This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

QH
5|C64|919
v.1 2

VIRGINIA STATE DOCUMENT
Public Documents
University of Virginia Library

FOR REFERENCE USE ONLY
DO NOT CIRCULATE

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

CODE OF VIRGINIA

WITH

The Declaration of Independence
The Constitution of the United States
The Constitution of Virginia

IN TWO VOLUMES—ANNOTATED

VOLUME TWO

Published by authority of the Commonwealth of Virginia
Under an Act Approved March 8, 1918

RICHMOND:
DAVIS BOTTOM, SUPERINTENDENT OF PUBLIC PRINTING
1919

Digitized by Google

Virginiana

425412

COPYRIGHT, 1919
FOR THE COMMONWEALTH OF VIRGINIA
BY
B. O. JAMES, SECRETARY OF THE COMMONWEALTH

VIRGINIA STATE LIBRARY

RICHMOND PRESS, INC., PRINTERS
EVERETT WADDEY COMPANY, BINDERS

Digitized by Google

TITLE 40.

Crimes and Punishments.

Ch. 177. Offenses against the sovereignty of the State.
178. Homicide, and other offenses against the person.
179. Offenses against property.
180. Forgery.
181. Offenses against public justice.
182. Offenses against the peace.
183. Offenses against morality and decency; protection of religious meetings.
184. Intoxicating liquors.
185. Offenses against public policy.
186. Offenses against the election laws.
187. Offenses concerning highways; obstructions in water courses; hindrance to travelers.
188. General provisions concerning crimes and punishments.

CHAPTER 177.

Offenses Against the Sovereignty of the State.

Sec.
4389. Treason defined; how proved and punished.
4390. Misprision of treason; how punished.
4391. Attempting or instigating others, to establish usurped government; how punished.
4392. Conspiring to incite the colored population to insurrection against the white population, or the white against the colored; how punished.

Sec. 4389. Treason defined; how proved and punished.—Treason shall consist only in levying war against the State, or adhering to its enemies, giving them aid and comfort, or establishing, without authority of the legislature, any government within its limits separate from the existing government, or holding or executing, in such usurped government, any office, or professing allegiance or fidelity to it, or resisting the execution of the laws under color of its authority; and such treason, if proved by the testimony of two witnesses to the same overt act, or by confession in court, shall be punished with death. (Code 1887, § 3658.)

Sec. 4390. Misprision of treason; how punished.—If any person knowing of such treason shall not, as soon as may be, give infor-

Digitized by Google

mation thereof to the Governor, or some conservator of the peace, he shall be punished by fine not exceeding one thousand dollars, or by confinement in the penitentiary not less than three nor more than five years. (Code 1887, § 3659.)

Sec. 4391. Attempting, or instigating others, to establish usurped government; how punished.—If any person attempt to establish any such usurped government, and commit any overt act therefor, or by writing or speaking, endeavor to instigate others to establish such government, he shall be confined in jail not exceeding twelve months, and fined not exceeding one thousand dollars. (Code 1887, § 3660.)

Sec. 4392. Conspiring to incite the colored population to insurrection against the white population, or the white against the colored; how punished.—If any person conspire with another to incite the colored population of the State to acts of violence and war, against the white population, or to incite the white population of the State to acts of violence and war, against the colored population, he shall, whether such insurrection be made or not, be punished by confinement in the penitentiary not less than five nor more than ten years. (Code 1887, § 3661.)

See Gregory's Forms Nos. 699, 707.

CHAPTER 178.

Homicide, and Other Offenses Against the Person.

Sec.
4393. Murder, first and second degree, defined.
4394. First degree, how punished.
4395. Second degree, how punished.
4396. Voluntary manslaughter, how punished.
4397. Involuntary manslaughter, how punished.
4398. How and where homicide prosecuted and punished, if death occur without the State.
4399. Wilful abandonment, upon any shore of the State, of person sick with small-pox, how punished.
4400. Attempts to poison; how punished.
4401. Attempt to produce abortion, or by publications, etc., prompt the procuring of it, how punished.
4402. Shooting, stabbing, etc., with intent to maim, kill, etc., how punished.
4403. Shooting, etc., in committing or attempting a felony; how punished.
4404. Shooting in place of public resort; how punished.
4405. Robbery; how punished.
4406. Extorting money, etc., by threats; how punished.
4407. Kidnapping, with intent to extort money; how punished.
4408. Kidnapping; how punished.
4409. Illegal seizure, etc., of a child; how punished.
4410. Seduction of female of previous chaste character; how punished.
4411. Abduction of female for purpose of defilement, etc.; how punished.

Digitized by Google

Sec.
4412. Abducting, kidnapping or unlawfully aiding in the escape of the inmates of any of the public hospitals of this State.
4413. The evidence necessary to convict; limitation of prosecution; marriage, a bar to conviction.
4414. Rape; carnal knowledge of child under sixteen years of age or a lunatic, or a pupil in any deaf, dumb, or blind institution; how punished.
4415. Depositions of female witnesses in cases of rape and attempted rape.
4416. Death by duel out of State on agreement made within it, murder.
4417. Seconds in duels accessories before the fact.
4418. Where such offenders prosecuted.
4419. Fighting a duel, or sending a challenge, how punished.
4420. Accepting or bearing a challenge; how punished.
4421. Persons leaving the State to evade law against duelling, etc., and persons present as seconds, etc., punished as if offense committed in the State.
4422. Plea of former conviction or acquittal.
4423. Posting or upbraiding another for not engaging in a duel; how punished.
4424. Duty of justice having cause to suspect a duel is about to be fought.
4425. Seconds, etc., required to testify, where duel fought and person killed or wounded; exemption from prosecution.
4426. Prize fighters, pugilism, and fights between men and animals; how punished.
4427. Their aiders and abettors, how punished.

Sec. 4393. Murder, first and second degree, defined.—Murder by poison, lying in wait, imprisonment, starving, or by any wilful, deliberate, and premeditated killing, or in the commission of, or attempt to commit arson, rape, robbery, or burglary, is murder of the first degree. All other murder is murder of the second degree. (Code 1887, § 3662.)

Definition.—For definition of murder, see McWhirt's Case, 3 Grat. 604, 46 Am. Dec. 196; Robertson's Case, 1 Va. Dec. 851, 20 S. E. 362; Harrison's Case, 79 Va. 374, 52 Am. Rep. 634.

"Wilful, deliberate, premediated killing."—A man must be taken to intend that which he does or which is the immediate or necessary consequence of his act. Hill's Case, 2 Grat. 594; Murphy's Case, 23 Grat. 972; McDaniel's Case, 77 Va. 287.

Before the jury can find the prisoner guilty of murder in the first degree, proof, direct or inferential, must be adduced that the death of the deceased was the ultimate result which the concurring will, deliberation, and premeditation of the prisoner sought. Jones' Case, 1 Leigh, 611; McDaniel's Case, 77 Va. 286.

How long the design must have existed.—The premeditated design to kill need not have existed for any length of time; but if the design at the time of the killing was then formed, and the killing was done without provocation then or recently received, it is murder in the first degree. Whiteford's Case, 6 Rand. 721, 18 Am. Dec. 771; Jones' Case, 1 Leigh, 598; Howell's Case, 26 Grat. 995; Mitchell's Case, 33 Grat. 872; Wright's Case, 75 Va. 914, 920; Wright's Case, 33 Grat. 880; McDaniel's Case, 77 Va. 281, 284; King's Case, and note, 2 Va. Cas. 84; Brown's Case, 90 Va. 671, 19 S. E. 447.

Design as to one—Killing another.—When the original intent is murderous, the crime, on legal principles, is the same, whoever happens to be killed. Note to King's Case, 2 Va. Cas. 87; note 10 Va. L. Reg. 622.

Digitized by Google

Possession of deadly weapon—Presumption of design.—A mortal wound given with a deadly weapon in the previous possession of the slayer, without any or upon very slight provocation, is prima facie wilful, deliberate, and premeditated killing, and throws upon the accused the necessity of proving extenuating circumstances. Hill's Case, 2 Grat. 594, 606; Vaiden's Case, 12 Grat. 717; Howell's Case, 26 Grat. 995; Wright's Case, 75 Va. 914; Lewis' Case, 78 Va. 732; Brown's Case, 90 Va. 672, 19 S. E. 447; Hite's Case, 96 Va. 489, 31 S. E. 895; Longley's Case, 99 Va. 807, 37 S. E. 339; Horton's Case, 99 Va. 848, 38 S. E. 184; Honesty's Case, 81 Va. 296; Harrison's Case, 79 Va. 378, 52 Am. Rep. 634; Jones' Case, 100 Va. 842, 41 S. E. 951.

When design or intention presumed.—In the enumerated cases, "poison, lying in wait, imprisonment, starving," and also in cases of murder "in the commission of or attempt to commit arson, rape, robbery, or burglary," there is no necessity of proof to establish that the homicide was intended. Jones' Case, 1 Leigh, 598, 612; Howell's Case, 26 Grat. 997.

The killing of a slave by his master and owner by willful and excessive whipping was murder in the first degree, though it may not have been the purpose and intention of the master and owner to kill the slave. Souther's Case, 7 Grat. 673.

Malice.—Express malice is a question of fact; implied malice, a question of law. Harrison's Case, 79 Va. 377, 52 Am. Rep. 634.

Self-control determines malice, and as long as self-control exists the crime is murder in the first or second degree, to be determined by other facts than the varying degrees of provocation. Reed's Case, 98 Va. 818, 827, 36 S. E. 399. See, also, for loss of self-control, Boswell's Case, 20 Grat. 860; Poindexter's Case, 33 Grat. 766; McDaniel's Case, 77 Va. 281; Honesty's Case, 81 Va. 292, 297.

Burden of proof—Malice is presumed from the fact of killing, unaccompanied with circumstances of extenuation, and the burden of disproving malice is thrown upon the accused. Lewis' Case, 78 Va. 733; Hill's Case, 2 Grat. 599; Willis' Case, 32 Grat. 932; Wright's Case, 75 Va. 914; Harrison's Case, 79 Va. 374, 52 Am. Rep. 634; Murphy's Case, 23 Grat. 960; Honesty's Case, 81 Va. 284; Hite's Case, 96 Va. 489, 31 S. E. 895.

Where corpus delicti has been proven, it is competent to show relations of accused and deceased in order to prove intent. O'Boyle's Case, 100 Va. 785, 40 S. E. 121.

Capacity to commit murder — *Insanity — Presumption — Burden of Proof.*—Every man is presumed to be sane till the contrary is proved. The burden of proving insanity is on the prisoner (or in civil cases the party alleging it); and where the prisoner relies on this defence it is not sufficient for him to raise a rational doubt on the mind of the jury as to whether he was responsible or not, but the burden is on him to prove to the satisfaction of the jury that he was not responsible. Longley's Case, 99 Va. 808, 37 S. E. 339; Boswell's Case, 20 Grat. 860; Baccigalupo's Case, 33 Grat. 817, 36 Am. Rep. 795; Dejarnette's Case, 75 Va. 871; Hite's Case, 96 Va. 489, 31 S. E. 895.

But in every case, although the accused may be laboring under partial insanity, if he still understands the nature and character of his act and the consequences, and has a knowledge that it is wrong, and a mental power sufficient to apply that knowledge to his own case, and to know that if he does the act he will do wrong and receive punishment, and possesses withal a will sufficient to restrain the impulse that may arise from a diseased mind, such partial insanity is not sufficient to exempt him from responsibility to the law for his crimes. Dejarnette's Case, 75 Va. 867.

Permanent insanity from drink excuses crime.—Permanent insanity from excessive drinking excuses an act which would be otherwise criminal, just as insanity produced in any other way, but anything short of permanent insanity from drink is no excuse, even though it amount to temporary insanity. Boswell's Case, 20 Grat. 860. But temporary insanity from drink may lessen the degree of murder from first to second

Digitized by Google

degree, since it cannot be premeditated. Hite's Case, 96 Va. 489, 31 S. E. 895. See note on Insanity, Boswell's Case, 20 Grat. 878, Va. Rep. Anno.

Drunkenness no excuse, but may reduce degree of crime.—Drunkenness is no excuse for crime, although such drunkenness may be the result of long-continued and habitual drinking, without any purpose to commit crime, and may have produced temporary insanity, during the existence of which the criminal act is committed. Boswell's Case, 20 Grat. 872; Hite's Case, 96 Va. 490, 31 S. E. 895; Longley's Case, 99 Va. 807, 37 S. E. 339.

Voluntary immediate drunkenness is not admissible to disprove malice or to reduce the offence to manslaughter. But where, by reason of it, there is wanting that deliberation and premeditation which are necessary to elevate the offence to murder in the first degree, it is properly ranked as murder in the second degree. Willis' Case, 32 Grat. 929, 936; Jones' Case, 1 Leigh 598; Boswell's Case, 20 Grat. 860.

Burden of proof to reduce crime.—The onus rests on the accused to prove, if he relies on intoxication as a defence, that when he committed the offence his condition from intoxication was such as to render him incapable of doing a "wilful, deliberate, and premeditated" act; and so of insanity. Both must be proved as independent facts. Honesty's Case, 81 Va. 284; Baccigalupo's Case, 33 Grat. 817, 36 Am. Rep. 795; Longley's Case, 99 Va. 808, 37 S. E. 339.

As to murder by one lacking in mental capacity, see Taylor's Case, 1 Va. Dec. 817, 19 S. E. 739.

Presumption.—As to presumption of innocence, see Taylor's Case, 88 Va. 20, 13 S. E. 298; Longley's Case, 99 Va. 808, 37 S. E. 339; O'Boyle's Case, 100 Va. 785, 40 S. E. 121.

Presumptions as to degree—Onus probandi.—Every homicide is prima facie murder in the second degree, and in order to raise the offence to murder in the first degree the Commonwealth must assume the burden of proving the elements of that crime. On the other hand, in order to reduce the offence from murder in the second degree to manslaughter the burden is cast on the accused. Hill's Case, 2 Grat. 595; Willis' Case, 32 Grat. 929; Bristow's Case, 15 Grat. 639; McDaniel's Case, 77 Va. 281; Tilley's Case, 89 Va. 151, 15 S. E. 526; Jackson's Case, 97 Va. 762, 33 S. E. 547; Reed's Case, 98 Va. 827, 36 S. E. 399; Longley's Case, 99 Va. 807, 37 S. E. 339; Robertson's Case, 1 Va. Dec. 851, 20 S. E. 362; Vance's Case, 1 Va. Dec. 830, 19 S. E. 785.

But to reduce the offence to manslaughter it is not necessary for the accused to show that before the mortal wound was given he had declined further combat and retreated as far as he could with safety. This would entitle him to be acquitted. Jackson's Case, 97 Va. 763, 33 S. E. 547.

The law presumes all homicide to be murder in second degree unless justified, excused, or alleviated, and it is incumbent upon the prisoner to make out to the satisfaction of the court and jury the circumstances of justification, excuse, or alleviation. McWhirt's Case, 3 Grat. 605, 46 Am. Dec. 196.

Possession of objects taken from person of one murdered.—The unexplained possession of the fruits of a larceny is prima facie evidence of the guilt of that crime. But no such presumption is raised by the possession of objects taken from a house that has been burglarized or from the person of one who has been murdered. Kibler's Case, 94 Va. 804, 26 S. E. 858. See, also, Taliaferro's Case, 77 Va. 411; Wright's Case, 82 Va. 183.

Indictment.—For what defects in indictments do not vitiate them, see section 4875 and notes.

See note on indictment, Boyle's Case, 14 Grat. 674, Va. Rep. Anno.

Common-law form of indictment sufficient.—The indictment is not defective in not charging specially such defects as would show the offence to have been murder in the first degree. The common-law form of indictment for murder is all that is necessary to support a finding of guilty

Digitized by Google

of murder in the first degree under this statute. Miller's Case, 1 Va. Cas. 310; Wicks' Case, 2 Va. Cas. 387; Livingston's Case, 14 Grat. 596; Kibler's Case, 94 Va. 809, 26 S. E. 858; Thompson's Case, 20 Grat. 730; O'Boyle's Case, 100 Va. 785, 40 S. E. 121.

Indictment for murder.—Conviction may be for murder in attempt to commit other crimes.—It is competent, in an indictment for murder simply, to try and convict one of murder in the commission of, or attempt to commit robbery, etc. Thompson's Case, 20 Grat. 724; Robertson's Case, 1 Va. Dec. 855, 20 S. E. 362.

"Malice aforethought" a sine qua non.—In an indictment for murder, it is indispensable that the killing and murder should be charged to be done "with malice aforethought." Gibson's Case, 2 Va. Cas. 70. But omission of the word "deliberately" will not be fatal on general demurrer. Bull's Case, 14 Grat. 613.

Murder by poison—Scienter.—When the murder is perpetrated by the means of poison, it is said that the indictment should aver that the prisoner knew the substance to be a deadly poison, and it is the safer course to insert such an averment. Com. v. Earle, 1 Whart. 525. See Hatchett's Case, 76 Va. 1026.

Verdict—*Length of time.*—The court will rarely disturb the verdict of the jurors in respect to the length of time for which the prisoner is to be confined. McCune's Case, 2 Rob. 771.

Rule as to new trial—Passing on evidence.—Where the court has to pass upon the evidence in the cause a new trial ought not to be granted except in a case of plain deviation or of palpable insufficiency of evidence, and not in a doubtful case, merely because the court if on the jury would have given a different verdict. Vaiden's Case, 12 Grat. 728, citing Ross v. Overton, 3 Call 309, 2 Am. Dec. 552; Brugh v. Shanks, 5 Leigh 598, etc. See, also, Hill's Case, 2 Grat. 594; McWhirt's Case, 3 Grat. 594, 46 Am. Dec. 196; Grayson's Case, 6 Grat. 712; McCune's Case, 2 Rob. 778; Grayson's Case, 7 Grat. 613; Kates' Case, 17 Grat. 561; Howell's Case, 26 Grat. 995; Mitchell's Case, 33 Grat. 879.

For cases of circumstantial evidence, see Dean's Case, 32 Grat. 912; Cluverius' Case, 81 Va. 845; Finchim's Case, 83 Va. 689, 3 S. E. 343; Robertson's Case, 1 Va. Dec. 857, 20 S. E. 362.

Degrees of murder—*Murder in the first degree.*—Cases in which verdict of guilty of murder in the first degree was sustained: Wicks' Case, 2 Va. Cas. 387 (on circumstantial evidence); Burgess' Case, Id. 483; Whiteford's Case, 6 Rand. 721, 18 Am. Dec. 771; Jones' Case, 1 Leigh 598; Bennett's Case, 8 Leigh 745; Hill's Case, 2 Grat. 594; Howell's Case, 26 Grat. 995; Mitchell's Case, 33 Grat. 845, 872; Wright's Case, 33 Grat. 880; Wright's Case, 75 Va. 914; Harrison's Case, 79 Va. 374, 52 Am. Rep. 634; Barbour's Case, 80 Va. 287; Honesty's Case, 81 Va. 284; Gaines' Case, 88 Va. 682, 14 S. E. 375; Davis' Case, 89 Va. 132, 15 S. E. 388; Tilley's Case, 89 Va. 136, 15 S. E. 526; Hite's Case, 96 Va. 489, 31 S. E. 895; Reed's Case, 98 Va. 817, 36 S. E. 399; Weatherman's Case, 1 Va. Dec. 819, 19 S. E. 778.

Cases in which verdict of murder in first degree was set aside because not sustained by the evidence: Grayson's Case, 6 Grat. 712, also s. c., 7 Grat. 613; Smith's Case, 21 Grat. 809; Willis' Case, 32 Grat. 929; Hatchett's Case, 76 Va. 1026; McDaniel's Case, 77 Va. 281.

Murder in the first degree.—The Legislature, in the description of offences which constitute murder in the first degree, has at first enumerated some of the most striking instances of deliberate and cruel homicide; but, finding it impossible to enumerate all of them, then proceeded by general words to embrace all kinds of wilful, deliberate, and premeditated killing. It is impossible to interpolate the word "such" in that general description. Whiteford's Case, 6 Rand. 721, 18 Am. Dec. 771; Jones' Case, 1 Leigh 598, 610.

Enumerated cases—Purpose of enumeration—The enumerated cases were not put for the purpose of indicating that those which might occur under the recited clause should resemble them in circumstances. But, if they were intended to influence the recited clause, it was by suggesting

Digitized by Google

the degree of malice which should appear in cases comprehended within the recited clause. Burgess' Case, 2 Va. Cas. 488, and note immediately above.

Same—No necessity to prove design.—In all of these enumerated cases the Legislature has declared the law that perpetrator shall be guilty of murder in the first degree without further proof that the death was the ultimate result which the will, deliberation, and premeditation of the party accused sought. And the same authority has declared the law that any other kind of killing, which is sought by the will, deliberation and premeditation of the party accused shall be murder also in the first degree; but as to this other kind of killing proof must be adduced to satisfy the mind that the death of the party slain was the ultimate result which the concurring will, deliberation and premeditation of the party accused sought. But to this general rule the same authority adds an exception, which is that any death consequent upon the perpetration or attempt to perpetrate arson, rape, robbery, or burglary shall be deemed murder in the first degree. So that the cases within the exception, as now put, and the cases enumerated, as first mentioned, are, in fact, placed upon the same principle; there is no necessity of proof in either that a homicide was intended. And it follows, of course, that all other homicide which was murder at common law is now murder in the second degree, except where it shall be proved that the homicide was the result of a "wilful, delibrate, and premeditated killing"; and it also follows, of necessity, that, when by proof the mind is satisfied that the killing was wilful, deliberate, and premeditated, such killing must be taken and held to be murder in the first degree. Jones' Case, 1 Leigh 598, 611; Burgess' Case, 2 Va. Cas. 483; Whiteford's Case, 6 Rand. 721, 18 Am. Dec. 771.

Same—Murder by poison.—To entitle the Commonwealth to a verdict, it is essential to prove clearly, beyond a reasonable doubt, these three essential propositions, viz.: (1) That the deceased came to his death by poison; (2) that the poison was administered by the accused; (3) that he administered it knowingly and feloniously. Hatchett's Case, 76 Va. 1026.

Same—Murder by lying in wait.—The expression "lying in wait" is taken to mean not merely his concealing himself in the path of his intended victim for the purpose of killing him, but the deliberately and premeditatedly seeking an occasion to effect the deadly purpose. Burgess' Case, 2 Va. Cas. 488.

Other cases of murder in the first degree.—Killing a by-stander, Wright's Case, 75 Va. 914; killing a policeman, Davis' Case, 89 Va. 132, 15 S. E. 388; killing after continued altercation, Crane's Case, 1 Va. Cas. 10; killing wife who was on bad terms with husband, Weatherman's Case, 1 Va. Dec. 819, 19 S. E. 778. See, also, Bennett's Case, 8 Leigh 745; Robertson's Case, 2 Va. Dec. 142, 22 S. E. 459.

Murder in the first degree distinguished from murder in the second degree. Note to King's Case, 2 Va. Cas. 78; Jones' Case, 1 Leigh, 598, 612.

The use of a deadly weapon has always been treated by the courts as a material circumstance or factor in passing on the degree of murder. Mitchell's Case, 33 Grat. 873; Wright's Case, 33 Grat. 880, 895; Wright's Case, 75 Va. 920; Jones' Case, 1 Leigh 598; Hite's Case, 96 Va. 489, 31 S. E. 895; Longley's Case, 99 Va. 807, 37 S. E. 339; Jones' Case, 100 Va. 842, 41 S. E. 951. But see McDaniel's Case, 77 Va. 281, where use of "bearing stick" did not warrant the presumptions of intent to kill.

Murder in second degree.—Cases in which verdict of murder in the second degree was sustained: King's Case, 2 Va. Cas. 78; Slaughter's Case, 11 Leigh 681, 37 Am. Dec. 638; McWhirt's Case, 3 Grat. 594, 46 Am. Dec. 196; Johnston's Case, 5 Grat. 660; Bristow's Case, 15 Grat. 634; Dock's Case, 21 Grat. 909; Stoneman's Case, 25 Grat. 887; Lewis' Case, 81 Va. 416; Shipp's Case, 86 Va. 746, 10 S. E. 1065; Snodgrass' Case, 89 Va. 679; 17 S. E. 238; Jackson's Case, 98 Va. 845, 36 S. E.

Digitized by Google

487; Longley's Case, 99 Va. 807, 37 S. E. 339; Vance's Case, 1 Va. Dec. 830, 19 S. E. 785; Robertson's Case, 2 Va. Dec. 142, 22 S. E. 359.

Cases in which verdict of murder in second degree was not sustained: Parrish's Case, 81 Va. 1; Tucker's Case, 88 Va. 20, 13 S. E. 298.

Examples of.—The offence of homicide by a workman throwing timber from a house into the street of a populous city without warning, or of a person shooting a fowl animo furandi and killing a man, are instances of murder in the second degree. King's Case, 2 Va. Cas. 87; Whiteford's Case, 6 Rand. 724, 18 Am. Dec. 771.

Defense—What party assaulted must show.—Before a party assaulted in a sudden brawl or quarrel can kill his adversary he must have retreated as far as he safely could to avoid the assault, until his further going back was prevented by some impediment, or as far as the fierceness of the assault permitted. He must show to the jury that the defense was necessary to protect his own life or to protect himself against grievous bodily harm. And with regard to the necessity that will justify the slaying of another in self-defense, it should seem that the party should not have wrongfully occasioned the necessity, for a man shall not in any case justify the killing of another by a pretense of necessity unless he were without fault in bringing that necessity upon himself. Vaiden's Case, 12 Grat. 729, 730.

Killing in a passion—When murder in second degree.—An instruction that if defendant was acting in the heat of passion, engendered by the slanderous words spoken of his wife, and if sufficient time had not elapsed for his passion to cool and subside, the killing was murder in the second degree, but that it was murder in the first degree if sufficient time had elapsed for his passion to subside, and if he afterwards went after the deceased with a deadly weapon for the purpose of killing him on account of the slanderous words, and did kill him wilfully and with malice and premeditation, is proper. Watson's Case, 87 Va. 608, 13 S. E. 22.

If the killing be malicious, but not wilful, deliberate, and premeditated, then such killing was murder in the second degree. Bristow's Case, 15 Grat. 642.

Killing by "lying in wait"—Verdict murder in second degree.—A person commits murder by "lying in wait"; is convicted of murder in the second degree; the judge sets the verdict aside as contrary to the law and the evidence, on the ground that the evidence justified murder in the first degree.

Quære, on second trial, is it legal for judge to dismiss the indictment? 2 Va. Law Reg. 697, 787, 870. Quære, ought the judge to have set the verdict aside? Id.

Notwithstanding this section declares "murder by lying in wait" to be murder in the first degree, yet this must be read along with sections 4918 and 4919 which allow the jury a certain degree of latitude and discretion in applying the law to the facts. Burton & Conquest's Case, 108 Va. 892, 62 S. E. 376.

For note upon duty of jury to convict of murder in first degree or to acquit, see 12 Va. Law Reg 777.

Interposition between contestants—Murder in second degree.—A person neither assaulted nor threatened gets down from his horse, arms himself with a club, interposes between two other persons who are about to engage in a fight, and kills one of them. Verdict of murder in the second degree will not be disturbed. Johnston's Case, 5 Grat. 660.

Nonfelonious homicide.—Of nonfelonious homicide there are two kinds, justifiable and excusable. Min. Syn. 36.

I. *Justifiable homicide.*—(1) Killing in advancement of public justice. Muscoe's Case, 86 Va. 443, 10 S. E. 534. The vital question is whether the arrest was legal or not. Id.

(2) Killing in execution of public justice. Min. Syn. 36.

(3) Justifiable killing in defence of person or property.

In this third class there must be some apprehension of some forcible or atrocious felony—dangerous to one's own life, or the life of a member of the family, or danger of burning the dwelling house, though

Digitized by Google

the danger may be unreal. Stoneman's Case, 25 Grat. 887; Parrish's Case, 81 Va. 1; Brown's Case, 86 Va. 466, 10 S. E. 745.

The bare fear that a man intends to commit murder or other atrocious felony, however well grounded, unaccompanied by any overt act indicative of such intention, will not warrant killing the party by prevention. There must be some overt act indicative of imminent danger at the time. Stoneman's Case, 25 Grat. 887; Brown's Case, 86 Va. 466, 10 S. E. 745; Field's Case, 89 Va. 690, 16 S. E. 865.

There must be some act by the deceased meaning present peril, or something in the attending circumstances indicative of a present purpose to make the apprehended attack. The act so done or circumstances thus existing must be of such a character as to afford reasonable ground for believing there is a design to commit a felony or to do some serious bodily harm, and imminent danger of carrying such design into immediate execution. Then the killing will be justifiable, though there is in fact no such design by the deceased. Stone's Case, 25 Grat. 887.

A person assaulted while in discharge of a lawful act, and reasonably apprehending that his assailant will do him bodily harm, has the right to repel the assault by all the force he deems necessary, and is not compelled to retreat from his assailant, but may, in turn, become the assailant, inflicting bodily wounds till his person is out of danger. Jackson's Case, 96 Va. 108, 30 S. E. 452.

For distinction between justifiable homicide in self-defense and excusable homicide in self-defense, see 6 Va. Law Reg. 176, and below (this note); also Min. Syn. 42.

II. *Excusable homicide.*—(1) Killing by misfortune. Min. Syn. 40, 41. (2) Killing in self-defense on a sudden broil.

When death ensues on a sudden provocation or sudden quarrel, without malice prepense, the killing is manslaughter, and in order to reduce the offense to killing in excusable self-defense the prisoner must prove two things: (1) That before the mortal blow was given he declined further combat and retreated as far as he could with safety; and (2) he killed the deceased through the necessity of preserving his own life or to save himself from great bodily harm. Dock's Case, 21 Grat. 909; Clark's Case, 90 Va. 360, 368, 18 S. E. 440; Jackson's Case, 98 Va. 845, 851, 36 S. E. 487; Vaiden's Case, 12 Grat. 717, 719.

To make out a case of self-defense in a case of homicide, the accused must show to the jury that the defense was necessary to protect his own life, or to protect himself against grievous bodily harm; and with regard to the necessity which will justify the slaying of another in self-defense, the accused must not have wrongfully occasioned that necessity, for a man shall not in any case justify the killing of another by a pretense of necessity unless he were without fault in bringing that necessity upon himself. Clark's Case, 90 Va. 369, 18 S. E. 440; Vaiden's Case, 12 Grat. 717; Lewis' Case, 78 Va. 732; Honesty's Case, 81 Va. 283, 298; Brown's Case, 86 Va. 466, 470, 10 S. E. 745; Gaines' Case, 88 Va. 682, 693, 14 S. E. 375; Jackson's Case, 98 Va. 845, 849, 36 S. E. 487, overruling Hash's Case, 88 Va. 172, 13 S. E. 398. See 6 Va. Law Reg. 176.

Homicide is not in self-defense where the deceased was not following the defendant or threatening him with any immediate danger at the time he threw the rock which killed the deceased. Byrd's Case, 89 Va. 536, 16 S. E. 727.

When a case of self-defense has been prima facie made out, evidence of dangerous character of deceased is admissible; but it is no palliation that prisoner believed the man he attacks and kills to be a dangerous person, and in such case such evidence is inadmissible. Harrison's Case, 79 Va. 374, 52 Am. Rep. 634.

Provocation sought or voluntarily provoked cannot excuse killing or doing bodily harm. No provocation whatever can render homicide justifiable or even excusable. The lowest grade to which it can reduce homicide is manslaughter. Honesty's Case, 81 Va. 283.

Digitized by Google

West Virginia decisions.—For West Virginia decisions on similar statute, see Justis' Annotations, chapter 144, section 1.

Sec. 4394. First degree; how punished.—Murder of the first degree shall be punished with death, or by confinement in the penitentiary for life, or for any term not less than twenty years. (Code 1887, § 3663; 1914, p. 419.)

Revisors' Note.—Acts 1914, p. 419, provided that "Murder of the first degree shall be punished with death, or in the discretion of the jury by confinement in the penitentiary for life." Omitting the words "in the discretion of the jury" as unnecessary, the revisors have added "or for any term not less than twenty years." Formerly, there were cases where the evidence showed the defendants guilty of first degree murder, but on account of the circumstances of the particular case, juries would not convict of first degree murder, because of the severity of the punishment, and for that reason brought in verdicts convicting defendants of a less offense. The revised section gives more latitude in this class of cases.

See notes to preceding section.

Under section 6 a person who committed murder prior to the date of the amendment of this section (Acts 1914, p. 419) but is tried subsequent thereto, is not obliged to accept the mitigation provided by the amendment. Conaway v. Com., 118 Va. 792, 88 S. E. 75.

Sec. 4395. Second degree; how punished.—Murder of the second degree shall be punished by confinement in the penitentiary not less than five nor more than twenty years. (Code 1887, § 3664.)

Revisors' Note.—The maximum punishment is made twenty years instead of eighteen. This change prevents a gap between the punishment for first and second degree murder. See revisors' note to the preceding section.

See notes to section 4393.

Sec. 4396. Voluntary manslaughter; how punished.—Voluntary manslaughter, shall be punished by confinement in the penitentiary not less than one nor more than five years. (Code 1887, § 3665.)

Manslaughter.—See Min. Syn. 45-52; also Note on Homicide, Souther's Case, 7 Grat. 673, Va. Rep. Anno.; also notes to section 4393.

Cases in which verdict of guilty of voluntary manslaughter was affirmed: Vaiden's Case, 12 Grat. 717; Bull's Case, 14 Grat. 613; Gray's Case, 92 Va. 772, 22 S. E. 858; Horton's Case, 99 Va. 848, 38 S. E. 184; Cash's Case, 2 Va. Dec. 1, 20 S. E. 893; Poindexter's Case, 33 Grat. 766.

Distinction between murder and manslaughter.—Every unlawful homicide must be either murder or manslaughter, and whether it be the one or the other depends alone upon whether the party who perpetrated the act did it with malice or not—malice either express or implied. Read's Case, 22 Grat. 924; King's Case, 2 Va. Cas. 78; Mitchell's Case, 1 Va. Cas. 116; McWhirt's Case, 3 Grat. 594, 605, 46 Am. Dec. 196.

Manslaughter (when voluntary) arises from the sudden heat of the passions; murder from the wickedness of the heart. McWhirt's Case, 3 Grat. 605, 46 Am. Dec. 196. See Crane's Case, 1 Va. Cas. 10; Gray's Case, 92 Va. 772, 22 S. E. 858.

If upon sudden quarrel two persons fight, and one of them kills the other, this is manslaughter. McWhirt's Case, 3 Grat. 605; Read's Case, 22 Grat. 937; Byrd's Case, 89 Va. 538, 16 S. E. 727; King's Case, 2 Va. Cas. 78; Watson's Case, 87 Va. 608, 13 S. E. 22; Horton's Case, 99 Va. 848, 38 S. E. 184.

Digitized by Google

Manslaughter is the unlawful killing of another, without malice, either express or implied; which may be either voluntary, upon a sudden heat, or involuntary, in the commission of some unlawful act. McWhirt's Case, 3 Grat. 605; King's Case, 2 Va. Cas. 78.

Distinction between voluntary and involuntary manslaughter.—On a trial for murder, where the evidence repelled the idea of self-defense, the court instructed the jury that if they believed from the evidence the deceased and prisoner were engaged in a sudden and mutual combat, in which no weapon dangerous in itself was used, and during the progress of the fight the prisoner struck the deceased an ordinary blow or blows with his fists or feet, without any intention either to kill the deceased or to do him great bodily harm, but to repel his attacks, and that the death of the deceased was caused thereby accidentally and apart from the prisoner's intention, then the prisoner is guilty of involuntary manslaughter. * * * Yet if the jury are satisfied that the manner of inflicting the blows are cruel and unusual, and exceeded in number and violence what was necessary to repel the deceased, and he died of such beating, then the prisoner is guilty of voluntary manslaughter. These two instructions are not erroneous. Bull's Case, 14 Grat. 613.

W. Va. Decisions.—For W. Va. decisions on similar statute, see Justis' Annotations, chapter 144, section 4.

Sec. 4397. Involuntary manslaughter; how punished.—Involuntary manslaughter shall be punished by confinement in the penitentiary not less than one nor more than five years; or, in the discretion of the jury, by a fine of not exceeding one thousand dollars, or confinement in jail not exceeding one year, or both. (Code 1887, § 3666.)

Revisors' Note.—The section as it stands in the Code of 1887 provides that involuntary manslaughter shall be a misdemeanor; but in view of the many injuries and deaths resulting from the careless and negligent operation of steam engines, electric cars, automobiles and motor vehicles of various kinds, the revisors deemed it wise substantially to increase the maximum punishment.

See section 4396, and notes.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 144, section 5.

Sec. 4398. How and where homicide prosecuted and punished, if death occur without the State.—If any person be stricken or poisoned in, and die, by reason thereof, out of this State, the offender shall be as guilty, and be prosecuted and punished, as if the death had occurred in the county or corporation in which the stroke or poison was given or administered. (Code 1887, § 3667.)

This section overrules Linton's Case, 2 Va. Cas. 205.

For article as to legal effect where wound is committed in one State and death occurs in another, see 9 Va. Law Reg. 591. See also id. 1034.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 144, section 6.

Sec. 4399. Wilful abandonment, upon any shore of the State, of person sick with small-pox; how punished.—If any person wilfully abandon, or cause to be abandoned, upon any of the shores of this Commonwealth, any person who is sick with the small-pox, he shall be confined in the penitentiary not less than three nor more than ten years; and if such abandoned person die by reason of such wilful abandonment, the person who abandoned or caused

Digitized by Google

him to be abandoned shall be punished with death, or, in the discretion of the jury, by confinement in the penitentiary not less than five nor more than eighteen years. (Code 1887, § 3668.)

Sec. 4400. Attempts to poison; how punished.—If any person administer or attempt to administer any poison or destructive thing in food, drink, medicine, or otherwise, or poison any spring, well, or reservoir of water with intent to kill or injure another person he shall be confined in the penitentiary not less than three nor more than eighteen years. (Code 1887, § 3669; 1897-8, p. 682.)

Essential averments.—An indictment for an attempt to administer poison that does not allege such acts as, in a legal sense, constitute an attempt to commit the offence charged, but only such as show preparation, is demurrable. Hicks' Case, 86 Va. 223, 9 S. E. 1024, 19 Am. St. Rep. 891.

Elements of "attempt."—An attempt to commit a crime consists of (1) the intent; (2) a direct ineffectual act towards its commission; and that act must reach far enough towards the accomplishment of the desired result to amount to the commencement of the consummation. Id.

Case at bar.—Merely a procurement of the poison, and an ineffectual solicitation of a third party to put it in the drink of the intended victim, constitute not an attempt, but only a preparation. Id.

Generally.—This section to be construed with section 4873. Davis' Case, 99 Va. 838, 38 S. E. 191.

Circumstantial evidence not strong enough to convict of attempt to poison. Id.

See section 4767 and note.

On indictment for felony, accused may be convicted of an attempt. See section 4922 and notes.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 144, section 7.

Sec. 4401. Attempt to produce abortion, or by publications, etc., prompt the procuring of it; how punished.—If any person administer to, or cause to be taken by a woman, any drug or other thing, or use any means with intent to destroy her unborn child, or to produce abortion or miscarriage, and thereby destroy such child or produce such abortion or miscarriage, he shall be confined in the penitentiary not less than three nor more than ten years. No person, by reason of any act mentioned in the foregoing part of this section, shall be punishable where such act is done in good faith, with intention of saving the life of such woman or child. And if any person, by publication, lecture, advertisement, or by the sale or circulation of any publication, or in any other manner, encourage or prompt the procuring of abortion or miscarriage, he shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined not less than one hundred nor more than five hundred dollars, and be confined in jail not less than one nor more than twelve months for each offense. (Code 1887, § 3670.)

See 8 Va. Law Reg. 63.

As to "opinion evidence" in trial for abortion, see 7 Va. Law Reg. 728.

For note of case upon a similar statute, see 10 Va. Law Reg. 1117.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 144, section 8.

Digitized by Google

Sec. 4402. Shooting, stabbing, etc., with intent to maim, kill, etc.; how punished.—If any person maliciously shoot, stab, cut, or wound any person or by any means cause him bodily injury, with intent to maim, disfigure, disable, or kill, he shall, except where it is otherwise provided, be punished by confinement in the penitentiary not less than one nor more than ten years. If such act be done unlawfully, but not maliciously, with the intent aforesaid, the offender shall, in the discretion of the jury, be confined in the penitentiary not less than one nor more than five years, or be confined in jail not exceeding twelve months, and fined not exceeding five hundred dollars. (Code 1887, § 3671.)

Malicious shooting.—Whether a person on trial is guilty of malicious shooting with intent to kill depends upon the question whether if he had killed the person at whom he shot, instead of only wounding him with intent to kill him, the offence would have been murder. Read's Case, 22 Grat. 924; Price's Case, 77 Va. 393.

As purpose to kill being inferred from deliberate use of deadly weapon, see Price's Case, 77 Va. 396, and notes to section 4393.

Assault and battery.—The conviction and punishment of a party by a justice for an assault and battery will not bar a prosecution for wounding with intent to kill by the same act for which he was punished by the justice. Murphy's Case, 23 Grat. 960.

Indictment conforming to Code.—An indictment charging that the accused made an assault with a stone, and did feloniously, maliciously, and unlawfully beat, wound, ill treat, and cause bodily injury, etc., sufficiently conforms to this section. Jones' Case, 87 Va. 63, 12 S. E. 226. See, also, Benton's Case, 91 Va. 793, 21 S. E. 495, and cases cited.

How intent should be charged.—Although this statute affixes a penalty when the act is done with the intent to maim, disfigure, disable, "or" kill (in the disjunctive), yet the indictment should charge the intents conjunctively. Angel's Case, 2 Va. Cas. 231.

Although all the intents be laid, yet proof of either supports the indictment. Id.

Necessary averment.—All offences for which the penalty is confinement in the penitentiary are felonies, and the indictment for such an offence must describe it as having been done "feloniously." Randall's Case, 24 Grat. 646; Barker's Case, 2 Va. Cas. 122; Trimble's Case, Id. 143; Taylor's Case, 20 Grat. 825.

Weapon unnecessary.—In an indictment for malicious assault with intent to kill, it is unnecessary to state the weapon with which the assault was made. Jackson's Case, 96 Va. 107, 110, 30 S. E. 452; Canada's Case, 22 Grat. 899.

To charge that one "feloniously and maliciously did stab P., with intention to maim," etc., sufficiently describes the offence. Woodson's Case, 9 Leigh, 669.

Before the enactment of this section it was held necessary, under 1 Rev. Code 1819, p. 582, to aver that the defendant did disable the person attacked. Lester's Case, 2 Va. Cas. 198.

As to variance between the record of examining court and the indictment, insufficient as ground for quashing the indictment, see Derieux's Case, 2 Va. Cas. 379.

The words "strike" and "cut," although not in a former statute, did not vitiate an indictment "by the commixture of felony and misdemeanor." Derieux's Case, 2 Va. Cas. 379.

As to the plea autrefois acquit in a case of malicious shooting, which was not good, though the act of shooting was the same in both cases, see Vaughan's Case, 2 Va. Cas. 273.

See Chapple's Case, 1 Va. Cas. 184; Carver's Case, 5 Rand. 662.

Verdict.—The verdict of the jury must always be read in connection

Digitized by Google

with the indictment, and, if it be certain upon the reading of them together what the meaning of the verdict is, it is sufficiently certain. Hoback's Case, 28 Grat. 922; Jones' Case, 31 Grat. 830, the latter case distinguishing Randall's Case, 24 Grat. 644. See, also, Price's Case, 77 Va. 393; Hairston's Case, 97 Va. 754, 32 S. E. 797.

Therefore, if the intent be stated in the indictment, the reference in the verdict, "guilty of," etc., "as charged in the within indictment," is a sufficient finding of the intent. Jones' Case, 31 Grat. 830, distinguishing Randall's Case, 24 Grat. 644.

And so the omission from the verdict of the name of the party injured does not vitiate such verdict. Hoback's Case, 28 Grat. 924; Price's Case, 77 Va. 393; Hairston's Case, 97 Va. 754, 32 S. E. 797.

Verdict irresponsive to issue.—Where, on an indictment under this section, the verdict finds the prisoner guilty of malicious assault, without saying with what intent the assault was committed, the verdict should be set aside on motion as irresponsive to the issue, and as malicious shooting merely is in itself no offence at all. Jones' Case, 87 Va. 63, 12 S. E. 226; Randall's Case, 24 Grat. 644. But see Jones' Case, 31 Grat. 830, where reference in the verdict to the indictment cures such omission.

On an indictment for malicious cutting and wounding with intent to maim, disfigure, etc., the defendant may be convicted of unlawful cutting and wounding with like intent, or of assault and battery. Montgomery's Case, 98 Va. 840, 36 S. E. 371; Canada's Case, 22 Grat. 899; Jones' Case, 31 Grat. 832; sections 4918, 4920, and notes.

Verdict—Effect of new trial.—On an indictment for malicious stabbing with intent to kill, a verdict finding the accused guilty of unlawful stabbing with intent to kill is an acquittal of malicious stabbing; and, if the accused obtains a new trial, he does not thereby waive the advantage of the acquittal thus obtained. Stuart's Case, 28 Grat. 950; Benton's Case, 91 Va. 791, 21 S. E. 495. See, also, sections 4918, 4920, and notes.

Repelling an assault—Partly assaulted not compelled to retreat.—A person assaulted while in the discharge of a lawful act, and reasonably apprehending that his assailant will do him bodily harm, has the right to repel the assault by all the force he deems necessary, and is not compelled to retreat from his assailant, inflicting bodily wounds till his person is out of danger. Jackson's Case, 96 Va. 109, 30 S. E. 452; Montgomery's Case, 98 Va. 840, 36 S. E. 371, s. c., 99 Va. 833, 37 S. E. 841.

For a mere trespass on land, the owner has no right to assault the trespasser with a deadly weapon, the result of which may be to kill him or to do him great bodily harm. Montgomery's Case, 98 Va. 840, 36 S. E. 371.

An indictment for malicious assault with intent to kill does not involve a charge of more than one offense, because it alleges a felonious assault by defendant, this being an ingredient to the other crime charged. Miller's Case, 2 Va. Dec. 47, 21 S. E. 499.

For note on Self-Defense, see notes to section 4393, "Non-felonious Homicide."

W. Va. decisions.—In the trial of an indictment found under W. Va. Code 1899, chapter 144, section 9 (substantially the same as this section), an instruction at the instance of the State which eliminates from the consideration of the jury the intent with which the alleged wounding was done, is erroneous. State v. David, 51 S. E. 230.

For W. Va., decisions on similar statute, see Justis' Annotations, chapter 144, section 9.

Sec. 4403. Shooting, etc., in committing or attempting a felony; how punished.—If any person, in the commission of, or attempt to commit a felony, unlawfully shoot, stab, cut or wound another person he shall, in the discretion of the jury, be confined in the penitentiary not less than one nor more than five years or be

Digitized by Google

confined in jail not exceeding one year, and fined not exceeding five hundred dollars. (Code 1887, § 3672.)

Sec. 4404. Shooting in place of public resort; how punished.—If any person unlawfully shoot at another person in any street in a city or town, or in any place of public resort, whether in a city or town, or elsewhere, he shall be confined in jail not exceeding one year, and be fined not exceeding one thousand dollars. (Code 1887, § 3673.)

Sec. 4405. Robbery; how punished.—If any person commit robbery, by partial strangulation or suffocation, or by striking or beating, or by other violence to the person, or by the threat or presenting of fire-arms, or other deadly weapon or instrumentality whatsoever, he shall be punished with death, or, in the discretion of the jury, by confinement in the penitentiary not less than eight nor more than eighteen years. If any person commit a robbery in any other mode, or by any other means, he shall be confined in the penitentiary not less than five nor more than ten years. (Code 1887, § 3674.)

Revisors' Notes.—The words "or other deadly weapon or instrumentality whatsoever" following "fire-arms" are new.

Definition at common law—intent to steal.—The common law offense of robbery is "the felonious and forcible taking from the person of another of goods or money to any value, by violence or putting in fear." The Virginia statute does not define the offense, but only regulates its punishment. Houston's Case, 87 Va. 257, 12 S. E. 385. See Bishop on Statutory Crimes, section 517.

The intent to steal (animus furandi) is an essential element in the crime of robbery. Therefore an instruction that certain enumerated acts constitute robbery, without the slightest reference to the intention with which those acts were done, is erroneous. And this felonious intention must exist with reference to the goods charged in the indictment and at the time of the asportation. Jordan's Case, 25 Grat. 943.

It is not necessary that the prisoner should intend to appropriate the property to his own use. If he intended to deprive the prosecutor of his property, that is sufficient. Id.

Indictment.—An indictment alleging the felonious and forcible taking by the accused from the person of another of goods and money of a named value, by violence and putting him in fear, and that such goods and money were the property of such other person, is a sufficient charge of robbery at common law. Houston's Case, 87 Va. 257, 12 S. E. 385.

An indictment for robbery charged that the prisoners made an assault upon G., and "feloniously and violently did steal," etc. Under the Code the jury may acquit prisoners of the felony, and find them guilty of the "assault and battery." Hardy & Curry's Case, 17 Grat. 592.

In an indictment for robbery it is necessary to state specifically the form of violence by which the robbery was committed. See 11 Va. Law Reg. 148.

Generally.—For correct instruction as to punishment of robbery committed by presenting of firearms, see Houston's Case, 87 Va. 257, 12 S. E. 385.

As to instruction in regard to accessories, incorrect because of assumption of the fact of robbery, see Id.

As to killing in attempt to commit or the commission of robbery, see Robertson's Case, 1 Va. Dec. 851, 20 S. E. 362. Section 4393 and notes.

As to conviction for attempt to commit robbery, see section 4922.

Digitized by Google

For W. Va., decisions on similar statute, see Justis' Annotations, chapter 144, section 12.

Sec. 4406. Extorting money, etc., by threats; how punished.—If any person threaten injury to the character, person, or property of another person or accuse him of any offense and thereby extort money, property, or pecuniary benefit or any note, bond, or other evidence of debt from him or any other person he shall be confined in the penitentiary not less than three nor more than five years or in the discretion of the jury be confined in jail not exceeding one year and fined not exceeding one thousand dollars. (Code 1887, § 3675; 1893-94, p. 520.)

Whether the person from whom the money was extorted was virtuous or vicious is not to be inquired into; such person is entitled to the protection of the law. Mitchell's Case, 75 Va. 856.

The error of the clerk in stating to the jury that the minimum of punishment fixed by law was three years instead of one year was not such error as to cause the judgment to be set aside in a case where the jury fixed the maximum, five years. Mitchell's Case, 75 Va. 857.

For W. Va., decisions on similar statute, see Justis' Annotations, chapter 144, section 13.

Sec. 4407. Kidnapping with intent to extort money; how punished.—If any person seize, take, or secrete any other person with intent to extort money, or pecuniary benefit, he shall be punished with death, or, in the discretion of the jury, be confined in the penitentiary not less than eight nor more than eighteen years. (Code 1887, § 3676; 1902-3-4, p. 948.)

Sec. 4408. Kidnapping; how punished.—If any person sell another as a slave, or kidnap a person with intent to use or sell him as a slave, he shall be confined in the penitentiary not less than three nor more than ten years. (Code 1887, § 3681.)

The sale of an adult free negro, by his own consent, as a slave, under a collusive contract between the seller and the free negro to divide the proceeds, is not such a sale of a free negro for a slave as is made a felony by 1 Rev. Code 1819, chapter 111, section 28; Mercer's Case, 2 Va. Cas. 144.

Upon an indictment on statute 1 Rev. Code, chapter 111, section 28, for selling a free negro for a slave, it was held that to constitute the felony the sale must be absolute, and not conditional. Nix's Case, 11 Leigh, 636.

The offense is complete by the kidnapping without the actual sale. Davenport's Case, 1 Leigh 588.

The consent of a boy of eight years of age does not excuse or lessen the offense. Id.

Sec. 4409. Illegal seizure, etc., of a child; how punished.—If any person, other than the father or mother of a child, illegally seize, take, or secrete a child from the person having lawful charge of such child, he shall be confined in the penitentiary not less than two nor more than five years, or, in the discretion of the jury, in jail not exceeding one year, and be fined not exceeding one thousand dollars. (Code 1887, § 3713.)

Discussed in 13 Va. Law Reg. 169.

Sec. 4410. Seduction of female of previous chaste character; how

Digitized by Google

punished.—If any person, under promise of marriage, conditional or unconditional, seduce and have illicit connection with any unmarried female of previous chaste character, or if any married man seduce and have illicit connection with any unmarried female of previous chaste character, he shall be guilty of a felony, and, upon conviction thereof, shall be punished by confinement in the penitentiary not less than two, nor more than ten years. For the purposes of this section, the chastity of the female shall be presumed, in the absence of evidence to the contrary. (Code 1887, § 3677.)

Revisors' Note.—Under this section as it stood before the revision, it was doubtful if the offense was committed where the promise of marriage was conditional. See 25 Am. & Eng. Ency. Law (2 ed.), p. 230; 35 Cyc, p. 1336; 11 Va. L. Reg. 424. In view of the insertion of the words "conditional or unconditional" after "promise of marriage," this doubt no longer obtains.

The last sentence is new and makes statutory the holding in Mill's Case, 93 Va. 815, 22 S. E. 863; Flick's Case, 97 Va. 766, 34 S. E. 39; and Barker's Case, 90 Va. 820, 20 S. E. 776.

Requisites.—To constitute the crime of seduction under promise of marriage it is necessary to show the seduction, the promise of marriage, and the previous chaste character of the female seduced (and also that the female was unmarried). Mills' Case, 93 Va. 815, 22 S. E. 863, 2 Va. Law Reg. 675, 678.

There must be seduction superadded to illicit connection. Flick's Case, 97 Va. 766, 34 S. E. 39, and note 5 Va. Law Reg. 487.

Seduction by married man.—Seduction by married man is the offense of inducing an unmarried female of previous chaste character to consent to unlawful sexual intercourse by enticements and influences which overcome her scruples. Flick's Case, 97 Va. 766, 34 S. E. 39. See exhaustive article, 5 Va. Law Reg. 205, and references.

Meaning of "unmarried female of previous chaste character."—The phrase "any unmarried female of previous chaste character" means a woman who has kept her person from actual defilement, and is intended to shield and save those whose dispositions are easy and complaisant, but who would have perhaps escaped irretrievable ruin had not their confidence been secured and their apprehensions put at rest by a promise of marriage. Mills' Case, 93 Va. 815, 22 S. E. 863.

The term "unmarried female" does not include a woman who has been married and divorced. Jennings' Case, 109 Va. 821, 63 S. E. 1080.

For editorial comment upon the said opinion, see 15 Va. Law Reg. 69.

Chastity presumed.—The chastity of the prosecutrix is presumed, and the burden of impeaching it lies on the accused. Mills' Case, 93 Va. 815, 22 S. E. 863; Flick's Case, 97 Va. 766, 34 S. E. 39; Barker's Case, 90 Va. 820, 20 S. E. 776. The section now makes statutory this doctrine.

See, in this connection 3 Va. L. Reg. 161.

Indictments—Counts differing as to date.—It is not error to compel prosecutor to elect between two counts, which charged that the offenses were committed on different days. Hausenfluck's Case, 85 Va. 702, 8 S. E. 683.

Admissions.—Admission of accused to matron of hospital to which he took prosecutrix that he had seduced her, and that she was before respectable, are relevant and competent evidence. Hausenfluck's Case, 85 Va. 702, 8 S. E. 683.

Where confession is retracted, an instruction that it is the province

Digitized by Google

of the jury to consider all the circumstances under which it was made held not error. Flick's Case, 97 Va. 766, 34 S. E. 39.

Evidence.—Where evidence of the good character of the accused for industry and veracity had been introduced, but none as to his relation with women, an instruction that the jury may in their discretion acquit defendant on the evidence of his good character, if sufficient to raise a reasonable doubt of his guilt, where all the evidence was considered, was properly refused. Flick's Case, 97 Va. 766, 34 S. E. 39.

Evidence of the repeated promises of the prisoner to marry the seduced female after the seduction had been accomplished is admissible to support the testimony as to the main fact of the seduction, in explaining the delay in the prosecution of the seducer, and to support the claim of the girl to previous chastity (Hausenfluck's Case, 85 Va. 707, 8 S. E. 683); but does not establish the fact of seduction (Id.).

It is allowable to prove birth of child. Hausenfluck's Case, 85 Va. 707, 8 S. E. 683.

Character of house.—The character of the house where prosecutrix resided prior to her alleged seduction may be proved by evidence of particular facts, but not by conclusions of witnesses, nor by general reputation. Barker's Case, 90 Va. 820, 20 S. E. 776.

Generally.—Cited but not construed, Kemp v. McGuire, 112 Va. 715, 72 S. E. 686.

Discussed in a review of the case of Flick v. Com., 1 Va. L. R. N. S. 655.

As to seduction, see Min. Syn. 69-72.

As to evidence necessary to convict, see section 4413 and note.

As to defendant's offering to marry as a defense, see 4 Va. Law Reg. 115.

Sec. 4411. Abduction of female for purpose of defilement, etc.; how punished.—If any person take away or detain, against her will, any female, with intent to marry or defile her, or cause her to be married or defiled by another person, or take from any person, having lawful charge of her, a female under sixteen years of age, for the purpose of concubinage or prostitution, he shall be confined in the penitentiary not less than three nor more than ten years; and every person who shall assist or aid in such abduction or detention for such purpose, shall be guilty of a felony, and, shall, upon conviction thereof, be punished by confinement in the penitentiary not less than two nor more than five years. (Code 1887, § 3678; 1887-8, p. 283.)

The abduction of a female over sixteen years of age (being not within the statute) cannot be punished by indictment. Anderson's Case, 5 Rand. 628, 16 Am. Dec. 776.

As to evidence necessary to convict, see section 4413 and note.

As to the original of this statute and English cases thereunder, see Rep. Rev. C. V. 1849, p. 946. See, also, Min. Syn. 69-72.

Discussed in 13 Va. Law Reg. 169.

Sec. 4412. Abducting, kidnapping or unlawfully aiding in the escape of the inmates of any of the public hospitals of this State.—If any person shall abduct, kidnap, or unlawfully aid in the abduction or kidnapping, or escape of any inmate of any of the hospitals for the insane, or of any inmate of the deaf, dumb and blind hospitals of this State, for any purpose other than those mentioned in sections forty-four hundred and seven and forty-four hundred and eleven, he shall be deemed guilty of a misdemeanor, and upon

Digitized by Google

conviction thereof, be fined not less than fifty nor more than one hundred dollars, or imprisoned not less than one nor more than six months, or both. (1908, p. 55.)

Sec. 4413. The evidence necessary to convict; limitation of prosecution; marriage, a bar to conviction.—No conviction under sections forty-four hundred and ten and forty-four hundred and eleven shall be had on the testimony of the female seduced, abducted, or detained, unsupported by other evidence, nor unless the indictment shall be found within two years after the commission of the offense: Provided, that the subsequent marriage of the parties may be pleaded in bar of a conviction. (Code 1887, § 3679; 1887-8, p. 283.)

The additional evidence required to sustain a conviction under promise of marriage must not emanate from the mouth of the seduced woman, and must not rest wholly upon her credibility, and must be such as strengthens and corroborates her testimony. The seduction and the promise of marriage are elements of the crime which must be established by such corroborating evidence in order to sustain a conviction. Mills' Case, 93 Va. 815, 22 S. E. 863, 2 Va. Law Reg. 675, 678 (note).

Quaere, as to the extent to which the testimony of the prosecutrix must be supported by other evidence under this section in order to sustain the conviction of the accused. Barker's Case, 90 Va. 820, 20 S. E. 776.

Testimony of prosecutrix, supported by evidence of admissions of accused to matron of hospital to which he took prosecutrix, that he had seduced her, etc., and other evidence, certified and considered as upon demurrer to evidence, held sufficient to sustain and warrant verdict of conviction. Hausenfluck v. Com., 85 Va. 702, 8 S. E. 683.

Does the marriage of a female, alleged to have been seduced, to another than the alleged seducer, bar a prosecution against the alleged seducer? See note, 1 Va. L. R. N. S. 73.

Discussed, 6 Va. L. J. 514.

Sec. 4414. Rape; carnal knowledge of child under sixteen years of age or a lunatic, or a pupil in any deaf, dumb, or blind institution; how punished.—If any person carnally know a female at sixteen years or more against her will, by force, or carnally know a female child under that age or a female inmate of any hospital for the insane, who has been adjudged a lunatic, or any female who is an inmate of a deaf, dumb, or blind institution who is a pupil therein he shall, in the discretion of the jury, be punished with death or confinement in the penitentiary not less than five nor more than twenty years. But, if such female child be over the age of fourteen years and not an inmate of such hospital for the insane or institution and consents to the carnal knowledge, the punishment shall be confinement in the penitentiary not less than five nor more than twenty years. If the carnal knowledge be with the consent of a female between the ages of twelve and sixteen years, and the female be not an inmate of such hospital for the insane or of such institution, the subsequent marriage of the parties, with the consent of the parent or guardian of the fe-

Digitized by Google

male, may be pleaded in bar of a prosecution for the offense. (Code 1887, § 3680; 1895-6, p. 673; 1916, p. 809.)

Revisors' Note.—Before the amendment of 1916 the age of consent was fourteen years. The amendment raised it to fifteen, and the revised section made it sixteen. In addition to this change, the last two sentences of the section are new with the revision. But attention is called to Acts 1918, p. 139, which puts back the age of consent to fifteen, and makes other changes.

Definition.—Rape is the unlawful carnal knowledge of a woman by a man, forcibly and against her will. Mings' Case, 85 Va. 640, 8 S. E. 474; Bailey's Case, 82 Va. 107, 3 Am. St. Rep. 87.

Force.—Wherever there is a carnal connection without anything which can be deemed consent—where there is neither a consent fraudulently procured nor any other sort of consent—by the woman, there is evidently in the wrongful act itself all the force which the law demands as an element of crime. Id.

Is penetration, without emission, sufficient?—In England, since statute of 9 Geo. IV., chapter 31, section 17, it has been held the smallest penetration is sufficient to constitute the complete offense of rape. Reg. v. Stanton, 47 Eng. Com. Law, 415. In Virginia there is no statute nor have we any case on the subject, but in case of buggery, it has been held that penetration alone completes the crime. Thomas' Case, 1 Va. Cas. 307.

Where prosecutrix testified that the accused "forced her" it was held that these words signified sexual intercourse. Bailey's Case, 82 Va. 113, 3 Am. St. Rep. 87.

Essentials of proof.—To justify conviction, (1) the criminal act must be clearly established; (2) the accused must be connected with the act in clear and satisfactory manner. Evidence of previous attempts to take improper liberties, which were neither disclosed nor resented, weakens the theory of rape. Boxley's Case, 24 Grat. 652; Brogy's Case, 10 Grat. 722.

Presumption as to boy under fourteen.—A boy under fourteen years old is conclusively presumed to be incapable of committing the crime of rape, or of attempting to commit it, whatever may be the real facts. Foster's Case, 96 Va. 306, 31 S. E. 503, 42 L. R. A. 589, 70 Am. St. Rep. 846, 4 Va. Law Reg. 539.

On whom committed—*Unchaste women.*—This offense may be committed as well on a woman unchaste, or a common prostitute, as on any other female. In matter of evidence, however, want of chastity may, within recognized limits, be shown as rendering it more probable that she consented. Bailey's Case, 82 Va. 110, 3 Am. St. Rep. 87.

Carnal knowledge of female under twelve (now fifteen).—Carnally to know a female child under twelve (now fifteen) years old, whether with or without consent, is rape. Givens' Case, 29 Grat. 330; Lawrence's Case, 30 Grat. 845; Bennet's Case, 2 Va. Cas. 235.

The prisoner may be convicted, though the female told him she was over twelve (now fifteen) years of age, and he had reasonable cause to believe that she was over that age. If she was not twelve years old, he is guilty under the statute. Lawrence's Case, 30 Grat. 845.

Principal in second degree—Under fourteen.—A boy under fourteen years of age, who assists another person in an attempt to commit rape, may be convicted as a principal in the second degree, and, under this statute, punished the same as the principal in the first degree, if it appear, under all the circumstances, that he had a mischievous discretion. Law's Case, 75 Va. 885, 40 Am. Rep. 750. See 4 Va. Law Reg. 539.

For husband's being principal in second degree to the crime of rape upon wife, see 5 Va. Law Reg. 111.

Indictment—Omission of the word "female."—The omission of the word "female" does not vitiate the indictment, provided the language used

Digitized by Google

sufficiently shows that the rape was committed on a female. Taylor's Case, 20 Grat. 825.

An indictment in the words of this section defining the offense is good. Smith's Case, 85 Va. 924, 9 S. E. 148.

Evidence.—The female's declarations out of court are only evidence so far as they are a part of the res gestae. Brogy's Case, 10 Grat. 722.

Recent complaint—Particulars of.—Though it is competent to prove the fact of a recent complaint by the female for the purpose of sustaining her credit, it is not competent to prove the particulars of her complaint. Brogy's Case, 10 Grat. 722. And so it is not competent to prove the description given by her before seeing parties arrested, when she refuses on trial to describe how they looked at the time of assault. Id.

Previous unchaste character.—It is not allowable on cross-examination to ask prosecutrix if she had not been before a person of unchaste character. Fry's Case, 82 Va. 334.

It seems that the general character of the prosecutrix for chastity cannot be shown in a trial for rape unless attacked. Proving that she had a daughter living with her who had an illegitimate child is a sufficient attack upon her chastity as to entitle evidence to show her general character for chastity. Coleman v. Com., 84 Va. 1, 3 S. E. 878.

Argument of counsel—Instructions.—In a prosecution for rape, it is entirely proper for the prisoner's counsel to argue before the jury "that accusations of this sort are easily made, hard to be proved, and still harder to be defended by one ever so innocent"; but this language is not proper as an independent instruction, and it is not error to refuse to give it as such. Crump's Case, 98 Va. 833, 23 S. E. 760.

For refusal of appellate court to set aside verdict of attempt to commit rape upon a girl under twelve, see Givens' Case, 29 Grat. 830.

Verdict—*Motion set aside.*—A motion to set aside a verdict on ground that the prosecutrix, twelve years old, could not understand the nature of an oath, will not be sustained where she has been examined in regard thereto by trial court, and the court is satisfied as to her capacity to understand the same. Smith's Case, 85 Va. 924, 9 S. E. 148.

Powers of appellate court.—Circumstantial evidence being deemed by the jury sufficient to convict of rape, and the trial court having refused a new trial, it would be an unwarrantable assumption of powers of the jury for appellate court to set verdict aside. Bennet's Case, 2 Va. Cas. 238.

The conviction of a man seventy years of age on the uncorroborated evidence of the woman, who made no complaint until after the birth of a child, and whose evidence bears the impress of falsehood on its face, will not be sustained, even though the plaintiff in error stands in the appellate court as a demurrant to evidence. Harvey's Case, 103 Va. 850, 49 S. E. 481.

For rape of stepdaughter, who made no outcry, see Bailey's Case, 82 Va. 107, 3 Am. St. Rep. 87.

For case in which the evidence does not warrant the verdict of the jury finding the accused guilty of rape, Brown's Case, 11 Va. Law J. 237; also Boxley's Case, 24 Grat. 649.

Attempt to rape—Force.—There must be evidence of force, or of an intention to use force, if necessary, to overcome the will of the victim. Hairston's Case, 97 Va. 754, 32 S. E. 797.

An indecent proposal, followed by the approach of the accused, who, however, was eluded, and who did not touch prosecutrix, does not sustain conviction of attempt to rape. Id.

The intent to commit, and a direct, ineffectual act towards its commission are essential to an attempt to commit rape. Glover's Case, 86 Va. 382, 10 S. E. 420; Uhl's Case, 6 Grat. 706; Hicks' Case, 86 Va. 223, 9 S. E. 1024, 19 Am. St. Rep. 891.

A negro, not intending to have carnal knowledge of a white woman by force, but intending to have such knowledge of her while she was asleep, got into bed with her, and pulled her night garment, which

Digitized by Google

waked her, using no other force. Held, this was not an attempt to ravish, within the meaning of the statute. Fields' Case, 4 Leigh 648.

Insufficient evidence.—What evidence not sufficient to convict of the offense of rape upon a woman of "easy virtue." Christian's Case, 23 Grat. 954.

Indictment—Attempt to commit rape—Word "ravish" unnecessary.—In an indictment for an attempt to commit rape, the word "ravish" is not necessary, but the words "attempting feloniously to know" are sufficient. Id.

One under indictment for attempt to rape was acquitted of that charge, but found guilty of assault and battery, and fined $1,000. This was not excessive. Doyle's Case, 100 Va. 808, 40 S. E. 925.

Generally.—As to rape, see Min. Syn. 72-74.

As to modes of punishment of rape in times past, 8 Va. Law Reg. 846.

Does sexual intercourse induced by sham marriage constitute rape? See note 10 Va. Law Reg. 556.

See article in 13 Va. Law Reg. 169.

For W. Va., decisions on similar statute, see Justis' Annotations, chapter 144, section 15.

Sec. 4415. Depositions of female witnesses in cases of rape and attempted rape.—Before or during the trial of an indictment for rape, or attempted rape, in which the female who is alleged to have been assaulted is a witness, the judge of the court in which the same is tried may, in his discretion, by an order entered of record, either in term time or in vacation, direct that the deposition of such witness be taken at a time and place designated in said order, and said judge may adjourn the taking thereof to such other times and places as he may deem necessary. Such deposition shall be taken by said judge, by the clerk, or by any officer authorized to take depositions in the presence of said judge, in the county or city in which the offense was committed or the trial is had, who shall rule upon all questions of evidence, and otherwise control the taking of the same as though it were taken in open court; and there shall be present also the attorney for the Commonwealth, as well as the accused and his attorneys, who shall have the same rights in regard to the examination of such witness as if she were testifying in open court; and no other persons shall be present unless expressly permitted by said judge. Such deposition shall be read to the jury at the time such witness might have testified if such deposition had not been taken, and shall be considered by them, and shall have the same force and effect as though such testimony had been given orally in court. But the clerk of the court, in case no appeal is taken, shall, after the time for granting a writ of error has elapsed, withdraw the deposition from the record of the case and destroy the same. Said judge may, in like manner, direct other depositions of such witness, in rebuttal or otherwise, which shall be taken and read in the manner and under the conditions herein prescribed as to the first deposition. The cost of taking such depositions shall be paid by the Commonwealth. (1904, p. 17.)

Digitized by Google

Revisors' Note.—The act authorized the deposition to be taken in ANY county, city, or town in the State. The revisors thought that the taking of the depositions should be restricted to the city or county in which the offense was committed, or the trial is had, and the section as revised so provides.

Sec. 4416. Death by duel out of State on agreement made within it, murder.—If any person, resident in this State, by previous agreement made within the same, fight a duel without the State, and in so doing inflict a mortal wound, he shall be deemed guilty of murder in this State. (Code 1887, § 3683.)

Sec. 4417. Seconds in duels accessories before the fact.—If any person, resident in this State, by like agreement, be the second of either party in such duel as is mentioned in the preceding section and be present as such when such mortal wound is inflicted, he shall be deemed an accessory before the fact to the crime of murder in this State. (Code 1887, § 3684.)

Sec. 4418. Where such offenders prosecuted.—An offender under either of the two preceding sections may be prosecuted in the county or corporation in which the death occurs, if it occur within this State; and, if not, in any county or corporation in which such offender may be found. (Code 1887, § 3685.)

Sec. 4419. Fighting a duel, or sending a challenge; how punished.—If any person fight a duel with any deadly weapon though no death ensue, or send or deliver to another a challenge, or message intended to be a challenge, oral or written, to fight a duel, though no duel ensue, he shall be confined in jail not more than one year, and be fined not exceeding one thousand dollars. (Code 1887, § 3686.)

An indictment for sending a challenge, in the form of a letter, to fight a duel, need not set out the words of the letter nor the substance thereof. Brown's Case, 2 Va. Cas. 516.

Before this statute, an indictment for fighting a duel with pistols was held bad on demurrer, whether considered as charging the act of fighting a duel as a distinct offense at common law, or as being equivalent to an indictment for an affray or a common assault. Lambert's Case, 9 Leigh 603, 607.

For W. Va., decisions on similar statute, see Justis' Annotations, chapter 144, section 22.

Sec. 4420. Accepting or bearing a challenge; how punished.—And if any person accept, or knowingly carry or deliver, any such challenge or message, or advise, encourage, or promote such duel, he shall be confined in jail not more than six months and fined not exceeding five hundred dollars. (Code 1887, § 3687.)

Party to a duel.—It seems that the surgeon of a party to a duel would be regarded in law as being concerned in or as aiding and abetting the duel. Cullen's Case, 24 Grat. 624.

Mere presence is not sufficient to render one guilty of aiding and abetting the commission of crime. There must be something done or said by him showing his consent to the felonious purpose and contributing to its execution. Reynolds' Case, 33 Grat. 834; Kemp's Case, 80 Va. 443.

Digitized by Google

For W. Va., decisions on similar statute, see Justis' Annotations, chapter 144, section 23.

Sec. 4421. Persons leaving the State to evade law against duelling, etc., and persons present as seconds, etc., punished as if offense committed in the State.—If any person, resident in this State, leave the same for the purpose of eluding the provisions herein contained respecting dwelling, or challenge to fight, and without the State engage in a duel (though no death ensue), or challenge another, or send or deliver a message intended to be a challenge to fight such duel, or accept, or knowingly carry or deliver any such challenge or message, or be present at the fighting of such duel with deadly weapons, as an aid, second, or surgeon, or advise, encourage, or promote such duel, he shall be deemed as guilty, and subject to the like punishment, as if the offense had been committed in this State. Prosecutions under this section shall be in the county or city in which the defendant resided immediately before leaving the State for the purposes aforesaid. (Code 1887, § 3688.)

Revisors' Note.—The last sentence is new, and prescribes the venue of prosecutions under the section.

The word "dwelling" in line three of the text is manifestly intended for "duelling"—a mere typographical error.

Sec. 4422. Plea of former conviction or acquittal.—Any person indicted in this State under sections forty-four hundred and sixteen, forty-four hundred and seventeen, forty-four hundred and eighteen or forty-four hundred and twenty-one, may plead his conviction or acquittal of the same offense in another State in bar of such indictment. (Code 1887, § 3689.)

Sec. 4423. Posting or upbraiding another for not engaging in a duel; how punished.—If any person post another, or, in writing or in print, use any reproachful or contemptuous language to or concerning another, for not fighting a duel, or for not sending or accepting a challenge, he shall be confined in jail not more than six months, or fined not exceeding one hundred dollars. (Code 1887, § 3690.)

Sec. 4424. Duty of justice having cause to suspect a duel is about to be fought.—If any justice or judge have good cause to suspect that any person is about to be engaged in a duel, he may issue his warrant to bring such person before him, and, if he think proper to take from him a recognizance to keep the peace, he shall insert therein a condition that he will not, during the time for which he is bound, be concerned in a duel, directly or indirectly. (Code 1887, § 3691.)

A judge out of court (and a fortiori in court) may, when he has reason to suspect that a duel is about to take place, commit a witness who refuses to give testimony by affidavit until he shall give testimony. Jones' Case, 1 Va. Cas. 270.

For W. Va., decisions on similar statute, see Justis' Annotations, chapter 144, section 27.

Digitized by Google

Sec. 4425. Seconds, etc., required to testify, where duel fought and person killed or wounded; exemption from prosecution.—Any person who bears a challenge or acceptance to fight a duel with a deadly weapon, if such duel be fought and any person be killed or wounded by such fighting, or who engages or is concerned in any manner, directly or indirectly, in a duel fought with a deadly weapon, by which fighting any person is killed or wounded, may be required, in any prosecution against any person but himself for such killing or wounding, to testify as a witness, as well before the grand jury, as before the court or any judicial tribunal, having cognizance of the offense; and when he shall have so testified, he shall never thereafter be liable to any punishment or prosecution for any offense committed by him as principal, accessory, or otherwise, in or about the said duel. (Code 1887, § 3692.)

Bill of rights—Self-crimination.—By the bill of rights of Virginia, a person is not only secured against giving evidence against himself on his own trial, but he cannot be required on the trial of another to testify, if his evidence will tend to criminate himself. Cullen's Case, 24 Grat. 624.

But where the statute affords full protection to a witness testifying in a criminal prosecution he is not justified in refusing to testify on the ground that his answer will tend to criminate himself. Kendrick's Case, 78 Va. 490; Temple's Case, 75 Va. 892. See section 4780.

The previous statute (October 11, 1870) was held unconstitutional, as it only provided that the "statement" made by the witness should not be used against him, and did not afford to the witness complete indemnity; therefore the witness could not be required to testify. Cullen's Case, 24 Grat. 624.

The fact that the witness has testified before the coroner or grand jury does not deprive him of the privilege. Id.

Sec. 4426. Prize fighters, pugilism, and fights between men and animals; how punished.—Any person who shall voluntarily engage in a pugilistic encounter between man and man or a fight between a man and bull or any other animal for money or other thing of value or for any championship, or upon the result of which any money or any thing of value is bet or wagered or to see which any admission fee is charged, either directly or indirectly, shall be deemed guilty of a felony, and upon conviction shall be punished by confinement in the penitentiary not less than one nor more than five years. By the term "pugilistc encounter" as used in this section is meant any voluntary fight or personal encounter by blows by means of the fists or otherwise, whether with or without gloves, between two or more men for money or for a prize of any character or for any other thing of value or for any championship or upon the result of which any money or any thing of value is bet or wagered. (Code 1887, § 3693; 1895-6, p. 546.)

Sec. 4427. Their aiders and abettors; how punished.—Whoever is present at such fight as an aid, second, or surgeon, or advises, encourages, or promotes such fight, shall, in the discretion of the

Digitized by Google

jury, be punished by confinement in the penitentiary not exceeding three years, or by fine not exceeding five hundred dollars, or both. (Code 1887, § 3694.)

CHAPTER 179.

Offenses Against Property.

Sec.
4428. Burning or destroying dwelling house, etc., at night.
4429. What not deemed a dwelling house.
4430. Burning or destroying meeting house, courthouse, college, school house, etc.; how punished.
4431. Burning piles of wood, stacks of straw, etc.; how punished.
4432. Burning or destroying any other building; how punished.
4433. Burning or destroying bridge, lock or dam; how punished.
4434. Setting fire to woods, fences, grass, etc.; how punished.
4435. Setting woods, etc., on fire, whereby another is damaged; how punished.
4436. Wilful burning of property with intent to injure insurer; how punished.
4437. Burglary defined, punishment; possession of burglarious tools.
4438. Entering dwelling house or other house, vessel, or car in the night or, etc., with intent to commit murder, rape, or robbery; how punished.
4439. Same act, with intent to commit larceny; how punished.
4440. Grand and petit larceny defined; how punished; larceny of horse, mule, ass, cow, steer, bull, or calf; how punished.
4441. Stealing and taking away sand on the banks of the Potomac river.
4442. Larceny of bank notes, checks, etc., or any book of accounts; how punished.
4443. How value thereof estimated.
4444. Larceny may be of things fixed to the freehold.
4445. Certain dogs not assessed subject to petit larceny and trespass.
4446. Protection of Antwerp and homing pigeons, and to punish their wilful destruction or detention.
4447. Removal, etc., of goods distrained or levied on with intent, etc., larceny.
4448. Receiving, etc., stolen goods, knowing etc., larceny; prosecution therefor.
4449. Buying or receiving certain goods with intent to defraud.
4450. Buying, etc., pig or railroad iron, brass, metal, or any composition thereof with intent to defraud; how punished; possession evidence of intent.
4451. Embezzlement deemed larceny; indictment; statement from attorney for the Commonwealth.
4452. Embezzlement by officers, etc., of public funds; how punished; default in paying over funds evidence of guilt.

Digitized by Google

Sec.
4453. Sale, pledge, etc., of goods, produce, etc., belonging to another and failure to pay over proceeds, deemed larceny.
4454. Failure to perform promise to deliver crop, or, etc., in return for advances, deemed larceny.
4455. In relation to the fraudulent conversion of property held under a trust deed.
4456. Failure to pay for or refusal to return goods wares or merchandise delivered for selection or approval, larceny in certain cases.
4457. Fraudulent entries, or, etc., with intent, etc., in accounts, by officers or clerks of banks, or joint stock company; how punished.
4458. Destroying or concealing a will; how punished.
4459. Obtaining money, etc., by false pretense, etc., with intent, etc., larceny. Obtaining signature by false pretense, etc., with such intent, forgery.
4460. To punish false pretense in obtaining registration of cattle and other animals and giving false pedigree.
4461. Sale of goods marked "sterling" and "sterling silver."
4462. Sale of goods marked "coin silver."
4463. Regulating sale of merchandise made of gold.
4464. Protection of hotels and boarding houses.
4465. Fraud in the issuance, sale, etc., of stocks, bonds, etc., or city or town lots; how punished.
4466. Wilfully destroying a vessel; how punished.
4467. Poisoning, killing, maiming, or disfiguring horses, cattle, or other beasts; how punished.
4468. Obstructing or injuring canal, railroad, etc.; how punished.
Sec.
4469. Being on track of railroad, etc., or driving, etc., any animal thereon, etc.; how punished.
4470. Trespassers forbidden to jump on or off railroad cars or trains.
4471. Trespassing upon railroad trains; how punished.
4472. Taking or removing waste or packing from journal boxes, etc.; how punished.
4473. Punishment for shooting at or throwing stones or other missiles at any train, car, vessel, or river craft.
4474. Injuring, destroying, or removing switch lamp flag-lamp or other signal used by any railroad; how punished.
4475. Driving, etc., any animal on track of railroad with view to recover damages; how punished.
4476. Injury to or destruction of fences or cattle stops along the line of railroads a misdemeanor; penalty.
4477. Unlawful use of or injury to, telephone and telegraph lines.
4478. To protect electric light and power companies, gas companies, and cities and towns from the theft of electric current or gas or apparatus, or unlawful interference therewith.
4479. Injuring, etc., any property, or removing, etc., any monument erected for, etc., or tree marked for, etc.; how punished.
4480. Unauthorized use of automobiles or motor vehicles.
4481. Pulling down fences or leaving open gates; how punished.
4482. Injuries to public buildings, etc; how punished.
4483. Injuries to trees, fences, or herbage on grounds of capitol or in any public square; how punished.

Digitized by Google

Sec. 4428. Burning or destroying dwelling-house, etc., at night. —If any person, in the night-time, maliciously burn, or by the use of dynamite, nitro-glycerine, or other explosive, maliciously destroy, in whole or in part, the dwelling-house of another, or any hotel, asylum, or other house in which persons usually dwell or lodge, or any railroad car, boat, or vessel, or river craft, in which persons usually dwell or lodge, or any jail or prison, or maliciously set fire to any thing by the burning whereof such dwelling house, hotel, asylum, or other house, or railroad car, boat, vessel or river craft, jail or prison, shall be burned in the night-time, he shall be punished with death, or in the discretion of the jury, by confinement in the penitentiary not less than five nor more than twenty years, but if the jury find that at the time of committing the offense there was no person in such dwelling house, hotel, asylum, or other house, or in such railroad car, boat, vessel, or river craft, jail or prison, the offender shall be punished by confinement in the penitentiary not less than five nor more than twenty years. Any such burning or destruction in the day-time shall be punished by confinement in the penitentiary not less than three nor more than ten years. And if any person in the night-time maliciously burn, or by the use of dynamite, nitro-glycerine, or other explosive, destroy any barn, stable, shed, or other building containing live stock, the live stock being in the building at the time of the burning or destruction, he shall be punished by confinement in the penitentiary not less than three nor more than ten years. (Code 1887, § 3695; 1889-90, p. 37; 1906, p. 14.)

Revisors' Note.—As the destruction of property by explosives was put on the same footing as destruction by fire by the act cited at the end of this section (1889-90, p. 37), the two methods have been united in the same section; and as burning, in legal contemplation, is a destruction of any portion of the house, however small, it was thought that greater latitude should be given the jury in the matter of punishment. It was also thought that the punishment prescribed in the last sentence of the section was too severe, and this was changed. The combination of burning and destruction by explosives has also been carried out in several of the sections mentioned below.

Definition at common law.—Arson is the malicious and wilful burning of the dwelling house of another person. Min. Syn. 88.

Quaere, is the common law offense of arson abolished? Cullen's Case, 7 Grat. 619.

Essentials of proof.—(1) The corpus delicti must be proved beyond a reasonable doubt. (2) The prisoner must be connected with the perpetration of the offense by evidence so convincing as to exclude every reasonable hypothesis consistent with innocence. Brown's Case, 87 Va. 220, 12 S. E. 472; Anderson's Case, 83 Va. 326, 2 S. E. 281.

Evidence simply that a fire was of an incendiary origin; that the accused had an opportunity to commit the crime, and that he cherished and expressed ill feelings toward the owner of property destroyed, does not warrant a conviction. Jones' Case, 103 Va. 1012, 49 S. E. 663. Garner's Case, 2 Va. Dec. 458, 26 S. E. 507.

Offense against possession.—Arson is an offense against the pos-

Digitized by Google

session or occupancy. Hence a landlord may commit it in the house occupied by his tenant. Erskine's Case, 8 Grat. 624.

Dwelling house.—A dwelling house, as here used, embraces all its parcels, including such outhouse as is parcel thereof. The burning of such an outhouse is the burning of a dwelling house in the meaning of the law, and may be so described in the indictment; and proof of the burning of the outhouse will as much sustain the indictment as would proof of the burning of the principal part of the dwelling house, or the whole of it, including all the parts. Page's Case, 26 Grat. 943.

The facts that a building has once been used as a dwelling house, and is intended for the same use in the future, do not of themselves make the building a dwelling house, within the meaning of this statute. Hooker's Case, 13 Grat. 763, 765.

A jail was a subject of arson before it was in terms included in the statute. Posey's Case, 4 Call 109, 12 Am. Dec. 560; Stevens' Case, 4 Leigh 737 (683). And if the jail be described as "the house of the sheriff and jailer of said county," that part of the description is unnecessary, and may be rejected as surplusage. Stevens' Case, 4 Leigh 737 (683).

Barns and stables.—A count (an indictment) charging that the prisoner at night did burn a barn and stable, the same being an outhouse not adjoining the dwelling house, nor under the same roof, but some person usually lodging therein at night, does not set out an offense for which the punishment is death. Page's Case, 26 Grat. 943.

On such count, the prisoner having been found guilty and sentenced to be hanged, the court will reverse the judgment, and remand the prisoner to be tried, under section 4431. Id.

The malicious burning of wheat threshed from the straw was not a violation of the sixth section of Acts 1847-8, chapter 120, subd. 4. Erskine's Case, 8 Grat. 624. See section 4431.

Indictment.—In indictment for statutory offenses, the language of the statute should be strictly followed. Therefore, in an indictment under this section, it is not sufficient to use the words "set fire to," but the word "burn" must be used. Howel's Case, 5 Grat. 664. See, on subject description of statutory offenses, Benton's Case, 91 Va. 782, 793, 21 S. E. 495; Young's Case, 15 Grat. 664; Taylor's Case, 20 Grat. 825; Dull's Case, 25 Grat. 965.

In an indictment under this section, the word house imports, "dwelling house," and is sufficient. If upon the trial it appears that it was not a house upon which arson could be committed, it is the duty of the judge to direct the jury to acquit the prisoner. Posey's Case, 4 Call 109, 2 Am. Dec. 560.

Averring ownership.—An indictment for the burning of a "certain store-house, not adjoining or occupied with the dwelling house of one S.," sufficiently describes the store-house as the property of S. Speers' Case, 17 Grat. 570; Butler's Case, 81 Va. 159.

An indictment for arson at common law is sufficient in a case of arson in the daytime, yet is more appropriate to charge the burning in the daytime. To convict of the offense of burning at night, it seems the indictment must charge the burning at night. Curran's Case, 7 Grat. 619.

Verdict—Guilty on one count—Acquitted on the other.—An indictment contains two counts, one under section 4428, the other under section 4432. A general verdict of guilty is found. The punishment fixed by the verdict is not such as could be ascertained under that finding in the first section. The finding of the jury was then guilty under the second count, and an acquittal under the first count. Richards' Case, 81 Va. 110, 116. See, also, Bennet's Case, 2 Va. Cas. 235; Kirk's Case, 9 Leigh 627; Page's Case, Id. 683; and sections 4773, 4774, 4918, and notes.

Sec. 4429. What not deemed a dwelling house.—No out-house, not adjoining a dwelling-house, nor under the same roof, (al-

Digitized by Google

though within the curtilage thereof) shall be deemed parcel of such dwelling-house, within the meaning of this chapter, unless some person usually lodge therein at night. (Code 1887, § 3696.)

Outhouse parcel of dwelling house.—To make an outhouse, not adjoining a dwelling house nor under the same roof thereof, two things are necessary: First, that such outhouse is within the curtilage of the dwelling house and occupied therewith; and, second, that some person usually lodges therein at night. Page's Case, 26 Grat. 943.

This section creates no offense. It declares nothing necessary to be noticed in pleading, either in the indictment or elsewhere. It is mere incident to the previous section, and a mere limitation of the word dwelling-house therein mentioned. Page's Case, 26 Grat. 943. See note section 4428.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 145, section 3.

Sec. 4430. Burning or destroying meeting-house, court-house, college, school-house, etc.; how punished.—If any person maliciously burn, or by the use of dynamite or nitro-glycerine, or any other explosive substance, maliciously destroy, in whole or in part, any meeting-house, court-house, town-house, college, academy, school-house or other building erected for public use (except an asylum, hotel, jail, or prison), or any banking-house, warehouse, store-house, manufactory, mill, or other house of another person, not usually occupied by persons lodging therein at night, at a time when any person is therein, or if he maliciously set fire to anything, by the burning whereof any building mentioned in this section shall be burned, at a time when any person is therein, he shall be confined in the penitentiary not less than three nor more than fifteen years. If such offense be committed when no person is in such building mentioned in this section, the offender shall be punished by confinement in the penitentiary not less than two nor more than ten years. (Code 1887, § 3697; 1889-90, p. 37.)

Revisors' Note.—See revisors' note to section 4428.

Sec. 4431. Burning piles of wood, stacks of straw, etc.; how punished.—If any person maliciously burn any pile or parcel of wood, boards, or other lumber, or any barn, stable, corn-house, tobacco-house, stack of wheat, or other grain, or of fodder, straw, or hay, or any other personal property, he shall, if the thing burnt, with the property therein, be of the value of one hundred dollars, be confined in the penitentiary not less than three nor more than ten years; and if it be of less value, he shall be so confined not less than two nor more than five years. (Code 1887, § 3698.)

See Erskine's Case, 8 Grat. 625.

For burning of barn, see Page's Case, 26 Grat. 943.

For insufficient circumstantial evidence of burning a barn, see Pryor's Case, 27 Grat. 1009.

For burning of cornhouse, see Anderson's Case, 83 Va. 326, 2 S. E. 281.

Sec. 4432. Burning or destroying any other building; how punished.—If any person maliciously burn, or by the use of dynamite or nitro-glycerine or other explosive substance, maliciously de-

Digitized by Google

stroy, in whole or in part, any building, at a time when any person is therein, the burning or destruction whereof is not punishable under any other section of this chapter, he shall be confined in the penitentiary not less than three nor more than fifteen years. If he commit such offense at a time when no person is in such building, and such building, with the property therein be of the value of one hundred dollars, or more, he shall be confined in the penitentiary not less than two nor more than ten years, and if it and the property therein be of less value, he shall be so confined in the penitentiary not less than one nor more than five years. (Code 1887, § 3699; 1889-90, p. 37.)

Revisors' Note.—See revisors' note to section 4428.

Indictment—Particular description of building.—An indictment under this section must describe the building with such particularity as will inform accused what building is meant. Richards' Case, 81 Va. 110.

Indictment for arson describes the house burned as "the county jail and prison of the county H., being the house of L. J., sheriff and jailor of said county." Held, the burning of such jail was felony under 1 Rev. Code, chapter 160, section 4, corresponding to this section. Stevens' Case, 4 Leigh 683. See section 4428.

An indictment charged that the accused did feloniously and maliciously burn a certain barn and the property therein, said barn and the property therein being the property of one D., and situate in the county aforesaid, which said barn and the property therein was then and there of the value of $1,500.

Held sufficient under this section. Wolf's Case, 30 Grat. 833.

The malicious burning by the owner of a house on his own lands, the house being then in the legal occupancy of another, is a violation of this section. Erskine's Case, 8 Grat. 624.

Before the word "prison" was used in the enumeration of section 4428, it was held that the burning of a jail was a felony under the section. Stevens' Case, 4 Leigh 683.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 145, section 6.

Sec. 4433. Burning or destroying bridge lock, or dam; how punished.—If any person maliciously burn, or by the use of dynamite, nitro-glycerine, or other explosive substance, or by other means, maliciously destroy, in whole or in part, any bridge, lock, or dam, he shall be confined in the penitentiary not less than one nor more than ten years. (Code 1887, § 3700; 1889-90, p. 37.)

Revisors' Note.—See revisors' note to section 4428.

Sec. 4434. Setting fire to woods, fences, grass, etc.; how punished.—If any person maliciously set fire to any woods, fence, grass, straw or other thing capable of spreading fire on lands, he shall be confined in the penitentiary not less than one nor more than three years, or in the discretion of the jury, be fined not less than five nor more than five hundred dollars and be confined in jail not less than one nor more than twelve months. (Code 1887, § 3701; 1908, p. 42.)

Revisors' Note.—The section formerly read, "If any person UNLAWFULLY AND maliciously set fire," etc. The words "unlawfully and" are stricken out, because sufficiently covered by the next succeeding section. In addition to this omission, a change has been made in the

Digitized by Google

arrangement of the punishment. No change, however, has been made in the amount of punishment.

For conviction under this statute on circumstantial evidence, see Earhart's Case, 9 Leigh, 671.

An indictment is described as an indictment "for setting fire to the woods and burning the same." Held, this is a sufficient record of the finding. Earhart's Case, 9 Leigh 671.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 145, section 8.

Sec. 4435. Setting woods, etc., on fire, whereby another is damaged; how punished.—If any person carelessly, negligently, or intentionally set any woods or marshes on fire, or set fire to any stubble, brush, straw or inflammable substance, capable of spreading fire on lands, whereby the property of another is damaged or jeopardized, he shall be fined not less than ten nor more than one hundred dollars. (Code 1887, § 3702; 1916, p. 490.)

Revisors' Note.—A material reduction in the punishment is made by the revised section. As it appears in Acts 1916, page 490, the punishment prescribed is a fine of not less than ten nor more than one hundred dollars, or confinement in jail not less than ten nor more than thirty days, or both such fine and imprisonment. The revisors deeming the fine alone a sufficient deterrent, have stricken out the jail sentence.

Sec. 4436. Wilful burning of property with intent to injure insurer; how punished.—If any person wilfully burn any building, or any goods or chattels, which at the time are insured against loss or damage by fire, with intent to injure the insurer, whether such person be the owner of the property or not, he shall be confined in the penitentiary not less than two nor more than ten years. (Code 1887, § 3703.)

Sec. 4437. Burglary defined; punishment; possession of burglarious tools.—If any person break and enter the dwelling-house of another in the night-time with intent to commit a felony or larceny therein, he shall be deemed guilty of burglary, though the thing stolen, or intended to be stolen, be of less value than fifty dollars. If any person be guilty of burglary, he shall be punished with death, or, in the discretion of the jury, by confinement in the penitentiary not less than five nor more than eighteen years. If any person have in his possession any tools, implements, or outfit, with intent to commit burglary, robbery, or larceny, he shall be deemed guilty of a felony, and be punished by confinement in the penitentiary not less than five nor more than eighteen years. The possession of such burglarious tools, implements, or outfit by any person other than a licensed dealer, shall be prima facie evidence of an intent to commit burglary, robbery, or larceny. (Code 1887, § 3704; 1912, p. 137.)

Revisors' Note.—The phraseology of this section has been changed so as to include common law burglary in the definition of burglary under the statute, and there is a transposition of sentences at the beginning of the section, but no material change has been intended.

Definition.—Burglary is the breaking and entering of the mansion

Digitized by Google

house of another in the night with intent to commit some felony (or, in Virginia, larceny of anything, though of less value than $50) within the same. Min. Syn. 91; Weldon's Case, 4 Leigh 652.

Breaking—*Two kinds.*—There are two kinds of breaking—actual and constructive. Actual breaking implies entrance by violence, more or less. Constructive breaking is by threats, fraud, or conspiracy. Clarke's Case, 25 Grat. 908.

The word "break," in this section, is borrowed from the law in regard to burglary, and is to be understood as it would be when used in a charge of burglary. Finch's Case, 14 Grat. 643.

Actual breaking.—Entry through a door that was so closed that it came within the casing, and to open which required some degree of force, constitutes in law a breaking, though there was no fastening of any other kind on the door. Finch's Case, 14 Grat. 643.

But an entry effected through a door which was open, or partially open, is in law no breaking. Id.

The only covering to an opening for a window is a cloth hung over two nails at the top and loose at the bottom. Quære, if the removing the cloth from one of the nails is a sufficient breaking to constitute burglary. Hunter's Case, 7 Grat. 642, 56 Am. Dec. 121.

Constructive breaking—Conspiracy.—Constructive breaking may be by conspiracy with servants, but not with one of two joint occupants of a room. Clarke's Case, 25 Grat. 908.

For note of case as to what constitutes "breaking," see 11 Va. Law Reg. 690.

When one has succeeded without actual breaking in getting into a building for purpose of taking goods, is he guilty of burglary upon breaking out to get away? See note, 1 Va. L. R. N. S. 75.

Time.—An indictment charging that goods were feloniously and burglariously taken from a dwelling house, without charging that this was done in the night time, is not a good indictment for burglary, but is only an indictment for a larceny. Marks' Case, 4 Leigh 652, 660.

Intent.—The allegation of an actual larceny is only in aid of the allegation of intent. Therefore such allegation need not be laid with the same formality as in an indictment for larceny itself. Speers' Case, 17 Grat. 570; Vaughan's Case, Id. 576; Wright's Case, 82 Va. 183.

Subject of burglary.—For a description of goods charged to be stolen which is good after verdict, see Vaughan's Case, 17 Grat. 576. See, also, Wright's Case, 82 Va. 185.

House.—An indictment for housebreaking need not negative the idea that the barroom which was broken and entered adjoined any dwelling house other than that of the owner of the barroom. Lawrence's Case, 81 Va. 484.

Averring ownership.—In an indictment for housebreaking, the house is said to be "a certain millhouse not adjoining to or occupied with the dwelling house of F." Held, the indictment sufficiently alleges the ownership of the house to have been in F., and is sufficient in law. Webster's Case, 80 Va. 598; Speers' Case, 17 Grat. 570; Butler's Case, 81 Va. 162.

An indictment contained the following description: "Six labor tickets, of the value of six dollars." Held, that the indictment is good, though it does not specify the articles, or state that they were the property of J. or any other person. Wright's Case, 82 Va. 183; Vaughan's Case, 17 Grat. 576.

Upon an indictment charging the person with breaking and entering the storehouse of A. and B., composing the firm of A. B., proof of the breaking and entering the storehouse of A. B. is sufficient to sustain a verdict of guilty, without showing the names of the individuals who composed the firm, or other particulars as to the ownership of the storehouse. Henderson's Case, 98 Va. 794, 34 S. E. 881.

Evidence.—The general rule of the common law with regard to the evidence in cases of larceny, that possession of the goods recently stolen is prima facie evidence of guilt, and throws upon the accused the burden of accounting for the possession of such goods, has never been held to

Digitized by Google

apply to the same effect in cases of burglary, and the decided weight of authority is that it does not. Still, where the goods have been obtained by means of burglary or housebreaking, the fact of such possession is a most material circumstance to be considered by the jury in connection with other inculpatory circumstances. There must be some evidence of guilty conduct besides the mere possession of the stolen property before the presumption of housebreaking is superadded to that of larceny. Henderson's Case, 98 Va. 800, 34 S. E. 881; Gravely's Case, 86 Va. 396, 10 S. E. 431; Hall's Case, 3 Grat. 593; Walker's Case, 28 Grat. 969; Taliaferro's Case, 77 Va. 411; Porterfield's Case, 91 Va. 806, 22 S. E. 352; Wright's Case, 82 Va. 188; Branch's Case, 100 Va. 837, 41 S. E. 862; Tyler's Case, 120 Va. 868, 91 S. E. 171.

See, also, Kibler's Case, 94 Va. 804, 26 S. E. 858, and notes to section 4393.

Possession and control must be exclusive.—The burden rests upon the Commonwealth to prove that the alleged possession of stolen goods by the accused was an exclusive possession, and in this case the evidence is insufficient. Tyler's Case, 120 Va. 868, 91 S. E. 171.

Even in case of simple larceny, in order to raise the presumption of guilt from the possession of stolen goods, it is necessary that they be found in the exclusive possession and subject to the exclusive control of the accused. Taliaferro's Case, 77 Va. 411; Wright's Case, 82 Va. 183.

Proof of the unlawful entry into a dwelling house in the night time does not throw upon the accused the burden of proving to the satisfaction of the jury that his entry was for a lawful purpose. Garnett's and Cosby's Case, 117 Va. 902, 83 S. E. 1083.

Sufficiency of evidence.—Circumstantial evidence insufficient to warrant conviction of burglary, Bundick's Case, 97 Va. 783, 34 S. E. 454.

Every fact necessary to prisoner's guilt must be proved beyond a reasonable doubt. Id.; Prather's Case, 85 Va. 125, 7 S. E. 178; Taliaferro's Case, 77 Va. 411; Pryor's Case, 27 Grat. 1009.

Generally.—Cited but not construed. Runde v. Commonwealth, 108 Va. 873, 61 S. E. 792.

See note on Burglary, Clarke's Case, 25 Grat. 908, Va. Rep. Anno.; also Min. Syn. 91-95, 253, 254, 315. See notes to sections 4438, 4439.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 145, section 11.

See Gregory's Forms Nos. 695, 696, 700, 702, 703.

Sec. 4438. Entering dwelling-house or other house, vessel, or car in the night or, etc., with intent to commit murder, rape, or robbery; how punished.—If any person in the night enter without breaking or in the daytime break and enter a dwelling-house or an out-house adjoining thereto and occupied therewith or in the night-time enter without breaking or break and enter either in the daytime or night-time any office, shop, store-house, warehouse, banking-house, or other house, or any ship or vessel or river craft or any railroad car with intent to commit murder, rape, or robbery, he shall be confined in the penitentiary not less than three nor more than fifteen years. (Code 1887, § 3705; 1893-4, p. 229; 1895-6, p. 36.)

Revisors' Note.—No change, except the maximum punishment is raised from ten to fifteen years. The offenses denounced by this section are heinous, much more so than some of those in the preceding sections, and yet the penalty was much less.

Housebreaking distinguished from larceny.—On an indictment for housebreaking which charges actual larceny, a general finding of guilty leads to a sentence for housebreaking, and not larceny. Speers' Case, 17 Grat. 574; Butler's Case, 81 Va. 162.

Digitized by Google

An indictment which charges a breaking into the house of L. with intent to steal and stealing therefrom is an indictment for housebreaking, not larceny, and is good. Speers' Case, 17 Grat. 570; Vaughan's Case, Id. 576; Butler's Case, 81 Va. 159.

In such indictment, if the actual larceny is properly stated, the prisoner may be found guilty of larceny, though acquitted of the housebreaking. Id.

Housebreaking with intent to commit larceny and grand larceny are two distinct offences, and to each is affixed its own penalty; but they may be, and often are, one continual act, and may be charged in the same count of an indictment. Upon such count the accused may be found guilty of either or both offences, but there can be only one penalty imposed. If it is desired to punish for both offences in a case of this kind, a separate count for larceny must be inserted in the indictment. If there is a conviction generally, or of the grand larceny only, and it is submitted to, in either case this is a bar to prosecution. Benton's Case, 91 Va. 783, 21 S. E. 495; Speers' Case, 17 Grat. 570.

Indictment was for breaking and entering a millhouse. If committed between February 12, 1894, when act amending this section and omitting words "or other house" was passed, and January, 1896, when the amendment was repealed, it was a misdemeanor; if before or after that period, it was a felony. Time, therefore, was of the essence, and should have been stated. Cool's Case, 94 Va. 799, 26 S. E. 411.

Housebreaking and grand larceny are of equal degree. Benton's Case, 91 Va. 782, 21 S. E. 495. See section 4918 and notes.

Meathouse held to be a storehouse. Benton's Case, 91 Va. 782, 21 S. E. 498.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 145, sections 11-12.

Sec. 4439. Same act, with intent to commit larceny; how punished.—If any person do any of the acts mentioned in the preceding section, with intent to commit larceny, or any felony other than murder, rape, or robbery, he shall be confined in the penitentiary not less than one nor more than ten years, or, in the discretion of the jury, confined in jail not exceeding twelve months, and fined not exceeding five hundred dollars. (Code 1887, § 3706; 1901-2, p. 567.)

Breaking and entering a house in the night-time, with intent to commit larceny, may be punished by imprisonment in the penitentiary or in jail, at the discretion of the jury, and is a felony. Benton v. Com., 89 Va. 570, 16 S. E. 725.

See notes to sections 4437, 4438.

Sec. 4440. Grand and petit larceny defined; how punished; larceny of horse, mule, ass, cow, steer, bull, or calf; how punished.—If any person steal from the person of another money or other thing of the value of five dollars or more he shall be deemed guilty of grand larceny and be confined in the penitentiary not less than one nor more than ten years. If any person commit simple larceny not from the person of another of goods and chattels he shall if they are of the value of fifty dollars or more be deemed guilty of grand larceny and be confined in the penitentiary not less than one nor more than ten years; and if they be of less value than five dollars in the first case or fifty dollars in the last he shall be guilty of petit larceny and shall be punished by confinement in jail not less than ten days nor more than twelve months or by fine not

Digitized by Google

less than five nor more than one hundred dollars, or both. But any person who shall be guilty of the larceny of a horse, mule, or ass shall be punished by confinement in the penitentiary not less than three nor more than eighteen years; and any person who shall be guilty of the larceny of a cow, steer, bull or calf, shall in the discretion of the jury be confined in the penitentiary not less than one nor more than five years or be confined in jail not exceeding twelve months and fined not exceeding five hundred dollars. (Code 1887, § 3707; 1889-90, p. 110; 1893-4, p. 220.)

Revisors' Note.—The punishment for petit larceny generally was formerly confinement in jail not less than fifteen days nor more than six months, or by fine of not less than five nor more than one hundred dollars, or both. The jail part of the punishment in the revised section has been changed to not less than ten days, nor more than twelve months, thus giving more latitude to the justice, court, or jury, as the case may be.

In the latter part of the section the words "or calf" appearing after "bull," are new.

Definition.—Larceny at common law is the taking and carrying away of the personal goods of another, against his will or without his consent, and with a felonious intent. If there be no trespass in taking goods, there can be no larceny in carrying them away. Richards' Case, 13 Grat. 806.

Elements—*Taking and carrying away—Character of taking.*—This statute applies not only to pickpockets (those who steal from the person of another secretly), but also to one who openly snatches money out of the hand of a person, if this be done animo furandi. Johnson's Case, 24 Grat. 555.

Subsequent abandonment by pickpocket of goods stolen is no defense. Whalen's Case, 90 Va. 544, 19 S. E. 182.

Owner induced to give up his goods by fraud by one who feloniously intends to convert them to his own use. This is larceny. Vaughan's Case, 10 Grat. 762; Starkie's Case, 7 Leigh 752; Walker's Case, 8 Leigh 743; Johnson's Case, 24 Grat. 555.

Salesman in store, having full control of goods and money in store for purposes of his employment, abstracts a part of the goods and money, with a fraudulent intent to convert the same to his own use. Held, he is guilty of larceny. Walker's Case, 8 Leigh 743.

Goods of another.—Goods stolen should be charged to be the property of some person by name or to the jurors unknown; otherwise the defect is not cured by the statute of jeofails. Barker's Case, 2 Va. Cas. 122. And if owner be a married woman, the property must be laid in her husband. Hughes Case, 17 Grat. 565, 94 Am. Dec. 498. (But this is probably no longer true under the present married women's law.)

If owner be named in the indictment, the proof must show the property to be in the person named. Jones' Case, 17 Grat. 563; Robinson's Case, 32 Grat. 866.

The possession of the owner may be either actual or constructive. Richards' Case, 13 Grat. 806.

Constructive possession is in case of servants stealing property given into their charge by the master (Walker's Case, 8 Leigh 743); or guest at hotel disposing of gun loaned him by landlord (Richards' Case, 13 Grat. 803).

Possession need not be charged.—At common law the indictment need not charge that the goods were stolen from the possession of the owner or of any other person. Thompson's Case, 2 Va. Cas. 135; Angel's Case, Id. 228.

An indictment for the larceny of a slave, of the goods and chattels of one A., and out of the possession of the said A., is bad, if the slave was hired for the year to B., and was in B.'s actual possession at the time of the larceny. Williams' Case, 1 Va. Cas. 14.

Digitized by Google

Intent.—The original intent must be felonious, and may be inferred from circumstances (Booth's Case, 4 Grat. 525); and is a question for the jury (Johnson's Case, 24 Grat. 555). The intent to steal must be when the goods came into the hands of the prisoner, and if the animus furandi be afterwards it is no larceny. The intent must exist with regard to the goods charged in the indictment. Jordan's Case, 25 Grat. 943.

A man who borrows with intent to steal is guilty of larceny. Starkie's Case, 7 Leigh 752.

Pretended buying, if done animo furandi, is larceny. Blunt's Case, 4 Leigh 689, 26 Am. Dec. 341.

A drunken man mounted a horse in the presence of the owner and several others, claimed it as his own, and tried to ride off. The circumstances do not indicate felonious intent. Hall's Case, 78 Va. 678. See, as to effect of drunkenness on intent, 8 Va. Law Reg. 687.

Subjects of larceny.—An article, to be subject to larceny, must be of some value: but it may be worth less than the smallest coin. That a lock had a key in it, and was used to fasten a door, was sufficient to show that it was of some value, though there was no distinct proof of value. Wolverton's Case, 75 Va. 909.

At common law a dog is not the subject of larceny. Maclin's Case, 3 Leigh 809; Davis' Case, 17 Grat. 617. But see sections 2324, 4445; 3 Va. Law Reg. 200.

Bees are creatures ferae naturæ, but when reclaimed and in the possession of the owner are the subjects of larceny. Harvey's Case, 23 Grat. 944.

If any of the subjects mentioned in the indictment might be the subject of larceny it is sufficient, and the verdict will not be arrested. Harvey's Case, 23 Grat. 941.

A negro, whether free or not, was a subject of larceny, as the law was aforetime. Davenport's Case, 1 Leigh 588.

See, also, sections 4444, 4445, 4447.

When special commissioner or receiver of a court deemed guilty of larceny, see section 6273.

Larceny of lost property.—The mere possession of goods which have been actually lost does not furnish any conclusive, or even prima facie evidence of guilt. To constitute larceny in the finder, it is not enough that the party has general means, by the use of proper diligence, of discovering the true owner. He must know the owner at the time of the finding, or the goods must have some mark about them understood by him, or presumably known by him, by which the owner can be ascertained, and he must appropriate them at the time of finding with intent to take entire dominion over them. Hunt's Case, 13 Grat. 757, 70 Am. Dec. 443; Tanner's Case, 14 Grat. 635; Perrin's Case, 87 Va. 554, 13 S. E. 76.

As to the time when the intent to appropriate goods found or received by mistake must exist, in order to constitute larceny thereof, see 2 Va. Law Reg. 702; 3 Va. Law Reg. 609.

Evidence.—Proof of receiving stolen goods knowing them to have been stolen, or of embezzlement, or of obtaining money under false pretenses, will sustain the common-law indictment for larceny. Pitsnogle's Case, 91 Va. 810, 22 S. E. 351, 50 Am. St. Rep. 867; Anable's Case, 24 Grat. 563; Dowdy's Case, 9 Grat. 727, 60 Am. Dec. 314; Leftwich's Case, 20 Grat. 716; Pierce's Case, 21 Grat. 722; Fay's Case, 28 Grat. 912; Dull's Case, 25 Grat. 965; Shinn's Case, 32 Grat. 899. See, also, on this point sections 4448, 4451, 4459, and notes.

As to what circumstances it is allowed to prove on trial for larceny in a hotel, see Burr's Case, 4 Grat. 534.

On indictment for larceny of a watch, evidence of another larceny of a clock, committed by the prisoner, the two acts being distinct and unconnected, is not admissible for any purpose. Walker's Case, 1 Leigh (574) 628.

As to exclusion of illegal confessions, but the introduction of in-

Digitized by Google

formation obtained in consequence thereof, see Williams' Case, 27 Grat. 997.

Possession of fruits of larceny.—Exclusive possession of the fruits of larceny, recently committed, is prima facie presumption that the possessor was the thief. What is such recent possession as to raise this presumption is a question for the jury, and depends upon the nature of the property and other circumstances of the case. Price's Case, 21 Grat. 847; Porterfield's Case, 91 Va. 806, 22 S. E. 352; Walker's Case, 28 Grat. 976; Taliaferro's Case, 77 Va. 413; Wright's Case, 82 Va. 183; Kibler's Case, 94 Va. 804, 26 S. E. 858; Branch's Case, 100 Va. 837, 41 S. E. 862. The last four cases are authority that mere possession is not even prima facie evidence of burglary and housebreaking. See, also, Tyler's Case, 120 Va. 868, 91 S. E. 171.

The presumption of guilt arising from the unexplained possession of the fruits of crime is a presumption of fact, and not of law. Kibler's Case, 94 Va. 804, 26 S. E. 858, 3 Va. Law Reg. 99.

For evidence to show previous conviction of petit larceny, see Pryor's Case, 2 Va. Dec. 479, 26 S. E. 864.

Indictment.—For errors in indictment cured by statute of jeofails, see section 4875 and notes.

For general rule as to description of a statutory offense in an indictment, see Dull's Case, 25 Grat. 974; also Taylor's Case, 20 Grat. 825; Duff's Case, 92 Va. 770, 23 S. E. 643.

An indictment may contain several counts, one for larceny, others for receiving stolen goods knowing them to have been stolen, and others for aiding to conceal the same, when the counts relate to the same goods, but lay the offense to different persons. Dowdy's Case, 9 Grat. 727, 60 Am. Dec. 314. See, also, Anthony's Case, 88 Va. 850, 14 S. E. 834; Benton's Case, 91 Va. 782, 792, 21 S. E. 495; Smith's Case, 21 Grat. 809.

For sufficiency of indictments charging larceny of United States currency, see notes to section 4870.

Joinder of offences.—Where several articles are stolen at one time and place, the stealing is regarded as one transaction, and may be charged in a single count, though the articles belong to different persons. Alexander's Case, 90 Va. 809, 20 S. E. 782.

For variance between indictment for horse stealing and record of examining court not sufficient to quash indictment, see Halkem's Case, 2 Va. Cas. 4.

The record of examining court need not set out the offense with the same precision as an indictment. Id

The omission of the word "feloniously" from a warrant charging an accused with larceny will not vitiate a judgment of acquittal. Jones v. Morris, 97 Va. 43, 33 S. E. 377.

Verdict.—The verdict need not ascertain what goods were stolen, nor their value, nor what articles are not forthcoming, if any, nor the value of such as are not forthcoming. Poindexter's Case, 6 Rand. 667.

When the aggregate value of the property stolen was less than $50, a conviction for felony is erroneous. Alexander's Case, 90 Va. 809, 20 S. E. 782.

An indictment for petit larceny contains the word "feloniously." The verdict was, "We, the jury, find the defendant guilty." Held, verdict is sufficient, as the word "feloniously" only refers to the intent with which the taking was done. Wolverton's Case, 75 Va. 909.

The change of verdict of grand larceny by the Commonwealth's attorney, which was not merely a change of form, was improper. Porterfield's Case, 91 Va. 806, 22 S. E. 352.

Jurisdiction.—One who steals property at a place beyond the jurisdiction of this State, and brings the same into the State, cannot be lawfully convicted of larceny in this State. Strouther's Case, 92 Va. 789, 22 S. E. 852, 53 Am. St. Rep. 852.

Generally.—Other cases on larceny: Chiles' Case, 2 Va. Cas. 260; Read's Case, 24 Grat. 618. See sections 3708, 3709, 3710. See, also,

Digitized by Google

Min. Syn. 98-117; note to Johnson's Case, 24 Grat. 562, Va. Rep. Anno. See note of Satterfield v. Com., under section 4785.

Cited but not construed in Satterfield's Case, 105 Va. 871, 52 S. E. 979

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 145, section 14.

Sec. 4441. Stealing and taking away sand on the banks of the Potomac river.—Taking, stealing, and carrying away twenty or more bushels of sand from the land of any owner on the banks of the Potomac river within this Commonwealth shall be deemed a felony, and on conviction the person found guilty shall be punished by confinement in the penitentiary not exceeding one year or in the discretion of the jury shall be punished as for a misdemeanor. (1893-4, p. 949.)

Revisors' Note.—The punishment prescribed by the act from which this section is taken was "confinement in the penitentiary of not less than one, nor more than three years, or at the discretion of the jury, by a fine of not less than one hundred, nor more than five hundred dollars." This punishment has been materially reduced, and now seems more commensurate with the offense.

An act was passed in 1918 (Acts 1918, page 534) the purpose of which apparently was to repeal the act from which this section is taken and to substitute therefor a much broader act; but it should be noticed that while the title of the act is confined to stealing and taking away sand and gravel from the banks of the Potomac river in certain cases, the body of the act is more comprehensive.

Sec. 4442. Larceny of bank notes, checks, etc., or any book of accounts; how punished.—If any person steal any bank note, check, or other writing, or paper of value, whether the same represents money, and passes as currency, or otherwise, or any book of accounts, for or concerning money or goods due or to be delivered, he shall be deemed guilty of larceny thereof, and receive the same punishment, according to the value of the thing stolen, prescribed for the punishment of the larceny of goods and chattels. The provisions of this section shall be construed to embrace all bank notes, and papers of value representing money and passing as currency, whether the same be the issue of this State or any other State, or of the United States, or of any corporation, and shall include all other papers of value, of whatever description. (Code 1887, § 3708.)

Effect of this section.—This section places larceny of papers of value on the same footing as larceny of any other subject. The rules of law and evidence applicable to the offense of larceny generally must also apply in case of such larceny under the statute. Vaughn's Case, 10 Grat. 760.

Larceny of check.—For circumstances that did not amount to larceny of a check by secretary of the board of supervisors, see Anable's Case, 24 Grat. 563. For circumstances amounting to larceny of a check, and what may be proved on an indictment therefor against secretary of a building fund association, see Shinn's Case, 32 Grat. 899.

The obligor in a bond may commit larceny thereof, even in the presence and with the knowledge of the assignee of the bond. Vaughn's Case, 10 Grat. 758.

Digitized by Google

Indictment—*Possession.*—In an indictment for the larceny of bank notes it is not necessary that it should charge that the stealing was from the possession of any one. Angel's Case, 2 Va. Cas. 228; Thompson's Case, Id. 135.

Description of note.—The names of banks issuing such notes may be rejected as surplusage. It is not necessary to give proof of the charters of those banks. Pomeroy's Case, 2 Va. Cas. 342.

A general description as "bank notes current in the United States" is sufficient. Moseley's Case, 2 Va. Cas. 154.

As to what description of money is sufficient in prosecution for larceny, see section 4870 and note. For state of the law before section 4870 was enacted, see Leftwich's Case, 20 Grat. 716. See, also, Dulin's Case, 25 Grat. 965.

The term "bank note" is not restricted to those of chartered banks. Pomeroy's Case, 2 Va. Cas. 342.

It is sufficient to state that the notes were for a certain sum of money, without stating their value. Adams' Case, 23 Grat. 949. See section 4443.

Description of paper.—An indictment charging the prisoner with stealing certain papers of the value of $110, not otherwise describing the paper charged to have been stolen, is fatally defective. Robinson's Case, 32 Grat. 866.

An indictment for larceny of "one paper, purporting to be a check for $125, of the value of $125, of the goods and chattels of one R., then and there being on the person of said R.," held sufficient. Whalen's Case, 90 Va. 544, 19 S. E. 182.

Value of note.—If it be proved that the prisoner, after stealing the note, passed it away as genuine, this act of his affords prima facie evidence that the note was genuine, and dispenses with the evidence of the further proof of these acts. Cumming's Case, 2 Va. Cas. 128.

Indictment—"Feloniously" necessary.—An indictment for stealing bank notes under act of 1806 should charge that they were feloniously stolen, although by the act it is not denominated a felony, and this error is not cured by the statute of criminal jeofails. Barker's Case, 2 Va. Cas. 122.

Evidence.—It is not necessary to produce the stolen notes on trial, and, if produced, not necessary to prove by the officers of the bank that they are genuine. Moore's Case, 2 Leigh 701, 706.

Presumption.—Possession of a lost bank note is not prima facie presumption of guilt of the possessor. Hunt's Case, 13 Grat. 757, 70 Am. Dec. 443.

Variance.—Indictment charges stealing of six dollars in United States treasury notes; the bill of exceptions states that A. was holding "some money," etc. This is an apparent variance between allegata and probata, and therefore judgment is erroneous. Johnson's Case, 24 Grat. 555.

See notes to section 4440.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 145, section 15.

Sec. 4443. How value thereof estimated.—In a prosecution under the preceding section, the money due on or secured by the writing, paper, or book, and remaining unsatisfied, or which in any event might be collected thereon, or the value of the property or money affected thereby, shall be deemed to be the value of the article stolen. (Code 1887, § 3709.)

This section merely prescribes for estimating the value of the paper, and is not a part of the necessary description of the offense prescribed by the preceding sections, although the words "remaining unsatisfied" are usually inserted in the indictment in such cases. Whalen's Case, 90 Va. 546, 19 S. E. 182; Adams' Case, 23 Grat. 949; Robinson's Case, 32 Grat. 866, distinguished Whalen's Case, supra.

Digitized by Google

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 145, section 16.

Sec. 4444. Larceny may be of things fixed to the freehold.—Things which savor of the realty, and are at the time they are taken, part of the freehold, whether they be of the substance or produce thereof, or affixed thereto, shall be deemed goods and chattels, of which larceny may be committed, although there be no interval between the severing and taking away. (Code 1887, § 3710.)

Sec. 4445. Certain dogs not assessed subject to petit larceny and trespass.—All dogs in the cities of Richmond, Petersburg, and Alexandria and in the county of Henrico, whether listed for taxation or not, shall be deemed personal property, and may be the subject of petit larceny and malicious or unlawful trespass. (Code 1887, § 3711; 1893-4, p. 421; 1897-8, p. 128; 1899-00, p. 1082; 1904, p. 343.)

Revisors' Note.—This section as found in Acts 1904, page 343, after enumerating certain cities and the county of Henrico continues, "and all dogs listed for taxation in any county or city in the State shall be deemed personal property," etc. As this provision is now covered by section 2824, this language is changed to read, "whether listed for taxation or not." No change is made as to dogs within the territory covered by this section. Manchester, being now a part of Richmond, is omitted in the enumeration of cities.

See Acts 1918, p. 622.

A somewhat similar statute of Louisiana held constitutional by U. S. Sup. Ct. Sentell v. N. O. & C. R. R., 3 Va. Law Reg. 200, 166 U. S. 698, 17 Sup. Ct. 693, 41 L. Ed. 1169. For common law doctrine as to property in dogs, see Maclin's Case, 3 Leigh 809; 3 Va. Law Reg. 200; Davis' Case, 17 Grat. 617.

See, also, 5 Va. Law Reg. 272; 10 Va. L. Reg. 460.

See section 2324.

Sec. 4446. Protection of Antwerp and homing pigeons, and to punish their wilful destruction or detention.—It shall be unlawful for any person or persons to shoot, maim, or kill any Antwerp or homing pigeon knowing them to be such, either in flight or at rest, and any person guilty of shooting, killing, or maiming such pigeon or pigeons as aforesaid shall be guilty of a misdemeanor, and upon conviction thereof shall for every such offense pay a fine of not less than one nor more than twenty-five dollars. It shall also be unlawful for any person or persons to forcibly detain or entrap any Antwerp or homing pigeon which can be identified by any device or mark, and any person or persons so detaining said pigeon or pigeons shall be guilty of a misdemeanor, and upon conviction thereof shall for every such offense pay a fine of not less than one nor more than twenty-five dollars. (1893-4, p. 804.)

Revisors' Note.—The minimum fine for the acts forbidden by both the first and second sentences has been reduced from ten dollars to one dollar.

Sec. 4447. Removal, etc., of goods distrained or levied on with intent, etc., larceny.—If any person fraudulently remove, destroy, re-

Digitized by Google

ceive, or secrete any goods and chattels that have been distrained or levied on, with intent to defeat such distress or levy, he shall be deemed guilty of larceny thereof. (Code 1887, § 3712.)

An indictment under this section may be for larceny or it may be framed on the language of the statute; but if the latter, the indictment must describe the offense in the terms of the statute, or in language substantially equivalent thereto. Duff's Case, 92 Va. 769, 23 S. E. 643, also note 1 Va. Law Reg. 528.

In either case, to bring the case within the statute, the elements of the offense would have been required to be proved, to wit, that the accused committed the act fraudulently and with intent to defeat the levy. 1 Va. Law Reg. 528.

Sec. 4448. Receiving, etc., stolen goods, knowing, etc., larceny; prosecution therefor.—If any person buy or receive from another person, or aid in concealing any stolen goods or other thing, knowing the same to have been stolen, he shall be deemed guilty of larceny thereof, and may be proceeded against, although the principal offender be not convicted. (Code 1887, § 3714.)

Four essentials of proof.—To sustain prosecution under this statute, four things are necessary: (1) That the goods or other things were previously stolen by some other person; (2) that the accused bought or received them from another person; (3) that at the time he so bought or received or aided in concealing them he knew they had been stolen; (4) that he so bought or received them, or aided in concealing them, malo animo, or with dishonest intent. Hay's Case, 32 Grat. 946, 34 Am. Rep. 799.

On an indictment for larceny, proof of receiving stolen goods knowing them to have been stolen is sufficient to sustain the indictment. Price's Case, 21 Grat. 846.

Counts for larceny may be joined with count for receiving stolen good, etc. Dowdy's Case, 9 Grat. 727, 60 Am. Dec. 314. See notes to section 4440 and section 4451.

Guilty knowledge—*General rule.*—Whenever the intent or guilty knowledge of a party charged with crime is a material ingredient in the issue of the case, other acts and declarations of a similar character, tending to establish such intent or knowledge, are proper evidence to be admitted, provided they are not too remotely connected with the offense charged; and what are the limits as to time and circumstances is for the court, in its discretion, to determine. Trogdon's Case, 31 Grat. 862.

Evidence to prove knowledge—Character of accused.—On the question whether the accused bought the goods knowing them to have been stolen, the evidence being circumstantial, evidence of the good character of the accused is competent. Hey's Case, 32 Grat. 946, 34 Am. Rep. 799.

Possession of the fruits of crime—Presumption.—The unexplained possession of the fruits of larceny is prima facie evidence of the guilt of that crime. But no such presumption is raised by the possession of objects taken from a house that has been burglarized or from the person of one who has been murdered. Taliaferro's Case, 77 Va. 411; Wright's Case, 82 Va. 183; Kibler's Case, 94 Va. 804, 26 S. E. 858; Walker's Case, 28 Grat. 976; Porterfield's Case, 91 Va. 806, 22 S. E. 352; Price's Case, 21 Grat. 846; Tyler's Case, 120 Va. 868, 91 S. E. 171.

The receiving of a stolen bank note was held not the receiving of stolen goods, within the meaning of the act of 1792, chapter 109. Rutherford's Case, 2 Va. Cas. 141.

For other cases bearing on false pretences, see section 4459.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 145, section 18.

Sec. 4449. Buying or receiving certain goods with intent to de-

Digitized by Google

fraud.—If any person buy or receive second-hand grate-baskets, keys, bells and bell-fixtures, gas-fixtures, water-fixtures, water-pipes, gas-pipes, or any part of such fixtures or pipes with intent to defraud he shall be confined in jail not less than one month nor more than six months. Possession of any such second-hand baskets, keys, bells and bell-fixtures, water-fixtures, gas-fixtures, water-pipes, gas-pipes, or any part of such fixtures or pipes if bought or received from any other person than the manufacturer thereof or his authorized agent or the owner thereof shall be prima facie evidence of such intent. (1893-4, p. 509.)

Revisors' Note.—See Acts 1918, chapter 311, p. 485.

Sec. 4450. Buying, etc., pig or railroad iron, brass, metal, or any composition thereof with intent to defraud; how punished; possession evidence of intent.—If any person buy or receive pig iron, or railroad iron, brass, metal, or any composition thereof with intent to defraud he shall be confined in the penitentiary not less than one nor more than two years or in the discretion of the jury in jail not exceeding one year. Possession of any pig iron or railroad iron, brass, metal, or any composition thereof if bought or received from any other person than the manufacturer thereof or his authorized agent or of a regularly licensed dealer therein shall be prima facie evidence of such intent. (Code 1887, § 3715. 1889-90, p. 30.)

Under this section it is essential for the Commonwealth to prove that such articles were bought or received in the manner forbidden by the statute before any presumption will arise from the possession of such articles. This presumption arising from possession is of intent, and not of the fact that the articles were bought or received. Goldman's Case, 100 Va. 865, 42 S. E. 923.

Cited but not construed. Runde v. Commonwealth, 108 Va. 873, 61 S. E. 792.

Sec. 4451. Embezzlement deemed larceny; indictment; statement from attorney for the Commonwealth.—If any person wrongfully and fraudulently use, dispose of, conceal, or embezzle any money, bill, note, check, order, draft, bond, receipt, bill of lading, or any other personal property, tangible or intangible, which he shall have received for another, or for his employer, principal, or bailor, or by virtue of his office, trust, or employment, or which shall have been entrusted or delivered to him by another, or by any court, corporation, or company, he shall be deemed guilty of larceny thereof, and may be indicted as for simple larceny, but proof of embezzlement under this section shall be sufficient to sustain the charge. On the trial of every indictment for larceny, however, the defendant, if he demands it, shall be entitled to a statement in writing from the attorney for the Commonwealth of what statute he intends to rely upon to ask for conviction. (Code 1887, § 3716; 1895-6, p. 676.)

Revisors' Note.—Two important changes have been made in this section.

Digitized by Google

Near the beginning of it the word "property" has been changed to "personal property, tangible or intangible." This change makes the decision in Pitsnogle v. Com., 91 Va. 810, 22 S. E. 351, statutory in plain terms.

As to the second change, in view of the fact that upon an indictment for larceny the proof may show simple larceny, embezzlement, obtaining goods by false pretenses, or fraudulent removal of goods which have been levied on, etc., the revisors have considered it wise to add the provision found in the last sentence of the section.

As to what is proper evidence to prove embezzlement of a check, see Shinn's Case, 32 Grat. 899.

On an indictment for larceny, proof of embezzlement is sufficient to sustain the charge. Pitsnogle's Case, 91 Va. 808, 811, 22 S. E. 351, 50 Am. St. Rep. 867. See, also, notes to sections 4440, 4448.

In the prosecution of a prisoner for embezzlement by substituting worthless for good securities, the worthless character of the securities substituted must be shown by witnesses who are present and testify as to facts within their personal knowledge. The impossibility of procuring such witnesses cannot justify the introduction of improper evidence. Wadley's Case, 98 Va. 803, 35 S. E. 452.

The conversion of property under a bona fide claim of ownership is not embezzlement. To constitute embezzlement there must be a fraudulent intent to deprive the owner of his property permanently. Wadley's Case, 98 Va. 803, 35 S. E. 452, 5 Va. Law Reg. 822, note.

As to what description of money is sufficient in prosecution for embezzlement, see section 4870.

See notes to section 4926.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 145, section 19.

Sec. 4452. Embezzlement by officers, etc., of public funds; how punished; default in paying over funds evidence of guilt.—If any officer, agent, or employee of the State or of any city, town, or county or the deputy of any such officer having custody of public funds knowingly misuse or misappropriate the same or knowingly dispose thereof otherwise than in accordance with law he shall be confined in the penitentiary not less than one nor more than ten years, and any default of such officer, agent, employee, or deputy in paying over said funds to the proper authorities when required by law to do so shall be deemed prima facie evidence of his guilt. (Code 1887, § 3717; 1891-2, p. 748.)

A publication stating that the plaintiff, a chief of police, had collected certain fines of an official, which fines did not appear by the records to have been recorded, is not a charge of crime under this or the preceding section. Moss v. Harwood, 102 Va. 386, 46 S. E. 385.

In the prosecution of a justice for embezzling money collected by him as a fine, it is not necessary to show the magisterial district in which the justice was an officer. Robinson v. Com., 104 Va. 888, 52 S. E. 690.

In a prosecution of embezzlement against a justice for money collected by him as a fine, a conviction may be had on showing a misappropriation of a part of it. Id.

Where a justice of the peace collects a fine and misuses or misappropriates the same he is indictable under this section. Id.

Under a charge of embezzlement the fact that defendant made restitution of the fruits of his crime after the completion of the offense is no defense. Id.

In a prosecution of a justice for embezzlement of funds collected by him as a fine, evidence as to the custom of other justices with reference to paying same over should be excluded. Id.

Digitized by Google

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 145, section 19.

Sec. 4453. Sale, pledge, etc., of goods, produce, etc., belonging to another and failure to pay over proceeds, deemed larceny.—If any person store or ship goods, wares, merchandise, grain, flour, or other produce or commodity, in his own name, being in the possession thereof for or on account of another, and sell, negotiate, pledge, or hypothecate the same, or any part thereof, or the receipt or bill of lading received therefor, and fraudulently fail to account for or pay over to his principal, or the owner of the property, the amount so received on such sale, negotiation, pledge, or hypothecation, he shall be deemed guilty of larceny thereof. (Code 1887, § 3718; 1895-6, p. 676.)

Embezzlement by waterman holding himself out to be captain of a boat. Smith's Case, 4 Grat. 532.

Sec. 4454. Failure to perform promise to deliver crop, or, etc., in return for advances, deemed larceny.—If any person obtain from another an advance of money, merchandise, or other thing, upon a promise in writing that he will send or deliver to such other person his crop, or other property, and fraudulently fail or refuse to perform such promise, and also fail to make good such advance, he shall be deemed guilty of the larceny of such money, merchandise, or other thing. (Code 1887, § 3719.)

Revisors' Note.—The words "and also fail to make good such advance" inserted after the second "promise" are new.

See Acts 1918, chapter 179, p. 312. The act of 1916 (Acts 1916, p. 12) referred to in the title of the act of 1918 (but not in the enacting clause) does not appear in this Code.

Sec. 4455. In relation to the fraudulent conversion of property held under a trust deed.—Whenever any person is in possession of any personal property, in any capacity, the title or ownership of which he has agreed in writing shall be or remain in another, and such person so in possession shall fraudulently sell, pledge, pawn, or remove from the premises where it has been agreed that the property shall remain, and refuse to disclose the location thereof, or otherwise dispose of the property without the written consent of the owner or the person in whom the title is, or if such writing be a deed of trust, without the written consent of the trustee or beneficiary in such deed of trust, he shall be deemed guilty of the larceny thereof; and in any prosecution hereunder, the fact that such person, after demand therefor by the person in whom the title or ownership of the property is, or his agent, shall fail or refuse to disclose to such claimant or his agent, the location of the property, or to surrender the same, shall be prima facie evidence of the violation of the provisions of this section.

This section shall not be construed to interfere with the rights of any innocent third party purchasing said property, unless such

Digitized by Google

writing shall be docketed or recorded as provided by law. (1887, p. 505; 1897-8, p. 371; 1904, p. 331; 1916, p. 513.)

Sec. 4456. Failure to pay for or refusal to return goods, wares or merchandise delivered for selection or approval larceny in certain cases.—If any person shall solicit and obtain from any licensed merchant any goods, wares or merchandise for examination or approval, and shall thereafter, upon written demand, refuse or fail to return the same to such merchant in unused condition, or to pay for the same, such person so offending shall be deemed guilty of the larceny thereof. But the provisions of this section shall not apply unless such written demand be made within five days after delivery, and unless the goods, wares or merchandise shall have attached to them or to the package in which they are contained a label, card or tag containing the words, "Delivered for selection or approval." (1916, p. 498.)

Revisors' Note.—The act from which this section is taken provided that, "If any person, WITH INTENT TO CHEAT AND DEFRAUD, shall solicit and obtain," etc. The capitalized words are omitted, because if there be the intent to cheat and defraud, the person is guilty of obtaining property under false pretenses under section 4459. As revised, the section makes the intent to cheat and defraud unnecessary.

Sec. 4457. Fraudulent entries, or, etc., with intent, etc., in accounts, by officers or clerks of banks, or joint stock company; how punished.—If any officer or clerk of any bank or joint stock company make, alter, or omit to make any entry in any account kept in such bank, or by such company, with intent, in so doing, to conceal the true state of such account, or to defraud the said bank or company, or to enable or assist any person to obtain money to which he was not entitled, such officer or clerk shall be confined in the penitentiary not less than two nor more than ten years. (Code 1887, § 3720.)

Sec. 4458. Destroying or concealing a will; how punished.—If any person fraudulently destroy or conceal any will or codicil, with intent to prevent the probate thereof, he shall be confined in the penitentiary not less than two nor more than five years. (Code 1887, § 3721.)

See 7 Va. Law Reg. 455, 461, 462.

Sec. 4459. Obtaining money, etc., by false pretense, etc., with intent, etc., larceny; obtaining signature by false pretense, etc., with such intent, forgery.—If any person obtain, by any false pretense or token, from any person, with intent to defraud, money or other property which may be the subject of larceny, he shall be deemed guilty of larceny thereof; or if he obtain, by any false pretense or token, with such intent, the signature of any person to a writing, the false making whereof would be forgery, he shall be confined in the penitentiary not less than two nor more than ten years. (Code 1887, § 3722.)

Digitized by Google

Revisors' Note.—Material increase in the punishment. Formerly the confinement in the penitentiary was one to five years. This did not harmonize with the punishment provided for by section 4489 (section 3737, as found in Acts 1912, p. 111), that is to say, one to ten years. As revised, section 4489 makes the punishment two to ten years. The punishment prescribed in the two sections is now the same.

For "An act to punish the making or use of false statements to obtain property or credit," see Acts 1918, p. 453.

Elements of the offense.—Four things must concur to constitute the offense described in the statute: (1) An intent to defraud; (2) actual fraud committed; (3) false pretences must be used for the purpose of perpetrating the fraud; (4) the fraud must be accomplished by means of the false pretences. Anable's Case 24 Grat. 567.

The gravamen of the offense is that the pretences are false. Id.

The false pretences must have been believed by the party whose property was taken (Trogdon's Case, 31 Grat. 864), and must have had a decided weight and influence upon the mind of the owner (Fay's Case, 28 Grat. 912).

The fraudulent intent must be averred and proved (Anable's Case, 24 Grat. 563, 570; Trogdon's Case, 31 Grat. 872); and must have existed at the time the false pretences were made by which the money was obtained (Fay's Case, 28 Grat. 912); and is a question of fact for the jury (Trogdon's Case, 31 Grat. 862); and may be proved by other acts and declarations of a similar character, tending to establish such intent or knowledge, provided they are not too remotely connected with the offense charged (Hey's Case, 32 Grat. 946, 34 Am. Rep. 799; Trogdon's Case, supra).

In an indictment for larceny, proof of obtaining money by false pretences will sustain the indictment. But, to sustain the prosecution, the Commonwealth must prove every ingredient required in an indictment for obtaining money by false pretences. Fay's Case, 28 Grat. 912; Trodgdon's Case, 31 Grat. 862. See, also, notes to sections 4440, 4448; and Leftwich's Case, 20 Grat. 716; Price's Case, 21 Grat. 846; Dowdy's Case, 9 Grat. 727, 60 Am. Dec. 314; Anable's Case, 24 Grat. 566; Lewis v. Com., 120 Va. 875, 91 S. E. 174.

If clerk charge the jury in the usual form of larceny, and it appears that the money charged to have been stolen was obtained by false pretences, another charge by the clerk is neither necessary nor proper. Dull's Case, 25 Grat. 966.

Accessories.—As to what conduct will amount to aiding and abetting the crime, see Dull's Case, 25 Grat. 966.

Description of subject-matter.—The general rule as to the description of the subject-matter is that it should be described with such a certainty as will enable the jury to decide whether the chattel proved to have been stolen is the very same with that upon which the indictment is founded, and show judicially to the court that it could have been the subject-matter of the offense charged, and enable the defendant to plead his acquittal or conviction to a subsequent indictment relating to the same chattel. Anable's Case, 24 Grat. 563.

Accused was charged in the indictment with the larceny of money, whereas the proof showed the larceny of a check, on which the money was obtained. Held, that the ultimate offense of obtaining money by false pretences was supported by the evidence that such money was fraudulently obtained by means of a check fraudulently acquired, and that in every real sense money was paid to the accused, hence, that the charge in the indictment was substantially proved. Lewis v. Com., 120 Va. 875, 91 S. E. 174.

As to what description of money is sufficient in prosecution for obtaining money under false pretences, see section 4870 and notes.

False token—*What is meant by*—A false token is some real visible mark or thing, such as a key or ring presented by the party as coming

Digitized by Google

from a third person, by which the person defrauded is deceived. Note to Speer's Case, 2 Va. Cas. 67.

Cheat at common law.—Falsely procuring the goods of others by means of a false and counterfeit note purporting to be the note of a bank, but which bank never existed, knowing said note to be false and counterfeit, is indictable as a cheat at common law. Com. v. Speer. 2 Va. Cas. 65.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 145, section 23.

Sec. 4460. To punish false pretense in obtaining registration of cattle and other animals and giving false pedigree.—Every person who by any false pretense shall obtain from any club, association, society, or company for improving the breed of cattle, horses, sheep, swine, or other domestic animals the registration of any animal in the herd register or other register of any such club, association, society, or company, or a transfer of any such registration, and every person who shall knowingly give a false pedigree of any animal shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by confinement in jail for a period not exceeding twelve months or fined not exceeding five hundred dollars or both. (1887, p. 38.)

Sec. 4461. Sale of goods marked "sterling," and "sterling silver."—A person who makes or sells or offers to sell or dispose of or has in his possession with intent to sell or dispose of any article of merchandise marked, stamped, or branded with the words "sterling" or "sterling silver," or encased or enclosed in any box, package, cover, or wrapper, or other thing in or by which the said article is packed, enclosed, or otherwise prepared for sale or disposition having thereon any engraving or printed label, stamp, imprint, mark, or trade-mark indicating or denoting by such marking, stamping, branding, engraving, or printing that such article is silver, sterling silver, or solid silver, unless nine hundred and twenty-five one thousandths part of the component parts of the metal of which the said article manufactured is pure silver, is guilty of a misdemeanor, and on conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred and fifty dollars and in default of payment be confined in jail not less than ten nor more than sixty days or both. (1895-6, p. 349.)

Sec. 4462. Sale of goods marked "coin silver."—A person who makes or sells or offers to sell or dispose of or has in his possession with intent to sell or dispose of any article of merchandise marked, stamped, or branded with words "coin" or "coin silver," or encased or enclosed in any box, package, cover, or wrapper, or other thing in or by which the said article is packed, enclosed, or otherwise prepared for sale or disposition having thereon any engraving or printed label, stamp, imprint, mark or trade-mark indicating or denoting by such marking, stamping, branding, engraving, or printing that such article is coin or coin silver, unless nine hundred one-thousandths part of the component parts of the metal of which the

Digitized by Google

said article is manufactured is pure silver, is guilty of a misdemeanor, and on conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred and fifty dollars and in default of payment be confined in jail not less than ten nor more than sixty days or both. (1895-6, p. 349.)

Sec. 4463. Regulating sale of merchandise made of gold.—Any person who makes or sells or offers to sell or dispose of or has in his possession with intent to sell or dispose of any article of merchandise made of gold of a less carat of fineness than is stamped or marked on it or of a less carat of fineness than is engraved, printed, stamped, or imprinted on the tag, card, box, label, package, wrapper, cover, or other thing in or by whic hthe said article is packed, enclosed, or otherwise prepared for sale or disposition shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred and fifty dollars for such offense and in default of payment be confined in jail not less than ten nor more than sixty days or both (1895-6, p. 349.)

Sec. 4464. Protection of hotels and boarding-houses.—Whoever puts up at a hotel or boarding-house and without having an express agreement for credit procures food, entertainment, or accommodation without paying therefor and with intent to cheat or de fraud the owner or keeper of such hotel or boarding-house out of the pay for the same; or with intent to cheat or defraud such owner or keeper out of the pay therefor obtains credit at a hotel or boarding-house for such food, entertainment, or accommodation by means of any false show of baggage or effects brought thereto; or with such intent obtains credit at a hotel or boarding-house for such food, entertainment, or accommodation through any misrepresentation or false statement; or with such intent removes or causes to be removed any baggage or effects from a hotel or boarding-house, while there is a lien existing thereon for the proper charges due from him for fare and board furnished therein, shall be punished by imprisonment not exceeding three months or by fine not exceeding fifty dollars. (1893-4, p. 970.)

The constitutionality of a somewhat similar statute has been upheld, in re Milecke, 21 L. R. A. (N. S.) 259.

Sec. 4465. Fraud in the issuance, sale, etc., of stocks, bonds, etc., or city or town lots; how punished.—If any person, including a corporation or association, and the officers or agents thereof, alone or in common with others, having devised or intending to devise any scheme or artifice to defraud by the issuance, sale, promotion, negotiation or distribution of any stocks, bonds, notes or other securities or contracts, or city, town or suburban lots, shall in or for executing such scheme or artifice or in attempting to do so, commit any overt act within this State, such person shall be guilty of a misdemeanor, and, upon conviction, be punished by a fine of

Digitized by Google

not more than five thousand dollars or by confinement in jail for not more than one year, or by both such fine and imprisonment. Prosecutions for violations of this section shall be only by indictment or presentment in the court having jurisdiction. (1916, p. 835)

Revisors' Note.—This section is taken from paragraphs one and four of the act cited. Paragraphs two and three of the act are made section 3714, found in chapter 146, which is on the State Corporation Commission. A comprehensive law on frauds of this nature was passed in 1918. (Acts 1918, p. 676).

See note, 2 Va. L. Reg. N. S. 146.

Sec. 4466. Wilfully destroying a vessel; how punished.—If any person wilfully scuttle, cast away, or otherwise dispose of, or in any manner destroy, except where otherwise provided, a ship, vessel, or other water craft, with intent to injure or defraud any owner thereof, or of any property on board the same, or any insurer of such ship, vessel, or other water craft, or any part thereof, or any such property on board of same, if the same be of the value of fifty dollars, he shall be confined in the penitentiary not less than one nor more than ten years, but if it be of less value than fifty dollars, he shall be guilty of a misdemeanor. (Code 1887, § 3723.)

Revisors' Note.—This section has been rewritten so as to make its supposed meaning clearer, to make the method of injury or destruction more comprehensive, and to graduate the punishment.

Sec. 4467. Poisoning, killing, maiming, or disfiguring horses, cattle, or other beasts; how punished.—If any person maliciously administer poison to or expose it with intent that it shall be taken by any horse, cattle, or other beast of any other person; or if he poison or kill his own horse, cattle, or other beast for the purpose of defrauding any insurer thereof; or if any person maliciously shoot, stab, cut, or wound any horse, mule, or cattle of any person with intent to kill or injure the same, he shall be confined in the penitentiary not less than two nor more than ten years. And if any person unlawfully shoot, stab, cut, or wound any horse, mule, or cattle of any person, or unlawfully and maliciously shoot, stab, cut, or otherwise wound or poison any fowl of another, or any dog of another which has been listed or assessed for taxation, with intent to maim, disfigure, disable or kill the same, he shall be guilty of a misdemeanor. (Code 1887, § 3724; 1901-2, p. 687.)

Revisors' Note.—This section has been rewritten and materially changed. The punishment is annexed if the act charged in the first part of the section is done maliciously and with intent to kill or INJURE. The original act said "kill or DESTROY." The original act made the punishment confinement in the penitentiary three to ten years, or in the discretion of the jury, confinement in jail not less than six nor more than twelve months, and a fine not exceeding five hundred dollars. The revisors thought that the offense was of such nature that it should be punished by confinement in the penitentiary from two to ten years. As to acts made unlawful by the latter part of the section, the revisors have extended the protection to fowls and to dogs listed or assessed for

Digitized by Google

taxation. The revisors thought the punishment prescribed by the former law too severe. It fixed the punishment at from one to three years in the penitentiary, or in the discretion of the jury, confinement in jail not exceeding twelve months and a fine not exceeding one hundred dollars. Now the offense is simply declared to be a misdemeanor.

See Gregory's Forms, No. 693.

Sec. 4468. Obstructing or injuring canal, railroad, etc.; how punished.—If any person maliciously obstruct, remove, or injure any part of a canal, railroad, or urban, suburban or interurban electric railway, or any lines of any electric power company, or any bridge or fixture thereof, or maliciously obstruct, tamper with, injure, or remove any machinery, engine, car, trolley, supply or return wires, or any other work thereof, or maliciously open, close, displace, tamper with, or injure any switch, switch point, or switch lever, or signal of any such company, whereby the life of any passenger or other person on such canal, railroad, urban, suburban, or interurban electric railway, is put in peril, he shall be confined in the penitentiary not less than two nor more than ten years; and, in the event of the death of any passenger or other person resulting from such malicious act, the person so offending shall be deemed guilty of murder, the degree to be determined by the jury.

If any act be committed unlawfully, but not maliciously, the person so offending shall, upon conviction thereof, be punished by confinement in the penitentiary not less than one nor more than three years, or at the discretion of the jury, be confined in jail not to exceed twelve months and fined not less than one hundred dollars nor more than five hundred dollars. (Code 1887, § 3725; 1893-4, p. 662; 1904, p. 294; 1906, p. 447.)

Sec. 4469. Being on track of railroad, etc., or driving, etc., any animal thereon, etc.; how punished.—If any person be on the track of a railroad within one hundred yards of an approaching train otherwise than in passing over such road at a public or private crossing, or wilfully ride, drive, or lead any animal, or contrive for any animal to go on such track, except in crossing as aforesaid, without the consent of the railroad company or person operating such road, he shall be fined not less than ten nor more than one hundred dollars. (Code 1887, § 3726.)

Sec. 4470. Trespassers forbidden to jump on or off railroad cars or trains.—If any person, not being a passenger or employee, but a trespasser, shall jump on or off any railroad car or train on its arrival, stay, or departure at or from any station or depot of such railroad, or on the passage of any such car or train over any part of any such railroad, such person so offending shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than two dollars and fifty cents,

Digitized by Google

nor more than ten dollars, or by imprisonment in jail not exceeding thirty days, or both. (1899-00, p. 743.)

Sec. 4471. Trespassing upon railroad trains; how punished.—If any person, not being a passenger or employee, shall be found trespassing upon any railroad car or train of any railroad in this State, by riding on any car, or any part thereof, on its arrival, stay, or departure at or from any station or depot of such railroad, or on the passage of any such car or train over any part of any such railroad, such person so offending shall be deemed a disorderly person, and on conviction as such, shall be punished by a fine of not less than two dollars and fifty cents nor exceeding twenty-five dollars, or by imprisonment in jail not exceeding thirty days, or both. (1899-00, p. 775.)

Sec. 4472. Taking or removing waste or packing from journal boxes, etc.; how punished.—If any person shall wilfully and maliciously take or remove the waste or packing from out any journal box, or boxes, of any locomotive, engine, tender, carriage, coach, car, caboose, or truck used or operated upon any railroad, whether the same be operated by steam or electricity, he shall, upon conviction thereof, be confined in the penitentiary not less than one nor more than three years, or in jail not less than one nor more than twelve months, or fined not exceeding five hundred dollars. (1904, p. 132.)

Sec. 4473. Punishment for shooting at or throwing stones or other missiles at any train, car, vessel, or river craft.—If any person maliciously shoot at, or maliciously throw any stones, or other missiles, at or against any train, or cars on any railroad or other transportation company, or at, or against, any vessel or other water craft, whereby the life of any passenger or other person on such train or car, or on such vessel, or other water craft, may be put in peril, the person or persons so offending, shall, upon conviction thereof, be punished by confinement in the penitentiary not less than two nor more than ten years; and, in the event of the death of any passenger or other person, resulting from such malicious shooting or throwing, the person so offending shall be deemed guilty of murder, the degree to be determined by the jury. If any such act be committed unlawfully, but not maliciously, the person so offending shall, upon conviction thereof, be punished by confinement in the penitentiary not less than one, nor more than three years, or, at the discretion of the jury, be confined in jail not to exceed twelve months, and fined not less than one hundred dollars nor more than five hundred dollars. (1904, p. 293.)

Revisors' Note.—The minimum punishment for violating the first part of the first sentence has been decreased from five to two years.

Sec. 4474. Injuring, destroying, or removing switch-lamp, flag-

Digitized by Google

lamp, or other signal used by any railroad; how punished.—If any person maliciously injure, destroy, or remove any switch-lamp, flag, or other signal used by any railroad whereby the life of any traveler, employee, or other person is or may be put in peril he shall be punished by confinement in the penitentiary not less than two nor more than ten years, and in the event of the death of any traveler, employee, or other person resulting from such malicious injuring, destroying, or removing the person so offending shall be deemed guilty of murder, the degree to be determined by the jury. If such act be done unlawfully but not maliciously the offender shall, in the discretion of the jury, be confined in the penitentiary not less than one nor more than three years or be confined in jail not exceeding twelve months and fined not exceeding five hundred dollars; and in the event of the death of any traveler, employee, or other person resulting from such unlawful injuring, destroying, or removing the person so offending shall be deemed guilty of murder or of manslaughter, as the jury may determine. (1897-8, p. 506.)

Revisors' Note.—The maximum confinement in the penitentiary prescribed in the first part of the second sentence has been decreased from five to three years.

Sec. 4475. Driving, etc., any animal on track of railroad with view to recover damages; how punished.—If any person, with a view to the recovery of damages against a railroad company, wilfully ride, drive, or lead any animal, or otherwise contrive for any animal to go on the railroad track of such company, and such animal is by reason thereof killed or injured, he shall be confined in the penitentiary not less than one nor more than ten years, or, in the discretion of the jury, confined in jail not exceeding one year and fined not exceeding five thousand dollars. (Code 1887, § 3727.)

Sec. 4476. Injury to or destruction of fences or cattle stops along the line of railroads a misdemeanor; penalty.—Any person who shall wilfully or maliciously cut or break down, injure, or destroy any fence erected along the line of any railroad, for the purpose of fencing the track or depot grounds of such road, or shall break down, injure, or destroy any cattle stop along the line of any railroad, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by confinement in jail not less than fifteen days, or fined not less than ten dollars, or both. (1899-00, p. 571.)

Revisors' Note.—The insertion of the words "wilfully or" before "maliciously" makes this section cover the offense described in section 3728 of the Code of 1887. That section prescribed a higher penalty than the act cited at the end of section 4476 above, although in that act the word "maliciously" and not "wilfully," was used. No other change is made in the act constituting section 4476, and section 3728 of the Code of 1887 has been omitted and thereby repealed.

Digitized by Google

Sec. 4477. Unlawful use of, or injury to, telephone and telegraph lines.—Any person

1. Who shall maliciously injure, molest, cut down, or destroy any telephone or telegraph line, wire, cable, or pole, or the material or property belonging thereto; or

2. Who shall maliciously cut, break, tap, or make any connection with any telephone or telegraph line, wire, cable, or instrument of any telegraph or telephone company which has legally acquired the right of way by purchase, condemnation, or otherwise; or

3. Who shall maliciously copy in any unauthorized manner any message, either social, business, or otherwise, passing over it in this State; or

4. Who shall wilfully or maliciously prevent, obstruct, or delay by any means or contrivance whatsoever the sending, conveyance, or delivery in this State of any authorized communication by or through any telephone or telegraph line, wire, or cable under the control of any telephone or telegraph company doing business in this State; or

5. Who shall maliciously aid, agree with, employ, or conspire with any unauthorized person or persons to unlawfully do or cause to be done any of the acts hereinbefore mentioned,

Shall be deemed guilty of a misdemeanor. (1897-8, p. 587.)

Revisors' Note.—In addition to changes in arrangement and phraseology, the punishment for a violation of this section is now as for a misdemeanor, for which see section 4782.

Sec. 4478. To protect electric light and power companies, gas companies, and cities and towns from the theft of electric current or gas or apparatus, or unlawful interference therewith.—Any person who shall unlawfully injure or destroy, or having the right to prevent it shall permit to be injured or destroyed any meter, pipe, conduit, wire, line, post, lamp, or other apparatus belonging to a city or town or to a company engaged in the manufacture or sale of electricity or gas for lighting or power purposes, or who shall unlawfully prevent an electric or gas meter from duly registering the quantity of electricity or gas supplied, or in any way unlawfully interefere with its proper action or just registration, or who shall without the consent of such company or city or town unlawfully divert any electric current from any wire of such company or city or town, or who shall otherwise unlawfully use or cause to be used without the consent of such company or city or town any electricity or gas manufactured or distributed by such company or city or town, shall be deemed guilty of a misdemeanor. (1897-8, p. 254.)

Revisors' Note.—The punishment for a violation of this section is now as for a misdemeanor, for which see section 4782.

Sec. 4479. Injuring, etc., any property, or removing, etc., any

Digitized by Google

monument erected for, etc., or tree marked for, etc.; how punished.—If any person, unlawfully, but not feloniously, take and carry away, or destroy, deface, or injure any property, real or personal, not his own, or break down, destroy, deface, injure or remove any monument erected for the purpose of marking the site of any engagement fought during the War between the States, or for the purpose of designating the boundaries of any city, town, tract of land, or any tree marked for that purpose, he shall be fined not less than five nor more than five hundred dollars. (Code 1887, § 3729; 1914, p. 498.)

Statute embraced slaves, domestic animals, but not dogs.—The statute of 1822-3, chapter 34, from which this section came, embraced living domestic animals, and the fact of the property being at the time of the trespass on the land of the defendant did not prevent the operation of the statute. Percavil's Case, 4 Leigh, 686. The statute embraced slaves (Howard's Case, 11 Leigh 631); but not dogs (Maclin's Case, 3 Leigh, 877 [809]; Davis' Case, 17 Grat. 617).

A party removing a fence from land to which he has a title is not indictable under the statute. Campbell's Case, 2 Rob. 791. See, also, Ratcliffe's Case, 5 Grat. 657; Wise's Case, 98 Va. 839, 36 S. E. 479.

An indictment charging that defendant knowingly, etc., removed a fence from the lands of P., and did injure and expose the growing crop of P. then on said land, charges but one offense, and is valid. Ratcliffe's Case, 5 Grat. 657.

The offence under the statute consists in unlawfully taking away, etc., the property of another, and it ought to appear by the indictment that it is the property of another. Israel's Case, 4 Leigh 677.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 145, section 27.

Sec. 4480. Unauthorized use of automobiles or motor vehicles.—Any person who, without the consent of the owner, shall take, or cause to be taken, an automobile or motor vehicle, and operate or drive, or cause the same to be operated or driven for his own private use or purpose, shall be deemed guilty of a misdemeanor. (1912, p. 566; 1916, p. 776.)

Revisors' Note.—The phraseology of the present section obviates the question of the application of the rule ejusdem generis, and the punishment is as for a misdemeanor, for which see section 4782, in this respect following the act of 1912 cited at the end of the section.

For note on unauthorized use of an automobile at common law, see 1 Va. L. R. N. S. 158.

Sec. 4481. Pulling down fences or leaving open gates; how punished.—If any person without permission of the owner pull down the fence of another and leave the same down, or without permission open and leave open the gate of another or any gate across a public road established by order of court, he shall be fined not less than five nor more than twenty dollars, to be recovered before a justice of the peace. (Code 1887, § 3730; 1891-2, p. 403.)

Revisors' Note.—See, as affecting this section, Acts 1918, chapter 88, p. 140.

Sec. 4482. Injuries to public buildings, etc.; how punished.—If any person wilfully and maliciously break any window or door

Digitized by Google

may be of an unchartered bank. Murry's Case, 5 Leigh, 720. The bank's charter may be unconstitutional. Hendrick's Case, 5 Leigh 712. It is not necessary to prove the notes to be counterfeit by an officer of the bank of which the notes are counterfeited. Martin's Case, 2 Leigh 745. Parol evidence is allowed to prove existence of bank. Cady's Case, 10 Grat. 776.

Indictment.—An indictment for causing and procuring a counterfeited bank note to be offered to be passed, without stating by whom or how the accused caused and procured it to be done, is sufficiently certain and good. Brown's Case, 2 Leigh 832 (769); Murry's Case, 5 Leigh.722.

In an indictment for passing a counterfeit note it is not necessary to allege that the bank is a chartered bank, or that there is no such bank, or that the note was passed "to the prejudice of another's right," or "for the prisoner's own benefit," or "for the benefit of another." Murry's Case, 5 Leigh 720. See section 4873.

Joining of offenses in one count.—In the same count may be charged the offense of falsely making, forging and counterfeiting, causing to and procuring to be falsely made, forged, or counterfeited; and willing by acting and assisting in the said false making, etc. Rasnick's Case, 2 Va. Cas. 356, and notes thereto Va. Rep. Anno.

Uttering counterfeit coin—Scienter—Presumption of fact.—In a prosecution for uttering counterfeit coin, guilty knowledge of prisoner is an essential fact to be proved. There can be no presumption of law from other facts of this guilty knowledge, though there may be a presumption of fact. Wash's Case, 16 Grat. 530, and note thereto Va. Rep. Anno. See, also, Sands' Case, 20 Grat. 801; Hendrick's Case, 5 Leigh 708; Finn's Case, 5 Rand. 701.

Generally.—It is not necessary to produce the coin or to account for its existence. Kirk's Case, 9 Leigh 627.

One who brightens base pieces is guilty of counterfeiting. Rasnick's Case, 2 Va. Cas. 356.

A prisoner examined for forging and counterfeiting under section 4487, and sent on to the circuit court, cannot be indicted under section 4490. Page's Case, 9 Leigh 687.

See notes to section 4489; also note on Forgery and Counterfeiting, Coleman's Case, 25 Grat. 865, Va. Rep. Anno., 23 Am. Rep. 711; Min. Syn. 128, et seq.

Cited, but not construed, Speer's Case, 2 Va. Cas. 65.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 146, section 3.

Sec. 4488. Making or having in possession anything designed for forging any writing; how punished.—If any person engrave, stamp, or cast, or otherwise make or mend, any plate, block, press, or other thing, adapted and designed for the forging and false making of any writing or other thing, the forging or false making whereof is punishable by this chapter; or if such person have in possession any such plate, block, press, or other thing, with intent to use, or cause or permit it to be used, in forging or false making any such writing or other thing, he shall be confined in the penitentiary not less than two nor more than ten years. (Code 1887, § 3736.)

For indictment under this section insufficient on account of description of die or instrument, see Scott's Case, 1 Rob. 695.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 146, section 4.

Sec. 4489. Forging, uttering, etc., other writings; how punished.—If any person forge any writing, other than such as is mentioned

Digitized by Google

in sections forty-four hundred and eighty-four and forty-four hundred and eighty-seven, to the prejudice of another's right, or utter, or attempt to employ as true, such forged writing, knowing it to be forged, he shall be confined in the penitentiary not less than two nor more than ten years. (Code 1887, § 3737; 1912, p. 111.)

Revisors' Note.—This section increases the minimum punishment from one year to two years, thus restoring the Code of 1887 as to the minimum punishment.

Definition at common law.—Forgery is the making of a false writing which, if genuine, would be apparently of legal sufficiency. Terry's Case, 87 Va. 674, 13 S. E. 104; Gordon's Case, 100 Va. 825, 41 S. E. 746, 57 L. R. A. 744. See 8 Va. Law Reg. 80-84.

Any forgery which is not enumerated in the statute is still indictable at common law. Com. v. Ayer, 3 Cush. (Mass.) 150; State v. Morton, 27 Vt. 310, 65 Am. Dec. 201.

Forgery and uttering separate offenses.—Forgery and uttering a forged instrument are separate offenses. Johnson's Case, 102 Va. 927, 46 S. E. 789.

Subjects of forgery.—The writings must not be invalid on their face. Terry's Case, 87 Va. 674, 13 S. E. 104. The statute predicates the offense only of such writings as are or may be to the prejudice of another's right. Terry's Case, 87 Va. 672, 13 S. E. 104; Powell's Case, 11 Grat. 822. An instrument is one of legal efficacy, within the rules relating to forgery, where, by any possibility, it may operate to the injury of another. Gordon's Case, 100 Va. 829, 41 S. E. 746, 57 L. R. A. 744; Linton's Case, 2 Va. Cas. 476. A bail bond taken by a sheriff may be a subject of forgery. Linton's Case, 2 Va. Cas. 476. Also the forging of the indorsement of a note. Powell's Case, 11 Grat. 822. Also the check of a bank whose charter is unconstitutional. Hendrick's Case, 5 Leigh 708. Also a receipt. Gordon's Case, 100 Va. 826, 832, 41 S. E. 746, 57 L. R. A. 744. But a letter recommending a person to credit was held not to be a subject of forgery at common law or under statutes. Foulkes' Case, 2 Rob. 836. See, also, Proctor's Case, 1 Va. Cas. 4. As to forgery of an instrument void for want of revenue stamp, see 5 Va. Law Reg. 193.

It is immaterial that the note was not indorsed by the payee. Hendrick's Case, 5 Leigh 707.

Indictment—*Description of forged document.*—If the description of the document would be good in case of an indictment for larceny, it is sufficient. Coleman's Case, 25 Grat. 866, 23 Am. Rep. 711; Pomeroy's Case, 2 Va. Cas. 342. See section 4871; also sections 4870 and 4440.

It is not necessary to state who is the maker of a note nor where it is payable. Cocke's Case, 13 Grat. 750. Nor is it necessary to insert the words, "to the prejudice of another's right." Powell's Case, 11 Grat. 822. Nor is it necessary to state in the indictment the person intended to be injured. Section 4873. Nor to set out the indorsements on the note, or any other matter written upon the same paper, constituting no part of the note itself, and not entering into the essential description of that instrument. Perkin's Case, 7 Grat. 651, 56 Am. Dec. 123. See, also, Powell's Case, 11 Grat. 822.

The description of the writing in the indictment as the indorsement of the person whose name is forged will not vitiate the indictment, though the simulated liability might not be that of technical indorser, but of a different character. Powell's Case, 11 Grat. 822.

An indictment, instead of setting out the tenor of the forged notes, has the notes annexed, and a reference thereto. The plea is the general issue. Although this is a careless and irregular mode of counting, the irregularity is cured by the statute of jeofails. Ervin's Case, 2 Va. 337.

Misjoinder of counts.—An indictment charging in one count the forgery of a check and of the indorsement thereon is not liable to the objection of duplicity or misjoinder. Sprouse's Case, 81 Va. 374.

Digitized by Google

New indictment—Variance—Autrefois acquit.—First indictment was for forgery of an order for forty-seven dollars and twenty-five cents, while the order produced was for for forty-seven dollars and twenty-three cents. This was a variance which entitled the accused to acquittal on that indictment. But the acquittal on that indictment does not forbid prosecution of accused on another indictment for same forgery, setting out order correctly. Burress' Case, 27 Grat. 934.

For indictment as principal in the second degree, see Huffman's Case, 6 Rand. 685; Rasnick's Case, 2 Va. Cas. 356.

Evidence.—Counterfeit notes passed by prisoner's confederate in the presence of prisoner are proper evidence. Martin's Case, 2 Leigh 745. The Commonwealth may disprove the genuineness of the signature by any one acquainted with the party's handwriting. Martin's Case, 2 Leigh 745; Foulkes' Case, 2 Rob. 836; Chahoon's Case, 20 Grat. 734; Burress' Case, 27 Grat. 935. The forged paper is proper evidence, notwithstanding its date has been changed since it was passed. Huffman's Case, 6 Rand. 685. If the original paper be lost, secondary evidence of the contents, character, and description of the paper is admissible to sustain the prosecution. Pendleton's Case, 4 Leigh 694, 26 Am. Dec. 342; Foulkes' Case, 2 Rob. 837; Cocke's Case, 13 Grat. 755.

Possession of similar forged notes or the implements for making them is prima facie presumptive evidence that the prisoner was the forger. Spencer's Case, 2 Leigh 751. As to evidence to prove pecuniary condition of obligor in a forged note, see Chahoon's Case, 20 Grat. 734; Sands' Case, Id. 800.

As to prisoner's furnishing evidence against himself which was not compulsory, see Sprouse's Case, 81 Va. 374. As to effect of prisoner's failure to produce evidence, see Chahoon's Case, 20 Grat. 735.

It seems it is a question of fact for the jury to decide by whom the forgery of the paper was committed. Perkins' Case, 7 Grat. 656, 56 Am. Dec. 123; Spencer's Case, 2 Leigh 751.

The accused being in possession of the forged order, drawn in his own favor, is a fact constituting complete proof that either by himself, or by false conspiracy with others, he forged or assented to the forgery of the instrument, until he shows that he is not the actual perpetrator, and that he himself was not privy. Perkins' Case, 7 Grat. 656, 56 Am. Dec. 123. In the case of a bank note, contra. Id.

Special verdict—Law with the prisoner.—Kearns' Case, 1 Va. Cas. 109.

Attempting to employ as true forged writing—Scienter.—Guilty knowledge of the prisoner is an essential fact to be proved. There can be no presumption of law from other facts of this guilty knowledge, but it is to be judged by the jury, and may be inferred from the unexplained possession of similar forged writings, and from having about the same time passed other writings of the same kind. Hendrick's Case, 5 Leigh 708; Martin's Case, 2 Leigh 745; Spencer's Case, Id. 751; Finn's Case, 5 Rand. 701; Wash's Case, 16 Grat. 540; Sands' Case, 20 Grat. 801; Chahoon's Case, 20 Grat. 734. See, also, Trogdon's Case, 31 Grat. 862.

There must also be a fraudulent intent, of which the jury is to judge; and this intent ought to be inferred from the false making or any writing which is the subject of forgery. Wash's Case, 16 Grat. 540; Trogdon's Case, 31 Grat. 871; Sands' Case, 20 Grat. 801; Chahoon's Case, 20 Grat. 734.

Any assertion or declaration, by word or act, directly or indirectly, that the forged writing is good, with such knowledge and intent, is an uttering or attempt to employ as true the writing. Sands' Case, 20 Grat. 801; Chahoon's Case, Id. 734.

For circumstances making the bringing suit on a forged note an attempt to employ the same as true, within the meaning of the statute, see Chahoon's Case, 20 Grat. 735; Sands' Case, Id. 800.

In all cases of tendering, offering, passing, or uttering counterfeit notes the indictment is sufficiently certain if it pursues the words of the

Digitized by Google

statute; if it sets forth the tenor of the instrument, thereby giving a precise certainty; if it sets forth the scienter, and the intent to defraud some person or corporate body by name. Brown's Case, 2 Leigh 837 (773).

It is not necessary to set forth in the count the persons whom the prisoner procured to forge the instrument, or with whom he acted and assisted in the forgery. A general description, in the words of the statute, is sufficient. Huffman's Case, 6 Rand. 685; Brown's Case, 2 Leigh, 832 (769); Ervin & Lewis' Case, 2 Va. Cas. 337.

Generally.—See notes to section 4487; also note to Coleman's Case, 25 Grat. 865, Va. Rep. Anno., 23 Am. Rep. 711; Min. Syn. 128, et seq. See article in 8 Va. Law Reg. 79, 321.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 146, section 5.

Sec. 4490. Having in possession, knowingly, forged coin or bank notes, with intent to utter same, etc., or selling same, etc., so as to enable another to do so; how punished.—If any person have in his possession forged bank notes, forged or base coin, such as are mentioned in section forty-four hundred and eighty-seven, knowing the same to be forged or base, with the intent to utter or employ the same as true, or to sell, exchange, or deliver them, so as to enable any other person to utter or employ them as true, he shall, if the number of such notes or coins in his possession at the same time, be ten or more, be confined in the penitentiary not less than one nor more than five years; and if the number be less than ten, be punished as for a misdemeanor. (Code 1887, § 3738.)

The charge in an indictment under this section that the prisoner had more than ten pieces of forged or base coin on a certain day is not sufficient; the indictment must allege he had them in his possession at the same time. Scott's Case, 14 Grat. 687.

The forging of coin (section 4487), the felonious having in possession such forged coin (section 4490), and the uttering and publishing the same (section 4489), are distinct and substantive offenses. They are kindred in character, but it cannot be said that any one is the major, and includes within itself all the elements of the other two or of either of them. Scott's Case, 14 Grat. 687; Page's Case, 9 Leigh, 683; Mowbray's Case, 11 Leigh, 643. Therefore a prisoner examined under section 4487, as the law was, could not be indicted under section 4490. Scott's Case, 14 Grat. 687.

See notes to sections 4487 and 4489, and the following cases: Martin's Case, 2 Leigh 745; Spencer's Case, Id. 751; Hendrick's Case, 5 Leigh 708.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 146, section 6.

Sec. 4491. Making false entry, record, etc., in book, etc., required to be kept by chapter two hundred and four; how punished.—If any clerk of a court, commissioner of the revenue, physician, surgeon, coroner, or minister celebrating a marriage, or clerk or keeper of the records of any religious society, shall, in any book, register, record, certificate or copy which such person is by chapter two hundred and four required to keep, make, or give, knowingly make any false, erroneous, or fraudulent entry, record, registration, or written statement, he shall, for every such offense, be fined not less than one hundred nor more than five hundred dollars. (Code 1887, § 3739.)

Digitized by Google

Sec. 4492. Making false statement, etc., for any record, etc., required to be kept by chapter two hundred and four; how punished. —If any person, upon whose information or statement any record or registration may lawfully be made under chapter two hundred and four, knowingly give any false information, or make any false statement to be used for the purpose of making any such record or registration, he shall, for every such offense, be fined not less than fifty nor more than one hundred dollars. (Code 1887, § 3740.)

CHAPTER 181.

Offenses Against Public Justice.

Sec.
4493. What deemed perjury.
4494. Perjury and subornation of perjury; how punished.
4495. Further penalty.
4496. Bribes to officers or candidates for office.
4497. Acceptance thereof by officer; how punished.
4498. Evidence in prosecutions under the two preceding sections.
4499. Lobbying with General Assembly; how punished.
4500. Employing persons so to lobby; how punished.
4501. To whom the two preceding sections not applicable.
4502. Bribes to officers to prevent service of process; how punished.
4503. Giving bribes to, or receiving same by, commissioners, auditor, jurors, etc.; how punished.
4504. Any person aiding escape of prisoner; how punished.
4505. Officer voluntarily suffering prisoner convicted of, or charged with, felony, to escape; how punished.
4506. Or negligently suffering such prisoner or a prisoner not so convicted or charged to escape, or wilfully refusing to receive a prisoner; how punished.
4507. Prisoner, if convicted, escaping from jail; how punished.
4508. Escape from jail of prisoner not sentenced; how punished.
4509. Escape, etc., by setting fire to jail; how punished.
4510. Officer refusing, delaying, etc., to execute process for criminal; how punished.
4511. Refusal to aid officer in execution of his office; how punished.
4512. Failure to obey order of justice, etc., on view of breach of the peace, etc.; how punished; ignorance of his office, no excuse,
4513. Concealing or compounding offenses; how punished.
4514. Extortion by officer; how punished.
4515. Fraudulent issue of fee bills; how punished.
4516. False entries, or destruction of records, by officers; how punished.
4517. Additional penalty.
4518. Theft or destruction of public records by others than officers; how punished.
4519. Officer summoning juror to act partially; how punished.
4520. Corruptly procuring juror to be summoned; how punished.

Digitized by Google

Sec.
4521. Cases in which courts and judges may punish summarily for contempt.
4522. Power of justice to punish for contempt.
4523. Appeal from sentence of justice; how; what justice to certify; how appeal heard and decided.
4524. Fine and imprisonment by court limited, unless jury be impaneled.
4525. Obstructing justice by threats or force; how punished.
4526. Fraud in drawing jurors, etc.; how punished.

Sec. 4493. What deemed perjury.—If any person, to whom an oath is lawfully administered on any occasion, wilfully swear falsely on such occasion touching any material matter or thing, or if a person falsely make oath that any other person is twenty-one years of age, in order to obtain a marriage license for such other person, he shall be guilty of perjury. (Code 1887, § 3741.)

Perjury.—For definition at common law, see Fitch's Case, 92 Va. 828, 24 S. E. 272; Pickering's Case, 8 Grat. 628, 56 Am. Dec. 158.

At common law, as well as under the statute, four things are essential to constitute the offense: (1) The oath must be wilful; (2) it must be false; (3) it must be taken before competent authority; (4) the thing sworn to must be material. Rhodes' Case, 78 Va. 692; Fitch's Case, 92 Va. 824, 24 S. E. 272; Crump's Case, 75 Va. 922; Pickering's Case, 8 Grat. 628, 56 Am. Dec. 158.

The indictment must charge that the defendant feloniously and wilfully swore falsely, or must use in the place of the word "wilfully" some equivalent. Fitch's Case, 92 Va. 824, 24 S. E. 272.

It is indispensable to charge that the defendant swore falsely, but not necessary to aver that he swore absolutely and positively. Fitch's Case, 92 Va. 824, 24 S. E. 272; Thomas' Case, 2 Rob. 795. See, also, Cook's Case, 1 Rob. 729.

The oath may be before a justice on a warrant trial (Litton's Case, 6 Grat. 691); before a regimental court of inquiry (Conner's Case, 2 Va. Cas. 30); by a juror on his voir dire (Stockley's Case, 10 Leigh 678); before clerk on application for marriage license (section 4493, overruling Williamson's Case, 4 Grat. 555). See, also, Maybush's Case, 29 Grat. 857. For other cases, see Roach's Case, 1 Grat. 561; Lodge's Case, 2 Grat. 579; Calvert's Case, 1 Va. Cas. 181; Cook's Case, 1 Rob. 729.

The indictment must aver that the false testimony was material, but it is not necessary to set forth all the circumstances which render it material. Fitch's Case, 92 Va. 824, 24 S. E. 272. See, also, on materiality, Crump's Case, 75 Va. 922 (garnishment proceedings); Calvert's Case, 1 Va. Cas. 181 (insolvent debtor's oath); Rhodes' Case, 78 Va. 692 (where the oath as to date was not material to the issue); also Pickering's Case, 8 Grat. 628, 56 Am. Dec. 158.

State cannot punish for perjury committed before judicial tribunal of United States. In re Loney, 134 U. S. 375, 10 Sup. Ct. 584, 33 L. Ed. 949.

Evidence.—If the evidence in proof of the crime of perjury consists of two opposing statements of the prisoner, and nothing more, he cannot be convicted. To authorize a conviction of perjury, there must be two witnesses testifying to the falsity of the statement, or one witness with strong corroborating circumstances. Schwartz's Case, 27 Grat. 1025, 21 Am. Rep. 365; Pickering's Case, 8 Grat. 628, 56 Am. Dec. 158.

Indictment.—Where one is indicted for swearing contradictorily on two occasions, prosecutor must elect which oath he holds to be perjured, and that oath he must affirmatively prove to be false. If defendant is shown to have sworn contradictory oaths, without more, non

Digitized by Google

constat which is false. Rhodes' Case, 78 Va. 692; Schwartz's Case, 27 Grat. 1027, 21 Am. Rep. 365.

As to form of an indictment for perjury, see section 4869 and notes.

Upon indictment for perjury, where it is a question whether the oath taken is legal perjury, the court should not quash the indictment, but should put the defendant to his demurrer. Litton's Case, 6 Grat. 691.

Variance.—The indictment sets forth that a warrant for debt due by account for rent was sued out by the defendant, and the warrant given in evidence shows that the claim was not for rent, but for other things; this is such a variance that the warrant ought not to be given in evidence. Hickman's Case, 2 Va. Cas. 323.

Generally.—Cited but not construed, Casselman v. Bialas, 112 Va. 57, 70 S. E. 479.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 147, section 1.

Sec. 4494. Perjury and subornation of perjury; how punished.—If any person commit or procure another person to commit perjury, he shall be confined in the penitentiary not less than one nor more than ten years; or, in the discretion of the jury, be confined in jail not exceeding one year, or fined not exceeding one thousand dollars, or both. (Code 1887, § 3742.)

Revisors' Note.—This section no longer expressly makes a distinction between perjury or subornation of perjury committed on a trial for felony and perjury or subornation of perjury committed on any other occasion; but it leaves it in the discretion of the jury to impose the jail sentence or fine, or both, in any case. If the punishment be by confinement in the penitentiary, under the present section the term may be not less than ONE nor more than ten years. The revisors thought that juries should be given more latitude in fixing the punishment for these crimes. Formerly if the perjury was committed on a trial for felony, the punishment was by confinement in the penitentiary not less than TWO, nor more than ten years, and if on any other occasion, by confinement in jail not exceeding one year, and by fine of not exceeding one thousand dollars.

In order to convict accused of subornation of perjury, it is essential for the Commonwealth to show that the person whom he is alleged to have suborned had committed perjury. Maybush's Case, 29 Grat. 859. See notes to section 4764.

Accused, after verdict for subornation of perjury, is entitled to a new trial, if the person whom he is accused of having suborned to commit perjury is acquitted of the perjury charged. Maybush's Case, 29 Grat. 857.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 147, section 2.

Cited but not construed, Samuel's Case, 110 Va. 901, 66 S. E. 222.

Sec. 4495. Further penalty.—He shall, moreover, on conviction thereof, be adjudged forever incapable of holding any post mentioned in section two hundred and eighty-nine, or of serving as a juror. (Code 1887, § 3743.)

Revisors' Note.—The words, "or giving evidence as a witness," found at the end of this section as it stood before the revision, have been omitted. In 1 Green. Ev. (16th Ed.), section 378a, it is said:

"The policy of absolute exclusion for persons convicted of crime can no longer be defended. Nevertheless, legislation has not yet everywhere caught up with enlightened opinion. (1) In the greater number

Digitized by Google

of jurisdictions, this disqualification has been entirely removed. (2) In a smaller number, it is retained for a few crimes—usually the crime of perjury. (3) In a few jurisdictions, the old crudities remain."

To disqualify the convict from giving evidence as a witness might be very detrimental to third persons, and in view of the fact that conviction in another jurisdiction does not disqualify, the revisors were of opinion that this provision of the section should be omitted. See Samuels v. Com., 110 Va. 901, 66 S. E. 222, 20 Anno. Cases 880, and Kain v. Angle, 111 Va. 415, 69 S. E. 335. See section 4779.

Sec. 4496. Bribes to officers or candidates for office.—If any person corruptly give, offer, or promise to any executive, legislative, or judicial officer, or to any candidate for such office, and either before or after he shall have qualified, or shall have taken his seat, any gift or gratuity, with intent to influence his act, vote, opinion, decision, or judgment on any matter, question, cause, or proceeding, which is or may be then pending, or may by law come or be brought before him in his official capacity, he shall, upon conviction, be confined in the penitentiary not less than one nor more than ten years. This section shall also apply to a resident of this State who, while temporarily absent therefrom for that purpose, shall make such gift, offer or promise, and thereafter return to this State. (Code 1887, § 3744; 1902-3-4, p. 823.)

Revisors' Note.—The phraseology of this section has been considerably changed, with some change in meaning. The section is extended so as to include candidates for office, as well as officers.

In an information against a J. P. for bribery in election of a clerk, it ought to be stated with certainty that an election was holden, and that at that election the vote was given. Newell's Case, 2 Wash. 88.

For a corrupt agreement that was not within the statute (1 R. C. 1819, p. 559) against the buying and selling of offices, see Com. v. Callaghan & Holloway, 2 Va. Cas. 460.

The term "executive officer" is not limited in its application to the chief magistrate of the Commonwealth, but embraces as well inferior executive officers, whose duties are for the most part ministerial. This section therefore embraces a police officer. Haynes v. Com., 104 Va. 854, 52 S. E. 358.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 147, section 4.

Sec. 4497. Acceptance thereof by officer; how punished.—If any executive, legislative, or judicial officer, or any candidate for such office accept in this State, or if, being resident in this State, such officer or candidate shall go out of this State and accept, and afterwards return to and reside in this State, any gift or gratuity, or any promise to make a gift or do any act beneficial to such officer or candidate under an agreement, or with an understanding that his vote, opinion, or judgment shall be given on any particular side of any question, cause, or proceeding which is or may be by law brought before him in his official capacity, or that in such capacity he shall make any particular nomination or appointment, he shall, upon conviction, be confined in the penitentiary not less than one nor more than ten years, and shall forfeit his

Digitized by Google

office and be forever incapable of holding any post mentioned in section two hundred and eighty-nine. The word candidate as used in this and the preceding section, shall mean any one who offers himself or is put forward by others as a suitable person or an aspirant for such office. (Code 1887, § 3745; 1902-3-4, p. 823.)

Revisors' Note.—This section now includes candidates. The last sentence is new.

Sec. 4498. Evidence in prosecutions under the two preceding sections.—No person prosecuted under either of the two preceding sections shall be competent to testify against a witness for the Commonwealth in such prosecution touching the giving, or offering to give, or the acceptance of any bribe by such witness prior to the commencement of such prosecution; nor shall any witness called by the court or Commonwealth's attorney and giving evidence for the prosecution, either before the grand jury or the court in such prosecution, be ever proceeded against for any offense of giving, or offering to give, or accepting a bribe committed by him at the time and place indicated in such prosecution; but such witness shall be compelled to testify, and for refusing to answer questions may, by the court, be fined a sum not exceeding five hundred dollars, and be imprisoned for a term not exceeding six months. (1902-3-4, p. 20.)

Sec. 4499. Lobbying with General Assembly; how punished.—If any person pay or receive money or other compensation, directly or indirectly, for the purpose of securing the passage or defeat of any measure by the General Assembly, he shall be confined in jail not exceeding twelve months, and fined not exceeding five thousand dollars. (Code 1887, § 3746.)

The section was doubtless intended to apply to the use of money in the line of bribery and corruption, debauching the members, or buying votes, and not to contracts with attorneys for purely professional services, such as drafting petitions, setting forth client's claim, taking testimony, collecting facts, preparing arguments, oral or written, addresses to the Legislature or its committee, with intention to reach its reason by argument. Yates v. Robertson, 80 Va. 475.

Sec. 4500. Employing persons so to lobby; how punished.—If any person employ paid agents for the purpose of giving information of any action which may be taken by the General Assembly, in order that said information may be used for the purpose of securing the passage or defeat of any measure by the General Assembly, he shall be confined in jail not exceeding twelve months, and fined not exceeding five thousand dollars. (Code 1887, § 3747.)

Sec. 4501. To whom the two preceding sections not applicable.—The two preceding sections shall not apply to any person who may be invited by or have the permission of any regular or special committee of the General Assembly to appear before it, either for or against any measure. (Code 1887, § 3748.)

Digitized by Google

Sec. 4502. Bribes to officers to prevent service of process; how punished.—If any officer, authorized to serve legal process, receive any money or other thing of value, for omitting or delaying to perform any duty pertaining to his office, he shall be confined in jail not exceeding six months, and be fined not exceeding one hundred dollars. (Code 1887, § 3749.)

The words "to perform any duty pertaining to his office" are broader in scope than the words "to serve legal process," and must be taken literally, and not limited to the latter expression. Old's Case, 18 Grat. 927.

The offense punishable by the statute is the omitting or delaying to perform any duty, etc., not the doing of any act. Id.

For the natural and proper mode of charging a violation of this statute, see opinion of Moncure, P., Id.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 147, section 6.

Sec. 4503. Giving bribes to, or receiving same by, commissioners, auditors, jurors, etc.; how punished.—If any person give, or offer, or promise to give, any money or other thing of value, to a commissioner appointed by a court, auditor, arbitrator, umpire, or juror (although not impaneled), with intent to bias his opinion or influence his decision in relation to any matter in which he is acting or is to act, or if any such commissioner, auditor, arbitrator, umpire, or juror, corruptly take or receive such money or other thing, he shall be confined in jail six months, and fined not exceeding five hundred dollars. (Code 1887, § 3750.)

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 147, section 7.

For comment upon this section, see 13 Va. Law Reg. 487.

Sec. 4504. Any person aiding escape of prisoner; how punished.—Where a person is lawfully detained as a prisoner in any jail, prison, or custody, if any person convey anything into the jail or prison, with intent to facilitate the prisoner's escape therefrom, or in any way aid such prisoner to escape, or in the attempt to escape from such jail, prison, or custody, or forcibly rescue, or attempt to rescue him therefrom, such person, if the rescue or escape be effected, shall, if the prisoner was detained on conviction or charge of felony, be confined in the penitentiary not less than one nor more than five years; and if the same be not effected, or if the prisoner was not detained on such conviction or charge, be confined in jail six months, and fined not exceeding five hundred dollars. (Code 1887, § 3751.)

Commented upon in 13 Va. Law Reg. 170.

Sec. 4505. Officer voluntarily suffering prisoner convicted of, or charged with, felony, to escape; how punished.—If any sheriff, jailor, or other officer, or any guard, or other person summoned or employed by any such sheriff, jailor, or other officer, voluntarily suffer a prisoner convicted of or charged with felony, to escape from his custody, he shall be confined in the penitentiary not less

Digitized by Google

than two nor more than ten years. (Code 1887, § 3752; 1899-00, p. 353.)

Commented upon in 13 Va. Law Reg. 170.

Sec. 4506. Or negligently suffering such prisoner or a prisoner not so convicted or charged to escape, or wilfully refusing to receive a prisoner; how punished.—If any sheriff, jailor, or other officer, or any guard or other person summoned or employed by such sheriff, jailor, or other officer, negligently suffer a prisoner convicted of or charged with felony, or voluntarily or negligently suffer a prisoner convicted of, or charged with, an offense, not a felony, to escape from his custody, or wilfully refuse to receive into his custody a person lawfully committed thereto, he shall be confined in jail not exceeding six months, or be fined not less than fifty nor more than five hundred dollars. (Code 1887, § 3753; 1899-00, p. 353.)

The sheriff of one county cannot be prosecuted in another for having dismissed a prisoner in his own county. Lewis' Case, 4 Leigh 664.

A sheriff is not liable for his deputy's dismissal of a prisoner. Id.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 147, section 10.

Commented upon in 13 Va. Law Reg. 170.

Sec. 4507. Prisoner, if convicted escaping from jail; how punished.—If any person confined in jail on conviction of a criminal offense escape thence by force or violence, other than by setting fire thereto, he shall be confined in the penitentiary one year, if previously sentenced to confinement therein, or be confined in jail six months, if previously sentenced to confinement in jail: the term of confinement under this section to commence from the expiration of the former sentence. (Code 1887, § 3754.)

The former sentence does not expire until the prisoner has suffered the full amount of imprisonment; and if prisoner escapes before he has served out a sentence, when he is recaptured he must be held in jail till he actually suffers the full amount of the term, and this though he has been indicted for his escape. Cleek's Case, 21 Grat. 777.

For W. Va. decisions on similar statute, see Justis' Annotations' chapter 147, section 11.

Sec. 4508. Escape from jail of prisoner not sentenced; how punished.—If any person, lawfully imprisoned in jail and not sentenced on conviction of a criminal offense, escape from jail by force or violence, other than by setting fire thereto, he shall be confined in jail not exceeding one year. (Code 1887, § 3755.)

Sec. 4509. Escape, etc., by setting fire to jail; how punished.—If any person, lawfully imprisoned in jail, escape, or attempt to escape therefrom, by setting fire thereto, he shall be confined in the penitentiary not less than three nor more than ten years. (Code 1887, § 3756.)

Sec. 4510. Officer refusing, delaying, etc., to execute process for criminal; how punished.—If any officer willfully and corruptly refuse to execute any lawful process, requiring him to apprehend or

Digitized by Google

confine a person convicted of, or charged with, an offense, or wilfully and corruptly omit or delay to execute such process, whereby such person shall escape and go at large, such officer shall be confined in jail not exceeding six months, and be fined not exceeding five hundred dollars. (Code 1887, § 3757.)

Sec. 4511. Refusal to aid officer in execution of his office; how punished.—If any person, on being required by any sheriff or other officer, refuse or neglect to assist him in the execution of his office in a criminal case, or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in any case of escape or rescue, he shall be confined in jail not exceeding six months, and be fined not exceeding one hundred dollars. (Code 1887, § 3758.)

Sec. 4512. Failure to obey order of justice, etc., on view of breach of the peace, etc.; how punished; ignorance of his office, no excuse.—If any person, being required by a justice or other conservator of the peace on view of a breach of the peace or other offense, to bring before him the offender, refuse or neglect to obey the justice or other conservator of the peace, he shall be punished as is provided in the preceding section for refusing to assist a sheriff; and if the justice or other conservator of the peace declare himself or be known to be such to the person so refusing or neglecting, ignorance of his office shall not be pleaded as an excuse. (Code 1887, § 3759.)

Sec. 4513. Concealing or compounding offenses; how punished.—If any person, knowing of the commission of an offense, take any money or reward, or an engagement therefor, upon an agreement or understanding, expressed or implied, to compound or conceal such offense, or not to prosecute therefor, or not to give evidence thereof, he shall, if such offense be felony, be confined in jail not more than one year, and fined not exceeding five hundred dollars; and if such offense be not a felony, unless it be punishable merely by forfeiture to him, he shall be confined in jail not exceeding six months, and fined not exceeding one hundred dollars. (Code 1887, § 3760.)

For W. Va. decisions on similar statute, see Justis' Annotations' chapter 147, section 19.

Sec. 4514. Extortion by officer; how punished.—If any officer, for performing an official duty for which a fee or compensation is allowed or provided by law, knowingly demand and receive a greater fee or compensation than is so allowed or provided, he shall be fined not exceeding fifty dollars. (Code 1887, § 3761.)

Sec. 4515. Fraudulent issue of fee bills; how punished.—If any person, authorized by law to charge fees for services performed by him, and issue bills therefor, fraudulently issue a fee bill for a service not performed by him, or for more than he is entitled

Digitized by Google

to, he shall be fined not exceeding five hundred dollars. (Code 1887, § 3762.)

Sec. 4516. False entries, or destruction of records, by officers; how punished.—If a clerk of any court, or other public officer, fraudulently make a false entry, or erase, alter, secrete, or destroy any record in his keeping and belonging to his office, he shall be confined in jail not exceeding one year, and fined not exceeding one thousand dollars. (Code 1887, § 3763.)

Sec. 4517. Additional penalty.—Any person, convicted under either of the two preceding sections, shall forfeit his office, and be forever incapable of holding any post mentioned in section two hundred and eighty-nine. (Code 1887, § 3764.)

Sec. 4518. Theft or destruction of public records by others than officers; how punished.—If any person steal, or fraudulently secrete or destroy, a public record or part hereof, he shall, if the offense be not embraced by section forty-five hundred and sixteen, be confined in jail not exceeding one year, and fined not exceeding one thousand dollars. (Code 1887, § 3765.)

Sec. 4519. Officer summoning juror to act partially; how punished.—If any sheriff or other officer corruptly, or through favor or ill-will, summon a juror, with intent that such juror shall find a verdict for or against either party, he shall be fined not exceeding five hundred dollars, and forfeit his office, and be forever incapable of holding any post mentioned in section two hundred and eighty-nine. (Code 1887, § 3766.)

Sec. 4520. Corruptly procuring juror to be summoned; how punished.—If any person procure, or attempt to procure, a juror to be summoned, with intent that such juror shall find a verdict for or against either party, he shall be fined not exceeding five hundred dollars. (Code 1887, § 3767.)

Sec. 4521. Cases in which courts and judges may punish summarily for contempt.—The courts and judges may issue attachments for contempt, and punish them summarily, only in the cases following:

First. Misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice.

Second. Violence, or threats of violence, to a judge or officer of the court, or to a juror, witness, or party going to, attending, or returning from the court, for or in respect of any act or proceeding had or to be had in such court.

Third. Obscene, contemptuous, or insulting language addressed to or published of a judge for or in respect of any act, or proceeding had, or to be had, in such court, or like language used in his presence and intended for his hearing, for or in respect of such act or proceeding.

Digitized by Google

Fourth. Misbehavior of an officer of the court in his official character.

Fifth. Disobedience or resistance of an officer of the court, juror, witness, or other person to any lawful process, judgment, decree, or order of the said court. (Code 1887, § 3768; 1897-8, p. 548; 1904, p. 309.)

Revisors' Note.—The words, "or published of," found in line two of the third sub-division, are new, and their insertion changes the holding in Yoder v. Com., 107 Va., at pp. 831, 832, 57 S. E. 581.

Contempt—Direct and Constructive—Distinction.—The substantial difference between a direct and constructive contempt is one of procedure. The court may proceed on its own knowledge of the facts, where the contempt is in the presence of the court, and punish the offender without further proof, while in contempt not in the presence of the court (constructive contempt) the offender must be brought before the court by a rule; but the power to punish is the same in both cases. Burdett's Case, 103 Va. 838, 48 S. E. 878.

Powers of courts in contempt cases.—There is an inherent power of self-defense and self-preservation in the courts of this State created by the Constitution, which may be regulated by the General Assembly, but cannot be destroyed or so diminished as to be rendered ineffectual thereby. It is a power in the breast of the court, and the General Assembly cannot deprive such courts of the power to summarily punish for contempt by providing for a trial by jury in such cases. Carter's Case, 96 Va. 791, 807, 816, 32 S. E. 780, 45 L. R. A. 310; Well's Case, 21 Grat. 503; Dandridge's Case, 2 Va. Cas. 408; Burdett's Case, 103 Va. 838, 48 S. E. 878.

Therefore the act of 1897-8, p. 548, was unconstitutional in so far as it gave the accused in case of indirect contempts the choice of trial by jury or the court. Carter's Case, 96 Va. 805, 32 S. E. 780, 45 L. R. A. 310. See, also, 4 Va. Law Reg. 49, 281, 345, 392; also, 5 Va. Law Reg. 200.

The power to punish "summarily" for contempt is a power to punish without the intervention of a jury and is limited to the classes of contempt set forth in this section, the provisions of which are reasonable and do not so far abridge or impair the powers of courts as to render them incapable of efficient exercise of their functions. Yoder's Case, 107 Va. 823, 57 S. E. 581.

Right of appeal.—But the act of 1897-8, p. 548, in so far as it allowed an appeal to the Court of Appeals in all cases of contempts, was constitutional. Trimble's Case, 96 Va. 818, 32 S. E. 786. (N. B. The subsection of act 1897-8, p. 548, is no longer law.) See as to right of appeal, section 4932 and notes.

Contempt—What Constitutes—Instances.—For what constitutes contempt, see 2 Barton's L. Pr. (2d Ed.) 774, et. seq.

Instances.—Insult off the bench in regard to an opinion delivered by judge in court, Dandridge's Case, 2 Va. Cas. 408; suit in false name, Howard v. Rawson, 2 Leigh 733; commissioners executing decree after an appeal granted, McLaughlin v. Janney, 6 Grat. 609; disobeying an injunction, Baltimore & O. R. Co. v. City of Wheeling, 13 Grat. 40, 57; interference with a receiver without the permission of the court, Thornton v. W. Sav. Bank, 76 Va. 432; resisting the execution of the court's order to open a road, Bailey's Case, 78 Va. 19; failure to obey peremptory mandamus, Cromwell's Case, 95 Va. 254, 28 S. E. 1023; preventing duly summoned witnesses from attending court, Feely's Case, 2 Va. Cas. 1; attorney sending false telegram to judge in order to delay case, Carter's Case, 96 Va. 791, 802, 32 S. E. 780, 45 L. R. A. 310; refusal to testify before grand jury, Kendrick's Case, 78 Va. 490; newspaper publications, Elam v. Com., 4 Va. Law Reg. 520; 6 Va. Law Reg. 792.

While any citizen may comment upon the decisions and proceed-

Digitized by Google

ings of a court, and discuss their correctness, and the fitness or unfitness of the judges, and the fidelity with which they perform their duties, he has no right to attempt, by libellous publications, to degrade the tribunal, for such publications are an abuse of the liberty of the press, and summary punishment, as for a contempt, of the author of a libellous newspaper article is not an invasion of the liberty of the press, but is to be exercised with utmost caution. Burdett's Case, 103 Va. 838, 48 S. E. 878.

Courts have power to punish, as for a contempt, libellous publications upon the court, or the judge thereof in his official capacity, and such power exists as well after a case has been finally disposed of as where it is still pending. Burdett's Case, 103 Va. 838, 48 S. E. 878.

Where an agent in charge of the affairs of a branch of a corporation has been notified of the appointment of receivers to take charge of the affairs of the corporation, and thereafter wrongfully pays over funds of which he was custodian to a creditor of the corporation, he is guilty of a contempt. Camden v. Virginia Safe Dep. Co., 115 Va. 20, 78 S. E. 596.

Fifth subdivision of section.—The language of the fourth (now fifth) clause of this section embraces only such judgments for contempt as are designed to enforce performance or obedience, and not to punish for an offense. Wells' Case, 21 Grat. 504.

Disobedience of a decree of the court comes within the fifth subdivision of this section, and the judge may punish summarily. Forbes v. State Council, 107 Va. 853, 60 S. E. 81.

Instances of behavior not amounting to contempt.—Riot during recess of court, Stuart's Case, 2 Va. Cas. 320; hiding from sheriff to avoid service of summons to testify before grand jury, Deskins' Case, 4 Leigh 685; failure of a member of a volunteer military company to answer jury summons, Miller's Case, 80 Va. 33; unauthorized acts of employees disclaimed by employer, Postal Tel. Co. v. N. & W. R. R., 88 Va. 929, 14 S. E. 691; attorney acting in good faith for what he believed the best interest of his client and from no disrespect of the court, Wells' Case, 21 Grat. 509; filing protest against action of court by justice thereof, Stokeley's Case, 1 Va. Cas. 330; failure of attorney to be present when his case was called and time agreed, owing to his detention in another case, protracted longer than he had anticipated, Wise's Case, 97 Va. 779, 34 S. E. 453; refusal to obey vague and uncertain decree. Birchett v. Bolling, 5 Munf. 442.

The publication in a newspaper of insulting language concerning a judge with respect to proceedings had in his court cannot be said to be "addressed to the judge," and is therefore not within this section. Yoder's Case, 107 Va. 823, 57 S. E. 581. Criticised in note to Yoder v. Com., 13 Va. Law Reg. 313, and also see editorial, 13 Va. Law Reg. 320. The revised section overturns this decision.

A person cannot be punished for contempt for disobedience or resistance of a decree appointing a receiver, when he was not a party to the suit, had no knowledge of its existence or the appointment of the receiver, and where the decree appointing the receiver contained no mandate, direction or prohibition against him. Kidd v. Virginia Deposit Co., 113 Va. 612, 75 S. E. 145.

Evidence necessary to convict.—The proceeding to punish for contempt is criminal or quasi criminal in its nature, and the rules of evidence applicable in criminal cases prevail. Mere preponderance of evidence is not sufficient to convict, but the offense charged must be proved beyond a reasonable doubt. The parties must be brought clearly within the terms of the statute before they can be punished summarily for contempt. Kidd v. Virginia Deposit Co., 113 Va. 612, 75 S. E. 145.

Proceedings in contempt cases.—*Title.*—Before attachment they may be entitled in the suit in which the contempt is alleged; afterwards they should be entitled on the criminal side of the court. 6 Va. Law Reg. 862.

Nature—How reviewed.—A proceeding for contempt is in the nature of a criminal proceeding, and the judgment can be reviewed by a superior

Digitized by Google

tribunal by writ of error only, and not on application for a writ of habeas corpus. B. & O. R. R. v. City of Wheeling, 13 Grat. 40, 57; Cromwell's Case, 95 Va. 254, 28 S. E. 1023. And while formerly not all judgments in contempt cases could be reviewed, now "any judgment of conviction for contempt" may be reviewed on writ of error, and this provision of the statute is constitutional. Trimble's Case, 96 Va. 818, 32 S. E. 786.

The attachment.—An attachment for contempt has no other object than to bring the party into court. Therefore, when the contempt is in open court, there is no need of process to bring him in, nor of interrogatories to ascertain what has occurred in open court. Where the contempt is not in open court, the usual course is to issue a rule to show cause why an attachment should not issue, though the attachment sometimes issues without the rule. Dandridge's Case, 2 Va. Cas. 408. For further proceedings, see same case; also Morris v. Creel, 1 Va. Cas. 333; 2 Barton's L. Pr. (2d Ed.) 773-776.

An attachment for contempt in disobedience of a decree of the chancery court will only lie for disobedience of what is decreed, and not for what may be decreed. Taliaferro v. Horde's Adm'r, 1 Rand. 242.

The sheriff is the proper officer to execute the order of attachment for contempt. Hook v. Ross, 1 Hen. & M. 319.

Where contempt not established.—In a proceeding for contempt, where the contempt is not established, it is error to seek to enforce the return of money improperly paid by an order directing the imprisonment of the defendant if the money be not paid. Kidd v. Virginia Deposit Co., 113 Va. 612, 75 S. E. 145.

Defenses.—With respect to conduct or language, where the intent with which a thing is said or done gives color and character to the act or words, a disclaimer of any purpose to be guilty of a contempt or to destroy or impair the authority due to the court is a good defense. Carter's Case, 96 Va. 800, 32 S. E. 780, 45 L. R. A. 310; Well's Case, 21 Grat. 500. But this is true only of language or acts of doubtful import, and which may reasonably bear two constructions. Carter's Case, 96 Va. 803, 32 S. E. 780, 45 L. R. A. 310. See, also Trimble's Case, 96 Va. 818, 32 S. E. 786.

For case where party disclaiming evil intent under oath was discharged. Postal Telegraph Cable Co. v. N. & W. R. R. Co., 88 Va. 929, 14 S. E. 691.

In a prosecution for contempt in publishing a libel, the fact that the defendant thought the court had adjourned constitutes no defense. Burdett's Case, 103 Va. 838, 48 S. E. 878.

Where there is a decree for the payment of money and an order of attachment if the money be not paid, the payment of money in accordance with the terms of a decree, or inability upon the part of the defendant to pay it on account of poverty, insolvency, or other cause not attributable to any fault of respondent, should be taken as a satisfaction. Camden v. Virginia Safe Dep. Co., 115 Va. 20, 78 S. E. 596.

Generally.—As to court's power to remit fine for contempt, see section 2557; bill of exceptions, section 4929; suspension of execution of sentence, section 4930; writs of error, section 4932.

On subject of contempt generally, see 2 Barton's L. Pr. (2d Ed.) 772-778; note to Wells' Case, 21 Grat. 500, Va. Rep. Anno; article 17 Va. L. Reg. 102; editorials, 20 Va. L. Reg. 149; 20 Va. L. Reg. 550; 2 Va. L. Reg. N. S. 70.

Cited in note to a review of the case of Carter v. Commonwealth, 1 Va. L. R. N. S. 658.

Discussed, 13 Va. Law J. 588.

Sec. 4522. Power of justice to punish for contempt.—A justice, while engaged in the trial of a case, or in any judicial proceeding, shall have the same power and jurisdiction as a court to punish summarily for contempt, but in no case shall the fine exceed

Digitized by Google

twenty dollars, or the imprisonment exceed ten days, for the same contempt. (Code 1887, § 3769.)

Sec. 4523. Appeal from sentence of justice; how; what justice to certify; how appeal heard and decided.—Any person sentenced to pay a fine, or to imprisonment, under the preceding section, may appeal therefrom to the court of the county or corporation in which the justice resides, or to the judge thereof in vacation, upon entering into a recognizance before the justice, with surety and in a penalty deemed sufficient, to appear before said court on the first day of the next term, or before the judge in vacation, to answer for the offense. If such appeal be taken, a certificate of the conviction and the particular circumstances of the offense, together with the recognizance,, shall forthwith be transmitted by the justice to the clerk of said court, who shall immediately deliver the same to the judge thereof. Such judge may hear the case in term or in vacation upon the said certificate and any legal testimony adduced on either side, and make such order therein as may seem to him proper. Such order when made in vacation shall be entered in the order book of the court and have the same force and effect as an order entered in term. (Code 1887, § 3770.)

Sec. 4524. Fine and imprisonment by court limited, unless jury be impaneled.—No court shall, without a jury, for any such contempt as is mentioned in the first class embraced in section forty-five hundred and twenty-one, impose a fine exceeding fifty dollars, or imprison more than ten days; but in any such case the court may impanel a jury (without an indictment, information, or any formal pleading), to ascertain the fine or imprisonment proper to be inflicted, and may give judgment according to the verdict. (Code 1887, § 3771.)

The limitation of the duration of the punishment for contempt imposed by this section applies only to the contempts mentioned in the first clause of section 4521. Yoder's Case, 107 Va. 823, 57 S. E. 581.

Sec. 4525. Obstructing justice by threats or force; how punished.—If any person, by threats, or force, attempt to intimidate or impede a judge, justice, juror, witness, or an officer of a court, or any sergeant, constable, or other peace officer or any revenue officer, in the discharge of his duty, or to obstruct or impede the administration of justice in any court, he shall be deemed to be guilty of a misdemeanor. (Code 1887, § 3772.)

Using means to prevent and preventing a witness from attending court who had been duly summoned is a contempt of court, which may be punished by information. Feely's Case, 2 Va. Cas. 1.

For W. Va. decisions on similar statute, see Justis' Annotations' chapter 147, section 30.

Sec. 4526. Fraud in drawing jurors, etc.; how punished.—If any person be guilty of any fraud, either by tampering with the jury box previously to a draft, or in drawing a juror, or in returning into the jury box the name of any person which has lawfully been

Digitized by Google

drawn out and drawing and substituting another in his stead, or in any other way in drawing of jurors, he shall be confined in jail not exceeding one year and fined not exceeding five thousand dollars. (Code 1887, § 3773.)

For comment upon this section, see 13 Va. Law Reg. 488.

CHAPTER 182.

Offenses Against the Peace.

Sec.
4527. Judges and justices may suppress riots, etc.; their duties as to same; who deemed a rioter.
4528. Persons arrested therefor to be committed on failure to give bail.
4529. Judge or justice failing in his duty; how punished.
4530. If persons disobey order of judge or justice to disperse, he may require assistance.
4531. Judges, justices, and persons acting under their orders, guiltless, if a person killed or wounded; if either of them killed, all engaged in the assembly guilty.
4532. Punishment of rioter, and person engaged in unlawful or tumultuous assembly, when dwelling house injured and when not.
4533. Riotous or disorderly conduct on train or street car a misdemeanor.
4534. Carrying concealed weapons; how punished; forfeiture of weapons; how disposed of.
4535. Prohibiting the selling or having in possession blackjacks, etc.
4536. Punishment for using abusive language to another.
4537. Threats of death or bodily injury to a person or member of his family; how punished.

Sec. 4527. Judges and justices may suppress riots, etc.; their duties as to same; who deemed a rioter.—All judges and justices may suppress riots, routs, and unlawful assemblies within their jurisdiction. And it shall be the duty of each of them to go among, or as near as may be with safety to, persons riotously, tumultuously, or unlawfully assembled, and in the name of the law command them to disperse; and if they shall not thereupon immediately and peaceably disperse, such judge or justice giving the command, and any other present, shall command the assistance of all persons present, and of the sheriff or sergeant of the county or corporation, with his posse, if need be, in arresting and securing those so assembled. If any person present, on being required to give his assistance or depart, fail to obey, he shall be deemed a rioter. (Code 1887, § 3774.)

See Mackaboy's Case, 2 Va. Cas. 268.

Sec. 4528. Persons arrested therefor to be committed on failure to give bail.—If a person be arrested for a riot, rout, or unlawful

Digitized by Google

assembly, the judge or justice ordering the arrest, or any other justice, shall commit him to jail, unless he shall enter into recognizance, with sufficient surety, to appear before the court having jurisdiction of the offense, at its next term, to answer therefor, and in the meantime to be of good behavior and keep the peace. (Code 1887, § 3775.)

Sec. 4529. Judge or justice failing in his duty; how punished.—If any judge or justice have notice of a riotous, tumultuous, or unlawful assembly, in the county or corporation in which he resides, and fail to proceed immediately to the place of such assembly, or as near as he may safely, or fail to exercise his authority for suppressing it and arresting the offenders, he shall be fined not exceeding one hundred dollars. (Code 1887, § 3776.)

Sec. 4530. If persons disobey order of judge or justice to disperse, he may require assistance.—If any persons, engaged in such assembly, being commanded as aforesaid to disperse, fail to do so without delay, any such judge or justice may require the aid of a sufficient number of persons, in arms or otherwise, and proceed, in such manner as he may deem expedient, to disperse and suppress such assembly, and arrest and secure those engaged in it. (Code 1887, § 3777.)

Sec. 4531. Judges, justices, and persons acting under their orders, guiltless, if a person killed or wounded; if either of them killed, all engaged in the assembly guilty.—If, by any means taken under authority of this chapter to disperse any such assembly, or attest and secure those engaged in it, any person present, as spectator or otherwise, be killed or wounded, any judge or justice exercising such authority, and every one acting under his order, shall be held guiltless; and if the judge or justice, or any person acting under the order of either of them, be killed or wounded in taking such means, or by the rioters, all persons engaged in such assembly shall be deemed guilty of such killing or wounding. (Code 1887, § 3778.)

Policeman using force in arresting.—A policeman who does not use more force than is necessary to arrest a person who is engaged in riotous and disorderly conduct, and who resists the officer, is not guilty of an assault and battery. Mesmer's Case, 26 Grat. 976.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 148, section 5.

Sec. 4532. Punishment of rioter, and person engaged in unlawful or tumultuous assembly, when dwelling-house injured and when not.—If any rioter, or person unlawfully or tumultuously assembled, pull down or destroy, in whole or in part, any dwelling-house, or assist therein, or shall in the night-time stone the same in a manner calculated to terrorize the inmates, or assist therein, he shall be confined in the penitentiary not less than two nor more than five years; and though no such house be so injured or stoned, every rioter, and every person unlawfully or tumultuously assem-

Digitized by Google

bled, shall be deemed guilty of a misdemeanor. (Code 1887, § 3779.)

Revisors' Note.—This section has been broadened so as to embrace the offense of stoning a dwelling-house in the night-time.

A house in which the lower front room is used as a store room, while the rest is used as a dwelling, is a dwelling house, in the meaning of this section. Samanni's Case, 16 Grat. 543.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 148, section 6.

Sec. 4533. Riotous or disorderly conduct on train or street car a misdemeanor.—If any person, whether a passenger or not, shall, while in any car or caboose, or on any part of a train carrying passengers or employees of any railroad or street passenger railway, behave in a riotous or disorderly manner, he shall be guilty of a misdemeanor. The agent or employees in charge of the train, car, or caboose, may require such person to discontinue his riotous or disorderly conduct, and if he refuses to do so may eject him, with the aid, if necessary, of any other persons who may be called upon for the purpose. (1899-00, p. 580.)

Revisors' Note.—The punishment for a violation of this section is prescribed by section 4782. The act from which the section is taken prescribed a fine of not less than five nor more than fifty dollars, or confinement in jail not less than one month nor more than six months, or both, in the discretion of the court.

Sec. 4534. Carrying concealed weapons; how punished; forfeiture of weapons; how disposed of.—If any person carry about his person hid from common observation, any pistol, dirk, bowie-knife, razor, slungshot, metal knucks, or any weapon of like kind, he shall upon conviction thereof, be fined not less than twenty dollars, nor more than one hundred dollars and, in the discretion of the court, justice, police justice, or jury trying the case, may, in addition thereto, be committed to jail for not more than six months, and such pistol, dirk, bowie-knife, razor, slung-shot, metal-knucks, or any weapon of like kind, shall, by order of the court, justice or police justice be forfeited to the Commonwealth and may be seized by an officer as forfeited, and such as may be needed for police officers and conservators of the peace shall be devoted to that purpose, and the remainder shall be destroyed by the officer having them in charge; but this section shall not apply to any police officer, town or city sergeant, constable, sheriff, conservator of the peace, or to carriers of United States mail in the rural districts, or collecting officer while in the discharge of his official duty: provided, the circuit court of any county in term time, and any corporation court in term time, upon a written application and satisfactory proof of the good character and necessity of the applicant to carry concealed weapons, may grant such permission for one year. The order making same shall be entered in the law order book of such court. (Code 1887, § 3780; 1895-6, p. 826; 1908, pp. 381, 671.)

Digitized by Google

Revisors' Note.—So much of the original act as was deemed desirable has been retained without material change. The residue is omitted.

Under the act of 1838, a constable could be convicted of carrying concealed weapons. Hicks' Case, 7 Grat. 597.

In Withers v. Com., 109 Va. 837, 65 S. E. 16, it was held that commissioners in chancery were conservators of the peace under section 3912 of the Code of 1887 (corresponding to section 4789 of this Code), and as such might carry concealed weapons although not at the time acting in the discharge of official duties; that the words "while in the discharge of his official duty" used in section 3780 of the Code of 1887, as amended (corresponding to the above section), applied only to the next antecedent class of officers, to-wit, collecting officers; and that it was not necessary, in that case, to invoke the aid of punctuation in construing the statutes.

The purpose of this statute was to interdict the practice of carrying a deadly weapon about the person, concealed, and yet so accessible as to afford prompt and immediate use. "About his person" must mean that it is so connected with the person as to be readily accessible for use or surprise, if desired. A pistol in a scabbard and in a pair of saddle-bags with the lids down, though the saddle-bags be in the hand, does not fall within the language of the statute. Sutherland v. Com., 109 Va. 834, 65 S. E. 15.

For comment on this section, see 14 Va. L. Reg. 408; 15 Id. 391.

Sec. 4535. Prohibiting the selling or having in possession blackjacks, etc.—If any person sell or barter, or exhibit for sale or for barter, or give or furnish, or cause to be sold, bartered, given or furnished, or has in his possession, or under his control, with the intent of selling, bartering, giving or furnishing any blackjack, brass or metal knucks, or like weapons, such person shall be fined not less than twenty-five nor more than one hundred dollars. The having in one's possession of any such weapon shall be prima facie evidence, except in the case of a conservator of the peace, of his intent to sell, barter, give or furnish the same. (1906, p. 9.)

Sec. 4536. Punishment for using abusive language to another.—If any person shall, in the presence or hearing of another, curse or abuse such person, or use any violent abusive language to such person concerning himself or any of his female relations, under circumstances reasonably calculated to provoke a breach of the peace, he shall be guilty of a misdemeanor, and on conviction fined in any sum not less than two dollars and fifty cents nor more than five hundred dollars, in the discretion of the justice trying the case. (1895-6, p. 808; 1910, p. 18.)

As to civil action for insulting words, see section 5781.

Sec. 4537. Threats of death or bodily injury to a person or member of his family; how punished.—If any person write or compose and also send or procure the sending of any letter or inscribed communication, so written or composed, whether such letter or communication be signed or anonymous, to any person, containing a threat to kill or do bodily injury to the person to whom such letter or communication is sent, or a threat to kill or do bodily injury to any member of his or her family, the person so writing

Digitized by Google

or composing and so sending or procuring the sending of such letter or communication, shall be confined in the penitentiary for a period not exceeding five years, or, in the discretion of the jury, shall be confined in jail not less than thirty days, nor more than twelve months, or be fined not less than fifty dollars. (1908, p. 686.)

Revisors' Note.—The words, "nor more than twelve months," found near the end of the section, are new.

CHAPTER 183.

Offenses Against Morality and Decency; Protection of Religious Meetings.

Sec.

4538. Person marrying, when former husband or wife is living; how punished.
4539. Qualification of preceding section.
4540. Marriage within prohibited degrees; how punished; residents, within prohibited degrees, and white person and colored person, going out of State to be married and afterwards returning; how punished; cohabitation, evidence of marriage.
4541. Issuing license contrary to law; how punished.
4542. Celebrating marriage without license, or, etc.; how punished.
4543. Adultery and fornication; how punished.
4544. Conspiracy between a husband and any other person or persons to cause a wife to commit adultery a felony; punishment.
4545. Lewd and lascivious cohabitation; how punished; penalty for second offense.
4546. Marriage of white person with colored person; how punished.
4547. Person performing ceremony of marriage between; how punished.
4548. Keeping house of ill-fame; how punished; general character of house may be proved.
4549. Publishing, selling, distributing, etc., obscene books, etc.; how punished.
4550. Fighting cocks, dogs, etc.; how punished.
4551. Buggery; how punished.
4552. Violation of sepulture; how punished.
4553. Injuries to cemeteries, burial grounds, etc.; how punished.
4554. Cruelty to animals.
4555. Officers and agents of societies for prevention of cruelty to animals given power to arrest offenders.
4556. Officers and agents of such societies may prevent cruelty to animals; interference with such officers and agents a misdemeanor.
4557. Power of search for violations of statutes against cruelty to animals.
4558. When animals to be destroyed.
4559. When agent or officer of such society to take charge of animals and vehicle; notice to owner; lien for care, etc.
4560. When such agent or officer may take charge of animals abandoned, neglected, cruelly treated, or unfit for use; notice to owner; expense of care and provision.
4561. Lien for food, shelter, and keep of animals; how enforced.

Digitized by Google

Sec.
4562. Jurisdiction of justices; right of appeal.
4563. Half of fines collected in certain prosecutions to go to society for prevention of cruelty to animals.
4564. When officer or agent to be set down as prosecutor.
4565. To whom fines go.
4566. Shooting of pigeons or other birds or fowls for amusement, and renting premises for such purposes.
4567. Injury to hired horse, etc., or vehicle by reckless riding, driving, etc.; defrauding livery man; how punished.
4568. Profane swearing and drunkenness; how punished.
4569. Use of profane or indecent language over telephone.
4570. Working or transacting business on Sunday.
4571. Exception as to the Jews.
4572. What transportation, etc., by railroads on Sunday prohibited.
4573. What time the word "Sunday" in the preceding section embraces.
4574. Violations of section four thousand five hundred and seventy-two; where and how punished.
4575. To prohibit the loading and unloading of steamships' and steamboats' cargoes on a Sunday.
4576. Disturbance of religious worship a misdemeanor.
4577. A misdemeanor to disturb schools, literary societies, etc.
4578. Carrying dangerous weapon to place of religious worship, or on Sunday at place other than his own premises, how punished.
4579. Pandering; punishment therefor; competency of certain evidence.
4580. Appointment of police for religious meetings.

Sec. 4538. Person marrying, when former husband or wife is living; how punished.—If any person, being married, shall, during the life of the former husband or wife, marry another person in this State, or if the marriage with such other person take place out of the State, shall thereafter cohabit with such other person in this State, he shall be confined in the penitentiary not less than three nor more than eight years. (Code 1887, § 3781.)

Proof to be made of marriage.—In prosecution for bigamy it is necessary to prove an actual marriage, valid or avoidable, and not yet avoided. 1 Min. (4th Ed.) 274, and cases there cited.

As to how the existence of the marriage is to be proved, see Womack v. Tankersley, 78 Va. 242; Warner's Case, 2 Va. Cas. 95; Oneale's Case, 17 Grat. 582; Moore's Case, 9 Leigh 639; Min. Syn. 177. If the marriage is alleged to have taken place in a foreign country or state, proof must be made of a marriage valid according to the laws of that country or state. Bird's Case, 21 Grat. 800. As to deliberate admissions of marriage, see cases cited above.

A marriage under the secession government is valid. Oneale's Case, 17 Grat. 582.

As to what constitutes the marriage certificate, see section 5074, et seq., Moore's Case, 9 Leigh 639.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 149, section 1.

Sec. 4539. Qualification of preceding section.—The preceding section shall not extend to a person whose former husband or wife shall have been continuously absent from such person for seven years next before marriage of such person to another, and shall

Digitized by Google

not have been known by such person to be living within that time; nor to a person who can show that the second marriage was contracted in good faith under a reasonable belief that the former consort was dead; nor to a person who shall, at the time of the subsequent marriage, have been divorced from the bond of the former marriage, although the term at which the decree for divorce was entered had not ended, or whose former marriage was void. (Code 1887, § 3782; 1877-8, p. 301.)

Revisors' Note.—In addition to a slight verbal change, material changes have been made in meaning. The words, "nor to a person who can show that the second marriage was contracted in good faith under a reasonable belief that the former consort was dead," are new, as are also the words appearing in lines two and three from the bottom of the text, "although the term at which the decree for divorce was entered had not ended." The words appearing at the end of the section, "or whose former marriage was void" are used in lieu of "or whose former marriage shall at that time have been declared void by the sentence of a court of competent jurisdiction."

The propriety of these changes would seem to be manifest. As to the first change mentioned, see 4 Va. Law Reg. 71. The second change was made because the question has arisen as to the status of persons marrying before the end of the term at which the decree for divorce was entered. As to the third change mentioned, under the statute as it formerly stood, if the marriage was void but had not been so declared, the person would probably be guilty of bigamy. It is not believed this was intended. If the former marriage was absolutely void, it should be immaterial whether it had been so declared or not.

This and the next preceding section should be read in connection with section 5113.

Sec. 4540. Marriage within prohibited degrees, how punished; residents, within prohibited degrees, and white person and colored person, going out of State to be married and afterwards returning, how punished; cohabitation, evidence of marriage.—If any person marry in violation of section five thousand and eighty-four or five thousand and eighty-five, he shall be confined in jail not exceeding six months, or fined not exceeding five hundred dollars, in the discretion of the jury. And if any person, resident in this State, and within the degrees of relationship mentioned in those sections, or any white person and colored person, shall go out of this State for the purpose of being married, and with the intention of returning, and be married out of it, and afterwards return to and reside in it, cohabiting as man and wife, they shall be as guilty, and be punished, as if the marriage had been in this State. The fact of their cohabitation here as man and wife shall be evidence of their marriage. (Code 1887, § 3783.)

Marrying brother's widow.—The seventeenth section of 1 Rev. Code, chapter 196, made it unlawful for one to marry his brother's "wife." Held, the marrying a brother's widow was an offense within the statute. Perryman's Case, 2 Leigh 717.

Judgment need not affix punishment.—A judgment declaring the marriage a nullity is valid, though it does not proceed to punish the parties, or to require them to enter into bonds with condition to live

Digitized by Google

separate (Kelly v. Scott, 5 Grat. 479); and husband has no interest in the property which was the wife's at time of marriage (Id.).

Marriage a mutual affair—Indictment.—An indictment which charges that the man did incestuously intermarry with the woman is sufficiently certain to charge her as well as him without requiring the converse to be charged. Hutchins' Case, 2 Va. Cas. 331.

Appearance by attorney.—In prosecution prior to 1827 for marrying a deceased wife's sister, or for marrying the husband of a deceased sister, the parties might appear by attorney. Kelly v. Scott, 5 Grat. 479.

Negro and white person going out of state to marry.—While the forms and ceremonies of marriage are governed by the laws of the place where the marriage is celebrated, the essentials of the contract depend upon and are governed by the laws of the country where the parties are domiciled at the time of the marriage, and in which the matrimonial residence is contemplated. Therefore a rule that a marriage valid where celebrated is valid everywhere has no application to a marriage entered into in a foreign country, in contravention of the public policy and statutes of the country of the parties, which pronounce marriage between them not only absolutely void, but criminal. Kinney's Case, 30 Grat. 858, 32 Am. Rep. 690, Greenhow v. James' Ex'r, 80 Va. 636, 56 Am. Rep. 603, citing Brook v. Brook, 9 H. L. Cas. 223. See section 4546 and notes. As to who are colored persons, see section 67.

Cited but not construed Moen v. Children's Home Society, 112 Va. 737, 72 S. E. 707.

Sec. 4541. Issuing license contrary to law; how punished.—If any clerk of a court knowingly issue a marriage license contrary to law, he shall be confined in jail not exceeding one year, and fined not exceeding five hundred dollars. (Code 1887, § 3784.)

Previous to the enactment of this section it was held not necessary to charge that the clerk knew that the party was an infant, or that he issued the license maliciously or corruptly, or that a marriage took place in pursuance of the license. Hill's Case, 6 Leigh 636.

Sec. 4542. Celebrating marriage without license, or, etc.; how punished.—If any person knowingly perform the ceremony of marriage without lawful license, or officiate in celebrating the rites of marriage without being authorized by law to do so, he shall be confined in jail not exceeding one year, and fined not exceeding five hundred dollars. (Code 1887, § 3785.)

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 149, section 6.

Sec. 4543. Adultery and fornication; how punished.—If any person commit adultery or fornication, he shall be fined not less than twenty dollars. And if he commit adultery or fornication with any person, whom he is forbidden by law to marry, he shall be deemed guilty of a misdemeanor. (Code 1887, § 3786.)

Revisors' Note.—For punishment of misdemeanors where no other is provided by statute, see section 4782. As this section stood before the revision, the last sentence read as follows "And if he commit adultery or fornication with any person, whom he is forbidden by section 2224 or 2225 [of the former Code] to marry, he shall be confined in jail not exceeding six months, or fined not exceeding five hundred dollars, in the discretion of the jury."

Adultery and fornication were not common law offenses, unless

Digitized by Google

accompanied by circumstances in themselves a misdemeanor. Anderson's Case, 5 Rand. 627, 16 Am. Dec. 776; Isaacs Case, 5 Rand. 634.

Illicit intercourse between an unmarried man and a married woman is fornication in the man. Lafferty's Case, 6 Grat. 672.

As the law was, adultery or fornication could be committed with a slave. Jones' Case, 2 Grat. 555.

Conviction may be had upon the testimony of one credible witness. Gregor's Case, 7 Grat. 591.

As to admission at trial of evidence of subsequent acts of adultery, see 7 Va. Law Reg. 730.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 149, section 22.

Sec. 4544. Conspiracy between a husband and any other person or persons to cause a wife to commit adultery a felony; punishment.—If any husband shall conspire with any other person or persons to cause the wife of such husband to commit adultery for the purpose of securing from her a divorce or for any other purpose and any act in furtherance of such conspiracy is done, the said husband shall be confined in the penitentiary not less than five nor more than ten years; and if any person or persons shall conspire with any husband to cause the wife of such husband to commit adultery for any of the purposes aforesaid and any act in furtherance of such conspiracy is done, such person or persons shall be confined in the penitentiary not less than three nor more than five years. (1897-8, p. 38.)

Revisors' Note.—Material changes are made by this section in the punishment. In the first case, it has been reduced from "not less than ten nor more than eighteen years" to "not less than five nor more than ten years"; and in the second case, it has been reduced from "not less than five nor more than eighteen years," to "not less than three nor more than five years."

Sec. 4545. Lewd and lascivious cohabitation; how punished; penalty for second offense.—If any persons, not married to each other, lewdly and lasciviously associate and cohabit together, or, whether married or not, be guilty of open and gross lewdness and lasciviousness, they shall be fined not less than fifty nor more than five hundred dollars; and, upon a repetition of the offense, and conviction thereof, they may also be confined in jail not less than six nor more than twelve months. (Code 1887, § 3787.)

Two things necessary to be proved.—The conjunction "and" in the phrase of the section is essentially and indispensably copulative; there must be both lewd and lascivious intercourse "and" a living together of the parties as husband and wife live together. Proof of occasional incontinence merely is not sufficient. Jones' Case, 80 Va. 18, 20; Pruner & Clark's Case, 82 Va. 115; Scott's Case, 77 Va. 344, distinguished in Jones' Case, supra.

Indictment either joint or separate.—An indictment for lewd and lascivious cohabitation may be either joint or separate. Scott's Case, 77 Va. 344; Isaacs' Case, 5 Rand. 634; Jones' Case, 2 Grat. 555; Nichols' and Janes' Case, 7 Grat. 589.

Cohabitation before and after act was passed.—In an indictment for lewd and lascivious cohabitation, the offense is charged from a day prior to the day when the statute went into effect, but as continuing to a day after the commencement of the act. The indictment is good. Nichols' and Janes' Case, 7 Grat. 589.

Digitized by Google

Admission sustaining indictment.—Admissions by the defendant that he, a white man, lived together with a colored woman, that she was his wife, and that her daughter was his child, will sustain an indictment under this section. Scott's Case, 77 Va. 346.

Actionable to accuse falsely of adultery.—It is actionable to charge one falsely with fornication or adultery, for they are crimes under the statute. Payne v. Tancil, 98 Va. 262, 35 S. E. 725.

Generally.—Cited but not construed in Wells' Case, 107 Va. 834, 57 S. E. 588.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 149, section 7.

Sec. 4546. Marriage of white person with colored person; how punished.—If any white person intermarry with a colored person, or any colored person intermarry with a white person, he shall be confined in the penitentiary not less than two nor more than five years. (Code 1887, § 3788.)

Who are colored persons—What necessary to prove under section.—Every person having one-sixteenth or more of negro blood shall be deemed a colored person. Section 67.

A marriage between a white man and a woman who is of less than one-fourth (now one-sixteenth) negro blood, even though it be only one drop less is legal. A woman whose father was white, and whose mother's father was white, and whose great-grandfather was of brown complexion was not a negro in the sense of the statute. McPherson's Case, 28 Grat. 939.

In order to sustain a charge under this section, it is necessary to prove: (1) That the accused is a person of one-fourth or more negro blood (now one-sixteenth), and the burden of proving this lies on the Commonwealth. Jones' Case, 80 Va. 538; McPherson's Case, 28 Grat. 940; (2) An actual marriage duly celebrated between the parties, or that the parties consummated the marriage in the bona fide belief that the person celebrating was legally authorized according to the laws of Virginia. Jones' Case, 79 Va. 213.

Marriage in another state.—A marriage made in another state, in fraudem legis of this state, does not protect the parties in a prosecution in this state for a violation of its penal laws; and therefore a negro man and a white woman domiciled in this state, but who are married in the District of Columbia, may, when they return to dwell in Virginia, be prosecuted for lewd and lascivious cohabitation. Kinney's Case, 30 Grat. 858, 865, 32 Am. Rep. 690; 1 Min. (4th Ed.) 273. See section 4540.

The admission by a white man that a colored woman is his wife sustains an indictment for lewd and lascivious cohabitation. Scott's Case, 77 Va. 346.

Cited but not construed, Moon v. Children's Home Society, 112 Va. 737, 72 S. E. 707.

W. Va. decisions.—For W. Va. decisions on similar statute, see Justis' Annotations, chapter 149, section 8.

Sec. 4547. Person performing ceremony of marriage between; how punished.—If any person perform the ceremony of marriage between a white person and a colored person, he shall forfeit two hundred dollars, of which the informer shall have one-half. (Code 1887, § 3789.)

Cited but not construed in Well's Case, 107 Va. 834, 57 S. E. 588.

Sec. 4548. Keeping house of ill-fame; how punished; general character of house may be proved.—If any person keep a house of

Digitized by Google

ill-fame, resorted to for the purpose of prostitution or lewdness, he shall be confined in jail not exceeding one year and fined not exceeding two hundred dollars; and, in a prosecution for this offense, the general character of such house may be proved. (Code 1887, § 3790.)

See sections 1521 to 1528.

For construction of statute of Iowa, substantially identical with this, see 7 Va. Law Reg. 729.

See notes of Eddy v. Com., 119 Va. 873, 89 S. E. 899, under section 4987.

Cited but not construed in Ragsdale v. Danville, 116 Va. 484, 82 S. E. 77.

For article on "Sale of Realty to Keeper of House of Ill Fame," see 2 Va. L. Reg. N. S. 174.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 149, section 10.

Sec. 4549. Publishing, selling, distributing, etc., obscene books, etc., how punished.—If any person import, print, publish, sell, or distribute any book or other thing containing obscene language, or any print, picture, figure, or description, manifestly tending to corrupt the morals of youth; or introduce into any family or place of education, or buy, or have in his possession, any such thing for the purpose of sale, exhibition, or circulation, or with intent to introduce it into any family or place of education, he shall be guilty of a misdemeanor. (Code 1887, § 3791.)

Revisors' Note.—For punishment of misdemeanors where no other is provided by statute, see section 4782. As this section stood before the revision, the punishment was by confinement in jail not exceeding one year and by a fine of not exceeding two hundred dollars.

Sec. 4550. Fighting cocks, dogs, etc.; how punished.—If any person engage in the fighting of cocks, dogs or other animals, for money, prize or anything of value, or upon the result of which any money or other thing of value is bet or wagered, or to which admission fee is charged, directly or indirectly, or for any championship, he shall be fined not less than one hundred dollars nor more than five hundred dollars for each offense. (Code 1887, § 3792; 1910, p. 330.)

Cited but not construed in Wells' Case, 107 Va. 834, 57 S. E. 588.

Sec. 4551. Buggery; how punished.—If any person commit the crime of buggery, either with mankind or with any brute animal, or have carnal copulation in any manner with another person of the same sex, he shall be guilty of a felony and shall be confined in the penitentiary not less than one nor more than three years. (Code 1887, § 3793; 1916, p. 511.)

Revisors' Note.—The penalty has been reduced from "not less than two nor more than five years" to "not less than one nor more than three years."

This crime is consummated by penetration alone, without emission. Thomas' Case, 1 Va. Cas. 307.

For the law of this offense, see 2 Bishop, Crim. Law, section 1191, et seq.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 149, section 12.

Digitized by Google

Sec. 4552. Violation of sepulture; how punished.—If a person unlawfully disinter or displace a dead human body, or any part of a dead human body, which has been deposited in any vault, grave or other burial place, he shall be confined in the penitentiary not less than five nor more than ten years. (Code 1887, § 3794.)

See Gregory's Forms No. 704.

Sec. 4553. Injuries to cemeteries, burial grounds, etc.; how punished.—If any person wilfully and maliciously destroy, mutilate, deface, injure, or remove any tomb, monument, grave-stone, or other structure placed within any cemetery, grave-yard, or place of burial, or within any lot belonging to any memorial or monumental association, or any fence, railing, or other work for the protection or ornament of any tomb, monument, grave-stone, or other structure aforesaid, or of any cemetery lot within any cemetery; or wilfully or maliciously destroy, remove, cut, break, or injure any tree, shrub, or plant within any cemetery or lot of any memorial or monumental association; or wilfully or maliciously destroy, mutilate, injure, or remove and carry away any flowers, wreaths, vases, or other ornaments placed upon or around any grave, tomb, monument, or lot in any cemetery, grave-yard, or other place of burial; or wilfully obstruct proper ingress and egress to and from any cemetery or lot belonging to any memorial association, he shall be fined not exceeding one hundred dollars, or confined in jail not exceeding six months. (Code 1887, § 3795.)

Sec. 4554. Cruelty to animals.—Any person who overrides, overdrives, overloads, tortures, ill-treats, or cruelly or unnecessarily beats, maims, mutilates, or kills any animal, whether belonging to himself or another, or deprives any animal of necessary sustenance, food, or drink, or causes any of the above things, or being the owner of such animal permits such acts to be done by another, or who wilfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal; or who shall carry or cause to be carried in or upon any vehicle or vessel or otherwise any animal in a cruel, brutal, or inhuman manner, so as to produce torture or unnecessary suffering, shall be deemed guilty of a misdemeanor; but nothing in this section shall be construed to prohibit the dehorning of cattle. (1893-4, p. 163.)

Revisors' Note.—This and the eleven following sections are taken from the same act. Various changes in phraseology have been made, and some changes in meaning. Section 4554 is taken from section 1 of the act with material changes: (1) The words, "or who having in custody any maimed, diseased, disabled, or infirm animal leaves it to lie or be in a street, road, or public place," found in the section as it appears in the act, have been transferred to section 4743. (2) The punishment is now as for a misdemeanor, for which see section 4782. Formerly, it was by fine of not more than one hundred dollars, or confinement in jail not exceeding twelve months, or both. (3) The act excepted the docking of horses' tails as well as the dehorning of cattle, but

Digitized by Google

the revised section makes but one exception. There can be no necessity for docking a horse's tail, and it subjects the animal to the greatest annoyance and distress in the summer season. In prohibiting the docking of horses' tails, Virginia now follows the laws of various other states.

For note upon the question whether cruelty to turtles falls within the statute, see 18 Va. L. Reg. 791.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 149, section 14.

Sec. 4555. Officers and agents of societies for prevention of cruelty to animals given power to arrest offenders.—Any officer or agent of any society duly incorporated under the laws of this State for the prevention of cruelty to animals whose appointment shall have been approved as hereinafter provided shall have power to arrest without warrant any person found violating in his presence any of the provisions of law concerning cruelty to animals, and upon making such arrest shall forthwith convey the person arrested before some court or magistrate having jurisdiction of the offense and there make complaint against him; but said officers and agents shall not be authorized to make such arrests within any municipal corporation unless their appointment has been approved by the mayor thereof, nor within any county beyond the limits of a municipal corporation unless their appointment has been approved by the circuit judge of said county; and the mayor or circuit judge shall keep a record of all such appointments and require the officer or agent to execute bond in the penalty of five hundred dollars with security conditioned according to law and that such officer or agent will not knowingly make a false or improper arrest. Such officers and agents shall be provided with a certificate by the society appointing them that they are such officers or agents, in such form as the directors of said society may choose, which certificate shall also bear the written approval by the mayor or circuit judge of such appointment as provided for in this section, and the said officers and agents shall, if requested, show such certificates when acting officially; and any such officer or agent shall have power to execute any warrant issued by a magistrate for the violation of any of the said provisions, whether the offense was committed in his presence or not.

In no case shall the appointment of such officers or agents or any services performed by them entail any cost or expense upon such county or municipal corporation or upon the State. (1893-4, p. 163.)

Sec. 4556. Officers and agents of such societies may prevent cruelty to animals; interference with such officers and agents a misdemeanor.—Any such officer or agent whose appointment shall have been approved as provided in the preceding section may lawfully interfere to prevent the perpetration of any act of cruelty upon any animal in his presence, and every person who shall in-

Digitized by Google

terfere with or obstruct or resist any such officer or agent in the discharge of his rights, powers, and duties as authorized and prescribed by law, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than fifty dollars or confined in jail not more than thirty days or both. (1893-4, p. 163.)

Sec. 4557. Power of search for violations of statutes against cruelty to animals.—When a sworn complaint is made to any proper authority by any such agent or officer that the complainant believes and has reasonable cause to believe that the laws in relation to cruelty to animals have been, are being, or are about to be violated in any particular building or place, such authority, if satisfied that there is reasonable cause for such belief, shall issue a warrant authorizing any sheriff, deputy sheriff, sergeant, deputy sergeant, constable, police officer, or any such officer, or agent of such society to search such building or place; but no such search shall be made after sunset unless specially authorized by such authority upon satisfactory cause shown. (1893-4, p. 163.)

Sec. 4558. When animals to be destroyed.—Any such agent or officer may lawfully destroy, or cause to be destroyed, any animal in his charge or found abandoned or not properly cared for, when in the judgment of such agent or officer and two reputable citizens called to view the same in his presence, one of whom may be selected by the owner of said animal, if he should so request, and who shall give their written certificate thereto, such animal appears to be injured, disabled, diseased, past recovery, or unfit for any useful purpose, and should the two citizens called in as above disagree they shall select a third, and his decision shall be final. (1893-4, p. 163.)

Sec. 4559. When agent or officer of such society to take charge of animals and vehicle; notice to owner; lien for care, etc.—When any person arrested under any provision of law concerning cruelty to animals is at the time of such arrest in charge of any vehicle drawn by or containing any animal cruelly treated, any such agent or officer of such society may take charge of such animal and of such vehicle and its contents and shall give notice thereof to the owner if known, and shall care and provide for them until their owner shall take charge of the same, which he shall do within thirty days from the date of said notice, and the said society shall have a lien on said animals and vehicles for the expenses of such care and provision, which lien may be enforced as provided in section forty-five hundred and sixty-one. (1893-4, p. 163.)

Sec. 4560. When such agent or officer may take charge of animals abandoned, neglected, cruelly treated, or unfit for use; notice to owner; expense of care and provision.—Any such officer or agent may lawfully take charge of any animal found abandoned, neg-

Digitized by Google

lected, or cruelly treated or unfit for use, and shall thereupon give notice thereof to the owner, if known, and may provide for such animal until the owner take charge of the same, and the expenses of such care and provision shall be a charge against the owner of such animal, collectible from the owner at the suit of the society whose officer or agent may have taken charge of such animal. (1893-4, p. 163.)

Sec. 4561. Lien for food, shelter, and keep of animals; how enforced.—When any such society, acting through its agents or officers, shall provide a neglected or abandoned animal, or any other animal, taken charge of by the society, as hereinbefore provided, with proper food, shelter, and care, it may detain such animal until the expense of such food, shelter, and care is paid, and shall have a lien upon such animal therefor, and if such expense be not paid within thirty days after such food, shelter, and care begins to be furnished, as aforesaid, such animal may be sold at public auction upon giving written notice of the time and place of sale at least six days previous thereto to the owner if he be known, and if he be not known by giving notice of the time and place of such sale for at least six days previous thereto in some newspaper published in the county or city where such animal was found; and after discharging the lien on said animal or vehicle the proceeds remaining shall be paid over to owner of said animal. (1893-4, p. 163.)

Revisors' Note.—The words, "thirty days" in line seven of the text, are used in lieu of "twenty days," which appear in the act.

Sec. 4562. Jurisdiction of justices; right of appeal.—The provisions of the eight preceding sections may be enforced by any justice of the peace in cities, towns, or counties wherein the offense is committed, or the offender or owner may be found, and every such offender shall have the right of appeal to the corporation court in cities and the circuit court in counties. (1893-4, p. 163.)

Sec. 4563. Half of fines collected in certain prosecutions to go to society for prevention of cruelty to animals.—In every case prosecuted upon the evidence, complaint, or information of any officer or agent of any duly incorporated society for the prevention of cruelty to animals, one-half of the fine assessed against the accused person who may have been convicted shall, upon the collection of said fine, be paid over to the said society. (1893-4, p. 163.)

Sec. 4564. When officer or agent to be set down as prosecutor.—Whenever a warrant is sworn out, or a presentment, indictment, or information is obtained upon the complaint or information of any such officer or agent, the name of such officer or agent shall be endorsed as prosecutor upon such warrant, indictment, information, or presentment. (1893-4, p. 163.)

Sec. 4565. To whom fines go.—The whole of the fines collected under the eleven preceding sections shall go to the Commonwealth

Digitized by Google

unless the name of such officer or agent be endorsed on the warrant, presentment, indictment, or information sued out, or presentment found or obtained, upon the complaint and information of such officer or agent. (1893-4, p. 163.)

Sec. 4566. Shooting of pigeons, or other birds or fowls for amusement, and renting premises for such purposes.—Whoever keeps or uses a live pigeon or other bird or fowl for the purpose of a target, or to be shot at either for amusement or as a test of skill in marksmanship, or shoots at a bird kept or used as aforesaid, or is a party to such shooting, or lets any building, room, field, or premises, or knowingly permits the use thereof for the purpose of such shooting, shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than thirty days, or by both. Nothing herein contained shall apply to the shooting of wild game. (1906, p. 448.)

Sec. 4567. Injury to hired horse, etc., or vehicle by reckless riding, driving, etc.; defrauding livery man; how punished.—If any person having hired from a licensed livery stable keeper or any other person, any horse, mule, automobile or other vehicle, wilfully or negligently injure or damage the same by hard or reckless riding, driving, or using, or permit any other person so to do, or hire the same to any other person, or procure any horse, mule, automobile or other vehicle from a licensed livery stable keeper, or any other person, without previously making arrangements for credit, and use the same without paying therefor and with intent to cheat or defraud said licensed livery stable keeper, or other person, he shall be fined not less than ten nor more than fifty dollars. (Code 1887, § 3797; 1904, p. 79; 1910, p. 347.)

Revisors' Note.—The words, "or any other person" found in line seven of the text are new, as are also the words, "or other person" found in line nine of the text. The latter part of the section should be as comprehensive as the first.

See Gregory's Forms, No. 692.

Cited but not construed in Wells' Case, 107 Va. 834, 57 S. E. 588.

Sec. 4568. Profane swearing and drunkenness; how punished.—If any person arrived at the age of discretion profanely curse or swear or get drunk in public he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one nor more than ten dollars. (Code 1887, § 3798; 1897-8, p. 342; 1914, p. 29.)

Revisors' Note.—The words formerly appearing in this section: "but nothing herein contained shall apply to any city or town having police regulations on this subject" have been omitted, so as to make no distinction in this respect between cities or towns and counties.

As to drunkenness, see Acts 1918, p. 578. This act supersedes chapter 184 of this Code.

Cited but not construed in Wells' Case, 107 Va. 834, 57 S. E. 588.

Sec. 4569. Use of profane or indecent language over telephone.—(1870)

Digitized by Google

If any person shall curse or abuse anyone, or use vulgar, profane or indecent language over any telephone in this State, he shall be guilty of a misdemeanor, and, upon conviction, be punished by a fine of not more than one hundred dollars. (1910, p. 258.)

Sec. 4570. Working or transacting business on Sunday; how punished.—If a person on a Sunday be found laboring at any trade or calling, or employ his apprentices or servants in labor or other business, except in household or other work of necessity or charity, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than five dollars for each offense. Every day any person or servant or apprentice is so employed shall constitute a distinct offense and the court in which or the justice by whom any judgment of conviction is rendered may require of the person so convicted a recognizance in a penalty of not less than one hundred or more than five thousand dollars, with or without security, conditioned that such person shall be of good behavior, and especially to refrain from a repetition of such offense, for a period not exceeding twelve months. This section shall not apply to furnaces, kilns, plants and other business of like kind that may be necessary to be conducted on Sunday. (Code 1887, § 3799; 1908, p. 258; 1916, p. 751.)

Revisors' Note.—This section was slightly amended by Acts 1916, p. 751; but as it appears above, it is taken from the act of 1908, with the last sentence added. The reason for the addition is manifest. The proviso with reference to the delivery of ice cream has been omitted because deemed unnecessary. The section is of long standing, and has always had a reasonable construction, and to make one special exception might lead to the construction that many other acts were forbidden which have never been held to be within the purview of the section.

Violation of section a misdemeanor.—Before the amendment of 1908 a violation of this section was not a misdemeanor, and the forfeiture imposed could be recovered only by civil warrant. Wells' Case, 107 Va. 834, 57 S. E. 588. Objection that the proceeding was by a criminal warrant might be raised in the Supreme Court of Appeals for the first time. Hanger's Case, 107 Va. 872, 60 S. E. 67. Any person, whether employer or employee, who violated the section was amenable to the forfeiture. Puckett's Case, 107 Va. 844, 57 S. E. 591. As the section now reads, a violation of it is expressly declared to be a misdemeanor.

When Sunday begins and ends.—Sunday is from 12:00 o'clock Saturday night until 12:00 o'clock Sunday night. Jeffries' Case, 113 Va. 773, 75 S. E. 90; State v. Green, 27 Mo. 466.

Decisions in other jurisdictions.—Sunday and Sabbath day are synonymous terms. Kilgore v. Miles, 6 Gill & J. 268.

Under a similar statute in West Virginia it was held that the burden was on the Commonwealth to prove that the work was not "of necessity or charity." State v. McBee, 52 W. Va. 257, 43 S. E. 121, 60 L. R. A. 638; 8 Va. Law Reg. 763. See, also, 8 Va. Law Reg. 908.

For W. Va. decisions on similar statute. see Justis' Annotations, chapter 149, section 16.

The publication of a daily paper on Sunday is a work of necessity within revised statute, section 4801 of Missouri. See note 1 Va. L. R. N. S. 871.

In Western Union Tel. Co. v. Fulling (Ind.), 96 N. E. Rep. 967, it was held that a Sunday telegraph message from a husband to his wife telling her that late trains prevented him from being home till the fol-

Digitized by Google

lowing morning was a work of necessity, and within the exception of an Indiana statute prohibiting any work on Sunday save that of charity and necessity.

As an offense against the Sunday laws consists in the doing of an act on a prohibited day, time is of the essence of the offense, and it must be affirmatively alleged that the act complained of was performed on a Sunday, although the particular Sunday is not important, provided it is within the Statute of Limitations. 37 Cyc. 579, citing Jackson v. the State, 87 Ga. 787, 15 S. E. 905; State v. Baltimore & C. R. Co., 15 W. Va. 362, 36 Am. Rep. 803.

On a trial of a complaint for keeping an open shop on the Lord's Day, the Commonwealth is not confined to the particular Sunday named in the indictment. Commonwealth v. Newton, 25 Mass. (8 Pick.) 234; Commonwealth v. Harrison, 77 Mass. (11 Gray) 308.

Generally.—An option executed for valuable consideration is not invalid under this section because executed on Sunday. Dunlop v. Baker, 239 Fed. 193 (C. C. A., Fourth Circuit).

For interesting history of the legislation concerning the violation of the Sabbath, see dissenting opinion of Buchanan, J., Wells' Case, 107 Va. 834, 57 S. E. 588.

Discussed, 4 Va. Law J. 141; 6 Va. Law J. 523; 13 Va. Law J. 643; 6 Va. Law Reg. 692; 19 Va. Law Reg. 709; 2 Va. L. Reg. N. S. 621.

Cited but not construed in Ragsdale v. Danville, 116 Va. 484, 82 S. E. 77.

Sec. 4571. Exception as to the Jews.—The penalty imposed by the preceding section shall not be incurred by any person who conscientiously believes that the seventh day of the week ought to be observed as a Sabbath, and actually refrains from all secular business and labor on that day, provided he does not compel an apprentice or servant, not of his belief, to do secular work or business on a Sunday, and does not on that day disturb any other person. (Code 1887, § 3800.)

Revisors' Note.—The words, "penalty imposed" are used in lieu of "forfeiture declared." As section 4570 (section 3799 of the Code of 1887) stood before the amendment of 1908, a violation of it was not a misdemeanor. Wells' Case, 107 Va. 884, 57 S. E. 588. Under the amendment of 1908, and as the section now stands, a violation of it is expressly declared to be a misdemeanor.

As to religious freedom, see section 34 and notes.

Discussed, 19 Va. L. Reg. 709. See, also, 15 Va. L. Reg. 920.

Sec. 4572. What transportation, etc., by railroads on Sunday prohibited.—No railroad company, receiver, or trustee, controlling or operating a railroad, shall, by any agent or employee, load, unload, run or transport upon such road on a Sunday, any car, train of cars or locomotive, nor permit the same to be done by any such agent or employee, except where such cars, trains or locomotives are used exclusively for the relief of wrecked train or trains so disabled as to obstruct the main track of the railroad; or for the transportation of the United States mail; or for the transportation of passengers and their baggage; or where such cars, trains or locomotives constitute interstate freight trains exclusively, which trains may be run through the State of Virginia without stopping at local stations for interchange of freight; or for the transportation of live stock, or for the transportation of articles of such perishable nature as would

Digitized by Google

necessarily impair in value by one day's delay in their passage: provided, however, that if it should be necessary to transport live stock or perishable articles on a Sunday to an extent not sufficient to make a whole train load, such train load may be made up with cars loaded with ordinary freight; and provided, however, that the State Corporation Commission may, at such times necessity may require, either to meet an emergency or to save life or property, suspend the restriction of this section and authorize the running, loading or unloading on Sunday of freight trains on any railroad, and of any car or locomotive. The State Corporation Commission may, upon petition, duly verified, of any railroad company, either by general rule or special order, or both, authorize the running, loading or unloading on Sunday of freight trains on such railroad, and of any car or locomotive, for any of the causes in the provisos of this section. (Code 1887, § 3801; 1910, pp. 59, 471.)

This statute prior to its amendment in 1910 held not unconstitutional in N. & W. R. R. v. Com., 93 Va. 749, 24 S. E. 837, 34 L. R. A. 105, 57 Am. St. Rep. 827, overruling N. & W. R. R. v. Com., 88 Va. 95, 13 S. E. 340, 13 L. R. A. 107, 29 Am. St. Rep. 705, in which latter case the court held that the section violated article 1, section 8, cl. 3, Const. U. S. See note, 2 Va. Law Reg. 283.

Empty coal cars, en route back to West Virginia, when they are used exclusively to transport coal into this state, and which are intended to be used again, are not engaged in transporting articles of interstate commerce, and the transportation is therefore controlled by laws of this state. Such transportation on Sunday is forbidden by this section. N. & W. R. R. v. Com., 93 Va. 749, 24 S. E. 837, 34 L. R. A. 105, 57 Am. St. Rep. 827.

Where ground of liability charged is that an injury was inflicted by a train run on Sunday, the declaration is bad on demurrer, if it does not aver that the train was not one of those permitted by law to be run on Sunday, as the statute contains several exceptions. Hortenstein v. Va.-Carolina Ry. Co., 102 Va. 914, 923, 47 S. E. 996.

Cited but not construed in Wells' Case, 107 Va. 834, 57 S. E. 588; Richmond v. Sutherland, 114 Va. 688, 77 S. E. 470.

Discussed, 14 Va. Law J. 124.

Sec. 4573. What time the word "Sunday" in the preceding section embraces.—The word "Sunday" as used in the preceding section shall be construed to embrace only that portion of the day between sunrise and sunset; and trains in transitu having started prior to twelve o'clock on Saturday night, may, in order to reach the terminus or shops of the railroad, run until nine o'clock the following Sunday morning, but not later. (Code 1887, § 3802.)

Cited but not construed in Richmond v. Sutherland, 114 Va. 688, 77 S. E. 470.

Sec. 4574. Violations of section forty-five hundred and seventy-two; where and how punished.—Any railroad company, receiver, or trustee violating the provisions of section forty-five hundred and seventy-two shall be deemed to have committed a separate offense in each county or corporation in which such car, train of cars, or locomotive shall run, or in which such car or train of cars shall be loaded or unloaded; and shall be fined not less than fifty

Digitized by Google

nor more than one hundred dollars for each offense. (Code 1887, § 3803.)

Cited but not construed in Richmond v. Sutherland, 114 Va. 688, 77 S. E. 470.

Sec. 4575. To prohibit the loading and unloading of steamships' and steamboats' cargoes on a Sunday.—No steamboat company shall by any agent or employee load or unload on a Sunday any steamship or steamboat arriving at any port or landing on the bays, rivers, or other waters of this State or permit the same to be done by any such agent or employee except where such steamship or steamboat is for the transportation of the United States mails, or for the transportation of passengers and their baggage, or for the transportation of through freight in transitu, or of live stock, or of articles of such perishable nature as would be necessarily impaired in value by one day's delay in their passage: provided, that nothing in this section shall be construed as preventing any steamship or steamboat arriving at any port or landing on the bays, rivers, and other waters of this State not its final point of destination from unloading any and all freight intended for delivery at such intermediate port or landing or from loading and taking on any and all freight intended for shipment from such intermediate port or landing to the final destination of said steamship or steamboat. Any steamship or steamboat company violating the provisions of this section shall be deemed to have committed a separate offense in each county or corporation in which said steamship or steamboat shall land and be unloaded. and shall be fined in a sum not less than fifty nor more than one hundred dollars for each offense. (1889-90, p. 38.)

Cited but not construed in Wells' Case, 107 Va. 834, 57 S. E. 588.

Sec. 4576. Disturbance of religious worship a misdemeanor.—If any person wilfully interrupt or disturb any assembly met for the worship of God, or being intoxicated, disturb the same, whether wilfully or not, he shall be guilty of a misdemeanor, and any justice or other conservator of the peace may put him under restraint during religious worship, and require him to enter into a recognizance for his good behavior for a period not exceeding twelve months. (Code 1887, § 3805; 1899-00, p. 1115; 1908, p. 24.)

Revisors' Note.—The punishment is now as for a misdemeanor, for which see section 4782.

The disturbance need not be during divine service, but may be at any time that the congregation is assembled, even at night, after they have retired to their tents. Jennings' Case, 3 Grat. 624.

The indictment need not set out the means by which the disturbance was effected. Daniels' Case, 2 Va. Cas. 402. See, also, Shiflett's Case, 90 Va. 387, 18 S. E. 838.

As to elements of the offense, see 8 Va. Law Reg. 380.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 149, section 18.

Sec. 4577. A misdemeanor to disturb schools, literary societies, (1874)

Digitized by Google

etc.—If any person wilfully interrupt, molest, or disturb the exercise of any free school or any other school or of any literary society, or being intoxicated, disturb the same, whether wilfully or not, he shall be guilty of a misdemeanor. (1889-90, p. 152.)

Revisors' Note.—The punishment is now as for a misdemeanor, for which see section 4782. The act provided that, "A justice of the peace or police justice may try and determine these cases." This sentence has been omitted as unnecessary. See section 4987.

Sec. 4578. Carrying dangerous weapon to place of religious worship, or on Sunday at place other than his own premises; how punished.—If any person carry any gun, pistol, bowie-knife, dagger, or other dangerous weapon, to a place of worship while a meeting for religious purposes is being held at such place, or, without good and sufficient cause therefor, carry any such weapon on a Sunday at any place other than his own premises, he shall be fined not less than twenty dollars. If any offense under this section be committed at a place of religious worship, the offender may be arrested on the order of a conservator of the peace, without warrant, and held until a warrant can be obtained, but not exceeding three hours. It shall be the duty of every justice, upon his own knowledge, or upon the affidavit of any person, that an offense under this section has been committed, to issue a warrant for the arrest of the offender. (Code 1887, § 3806.)

Sec. 4579. Pandering; punishment therefor; competency of certain evidence.—Any person who takes, harbors, inveigles, entices, persuades or encourages, either by threats or promises, or by any device or scheme takes, or causes to be taken, any female into a house of ill-fame or of assignation, or elsewhere, against her will, for the purpose of prostitution or illegal sexual intercourse; or,

Takes or detains a female unlawfully against her will with the intent to compel her, by force, threats, persuasion, menace or duress, to marry him or to marry any other person, or to be defiled; or,

Being parent, guardian or any other person having legal charge of the person of a female, consents to her being taken or detained by any person for the purpose of prostitution or sexual intercourse,

Is guilty of pandering, and shall be punished by confinement for a term of not less than one year nor more than ten years in the penitentiary, and by a fine of not more than one thousand dollars.

Any person who shall place any female in the charge or custody of any other person or persons for immoral purposes, or in a house of prostitution, with the intent that she shall live a life of prostitution, or any person who shall compel any female to reside with him, or with any other person for immoral purposes, or for the purposes of prostitution, or compel her to live a life of prosti-

Digitized by Google

tution, is guilty of pandering, and shall be punished by a fine of not less than one thousand dollars and by confinement in the penitentiary for not less than one or more than ten years.

Any person who shall receive any money or other valuable thing for or on account of procuring for or placing in a house of prostitution or elsewhere any female for the purpose of causing her to cohabit with any male person or persons, shall be guilty of a felony, and upon conviction thereof shall be confined in the penitentiary for not less than one year nor more than ten years.

Any person who, by force, fraud, intimidation or threats, places or leaves, or procures any other person or persons to place or leave his wife in a house of prostitution or to lead a life of prostitution, shall be guilty of pandering, and upon conviction thereof shall be confined in the penitentiary not less than three nor more than ten years.

Any person or persons who shall knowingly receive any money or other valuable thing from the earnings of any female engaged in prostitution, except for a consideration deemed good or valuable in law, shall be guilty of pandering, and on conviction be confined in the penitentiary for a term not less than one year nor more than ten years, and fined not more than five hundred dollars.

Any person or persons who shall detain any female in a disorderly house or house of prostitution because of any debt or debts she has contracted, or is said to have contracted, while living in said house of prostitution or disorderly house, shall be guilty of felony, and on conviction thereof shall be confined in the penitentiary for a term not less than one year nor more than ten years.

Any person or persons transporting, or attempting to transport, by any railroad, steamboat, railway, or by any other means of conveyance, through or across this State, any female for the purposes within the intent of this section, may be presented, indicted, tried and convicted in any county or city in which any part of said transportation may have taken place.

Any female hereinbefore referred to shall be a competent witness in any prosecution under this section to testify to any and all matters, including conversations with the accused or by him with third persons in her presence, notwithstanding she may have married the accused either before or after the violation of any of the provisions of this section, but she shall not be compelled to testify after such marriage. (1910, p. 252.)

Revisors' Note.—In addition to slight verbal changes, the revised section contains one change in meaning. This change consists of the use of the words, "in which any part of said transporation may have taken place," found at the end of the second paragraph from the bottom, in lieu of "in which the said offender may be apprehended, and on arrest (1876)

Digitized by Google

be taken to any court of competent jurisdiction in any such county or city; and the said presentment, indictment and trial shall be had in the same county or city in which the arrest occurs." The object of this change is to obviate a constitutional question. (See Const., section 8.) A trial by a jury remote from where the offense was committed could hardly be called a trial by a jury of his vicinage. See Richard's Case, 107 Va. 881, 59 S. E. 1104. But each step of the transportation may be regarded as a part of a continuous offense. In some states where property is stolen in one state and brought into another, the latter state punishes for larceny, deeming each removal of the property as a new asportation. There was no such statute in Virginia when Strouther's Case, 92 Va. 787, 22 S. E. 852, was decided, but such statutes are regarded as valid.

Sec. 4580. Appointment of police for religious meetings.—The supervisor or any justice of the magisterial district where a religious meeting is held shall, upon the written application of the conductor of such meeting, appoint as many temporary police as may be necessary to enforce order at such meeting, the authorities of such meeting paying all expenses incurred by reason of the appointment of such officers. (Code 1887, § 3810; 1891-2, p. 872; 1895-6, pp. 488, 539.)

CHAPTER 184.

Intoxicating Liquors.*

Sec.
4581. Ardent spirits defined.
4582. Person defined; second offense defined.
4583. Sale, use, etc., of ardent spirits restricted; sales by dispensaries.
4584. Violation of provisions of preceding section; acting as agent of seller or purchaser.
4585. Penalties.
4586. Situs of sale when shipment is made by common carrier.
4587. Form of indictment under sections four thousand five hundred and eighty-three, four thousand five hundred and eighty-four, and four thousand five hundred and eighty-five.
4588. Acts and products not affected by this chapter; sales by druggists for medicinal purposes.
4589. Sales of proprietary medicines, toilet articles, etc., and Jamaica ginger, and purchases, etc., by druggists not licensed under this chapter.
4590. Purchases by manufacturers of flavoring extracts, etc.
4591. Sales by druggists for medicinal purposes.
4592. Sales by druggists for scientific, etc., and sacramental purposes; purchases by dentists, physicians and veterinary surgeons.
4593. Penalty on druggists, etc., for violating preceding section.

---

*Revisors' Note.—This entire chapter is superseded and repealed by the amended prohibition Act of 1918 (Acts 1918, p. 578).

Boards of supervisors may pay rewards out of county levies for the capture of illicit stills. Acts 1918, chapter 870, p. 559.

Digitized by Google

Sec.
4594. Purchases by dentists, physicians, and veterinary surgeons.
4595. Presumptions upon sale by druggists, etc.; unlawful sales by employees without employer's knowledge; penalties for failure to discharge convicted employees.
4596. Indictments against druggists.
4597. Affidavit by person of intemperate habits; use other than stated in affidavit.
4598. When issue of prescriptions by physicians unlawful; penalty.
4599. Issue of licenses to druggists.
4600. Issue of licenses to manufacturers of alcohol.
4601. Statement required of druggists; licenses to hospitals, etc.
4602. Bond required of druggists, etc.; conditions; licenses to hotels and rights of common carriers.
4603. Statements required of hotel managers; bond, etc.; counties and cities excepted.
4604. Wood or denatured alcohol.
4605. Amount which may be shipped druggists and hotels; records to be kept by transportation company.
4606. Keeping ardent spirits at clubs, lodges, etc.
4607. Ardent spirits in houses of prostitution.
4608. Devices to evade the provisions of this chapter.
4609. Certain advertisements and circulation, etc., of certain printed matter prohibited; publication of statements concerning the liquor traffic.
4610. Handling certain drafts for ardent spirits prohibited.
4611. Agents of common carriers not to receive orders or collect money, etc., for ardent spirits.
4612. Search warrants; arrest of offenders.
4613. When accused sent on to court and recognizance required.
4614. Jurisdiction of cases arising under this chapter.
4615. Enforcement of city ordinances; territory contiguous to cities.
4616. Trial of cases without a jury.
4617. City ordinances regulating sale, etc., of ardent spirits.
4618. Finding of ardent spirits or United States liquor dealers' tax receipt prima facie evidence; who to be tried.
4619. When officers may break and enter houses, etc.
4620. Effect of payment of United States internal revenue tax; collector's certificate as evidence.
4621. Analysis of mixtures supposed to contain ardent spirits; chemists' certificates as evidence.
4622. Certain houses, etc., declared common nuisances.
4623. Election, salary and term of Commissioner.
4624. Suspension by Governor.
4625. Report to Governor.
4626. Bond required of Commissioner.
4627. Appointment of deputies and inspectors; employment of attorneys, etc.
4628. Duties and powers of Commissioner; prosecution of cases arising under this chapter.
4629. Powers of deputies and inspectors.
4630. Injunctions against nuisances as defined in this chapter.
4631. Drinking ardent spirits in public places.
4632. Books required to be kept by common carriers.
4633. Transportation of ardent spirits.
4634. Books to be kept by common carriers; affidavit by consignees; receiving ardent spirits; penalties.

Digitized by Google

Sec.
4635. What consignees may authorize others to receive liquor for them; hours in which same may be delivered.
4636. Amount permitted to travelers.
4637. Records kept by common carriers open to inspection.
4638. Amount of ardent spirits persons may receive; containers in which shipped; records to be kept by common carriers; penalty.
4639. Giving ardent spirits to minors, etc.; sending minors and females for ardent spirits.
4640. Persons of intemperate habits, etc., required to disclose from whom they obtain ardent spirits; penalty for refusal.
4641. Possession of ardent spirits by minors a misdemeanor.
4642. Ordering or receipt, etc., of ardent spirits by female.
4643. When bond required of persons convicted.
4644. Associate counsel in prosecutions.
4645. Right of appeal by Commonwealth.
4646. Effect when part of chapter declared unconstitutional.
4647. Duties of attorneys for the Commonwealth.
4648. Prescriptions, affidavits and record books to be examined.
4649. Who deemed intoxicated; of intemperate habits.
4650. Hotel employees assisting guests to obtain ardent spirits; penalty.
4651. Hotel proprietor permitting employees to assist guests to secure ardent spirits; failure to discharge convicted employee; penalty.
4652. Keeping or sale of ardent spirits in hotels prohibited.
4653. When licenses of hotels, etc., revoked.
Sec.
4654. Prescriptions and affidavits to be in duplicate; filing; examination.
4655. Certain officials charged with enforcement of provisions of this chapter; fees.
4656. When identification to be required by druggists.
4657. Search of vehicles; when same seized and person in charge arrested.
4658. How vehicles disposed of.
4659. Chapter deemed exercise of police power.
4660. Prosecution of persons holding internal revenue tax receipt.
4661. Certain allegations unnecessary in indictment; what proof sufficient.
4662. Use of ardent spirits in the home; home defined; transient guests in hotels.
4663. Change of venue; venire from another county.
4664. Soft drinks defined.
4665. License for the sale of soft drinks.
4666. When possession of ardent spirits prima facie evidence of purpose to sell.
4667. What persons may make affidavits.
4668. Stamps to be affixed to affidavits and prescriptions.
4669. When convict required to work on public roads.
4670. Encumbering estate to evade chapter.
4671. When unlawful to grind malt.
4672. Agents of authorities may purchase ardent spirits contrary to the provisions of this chapter.
4673. Certain local laws, and act approved March twenty-two, nineteen hundred and sixteen, not repealed.
4674. Incriminating testimony no excuse for not testifying.
4675. Right of action against persons causing intoxication.

Digitized by Google

Sec. 4581. Ardent spirits defined.—The words ardent spirits, as used in this chapter, shall be construed to embrace alcohol, brandy, whiskey, rum, gin, wine, porter, ale, beer, all malt liquors, absinthe and all compounds or mixtures of any of them; all compounds or mixtures of any of them with any vegetable or other substance; and also all liquids, mixtures or preparations, whether patented or otherwise, which will produce intoxication; fruits preserved in ardent spirits, and all beverages containing more than one-half of one per centum of alcohol by volume, except as herein provided. (1916, p. 215, § 1.)

Revisors' Note.—This entire chapter is superseded and repealed by the amended prohibition act of 1918 (Acts 1918, p. 578).

Sec. 4582. Person defined; second offense defined.—The word person, as used in this chapter, shall be construed to embrace all natural persons, firms, corporations, combinations and associations of every kind; and the term second offense shall be construed to mean an offense committed after a prior conviction of a like offense. (Id., § 2.)

Sec. 4583. Sale, use, etc., of ardent spirits restricted; sales by dispensaries.—It shall be unlawful for any person in this State to manufacture, transport, sell, keep, or store for sale, offer, advertise or expose for sale, give away or dispense or solicit in any way, or receive orders for or aid in procuring ardent spirits, except as hereinafter provided.

This chapter insofar as it affects the storing or transportation out of this State, shall not apply to ardent spirits manufactured prior to January first, nineteen hundred and sixteen, and stored in United States bonded warehouses in the custody of the United States collector of internal revenue, and the said ardent spirits, when tax paid and in transit from such warehouses to points outside of this State where said ardent spirits may be legally sold or stored. (Id., § 3.)

Sec. 4584. Violations of provisions of the preceding section; acting as agent of, seller or purchaser.—Any person who shall violate any of the provisions of the preceding section, or any person, except a common carrier, who shall act as the agent or employee of such manufacturer or such seller, or person in so keeping, storing, offering or exposing for sale such ardent spirits, or act as the agent or employee of the purchaser in purchasing such ardent spirits, except as herein provided, shall be deemed guilty of a misdemeanor for the first offense, and of a felony for a second or any subsequent offense committed after the first conviction; but the offense of drinking, giving away, or receiving ardent spirits contrary to the provisions of this chapter, shall not be deemed a felony in any case; nor shall the purchasing or having in possession by any person of ardent spirits for personal use, in any

Digitized by Google

case be deemed a felony, but the burden of proof that said ardent spirits are for personal use shall be upon the defendant. (Id., § 4.)

Sec. 4585. Penalties.—Any person who shall violate any provision of this chapter, shall, except as otherwise herein provided, be deemed guilty of a misdemeanor, and be fined not less than fifty dollars nor more than five hundred dollars, and be confined in jail not less than one nor more than six months. The penalty for the second or any subsequent offense committed after the first conviction, which is not declared a felony in this chapter, shall be a fine of not less than one hundred dollars, nor more than five thousand dollars, and imprisonment in jail for not less than six months nor more than one year. Whenever, in this chapter, the violation of any provision is declared a felony, the person convicted of such violation shall be punished by confinement in the penitentiary for not less than one nor more than five years, or, in the discretion of the jury, by confinement in jail not less than six nor more than twelve months and by a fine not exceeding five hundred dollars. (Id., § 5.)

Sec. 4586. Situs of sale when shipment is made by common carrier.—In case of a sale in which a shipment or delivery of such ardent spirits is made by a common or other carrier, the sale thereof shall be deemed to be made in the county or city wherein the delivery thereof is made by such carrier to the consignee, his agent or employee. A prosecution for such sale may likewise be had in the county or city wherein the seller resides or from which the shipment is made. (Id., § 6.)

Sec. 4587. Form of indictment under sections forty-five hundred and eighty-three, forty-five hundred and eighty-four and forty-five hundred and eighty-five.—While any good and sufficient indictment may be used, an indictment for any first offense under sections forty-five hundred and eighty-three, forty-five hundred and eighty-four and forty-five hundred and eighty-five, shall be sufficient if substantially in the form or to the effect following:

"Commonwealth of Virginia.

County of .....to-wit:

In the circuit court of ..... county:

The grand jurors in and for the body of said county of..... ..... and now attending said court at its ..... term, nineteen ....., upon their oaths, do present that ..... within one year next prior to the finding of this indictment, in the said county of ....., did unlawfully manufacture, sell, offer, keep, store and expose for sale, give away, transport, dispense, solicit, advertise, receive orders for and aid in procuring ardent spirits, against the peace and dignity of the Commonwealth of Virginia."

Digitized by Google

And if it be a second offense, it shall be so stated in the indictment returned, and the prosecuting attorney shall introduce before the trial court, evidence of said former conviction, and shall not be permitted to use his discretion in charging said second offense, or in introducing evidence and proving the same, on the trial, but the failure to charge former conviction shall not invalidate the indictment.

If the offense is committed in a city the word "city" shall be substituted for county, the proper court having jurisdiction substituted for circuit court, and the name of the city for the name of the county. (Id., § 7.)

Sec. 4588. Acts and products not affected by this chapter; sales by druggists for medicinal purposes.—The provisions of this chapter shall not be construed to prevent any person from manufacturing for his domestic consumption at his home, but not to be sold, dispensed or given away, except as hereinafter provided, wine or cider from fruit of his own raising; or to prevent the manufacture from fruit of cider for the purpose of making vinegar, not used as a beverage; and non-intoxicating cider, containing not more than one per centum of alcohol by volume, for use or sale; or to prevent the manufacture and sale, as hereinafter provided at wholesale, to druggists, only of pure grain or fruit or ethyl alcohol, for medicinal, pharmaceutical, scientific and merchanical purposes, or of wine for sacramental purposes for use by religious bodies; or to prevent the sale, keeping or storing for sale by druggists, of pure grain or fruit or ethyl alcohol, and of pure whiskey and pure brandy, for mechanical, pharmaceutical, medicinal and scientific purposes, or of wine for sacramental purposes for use by religious bodies, but nothing in this chapter nor in any section thereof shall have any application whatever to denatured alcohol or denatured rum intended for use only in the industrial or mechanical arts, including especially the manufacture of tobacco, cigarettes, cheroots or cigars, where the same is brought or shipped into the State under bond and there kept and stored under bond, in strict compliance with the United States internal revenue laws and regulations, until actually applied to the uses above mentioned and none other whatsoever, or to prevent the sale or gift and keeping and storing for sale by druggists and general merchants or others duly licensed by existing laws of any medicinal preparations manufactured in accordance with formulas prescribed by the United States pharmacopeia and national formulary patent and proprietary preparations and other bona fide medicinal and technical preparations which contain no more alcohol than is necessary to extract the medicinal properties of the drugs contained in such preparations, and no more alcohol than is necessary to hold the medicinal agents in solution and to preserve the same, and which

Digitized by Google

are manufactured and sold as medicine and not as beverages; or to prevent the manufacture and sale of toilet, medicinal and antiseptic preparations and solutions not intended for internal human use, nor to be sold as beverages, and upon the outside of each bottle, box or package of which is printed in English conspicuously and legibly and clearly the quantity by volume of alcohol in such preparations; or to prevent the manufacturing or keeping for sale of the food product known as flavoring extracts which shall be so manufactured or sold for cooking and culinary purposes only, and not to be sold for beverage purposes, provided that it shall not be lawful to manufacture or sell any toilet medicinal, antiseptic preparations or solutions, or any flavoring extracts or patent or proprietary medicines or preparations, the manufacture or sale of which requires the payment of the United States liquor dealer's tax. (Id., § 8.)

Sec. 4589. Sales of proprietary medicines, toilet articles, etc., and Jamaica ginger, and purchases, etc., by druggists not licensed under this chapter.—It shall be unlawful for any person to sell such toilet, medicinal, antiseptic preparations or solutions or flavoring extracts or patent or proprietary medicines or preparations for beverage purposes in the guise of flavoring extracts or medicines, and it shall be unlawful for anyone but a licensed pharmacist to sell, dispense or give away to the consumer the extract, essence or tincture of Jamaica ginger, and such pharmacist only upon the prescription of a regular licensed physician, and then only upon the same conditions as ardent spirits are sold under the provisions of this chapter.

Nothing in this section shall be construed to prevent the manufacture and transportation for sale outside of the State of the extract, essence, or tincture of Jamaica ginger into territory where the same may be legally sold, nor to prevent any regularly licensed druggist or drug company doing business in this State, though not licensed under this chapter, from buying, storing, and having the same transported to him, or it, by common carriers, pure grain, fruit or ethyl alcohol for medicinal, pharmaceutical, scientific and mechanical purposes, but all such druggists and drug companies shall make inventories of stock on hand, affidavit, and the monthly report as hereinafter required of druggists licensed under this chapter, except that the affidavit of such druggists and drug companies shall not contain the words, "sold, dispensed." (Id., § 8.)

Sec. 4590. Purchases by manufacturers of flavoring extracts, etc.—The manufacturers of flavoring extracts, or of toilet, medicinal, antiseptic preparations or solutions, patent or proprietary medicines or preparations permitted to be manufactured by this chapter shall be permitted to purchase and to store ardent spirits

Digitized by Google

or alcohol necessary for the manufacture of said articles, but not to be sold or given away, but such manufacturer must secure a license from the court under the same conditions as provided in this chapter for the granting of license to sell ardent spirits to druggists and said manufacturers shall make the monthly report as is required of druggists by this chapter. (Id., § 8.)

Sec. 4591. Sales by druggists for medicinal purposes.—No druggist shall sell any grain, ethyl, or fruit alcohol, or pure whiskey, or pure brandy, except for medicinal, scientific, pharmaceutical, or mechanical purposes, or wine for sacramental purposes for use by religious bodies only, except as hereinafter provided, and the same shall not be sold by such druggists for medicinal purposes, except upon written prescription of a physician in active practice of good standing in his profession, and not of intemperate habits, or addicted to the use of any narcotic drug, prescribing the quantity of alcohol, pure whiskey or pure brandy, designating the said amount in fractions of a pint, or quart, the disease or malady for which it is prescribed, how it is to be used, the name of the person for whom prescribed, the number of previous prescriptions for ardent spirits given by such physician to such person within six months next preceding the date of such prescription, and stating that the same is absolutely necessary for medicine, and not to be used as a beverage, and that such physician, at the time such prescription was given, made a careful, personal physical examination of such person; and only one sale, not exceeding one pint of whiskey or brandy or not exceeding one quart of pure fruit or grain alcohol, shall be made upon such prescription, which shall at all times be kept on file by the druggist filling the same, and open to the inspection of all State, county, and municipal officers, their deputies and inspectors. It shall be the duty of the druggist to register in an alphabetically arranged book, kept exclusively for the purpose of registering prescriptions and affidavits, all prescriptions from physicians mentioned in this section in the following order: The name of the physician, the name of the person prescribed for, the quantity of alcohol, pure whiskey or pure brandy, and the use for which prescribed, and shall endorse on the prescription or affidavit the date upon which the prescription was filled, and the name of the druggist or firm filling said prescription, or making said sale, and such book shall at all times be open for the same inspection as the prescription. (Id., § 8.)

Sec. 4592. Sales by druggists for scientific, etc., and sacramental purposes; purchases by dentists, physicians and veterinary surgeons.—It shall be lawful for wholesale and retail druggists to sell pure grain or fruit alcohol for scientific, pharmaceutical and mechanical purposes, or wine for sacramental purposes, for use by religious bodies, only to a person, not a minor, nor of intemperate

Digitized by Google

habits and not addicted to the use of any narcotic drugs, who shall at the time and place of sale, if bought in person, make an affidavit in writing, signed by himself, before such druggist, or a registered pharmacist, then in the employ of such druggist, or, if not bought in person, before any person authorized by law to administer oaths, stating the quantity, when, where and fully for what purpose and by whom such alcohol or wine is to be used, and that the affiant is not a minor nor of intemperate habits and not addicted to the use of any narcotic drugs. Such affidavit shall be filed and preserved by the druggist selling the alcohol and wine and be subject to the inspection at all times by any State, county or municipal officer, their deputies or inspectors, and a record thereof made by such druggist in the record book for prescriptions and affidavits herein mentioned, showing date of affidavit, by whom made, the quantity of such alcohol, or wine, and when, where, for what purpose and by whom to be used. Only one sale shall be made upon such affidavit, and for no greater quantity than is therein specified. The person offering said prescription to be filled, or making said affidavit, shall certify to the correctness of the record in said record book, by recording his signature opposite said record of said prescription or affidavit. For the purpose of this chapter, any registered druggist or pharmacist making such sale, shall have authority to administer the oaths required by this section. (Id., § 9.)

Sec. 4593. Penalty on druggists, etc., for violating preceding section.—If any druggist, owner of a drug store, registered pharmacist, clerk, or employee shall knowingly violate the provisions of the preceding section by selling or giving away such alcohol, pure whiskey, pure brandy or wine, to any one to be used for any purpose other than that named in said prescription or affidavit (provided that no whiskey or brandy shall be sold except upon prescription), or shall sell or give away any ardent spirits without such prescription or affidavit, he shall be deemed guilty of a misdemeanor, and in addition to the penalty prescribed for a misdemeanor by this chapter, the license of such druggist to sell ardent spirits shall be revoked by the court for a period of one year, and all ardent spirits in possession of said druggist, or in the said drug store, or on the premises connected therewith, shall be destroyed by order of the court; for a second or a subsequent offense, in addition to the penalty prescribed for a misdemeanor by this chapter, the license of the said druggist to practice pharmacy shall be revoked forthwith, and all ardent spirits in the possession of said druggist, or in the said drug store, or on the premises connected therewith, shall forthwith be destroyed, by order of the court, and the court shall forthwith certify the fact of the revocation of said license to the authority granting such license, which

Digitized by Google

order of revocation shall forthwith be made a matter of record by said authority, and shall act as a bar to the granting of license to said druggist in the future. (Id., § 9.)

Sec. 4594. Purchases by dentists, physicians and veterinary surgeons.—Nothing in this chapter shall be construed to prevent dentists, physicians and veterinary surgeons from purchasing in accordance with the provisions of this chapter, pure fruit or ethyl or grain alcohol to be used in the practice of their professions and for no other purpose whatsoever. (Id., § 9.)

Sec. 4595. Presumptions upon sale by druggists, etc., unlawful sales by employees without employer's knowledge; penalties for failure to discharge convicted employees.—In any prosecution against a druggist, owner of a drug store, registered pharmacist, clerk or employee, for selling or giving ardent spirits contrary to law, if such sale or gift be proven, it shall be presumed to be unlawful in the absence of satisfactory proof to the contrary, but the presentation of such prescription or affidavit by the defendant on trial shall be sufficient to rebut the presumption arising from the proof of such sale or gift, if the jury shall believe from all the evidence in the case that such sale or gift was made in good faith under the belief that such prescription or affidavit and the statements therein were true, and that such druggist, owner of a drug store, registered pharmacist, clerk or employee shall have complied with all other provisions of this chapter relating to such sale or gift. If any clerk or employee in a drug store other than the druggist or owner of said drug store, shall sell or give away any ardent spirits contrary to the provisions of this chapter, upon conviction of said clerk or employee, said druggist, or owner of said drug store, may before trial and the revocation of the license and the destruction of the ardent spirits in his possession as required in sections forty-five hundred and ninety-two and forty-five hundred and ninety-three, be permitted to present to the court evidence that said sale or gift was without his knowledge, consent, acquiescence or connivance, and if the court is convinced from said evidence that said druggist, or owner of said drug store was not in any sense a party to the violation of this chapter by his clerk or other employee, then said druggist or owner of a drug store shall not be deemed guilty of the violation of said section forty-five hundred and ninety-two and forty-five hundred and ninety-three, by reason of the violation thereof by his clerk or employee.

If any druggist or owner of a drug store, who has been duly notified that any clerk or employee has been convicted of a violation of any of the provisions of this section, shall fail at once to discharge said clerk or employee permanently, he shall forfeit his license as a registered pharmacist for a period of three months,

Digitized by Google

and for any second or subsequent offense he shall forfeit his license as a registered pharmacist for a period of one year; and if any registered pharmacist shall be convicted of a violation of this section he shall forfeit his license as a registered pharmacist for a period of two years. (Id., § 10.)

Sec. 4596. Indictments against druggists.—While any good and sufficient indictment may be used, an indictment against any druggist, owner of a drug store, registered pharmacist, clerk or employee, for any offense committed under the provisions of this chapter relating to druggists, shall be sufficient if substantially in the form and to the effect following:

"Commonwealth of Virginia,

County of ....., to-wit:

In the circuit court of said county:

The grand jurors in and for the body of said county of..... ..... and now attending said court at its.....term, 19...., upon their oaths do present that ..... within one year next prior to the finding of this indictment in the said county of ....., did unlawfully sell, give away, offer, dispense, expose, keep and store for sale and gift, ardent spirits against the peace and dignity of the Commonwealth of Virginia."

And if it be a second offense, it shall be so stated in the indictment returned, and the prosecuting attorney shall introduce before the trial court evidence of said former conviction, and shall not be permitted to use his discretion in charging said second offense, or in introducing evidence or proving the same on the trial; but the failure to charge a former conviction shall not invalidate the indictment.

If the offense is committed in a city, the word city shall be substituted for county, the court having jurisdiction substituted for circuit court, and the name of the city for the name of the county. (Id., § 11.)

Sec. 4597. Affidavit by person of intemperate habits, use other than stated in affidavit.—If any person who is of intemperate habits or addicted to the use of any narcotic drug shall make the affidavit mentioned in section forty-five hundred and ninety-two, or if any person making such affidavit shall use as a beverage, or for any purpose, or at any place other than that stated in the affidavit, or shall knowingly permit another to make use of said alcohol or wine, or any part thereof, or shall knowingly make any false statement in such affidavit, he shall be guilty of a misdemeanor. (Id., § 12.)

Sec. 4598. When issue of prescriptions by physicians unlawful; penalty.—If any physician who is not in active practice, or who is not in good standing in his profession, or who is of intemperate habits, or addicted to the use of any narcotic drug shall issue any

Digitized by Google

such prescription as is mentioned in this chapter, or if any physician shall issue such prescription without at the time making a careful, personal physical examination of the person for whom the ardent spirits are prescribed, or shall prescribe ardent spirits for any person who he knows or has reason to believe is in the habit of drinking to intoxication, unless it is prescribed bona fide and solely for medical purposes as a necessary treatment, when the patient is confined to his bed or in some hospital or institution as a result of alcoholism, or shall in his prescription make any false statement, or shall prescribe ardent spirits when such ardent spirits are plainly not a remedy, or shall resort to any shift or device by which ardent spirits may be improperly procured, he shall be deemed guilty of a misdemeanor, and in addition to the penalty prescribed for a misdemeanor by this chapter, for the first offense under this chapter, the court may in its discretion suspend the license of such physician for a period of six months, and for a second offense in addition to the penalty prescribed for a misdemeanor by this chapter the court shall suspend such license for a period of twelve months, and for any subsequent offense in addition to the penalty prescribed for a misdemeanor by this chapter, the court shall forthwith revoke the license of said physician, and shall forthwith certify the fact of the revocation of said license to the authority granting said license, which order of revocation shall forthwith be made a matter of record by said authority, and shall act as a bar to the granting of license to said physician in the future. (Id., § 13.)

Sec. 4599. Issue of licenses to druggists.—Before a druggist shall sell ardent spirits on prescription, or pure fruit, ethyl, or grain alcohol for scientific, mechanical or pharmaceutical purposes, or wine for sacramental purposes on affidavit as provided in this chapter, he must procure a license to do so from the circuit court of the county, or the corporation court of the city.

Before making application for such license notice must be posted and continuously kept at the front door of the store in which the privilege is to be exercised for at least thirty days before making the application, stating the court before which and the time at which the application will be made for license to sell pure fruit, ethyl and grain alcohol, pure whiskey and pure brandy and wine for sacramental purposes. Such notice shall be published once a week for three successive weeks in some newspaper published in the county or city, and if there is no newspaper published in the county in which the privilege is to be exercised, the notice shall be published in some newspaper of general circulation therein. The applicant shall, in the event that a license is granted, obtain from the commissioner of the revenue, upon the payment of the

Digitized by Google

usual fee, the proper certificate, but no tax shall be required for the exercise of said privilege.

Before the court shall grant any such license, the judge thereof shall be satisfied that the person making the application is a qualified voter of the State and of good moral character, is a registered pharmacist in good standing, or employs a registered pharmacist, that he has in his store drugs, belonging to him, and not including patent medicines and drugs to be sold on commission, of the value of one thousand dollars (wholesale price), provided that in towns of less than five hundred inhabitants the value of the stock of drugs referred to above shall be not less than five hundred dollars, wholesale value, and carries on in good faith the business of a druggist; that he is not of intemperate habits or addicted to the use of any narcotic drugs; that he is a person of good character and will observe the laws controlling the sale of ardent spirits and alcohol; that the applicant has presented satisfactory proof that there is a necessity existing for the granting of such license, and that the sale of ardent spirits at that place and by such applicant will not be contrary to sound public policy or injurious to the moral or material interests of the community. In no case shall a license be granted if a majority of the voters qualified to vote at the last preceding general election petition the court not to grant such license in the following cases, namely: in a town of over one thousand inhabitants, the petition shall be signed by a majority of the said qualified voters of such town; in a town under one thousand inhabitants, the petition shall be signed by a majority of said qualified voters of the town and district in which said town is situated; if in the district, the petition shall be signed by a majority of the said qualified voters of the district and towns of less than one thousand inhabitants in said district. (Id., § 14.)

Sec. 4600. Issue of licenses to manufacturers of alcohol.—The court may also in its discretion issue to any person, a qualified voter of the State and of good moral character, a license to manufacture pure fruit, ethyl, and pure grain alcohol to be sold only to licensed druggists and to manufacturers of preparations, the manufacture and sale of which are permitted by this chapter, and not to be sold for transportation out of the State, and a license to wholesale druggists only to sell pure grain, ethyl, and fruit alcohol, to any druggist, or other person for scientific, pharmaceutical and mechanical purposes, or wine for sacramental purposes for use by religious bodies under the provisions of section forty-five hundred and ninety-two, and pure grain, ethyl, and fruit alcohol, pure whiskey, pure brandy, and wine for sacramental purposes to retail druggists in Virginia only, licensed under this chapter, and pure grain, ethyl or fruit alcohol to retail druggists outside of the State of Virginia, where the sale thereof is permitted by law. Any

Digitized by Google

citizen may appear personally or by counsel in opposition to the granting of any license herein provided for. (Id., § 14.)

Sec. 4601. Statement required of druggists; licenses to hospitals etc.—Each retail and wholesale druggist shall file a sworn statement with the clerk of the circuit court on or before the fifth of each month, stating the amount of pure fruit, ethyl, and grain alcohol, pure whiskey and pure brandy and wine on hand on the first of the previous month, the amount received during the previous month, and the amount on hand on the date the statement is made. Nothing in this chapter shall prevent the superintendent of a hospital from ordering, purchasing or receiving ardent spirits, or the superintendent of a chemical laboratory from ordering, purchasing or receiving pure grain, ethyl or pure fruit alcohol for the use of the hospital or laboratory, not to be used contrary to the provisions of this chapter, and nothing shall prevent common carriers from transporting and delivering such ardent spirits and alcohol to such hospitals or laboratories having license to order and receive the same, but before ordering or receiving said ardent spirits or alcohol, the hospital or laboratory shall procure license from the court under the same conditions as license is granted to druggists; but it shall be unlawful for any hospital to sell ardent spirits, except upon prescription to its own patients under the same restrictions and reports required of druggists. Chemical laboratories shall make report as required of druggists of the disposition and use of all alcohol received by them. (Id., § 14.)

Sec. 4602. Bond required of druggists, etc.; conditions; licenses to hotels and rights of common carriers.—If the license is granted, the applicant shall give bond in the penalty of not less than one thousand dollars, nor more than ten thousand dollars, as the court may require, with security to be approved by the court and with condition that he will not dispense or sell any ardent spirits or alcohol, except under and in accordance with the provisions of this chapter; but nothing in this chapter shall prevent the manager of any hotel from ordering or receiving ardent spirits, wines, or alcohols which shall be used for cooking, culinary purposes only, or externally with massage in connection with baths; and not to be used contrary to the provisions of this chapter; and nothing in this chapter shall prevent common carriers from transporting and delivering such ardent spirits, wines and alcohols to such hotels having license to order and receive the same; but before ordering or receiving such ardent spirits, wines or alcohols, the hotel shall procure a license from the court, as hereinafter provided. Such ardent spirits, wines or alcohols shall be used in no other manner than for cooking or any culinary purpose, or externally with massage in connection with baths, where baths are given in said hotel or bath houses connected therewith.

(1890)

Digitized by Google

Before a manager of a hotel shall receive any such ardent spirits, wines, or alcohols, he, or the owner of said hotel, must procure a license to do so from the circuit court of the county, or the corporation court of the city in which such hotel is located.

Before making application for such license, notice must be posted and continuously kept in a conspicuous place in the office of the hotel in which the privilege is to be exercised, for at least thirty days before making the application, stating the court before which and the time at which the application will be made for license to have and use such ardent spirits, wines and alcohols. Such notice shall be published once a week for three successive weeks in some newspaper published in the county or city, and if there is no newspaper published in the county in which the privilege is to be exercised, the notice shall be published in some newspaper of general circulation therein.

Before the court shall grant any such license the judge thereof shall be satisfied that the manager of said hotel making the application is of good moral character, is a hotel manager in good standing, that the hotel for which license is sought is a reputable one in which the business of keeping a hotel is carried on in good faith by the owner or lessee thereof; that said manager is not of intemperate habits or addicted to the use of any narcotic drugs; that he will observe the laws controlling the use of such ardent spirits, wines and alcohols; and that the applicant has presented satisfactory proof that there is a necessity existing for the granting of such license. Any citizen may appear personally or by counsel in opposition to the granting of any license herein provided for. (Id., § 14.)

Sec. 4603. Statements required of hotel managers; bond, etc.; counties and cities excepted.—Each manager of any licensed hotel shall file a sworn statement, with the clerk of the court which granted the license, on the first of each month, stating the amount of ardent spirits, wines and alcohols on hand on the first of the previous month, the amount received during the previous month and the amount on hand on the date the statement is made.

If the license is granted, the applicant shall give bond in the penalty of not less than five hundred dollars, nor more than twenty-five hundred dollars, as the court may require, with security to be approved by the court and with condition that said applicant will not use or dispose of any ardent spirits, wines or alcohol, except under and in accordance with the provisions of this chapter. The following counties are hereby exempted from the operation of so much of this section as permits the possession and use by hotels of ardent spirits for cooking or culinary purposes or externally with massage in connection with baths: Smyth, Russell, Scott, Prince Edward, Grayson, Giles, Bland, Prince William, Accomac, Louisa,

Digitized by Google

Carroll, Orange, Northampton, Southampton, Washington, Mathews, Middlesex, Lee, Tazewell, Buchanan, Henry, Wise, Dickenson, Rockingham, Greensville, Sussex, Floyd, Brunswick, Spotsylvania, Culpeper and the cities of Danville and Roanoke. (Id., § 14.)

Sec. 4604. Wood or denatured alcohol.—Nothing in this chapter shall be construed to apply to wood or denatured alcohol, the manufacture or sale of which does not require the payment of United States liquor dealers' tax. (Id., § 14.)

Sec. 4605. Amount which may be shipped druggists and hotels; records to be kept by transportation company.—Nothing in this chapter shall be construed to prevent a duly licensed druggist or manager of a hotel licensed under this chapter, from having shipped to him, or to prevent any transportation company from delivering to him, pure brandy, pure whiskey, ale, beer, wine and pure fruit, ethyl and grain alcohol, in such quantities and at such times as said druggist or manager of a hotel licensed under this chapter may deem necessary. But before any shipment is delivered, the consignee shall sign a record, to be made and kept by the transportation company, which shall state the name of the shipper, the kind and quantity of the ardent spirits shipped, the date of shipment and of delivery, and the consignee shall make an affidavit before some person authorized to administer an oath that the brandy, whiskey, wine, ale, beer, pure fruit and grain alcohol included in the shipment are to be sold, dispensed or used according to the provisions of this chapter. Any druggist or manager of a hotel licensed under this chapter, failing to comply with any of the provisions of this section, or who shall make a false affidavit, shall be guilty of a misdemeanor. In the counties of Roanoke, Halifax, Bedford, Grayson, Smyth, Russell, Scott, Lee, Floyd, Augusta, Pittsylvania, Washington, Bland, Giles, Pulaski, Prince William, Southampton, Rockingham, Princess Anne, Amherst, Accomac, Carroll, Lunenburg, Prince Edward, Patrick, Brunswick, Henrico, Chesterfield, Campbell, Loudoun, Orange and Northampton, Montgomery and Louisa, and the cities of Roanoke, Staunton, Danville, Norfolk, Portsmouth, Richmond and Radford, however, it shall not be lawful for druggists to purchase, store or sell ardent spirits, except wine for sacramental purposes and pure fruit, ethyl and grain alcohol for medicinal, scientific, mechanical or pharmaceutical purposes, as provided in this chapter. (1916, pp. 215, 553, § 15.)

Sec. 4606. Keeping ardent spirits at clubs, lodges, etc.—It shall be unlawful for ardent spirits to be kept, stored, sold, distributed, given away, or used in or at any club house, fraternity house, lodge or meeting place, whether such meeting place is a house, room, boat, car or any place in any building, or in the open air,

Digitized by Google

on land or water, or in any place, except in a bona fide "home" as hereinafter provided. Every person who shall directly or indirectly, or by association with others, keep or maintain or in any manner aid, assist or abet in keeping or maintaining any such club house, fraternity house, lodge or meeting place of any corporation, association or combination, or any place in which ardent spirits are received or kept for the purpose of use, gift, barter or sale, or for distribution, or individual use by means of lockers or otherwise, or for division among the members of any club, fraternity, lodge, corporation, association or combination by any means whatsoever; and every person who shall use, barter, sell, store or give away, dispense or assist or abet in bartering, selling, storing or giving away in individual lockers or otherwise, any ardent spirits so received or kept, shall be deemed guilty of a misdemeanor, and upon second offense shall be guilty of a felony, and in all cases the members, shareholders or guests in any club, fraternity, lodge, association, corporation or combination mentioned in this section shall be competent witnesses to prove any violation of the provisions of this section, or of any fact tending thereto. (1916, p. 215, § 16.)

Sec. 4607. Ardent spirits in houses of prostitution.—It shall be unlawful to deliver to, receive in, keep, store, dispense, give away or use ardent spirits, in a place reputed to be a house of prostitution, or in any place, except as provided in this chapter. Any violation of this provision shall be deemed a misdemeanor; a second or subsequent violation shall be deemed a felony. (Id., § 17.)

Sec. 4608. Devices to evade the provisions of this chapter.—The keeping, storing, or giving away of ardent spirits, or any shift, or device whatever, to evade the provisions of this chapter, shall be deemed unlawful within the provisions of this chapter, and shall be punished as unlawful selling is punished. (Id., § 18.)

Sec. 4609. Certain advertisements and circulation, etc., of certain printed matter prohibited; publication of statements concerning the liquor traffic.—It shall be unlawful (1), to advertise upon any street car, railroad car or other vehicle of transportation, or any public place or resort, or upon any sign or billboard, or by circular, poster, price list, newspaper, periodical, or otherwise within this State ardent spirits, or to advertise the manufacture, sale, keeping for sale or furnishing of the same, or the person from whom, or the firm or corporation from which, or the place where, or the price at which, or the method by which the same or any of them may be obtained; but manufacturers and wholesale druggists licensed under this chapter shall be permitted to send price lists to those to whom they are permitted to sell ardent spirits under this chapter; (2) to circulate or publish any written or printed matter, other than newspapers and periodicals published beyond the con-

Digitized by Google

fines of this State for which an obligation has been incurred or money paid, in which any advertisement in this section specified shall appear, or to permit any sign or billboard, containing such advertisement to remain upon one's premises; or to circulate any price list, order blank or other matter for the purpose of inducing or securing orders for such ardent spirits no matter where located. Any sheriff, constable or police officer is authorized to remove any such advertisement from any sign, billboard, or other public place when it comes to his notice, and shall do so upon demand of any citizen.

Any advertisement or notice containing the picture of a brewery, distillery, bottle, keg, barrel, or box, or other receptacle represented as containing ardent spirits, or designed to serve as an advertisement thereof, shall be within the inhibition of this section. Nothing in this chapter shall be construed as prohibiting any person from giving away without any compensation therefor any paper or magazine which he has received by mail, or which he has brought into the State in person, provided that such gift shall not be a subterfuge or device, or a violation of the provisions of this chapter, forbidding the circulation of newspapers, periodicals, or other written or printed matter containing any advertisement of ardent spirits; (3) it shall be unlawful for any newspaper or periodical published in this State to print in its columns statements concerning the liquor traffic, for which the said newspaper or periodical receives compensation of any kind, without printing at the beginning and at the close of said statements in type of the same size used in the body of said article the following statement: "Printed as paid advertising."

When any violation of any of the provisions of this section shall have occurred, the continuation and repetition of the unlawful act or any of like kind by the offending person,, firm or corporation, may be prevented by a writ of injunction issued by a court of equity or by the judge thereof in vacation, upon a bill filed in the name of the State of Virginia by the Attorney General, or by any attorney for the Commonwealth in any county or city, or by any citizen or citizens of the county or city in which the offense has been committed; and all rules of evidence, practice and procedure that pertain to courts of equity generally in this State may be invoked and applied, as well as the rules and practice prescribed for bills in equity to abate nuisances, as far as the same are applicable. All persons, whether agents, servants or officers of corporations, or agents or servants of individuals aiding or abetting in the commission of the offense, may be made parties defendant to such bills.

Any violation of any provision of this section shall be punishable by a fine of not less than fifty nor more than five hundred

Digitized by Google

dollars; to which may be added, in the discretion of the court or judge trying the case, imprisonment in jail for not more than six months; a second offense shall be punishable by a fine of not less than one hundred dollars nor more than five hundred dollars, and by imprisonment in jail for not less than two nor more than six months. (Id., § 19.)

Sec. 4610. Handling certain drafts for ardent spirits prohibited. —It shall be unlawful for any bank incorporated under the laws of this State, or any national or private bank, or any individual, corporation, firm or association, to present, collect, or in any way handle any draft, bill of exchange, or order to pay money, to which draft, bill of exchange, or order to pay money is attached a bill of lading, or order, or a receipt for any ardent spirits of any kind, prohibited by the laws of this State, to be manufactured or sold, or otherwise disposed of in this State, or which draft is enclosed with, connected with, or in any way related to, directly or indirectly, any bill of lading, or receipt for the said ardent spirits in this section above mentioned, and any person, firm, corporation or bank, or banker, violating the provisions of this chapter, shall be guilty of a misdemeanor, and shall be fined not less than fifty nor more than one hundred dollars. (Id., § 20.)

Sec. 4611. Agents of common carriers not to receive orders or collect money, etc., for ardent spirits.—It shall be unlawful for any employee or agent of any common carrier doing business in this State, to collect, receive or transmit any money or other valuable consideration in payment for any ardent spirits, delivered by said agent or employee, or any other agent, or employee of such common carrier, nor shall any agent or employee of any common carrier solicit or receive, or transmit any order for ardent spirits for another person, nor shall any such employee or agent receive any commission or fee on any ardent spirits shipped, transferred or delivered by such common carrier. A violation of this provision shall be a misdemeanor. (Id., § 21.)

Sec. 4612. Search warrants; arrest of offenders.—Every justice of the peace, police justice, circuit or city judge and mayor of any city or town, upon complaint and information given under oath, that any person is manufacturing, selling, offering, exposing keeping or storing for sale, barter, gift, or use ardent spirits contrary to law, or that affiant has cause to believe and does believe that such ardent spirits so manufactured, or sold, offered, kept or stored for sale, barter, gift, or use are in any house, building, car, boat, or other place, contrary to the provisions of this chapter, shall issue his warrant requiring any person suspected to be brought before him, or some justice of the peace, and the said house, building, boat, car or other place to be searched, and if ardent spirits are found therein contrary to the provisions of this

Digitized by Google

chapter, requiring the parties found in said house, building, boat, car or other place, to be arrested and brought before him or some justice of the peace, with such witnesses as shall be named in the warrant, or whose names are endorsed thereon, to give evidence concerning said complaint, and shall, in the same warrant, require the officer to whom it is directed, or who shall execute the same, to seize and hold all ardent spirits found therein, also all vessels, bar fixtures, screens, glasses, bottles, jugs and other appurtenances apparently used in the sale, keeping or storing of such ardent spirits, contrary to law. (Id., § 22.)

Sec. 4613. When accused sent on to court and recognizance required.—If upon examination of any person charged with the violation of any of the provisions of this chapter, it shall appear to the justice, judge, or mayor before whom the warrant is returned, that there is probable cause to believe the accused guilty, he shall be required to enter into a recognizance in the penalty and with security to be approved by the said justice, mayor or judge to appear before the next term of the circuit, hustings or corporation court having jurisdiction, to answer any indictment found against him. All material witnesses shall also be recognized, with or without security, as the justice, judge or mayor may deem proper, to appear before the grand jury, at the next term of the court having jurisdiction, to give evidence, and if the person so charged shall have been previously convicted of the violation of this chapter, the justice, judge or mayor may require of the person so charged, to give bond with penalty and security, to be approved by said justice, judge or mayor, conditioned that he will not violate any of the provisions of this chapter, until the charge against him has been tried or dismissed, and upon failure to give such bond, he shall be committed to jail until the bond is given, or he is discharged by the court. (Id., § 23.)

Sec. 4614. Jurisdiction of cases arising under this chapter.—The circuit, corporation and hustings courts having jurisdiction for the trial of criminal cases shall have exclusive original jurisdiction for the trial of all cases arising under this chapter; except that mayors, police justices and others having jurisdiction for the trial of cases for the violation of the ordinances of cities and towns shall have jurisdiction to try cases arising under ordinances passed by their respective cities and towns as hereinafter provided, with the right of appeal to the defendant to the court having jurisdiction to try such appeal. (Id., § 24.)

Sec. 4615. Enforcement of city ordinances; territory contiguous to cities.—Nothing in this chapter shall be construed as conflicting with the jurisdiction of any mayor or police justice in the enforcement of city ordinances, prohibiting the manufacture, sale or distribution of ardent spirits. For the enforcement of such or-

Digitized by Google

dinances, the mayor or police justice shall have jurisdiction over the territory contiguous to the city within three miles of the city limits, provided said three-mile limit does not interfere with the jurisdiction of the mayor or police justice of any other city or town, and where there is less than six miles between any city or town and another city or town, the jurisdiction of the mayor or police justice of either city or town shall extend to one-half the distance between said cities and towns.

In any prosecution before a mayor or police justice, the Commissioner of Prohibition shall be notified by the said mayor or justice, in time to attend said trial, and the commissioner, his deputies and inspectors, shall have the same power in respect to such cases that he has in cases before the circuit court. (Id., § 25.)

Sec. 4616. Trial of cases without a jury.—Nothing in this chapter shall interfere with the jurisdiction of courts for the trial of criminal cases without a jury. (Id., § 26.)

Sec. 4617. City ordinances regulating sale, etc., of ardent spirits—All cities and towns of the State of Virginia shall have full power to pass all ordinances (not repugnant to the Constitution and laws of the State), embracing such provisions of this chapter as are applicable and further to prohibit the manufacture, transportation, sale, keeping or storing for sale, advertising or exposing for sale, receiving, giving away or dispensing of ardent spirits, and to provide adequate penalties therefor. (Id., § 27.)

Sec. 4618. Finding of ardent spirits or United States liquor dealers' tax receipt prima facie evidence; who to be tried.—Whenever ardent spirits shall be seized in any room, building, boat, car or other place, searched under the provisions of this chapter, the finding of such ardent spirits or of a United States liquor dealer's tax receipt in any such place, shall be prima facie evidence of the unlawful selling, keeping and storing for sale, gift, or use, by the person or persons occupying such premises, or by any person named in any United States internal revenue tax receipt posted in any room or found anywhere on said premises, or elsewhere, and the proprietor or other person in charge of the premises where such ardent spirits are found, or who is so named in such United States government tax receipt, shall be tried on the charge of selling, and keeping and storing for sale unlawfully, such ardent spirits, under the indictment and form prescribed in section forty-five hundred and eighty-seven, and the liquor found upon said premises shall be destroyed, by order of the court, and the containers shall be sold or destroyed. (Id., § 28.)

Sec. 4619. When officers may break and enter houses, etc.—If in any house, building, boat, car, or other place, as is hereinbefore mentioned, the sale, offering, storing or exposing for sale of ardent spirits is carried on clandestinely, or in such manner that the per-

Digitized by Google

son or persons engaged therein cannot be seen or identified by the officer or officers charged with the execution of a warrant, under any section of this chapter, any such officer may, whenever it is necessary for the arrest or identification of the person or persons offending, or of seizing such ardent spirits, break open and enter such house, building, boat, car or place, or any room or part of any of them. (Id., § 29.)

Sec. 4620. Effect of payment of United States internal revenue tax; collectors' certificates as evidence.—The payment of the United States internal revenue tax, required of liquor dealers by the government of the United States, by any person or persons other than druggists, or hotels licensed under this chapter within this State, shall be prima facie evidence that such person or persons are engaged in keeping, selling, offering and exposing for sale, ardent spirits contrary to the laws of this State, and a certificate from the collector of internal revenue, his agents, clerks or deputies, showing the payment of such tax, the name or names of the person or persons to whom issued, shall be evidence of the payment of such tax in the examination or trial of any person or persons selling, keeping, offering and exposing for sale, ardent spirits, contrary to the provisions of this chapter. (Id., § 30.)

Sec. 4621. Analysis of mixtures supposed to contain ardent spirits; chemist's certificates as evidence.—It shall be the duty of the State Commissioner of Agriculture, at the written request of any officer, State, county, or municipal, including the Commissioner of Prohibition, charged with the execution of this chapter and other laws of this State concerning ardent spirits as herein defined, to cause to be analyzed any mixture supposed to contain ardent spirits as herein defined, and to return to the officer making the request a certificate of the chemist showing such analysis. For making said analysis the department of agriculture shall be paid the actual cost thereof, including the time of the chemist and the chemicals required in making said analysis. Said costs shall be paid by the Commissioner of Prohibition out of the funds appropriated for the enforcement of this chapter upon an itemized statement of the Commissioner of Agriculture rendered at the end of each month. The certificate of any chemist regularly employed in the Department of Agriculture of this State, when signed and sworn to by him, shall be evidence in all prosecutions for violations of this chapter or of any other laws relating to ardent spirits as herein defined and in all controversies touching the mixture analyzed by him; but the burden shall be upon the prosecution to establish the fact that the mixture analyzed is the same as that alleged to have been illicitly sold; but upon the motion of the accused, the chemist making the analysis shall be required to appear as a witness and shall be subject to cross-examination. (Id., § 30½.)

Digitized by Google

Sec. 4622. Certain houses, etc., declared common nuisances.—All houses, boat houses, buildings, tents, club, fraternity and lodge rooms, boats, cars and places of every description, including drug stores, where ardent spirits are manufactured, stored, sold, vended, dispensed, bartered, given away, furnished or used contrary to law by any scheme or device whatever, shall be held, taken and deemed common nuisances. Any person who shall maintain, or shall aid or abet, or knowingly be associated with others in maintaining such common nuisances, shall be guilty of a misdemeanor and judgment shall be given that such house, building, tent, boat house, boat, car or other place, or any room or part thereof, be closed up, but the court may, upon the owner giving bond in the penalty of not less than five hundred dollars, and with security to be approved by the court, conditioned that the premises shall not be used for unlawful purposes, or in violation of the provisions of this chapter, turn the same over to its owner. (Id., § 31.)

Sec. 4623. Election, salary and term of commissioner.—The General Assembly shall, in nineteen hundred and twenty, and every four years thereafter, elect a Commissioner of Prohibition, whose compensation shall be three thousand five hundred dollars per annum, and whose term of office shall be four years, commencing on the first day of September, nineteen hundred and twenty. The commissioner who may be in office when this Code takes effect shall continue therein until the expiration of his term of office. Whenever the word "commissioner" is used in this chapter it shall mean the Commissioner of Prohibition. (Id., § 32.)

Sec. 4624. Suspension by Governor.—The Governor of Virginia by authority vested in him by sections seventy-three and seventy-four of the Constitution shall have the power to suspend said commissioner from office for misbehavior, incapacity, neglect of official duty or acts performed without due authority of law, but in any case in which this power is so exercised, the Governor shall report to the General Assembly at the beginning of the next session thereafter the fact of such suspension, and the cause thereof; whereupon the General Assembly shall determine whether such commissioner shall be restored or finally removed, and the Governor shall have the power during the recess of the General Assembly, to appoint pro tempore a successor to the said commissioner; but his appointment to such vacancy shall expire at the end of thirty days after the commencement of the next session of the General Assembly. Except as herein provided, the General Assembly shall fill by election any vacancy in the office of commissioner, which election shall be for the unexpired term. (Id., § 32.)

Sec. 4625. Report to Governor.—The said commissioner shall make an annual report to the Governor, which shall, by the Governor, be biennially reported to the General Assembly; such re-

Digitized by Google

port shall give in detail the expenditure of all public moneys and the work of his department, together with such recommendations for new or additional legislation in reference to his powers and duties as he may deem expedient. (Id., § 32.)

Sec. 4626. Bond required of commissioner.—Before entering upon the duties of his office the said commissioner shall give a bond to be approved by the Attorney-General in the penalty of ten thousand dollars for the faithful performance of his duties. (Id., § 32.)

Sec. 4627. Appointment of deputies and inspectors; employment of attorneys, etc.—The commissioner shall have the power to appoint deputies and inspectors, and whenever he deems it necessary, employ attorneys and such other helpers as may be necessary in performing the duties of his office, but he shall keep their compensation and expenses within the limits of the appropriation made for the conduct and maintenance of his department. Said deputies and inspectors shall be removed at the pleasure of the commissioner. (Id., § 33.)

Sec. 4628. Duties and powers of commissioner; prosecution of cases arising under this chapter.—It shall be the duty of the commissioner, in person or by his deputies and inspectors, to superintend the enforcement of all the provisions of this chapter, and the laws of this State and ordinances of municipalities concerning the traffic in ardent spirits. The commissioner, his deputies and inspectors shall diligently inform themselves of all violations of such laws and make report thereof to the judge of the circuit or corporation court and to the Commonwealth's attorney of the county or city in which such violations occur, and it shall be the duty of every prosecuting attorney to faithfully prosecute every such case or complaint. The commissioner and his deputies and inspectors shall for the purposes of arrest under this chapter have the power of the sheriffs of the Commonwealth. The commissioner, if an attorney at law, may associate himself with the attorney for the Commonwealth; if not an attorney at law, may associate with the attorney for the Commonwealth an attorney representing his office in the prosecution of any complaint or case arising under this chapter, and in cases where he may deem it advisable, the commissioner may request the Attorney-General of the State, or one of his assistants selected by himself, to take charge of and control the management of such complaint or case, the Commonwealth's attorney acting with the commissioner, his attorney, or the Attorney-General, as the case may be; but nothing in this chapter shall be construed as taking from the attorneys for the Commonwealth, sheriffs or other officers any of the powers now conferred upon them except as herein provided. (Id., § 34.)

Sec. 4629. Powers of deputies and inspectors.—The deputies and

Digitized by Google

inspectors appointed by the Commissioner of Prohibition provided for in this chapter shall have the power to administer oaths, take affidavits and examine records, and, with a warrant, enter buildings where there is reason to believe that the law relating to ardent spirits is being violated. Such deputies and inspectors may call to their aid in securing such information and in making such search, any officer of the law whose duty it is to enforce the law prohibiting the sale of ardent spirits. (Id., § 35.)

Sec. 4630. Injunctions against nuisances as defined in this chapter.—The commissioner, his deputies or inspectors, the attorney for the Commonwealth, or any citizen of the county, town or city, where such a nuisance as is defined in this chapter exists, or is kept or maintained, may, in addition to the remedies given in and punishment imposed by this chapter, maintain a suit in equity in the name of the State to abate and perpetually enjoin the same. The courts of equity shall have jurisdiction thereof, and in every case where the bill charges, on the knowledge or belief of complainant, and is sworn to by two reputable citizens, that ardent spirits are sold, bartered, given away, distributed, dispensed or stored or used in any house, building, boat house, club room, fraternity room, lodge room, boat, tent, or any place contrary to the laws of this State, an injunction shall be granted as soon as the bill is presented to the court or judge in vacation, and no bond shall be required. The injunction shall enjoin and restrain the owners, tenants, their agents, employees, servants, and any person connected with said house, building or other place named in this section, and all persons whomsoever from selling, bartering, giving away, distributing, dispensing, storing, or using ardent spirits in said house, building, boat house, club room, fraternity room, boat, tent, or other place named in this section, and shall also restrain all persons from removing any ardent spirits then on said premises until the further order of the court. Upon the hearing of the cause, when it shall have been matured and set for hearing as required by law, upon deposition of witnesses, documentary and oral evidence, if the court or judge in vacation, shall be satisfied that the material allegations of the bill are true, although the premises complained of may not be then unlawfully used, it or he shall continue the injunction against such house, building or place, if it shall be a drug store for one year, and in all other cases the injunction shall be perpetual.

Any person guilty of a contempt by violating any of the provisions of the injunction granted under this section shall be summarily punished by the court, without the empaneling of a jury, by a fine of not less than one hundred nor more than five hundred dollars, and confinement in jail not less than one nor more than six months.

Digitized by Google

Whenever the court upon the hearing of any cause in equity under this section shall continue the injunction for one year or make it perpetual, it shall allow to the attorney for the complainant, or the commissioner, or the attorney for the Commonwealth, when he conducts the case without assistance, a reasonable fee, which shall be taxed and collected as other costs, provided that any fee allowed the commissioner shall be paid into the treasury of the State. (Id., § 36.)

Sec. 4631. Drinking ardent spirits in public places.—Any person who shall take a drink of ardent spirits in any railroad station, or at any boat landing, or in any day coach, or Pullman car, or on any passenger train, or in any passenger boat, or in any street car, hack, jitney, or other public conveyance, or automobile, or in any street, or alley, highway or in any other public place, or any person in charge of or employed in connection with any car, boat, hack, jitney, or other public conveyance or automobile, who shall procure for or assist in procuring or who shall give any information or direction by which any person may secure ardent spirits, shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than ten nor more than one hundred dollars. (Id., § 37.)

Sec. 4632. Books required to be kept by common carriers.—All railroad, steamboat or other boat companies, express and transportation companies, which shall in any manner at any time, transport ardent spirits from one place to another within this State, except as hereinafter provided, are hereby required to keep books alphabetically arranged, in which shall be entered immediately upon receipt thereof the name of every person shipping, or to whom ardent spirits are shipped; the amount and kind received, the date of delivery, by whom and to whom delivered. After this record is made and before delivery it shall be signed by the consignee. The book shall be open to the inspection of any State, county or municipal officer, or any deputy of such officer, or of any other person, during the business hours of the company. Such books or a copy of said records, attested by an officer of the company, or verified by affidavit, shall be admissible as evidence in any court, and shall be prima facie evidence of the fact therein stated in any trial or proceeding for the enforcement of the provisions of this chapter.

Any employee or agent of any express company, railroad company steamboat company, or transportation company, charged with the duty of keeping such record, who shall fail to keep such record shall be guilty of a misdemeanor.

Any railroad, express company, steamboat company, or transportation company who shall not require some one of its employees to keep such record, shall be fined not less than twenty-five nor more

Digitized by Google

than one hundred dollars for every day or portion thereof during which such failure shall continue. (Id., § 38.)

Sec. 4633. Transportation of ardent spirits.—No person or firm, and no corporations other than corporations authorized by the laws of this State to engage in the transportation of merchandise, as common carriers, shall bring into this State, for use in this State, from any point without this State, or transport from one point to another in this State, or from any point in this State to any point without this State, any ardent spirits, and no common carrier shall, except as otherwise specially provided in this chapter, bring into this State, from any point without this State, or transport from one point to another within the State, any ardent spirits except as follows: One quart of distilled liquors, or three gallons of beer, or one gallon of wine, may be brought to any person not a student at a university, college or any other school in this State, nor a minor nor a female (not the head of a family), in this State, for his own use, and not to be used contrary to the provisions of this chapter; provided every container in which such ardent spirits, wine or beer are carried shall, except as hereinafter provided, have a card not less than six by twelve inches, upon which shall be stated in letters not less than one inch high, the kind and quantity of ardent spirits, wine or beer that it contains. (Id., § 39.)

Sec. 4634. Books to be kept by common carriers; affidavit by consignees; receiving ardent spirits; penalties.—Every common carrier undertaking the transportation of ardent spirits from any point without this State to any point within this State, or from one point to another within this State, shall keep an alphabetically arranged book, in which shall be entered before the delivery thereof, the name of every shipper and person to whom ardent spirits are shipped, the amount and kind received, and upon delivery, the date of delivery and to whom delivered. After this record is made there shall be an affidavit in duplicate by the consignee, which shall state that the consignee is not a student, minor or a female (not the head of a family), that ardent spirits received were ordered by him, that he had not, within thirty days previous, received any ardent spirits of any kind whatever, from any place whatever, contrary to the provisions of this chapter, and that the ardent spirits then received are for his own use at his own home. This affidavit shall be made in duplicate, signed by the consignee and sworn to before a justice of the peace, notary public or a commissioner in chancery, or before an agent of the transportation company, all of which agents dealing with ardent spirits, shall, for the purposes aforesaid (without charge therefor), be authorized to administer an oath, and one original shall be sent on or before the fifth day of the month following, to the clerk of the court of the city or county having jurisdiction of criminal cases. If any employee charged with

Digitized by Google

the duty of keeping the record required by this section shall fail to keep said record, or shall deliver the ardent spirits transported to any person other than the consignee, or to such consignee, before he has signed his name and made the affidavit required by this section, or shall fail to file the affidavit as herein required, he shall be guilty of a misdemeanor.

Any person falsely representing himself to be the consignee of any ardent spirits, and receiving or offering, or attempting to receive the same, and any consignee making a false affidavit, shall be guilty of a misdemeanor. (Id., § 39.)

Sec. 4635. What consignees may authorize others to receive liquor for them; hours in which same may be delivered.—Any consignee may authorize in writing, a person not of intemperate habits or addicted to the use of narcotic drugs, not a minor or a female, to receive for him such ardent spirits. Such person shall sign the receipt or record, as agent for said consignee, provided that the said written authority shall be accompanied by the affidavit of the consignee as hereinbefore required; but it shall be unlawful for any common carrier to deliver ardent spirits to any person on Sunday, or before eight o'clock in the morning or after five o'clock in the afternoon of any other day. (Id., § 39.)

Sec. 4636. Amount permitted to travelers.—Nothing in this chapter shall be construed to prohibit any person traveling from one point to another within the State, or from without the State, to any point within the State, from carrying in his baggage for the bona fide use of himself or his family, and not as a means of evading the intent and meaning of this chapter, and not to be used contrary to the provisions of this chapter, ardent spirits not in excess of one quart, which bona fide baggage it shall not be necessary to label or mark, as provided in this chapter. It shall be unlawful for any person to bring into the State from any point without the State, whether in his personal baggage or otherwise, within a period of thirty days, more than one quart of ardent spirits, and any justice of the peace, police justice, circuit judge or mayor of any city or town upon complaint and information given under oath that affiant has cause to believe and does believe that any person is violating this provision of this chapter shall issue his warrant directing such person and his baggage to be brought before him for examination in accordance with the provisions of this chapter. (Id., § 39.)

Sec. 4637. Records kept by common carriers open to inspection.—The record required to be kept by common carriers in this chapter shall, during the business hours of such common carriers, be open to the inspection of any State, county or municipal officer, or any deputy of any such officer, or to any person. (Id., § 39.)

Sec. 4638. Amount of ardent spirits persons may receive; con-

Digitized by Google

tainers in which shipped; records to be kept by common carriers; penalty.—No person in this State shall receive or accept delivery from any railroad, steamboat, express company, or transportation company of any kind, or from any person whomsoever, any ardent spirits brought into this State from any point without the State, or ardent spirits transported from one point to another within this State, except as follows: He may receive one quart of distilled liquor "in a single container," or three gallons of beer, or one gallon of wine, not oftener than once a month; but every container in which such distilled liquor, wine or beer is carried, shall have on it a card not less than twelve inches long, by six inches wide, upon which shall be stated, in letters not less than one inch high, the kind and quantity of its contents, but a container in which a quart or less is carried, may have on it a card six inches long by four inches wide, upon which shall be stated in letters not less than one inch high, the kind and quantity of its contents, and shall, before receiving the distilled liquor, wine or beer, sign a record made or kept alphabetically by the company transporting the distilled liquor, wine or beer, which shall show the name of shipper, name of consignee, quantity and kind shipped, and date of shipment, and shall make an affidavit that the said distilled liquor, wine or beer was brought into the State on his written order, and that he has not received any distilled liquor, wine or beer from any person, or from any place, in excess of the quantity allowed by this chapter, within thirty days preceding the date of his affidavit, and that the distilled liquor, wine or beer will not be used in violation of the provisions of this chapter. Any person who shall receive such distilled liquor, wine or beer without signing such a record or making such affidavit, or who shall make a false affidavit, shall, for the first offense, be guilty of a misdemeanor, and for a second or any subsequent offense, of making a false affidavit, shall be guilty of a felony. (Id., § 40.)

Sec. 4639. Giving ardent spirits to minors etc.; sending minors and females for ardent spirits.—It shall be unlawful for any person to give ardent spirits to any person of intemperate habits or addicted to the use of any narcotic drug or for any person, except a parent or guardian, to give any ardent spirits to a minor, except on the prescription of a physician, or to send a minor or a female to obtain ardent spirits. (Id., § 41.)

Sec. 4640. Persons of intemperate habits, etc., required to disclose from whom they obtain ardent spirits; penalty for refusal.—Any person of intemperate habits or addicted to the use of any narcotic drug shall be compellable in any proceeding had under this section to disclose from whom he has received ardent spirits. For a failure or refusal to make such disclosure he shall be guilty of contempt and shall be fined not less than five dollars nor more

Digitized by Google

than fifty dollars and be committed to the jail for a period not exceeding thirty days. (Id., § 41.)

Sec. 4641. Possession of ardent spirits by minors a misdemeanor.—It shall be a misdemeanor for any minor to have ardent spirits in his possession, whether belonging to himself or another, and upon conviction, he shall be fined not less than ten nor more than five hundred dollars, and in the discretion of the court, he may be sentenced to jail, if over the age of eighteen years, or if under that age to a reformatory, for not less than one nor more than six months. And if it shall appear in any prosecution, under this section, that such minor is acting as the agent of another person, such person shall be deemed guilty of a misdemeanor. (Id., § 41.)

Sec. 4642. Ordering or receipt, etc., of ardent spirits by female.—It shall be unlawful for any female to order, receive or have in her possession, any ardent spirits, except as permitted in this chapter, and not then, unless she is the head of a family and for her own use in a bona fide home. (Id., § 42.)

Sec. 4643. When bond required of persons convicted.—In addition to the penalties imposed by this chapter for the violation of any of its provisions, the court may, in its discretion, after conviction is had, for the first offense, and shall after every subsequent conviction, require the defendant to execute bond with approved security, in the penalty of not less than five hundred, nor more than five thousand dollars, conditioned that the said defendant will not violate any of the provisions of this chapter, for the term of one year. And if said bond shall not be given, the defendant shall be committed to jail until it is given, or until he is discharged by the court, provided that he shall not be confined for a longer period than six months. (Id., § 43.)

Sec. 4644. Associate counsel in prosecutions.—Any citizen or organization within this State may employ an attorney to assist the attorney for the Commonwealth in the prosecution of any case under this chapter, and such attorney shall be recognized by the attorney for the Commonwealth and the court as associate counsel in the case; and no prosecution shall be dismissed over the objection of such associate counsel or over the objection of the Commissioner of Prohibition or of the attorney representing his office, or of the Attorney-General or his assistant whenever any of said officials are associated in such prosecution, until the reasons in writing of the attorney for the Commonwealth for such dismissal, with the objections thereto by the associate counsel in writing, shall have been filed, argued and fully considered by the court. (Id., § 44.)

Sec. 4645. Right of appeal by Commonwealth.—In all cases arising under this chapter the State shall have the right of appeal, ex-

Digitized by Google

cept when such appeal is forbidden by the Constitution. (Id., § 45.)

Sec. 4646. Effect when part of chapter declared unconstitutional.—If any section or provision of this chapter or any part of any section shall be declared unconstitutional by the Supreme Court of Appeals of Virginia, or the Supreme Court of the United States, the part so declared unconstitutional shall cease to be operative, but the remainder of the chapter and every section or part thereof not so declared unconstitutional shall continue to be the law of this State. (Id., § 46.)

Sec. 4647. Duties of attorney for the Commonwealth.—The attorney for the Commonwealth of every county and city in this State shall, as often as once a month, examine all prescriptions and affidavits and record books required to be kept by any section of this chapter and filed in the clerk's office, and if the said prescriptions, affidavits and records are not made and kept according to the provisions of this chapter, or if he has reason to believe that there has been any violation of any of the provisions of this chapter, he shall take such action as may be necessary to bring the offender to justice. (Id., § 47.)

Sec. 4648. Prescriptions, affidavits and record books to be examined.—The commissioner in person or by his deputies or inspectors shall as often as possible examine all prescriptions, affidavits and record books required by this chapter, and report the violation of any of its provisions to the attorney for the Commonwealth of the city or county in which said violations occur, whose duty it shall be to proceed at once to investigate and prosecute the same. (Id., § 48.)

Sec. 4649. Who deemed intoxicated; of intemperate habits.—Any person who has drunk enough ardent spirits to so affect his manner, disposition, speech, muscular movements, general appearance or behavior, as to be apparent to observation, shall be deemed, for the purposes of this chapter, to be intoxicated, and if he shall continue to use ardent spirits as a beverage during the period of one year, so as to produce the above results from time to time, he shall be deemed a person of intemperate habits within the meaning of this chapter. (Id., § 49.)

Sec. 4650. Hotel employees assisting guests to obtain ardent spirits; penalty.—Any bell boy, elevator boy, or employee of any hotel or place of public entertainment in this State who shall procure for or assist in procuring, or who shall give any information or direction to any guest or patron of such hotel or house of public or private entertainment, or other person by which said guest or other person may secure ardent spirits shall be deemed guilty of a misdemeanor, and upon conviction be fined not less than ten nor more than fifty dollars and be confined in jail or committed to the re-

Digitized by Google

formatory for not less than one nor more than six months. (Id., § 50.)

Sec. 4651. Hotel proprietor permitting employees to assist guests to secure ardent spirits; failure to discharge convicted employee; penalty.—Any proprietor of any hotel or house of public or private entertainment in this State who shall knowingly permit any bell boy, elevator boy, or other employee to, or who shall himself, procure ardent spirits for, or give direction and information by which ardent spirits can be secured by any guest, patron or other person, or who when duly notified that any employee has been convicted of a violation of any of the provisions of this chapter, shall fail at once to discharge said employee permanently, shall be guilty of a misdemeanor, and when convicted, shall be fined not less than one hundred nor more than five hundred dollars, and for any subsequent offense shall be fined not less than one hundred nor more than five hundred dollars and be confined in jail not less than one nor more than six months. (Id., § 51.)

Sec. 4652. Keeping or sale of ardent spirits in hotels prohibited.—It shall be unlawful for any keeper of a hotel or boarding house, even though he may reside in said hotel or boarding house, to keep in said hotel or boarding house or on the premises connected therewith, any ardent spirits, except for the personal use of himself and his family, or as provided herein, and not to be sold or dispensed or given away by any shift or device whatsoever; and if the keeper of any hotel or boarding house shall knowingly permit ardent spirits to be sold, kept, stored, dispensed, given away, or used in any part of said hotel or boarding house, or on the premises thereof, except on the prescription of a physician, and except as provided in this chapter, he shall be guilty of a misdemeanor. (Id., § 52.)

Sec. 4653. When licenses of hotels, etc., revoked.—If any keeper of a hotel, boarding house, pool room, billiard room, bowling alley, store or other place requiring any such license, or any employee with his knowledge, consent, connivance or acquiescence shall keep, store, dispense or use, contrary to the provisions of this chapter any ardent spirits, in addition to the penalties prescribed for the violations of this chapter, the license of such place shall be revoked for one year for the first offense, and for the second offense, no such license shall be granted at the same place or to the person convicted for a period of two years; but where the place is run under a lease by a person or persons other than the true owner of the building, nothing herein shall operate to prohibit the issuance of a license to a new lessee who was not in any way connected as employee or otherwise with the former business therein conducted at the time of the revocation of the license. (Id., § 53.)

Sec. 4654. Prescriptions and affidavits to be in duplicate; filing; examination.—All prescriptions and affidavits required by this chap-

Digitized by Google

ter shall be made in duplicate and one original filed with the clerk of the circuit court of the county or the corporation court of the city, which has criminal jurisdiction, on or before the fifth day of every month following the filing of such prescriptions and the making of such affidavits, by the druggists, or by the common carrier handling the same, and the failure of any physician to make out said prescription in duplicate and the failure of the person making the affidavit to do so in duplicate shall be deemed a misdemeanor. The clerk of the court with whom said prescriptions and said affidavits shall be filed shall paste them in an alphabetically arranged book, and permit their examination without fee. (Id., § 54.)

Sec. 4655. Certain officials charged with enforcement of provisions of this chapter; fees.—It shall be the duty of all sheriffs, attorneys for the Commonwealth, deputies, contsables and justices of the peace of the counties and cities, and all mayors, sergeants and their deputies, justices of the peace and police of the cities and towns of this State to enforce all of the provisions of this chapter; and the neglect, failure or refusal of such officer so to do shall be deemed misfeasance in office.

For official services rendered in connection with violations of this chapter all said officers, including clerks of courts having jurisdiction to try such cases, and witnesses summoned on behalf of the Commonwealth shall be entitled to and shall be paid the same fees as are now allowed by law in other misdemeanor and felony cases (as the case may be), said fees to be paid as now prescribed by law in misdemeanor and felony cases other than violations of the revenue laws. (Id., § 55.)

Sec. 4656. When identification to be required by druggists.—If any person lawfully applying by affidavits for ardent spirits is not personally known to the druggist to whom he applies, as the person named in the affidavit, and a proper person to receive such ardent spirits, the druggist shall require him to be identified by some person known to him, who is not of intemperate habits or addicted to the use of narcotic drugs. (Id., § 56.)

Sec. 4657. Search of vehicles; when same seized and person in charge arrested.—When any sheriff or sergeant or the deputy of either, or any constable or police officer or deputy commissioner or inspector appointed by the commissioner, shall have reason to suspect that ardent spirits are being transported in any wagon, buggy, automobile or other vehicle, contrary to law, he shall have the right and it shall be his duty to obtain a warrant to search such wagon, buggy, automobile or other vehicle, and to seize any and all ardent spirits found therein which is being transported contrary to law. Whenever any ardent spirits which are being illegally transported, or are being transported for an illegal use, shall be seized by an officer of the State of Virginia, he shall also take possession of the

Digitized by Google

vehicle and team or automobile, boat or any other conveyance other than a conveyance owned and used by a railroad, steamboat or express company, in which such liquor shall be found, and shall also arrest any person in charge of such team or vehicle, and report the seizure and arrest to the attorney for the Commonwealth of the county or city in which such seizure and arrest shall be made, and to the commissioner in writing, and the attorney for the Commonwealth shall at once proceed against the person arrested under the provisions of this chapter, who upon conviction, shall be deemed guilty of a misdemeanor and shall be fined not less than fifty nor more than five hundred dollars, and confined in jail not less than one nor more than six months; but the accused may give bond, approved by the court, or judge in vacation, or the bail commissioner, for his appearance in court to answer to the charge against him, and to pay the fine and costs if convicted, in which event the vehicle, team or automobile shall be released. (Id., § 57.)

Sec. 4658. How vehicles disposed of.—The court wherein the conviction is made shall, unless good cause to the contrary is shown by the owner, who must clearly prove that he was ignorant of the purposes for which his team or vehicle or automobile was being used, order a sale by public auction of the property seized, and the officer making the sale, after deducting the expense of keeping the animals and vehicles or automobile, the fee for seizure and the cost of sale shall pay the process to the officer authorized to receive fines. In the event that the proceeds of the sale shall exceed the amount of the fine and of the costs above mentioned, the balance remaining after the fine and costs shall have been paid shall be paid to the owner of the vehicle, team or automobile which has been sold. If, however, no one shall be found in charge of the team, vehicle or automobile, the taking of the same shall be advertised in some newspaper published in the city or county, or if there be no newspaper published in such city or county, in a newspaper having a circulation in the county, once a week for three weeks, and by handbills posted near the place of seizure, and if no claimant shall appear within ten days after the last publication of the advertisement, the property shall be sold and the proceeds, after deducting the expenses and the costs of advertising, shall be paid into the treasury of the State.

In any case the ardent spirits seized shall be destroyed and the containers sold or destroyed. (Id., § 57.)

Sec. 4659. Chapter deemed exercise of police powers.—This entire chapter shall be deemed an exercise of the police power of the State for the protection of the State, for the protection of the public health, peace and morals, and the prevention of the sale and use of ardent spirits, and all of its provisions shall be liberally construed to effect these objects. (Id., § 58.)

Digitized by Google

Sec. 4660. Prosecution of persons holding internal revenue tax receipt.—The commissioner shall, on the first day of each month, procure from the collector of internal revenue a list of all persons who have been granted United States internal revenue tax receipts for the sale of ardent spirits during the preceding month, and shall furnish to the attorney for the Commonwealth, of every county and city in this State, the names of the persons in his county or city holding such receipts, and shall publish a list of the names as procured by him, in a newspaper published in the city or county of their residence, and if there is no newspaper published in the county, then in some newspaper having general circulation in said county.

Every attorney for the Commonwealth, upon receiving the list of names in the preceding section, shall proceed against all such persons, except druggists, superintendents of hospitals and laboratories and other persons as provided herein, for the violation of the provisions of this chapter. (Id., § 59.)

Sec. 4661. Certain allegations unnecessary in indictment; what proof sufficient.—In an indictment for the violation of any provision of this chapter, as to a sale or gift of ardent spirits, it shall not be necessary to allege a sale or gift of ardent spirits to a particular person, and it shall be sufficient for the conviction of the accused to prove a sale or gift contrary to law, within one year prior to the finding of such indictment. (Id., § 60.)

Sec. 4662. Use of ardent spirits in the home; home defined; transient guests in hotels.—Nothing in this chapter shall prevent one, in his own home, from having and there giving to another, ardent spirits, when the quantity of such spirits shall not exceed the quantity allowed by this chapter, to be kept in his home, and such gift is in no wise a shift or device to evade the provisions of this chapter; but the word "home," as used herein, shall be the permanent residence of the person and his family, and shall not be construed to include a club, fraternity house, lodge room or rooms, or place of common resort, or room of a guest in a hotel or boarding house, provided that any transient guest may carry in his baggage for the bona fide use of himself or family not in excess of one quart of ardent spirits, the same not to be opened or used, or given away by such transient guest during his stay in said hotel or boarding house. (Id., § 61.)

Sec. 4663. Change of venue; venire from another county.—Whenever it shall appear to any court before whom a case is to be tried for the violation of the provisions of this chapter, that the local conditions, family connections of the accused or public feeling hostile to the provisions of this chapter, or that for any other reason the case cannot be fairly or impartially tried at the place or by a jury of the city or county, the court may in its discretion, upon motion of the attorney for the Commonwealth, the complainant or

Digitized by Google

his attorney, or of the commissioner or his attorney, when he is in the case, or the attorney for the accused, change the venue to some other county or city where it shall be tried; or the court may, in its discretion, order a jury to be summoned from another county or city, and no person who is a relative or indebted to the accused, shall act as juror in any such case, and in case of a change of venue as herein provided, the witnesses of the defendant shall be paid as if they were summoned for the Commonwealth. (Id., § 63.)

Sec. 4664. Soft drinks defined.—The words "soft drinks," as used in this chapter, shall be construed to embrace and include any and all beverages, patented, domestic or otherwise, of every description and kind, which may be offered for sale, in this State, not embraced in the words "ardent spirits" as defined in this chapter. (Id., § 64a.)

Sec. 4665. License for the sale of soft drinks.—It shall be unlawful for any person, firm or corporation to dispense soft drinks without first obtaining a license to do so (for which no additional tax shall be charged) from the circuit court of the county, or corporation or hustings court of the city in which county or city the privileges are to be exercised. Any citizen may appear personally or by counsel in opposition to the granting of said license, and the court may in its discretion refuse to grant such license if convinced that the person applying is not a suitable person to exercise the said privilege, and the court may revoke such license after giving to the holder of the same an opportunity to be heard in opposition to such revocation; provided it shall not be necessary to obtain such license to sell soft drinks at any place for benevolent or charitable purposes. It shall be unlawful for any dispenser of soft drinks to use any ardent spirits as a flavor or mixture.

Any person violating any provision of this section shall be deemed guilty of a misdemeanor and shall be fined not less than twenty-five nor more than one hundred dollars for the first offense, and shall be fined not less than fifty nor more than five hundred dollars for the second offense, and for every subsequent offense shall be fined not less than one hundred nor more than five hundred dollars, and confined in jail not less than one nor more than six months. (Id., § 64b.)

Sec. 4666. When possession of ardent spirits prima facie evidence of purpose to sell.—The possession by any person, of any ardent spirits, at any place other than his home, except as provided in this chapter, and the possession in his home of more than one gallon of distilled liquor, one gallon of wine or three gallons of beer, or other malt liquor, at any one time, shall, in any proceeding or prosecution under this chapter, be prima facie evidence that such person possesses such distilled liquors, wine and malt liquor for the purpose of sale; but it shall be lawful for any person to carry from

Digitized by Google

the depot of a common carrier to his own home any ardent spirits which he has received from such common carrier in accordance with the provisions of this chapter, or to carry from the depot any ardent spirits which he has received from a common carrier upon the written authority of the consignee as provided for in this chapter, said ardent spirits to be delivered at the home of said consignee; or to carry any ardent spirits which have been delivered to him by a registered pharmacist upon the prescription of a physician as provided in this chapter. (Id., § 65.)

Sec. 4667. What persons may make affidavits.—Whenever an affidavit is required to be administered under the provisions of this chapter, the person who is to receive and file such affidavit shall have authority to administer the oath, and the same shall be as binding as if administered by any officer now authorized by law to administer oaths. (Id., § 66.)

Sec. 4668. Stamps to be affixed to affidavits and prescriptions.—Every prescription and affidavit required by this chapter shall have affixed thereto and duly cancelled by the initials in ink of the person affixing the same, a five cent stamp, to be furnished to druggists, transportation companies and other persons handling such prescriptions and affidavits, who shall keep such stamps for that purpose in stock. Said stamps shall be prepared by the commissioner and sold by him to the parties required by law to handle the same. The persons for whom the prescriptions are given and the persons making the affidavit shall pay for the stamps affixed thereto. All money received by the commissioner from the sale of stamps or otherwise under this chapter shall be paid into the treasury of the State, and shall there be accounted for as a separate fund. (Id., § 67.)

Sec. 4669. When convict required to work on public roads.—Whenever a male person over the age of eighteen years is convicted under this chapter for an offense punishable by confinement in jail, he may, for the first offense, be required to work out the term of his confinement on the public roads, and for the second offense he shall be sentenced by the court to work out his term of confinement on the public roads, unless the court shall be satisfied that his physical condition be such, upon the testimony of two reputable physicians after careful personal examination, as to make such work permanently injurious to his health, and in every such case the judge shall after consultation with the State Commissioner of Highways by letter or otherwise name in his order the camp to which the person convicted is to be sent. (Id., § 68.)

Sec. 4670. Encumbering estate to evade chapter.—Any person who shall transfer, alienate, or encumber in any manner his estate, real or personal, with intent to evade any provisions of this chapter, and all persons aiding and abetting in such evasion shall be

Digitized by Google

deemed guilty of a misdemeanor for the first offense, and of a felony for every subsequent offense. (Id., § 69.)

Sec. 4671. When unlawful to grind malt.—It shall be unlawful for any person to grind malt in this State or any substitute for the same by whatever name it may be called, to be used in the manufacture of ardent spirits, and the burden of proof shall be upon any person grinding malt to show that such malt is not to be used in violation of this chapter, provided that this section shall not apply to any manufacturer of pure grain or ethyl alcohol licensed to manufacture such alcohol under this chapter. (Id., § 70.)

Sec. 4672. Agents of authorities may purchase ardent spirits contrary to the provisions of this chapter.—Nothing in this chapter shall be construed as prohibiting any person from purchasing ardent spirits contrary to the provisions of this chapter, when acting as the agent of the authorities charged with the enforcement of prohibition laws in the detection and conviction of violators of said laws. (Id., § 71.)

Sec. 4673. Certain local laws; and act approved March twenty-second nineteen hundred and sixteen, not repealed.—None of the provisions of this chapter shall be construed as repealing, annulling or in any way abrogating or superseding the act of the General Assembly, approved March twenty-fifth, nineteen hundred and two, as amended, relating to the sale of ardent spirits in the counties of Tazewell, Giles, Buchanan and Dickenson; or any other prohibitory act for any county or town, or any provisions of any charter of any city or town in so far as said act or acts or charter provision restricts, prohibits or limits the sale, manufacture or delivery of ardent spirits beyond the provisions of this chapter, but this chapter shall be construed as supplemental to said act or acts and charter provisions and in aid thereof, and such special act or acts and prohibitive charter provisions, beyond the provisions of this chapter, are hereby expressly continued unrepealed and the same shall remain with like force and effect as if this chapter had not been enacted. Nor shall any provision of this chapter be construed as repealing any ordinance of any town or city in so far as the same restricts and limits beyond the provisions of this chapter, the transportation, delivery, receipt, possession, sale, offering for sale, advertising for sale, or in any way dispensing, giving away or receiving orders or transmitting orders, for ardent spirits as herein defined; nor shall the provisions of this chapter be construed to repeal or alter an act approved March twenty-second, nineteen hundred and sixteen, entitled, "An act to provide for submitting to the qualified voters of counties and cities the question of interstate and intrastate shipment of ardent spirits for beverage purposes, and prohibiting the transportation, bringing into or receiving of ardent spirits for beverage purposes in any such county or city as shall

Digitized by Google

by majority vote under this act declare against interstate and intrastate shipment of ardent spirits for beverage purposes, and prescribing penalties therefor," but the same shall remain in full force and effect. (1916, pp. 208, 215, 820, § 72.)

Sec. 4674. Incriminating testimony no excuse for not testifying.— No person shall be excused from testifying as to any offense committed by another under this chapter by reason of his testimony tending to incriminate himself, but the testimony given by such person shall in no case be used against him, nor shall he be prosecuted for the offense as to which he testified. (Id., § 73.)

Sec. 4675. Right of action against persons causing intoxication.— Every wife, child, parent, guardian, or employer or other person who shall be injured in person or property or means of support by any intoxicated person in consequence of his intoxication, habitual or otherwise, shall have a right of action, in his or her own name against any person who shall, by selling, bartering, or giving away intoxicating liquors, have caused the intoxication of such person, for all damages actually sustained, as well as for exemplary damages; and a married woman shall have the right to bring suit, prosecute and control the same, and the amount recovered in like manner as if unmarried; and all damages recovered by a minor under this chapter shall be paid either to such minor or his or her parent, guardian, or next friend, as the court shall direct; and all suits for damages under this chapter shall be by civil action in any of the courts of this State having jurisdiction thereof. (Id., § 74.)

CHAPTER 185.

Offenses Against Public Policy.

Sec.
4676. Keeping gaming bank, gaming tables, etc., how punished; seizure of money, tables, etc.; money to be forfeited and tables, etc., burned
4677. Occupant of premises permitting gaming tables, gaming bank, etc., how punished.
4678. Persons aiding as doorkeepers, etc., how punished.
4679. Betting or playing at faro or at the said games, or at any game, except, etc., at a public place, how punished.
4680. What included in preceding section.
4681. Offense complete without betting.
4682. To prevent and punish betting, gambling, and the making, writing, or selling of books or pools or mutuals on the results of any trotting race or running race of horses or race of any kind, or on any game of ball.
4683. Pool selling, etc., upon the results of any trials of speed of any animals or beasts taking place without the

Digitized by Google

Sec.
limits of the Commonwealth forbidden.
4684. Relating to the entry and riding or driving of horses at places where purses, premiums, or stakes are competed for.
4685. Prohibiting keeping or exhibiting, or being concerned in interest in keeping or exhibiting, any slot machine or device that operates on the nickel-in-the-slot principle, in operating which the element of chance enters in.
4686. To prohibit gambling, how punished.
4687. To prohibit the conducting of any game played for money or other thing of value and receiving compensation from those who play; rules of evidence in prosecutions therefor; penalty.
4688. Keeper of ordinary, etc., permitting unlawful gaming at his house, etc., how punished.
4689. When his permission of the gaming presumed.
4690. Keeper of ordinary, etc., letting out-house, or, etc., for unlawful gaming, how punished; presumption against him.
4691. Winning by cheating or other fraud, how punished.
4692. Betting on election or appointment to office, how punished.
4693. Persons concerned in managing, etc., a lottery or raffle, or permitting same in his house, or buying, selling, etc., chances or tickets in a lottery, how punished.
4694. Money, etc., drawn or proposed to be drawn in such lottery, forfeited to the State.
4695. Furnishing cigarettes or tobacco in any form or pistols, etc., to minors.

Sec.
4696. Use of opium in the manufacture of cigarettes prohibited.
4697. Selling or giving toy firearms to persons under twelve years of age a misdemeanor.
4698. Persons issuing notes for circulation without authority of law, how punished.
4699. Persons passing, etc., such circulating medium, how punished.
4700. Persons bringing into the State for circulation notes under five dollars, or passing, etc., same, how punished.
4701. Issuing such notes, how punished; who deemed an issuer.
4702. Private action given; penalty cumulative.
4703. Scrip prohibited as well as notes.
4704. Law construed as remedial.
4705. Attorney's fee; officers not allowed fees out of the treasury in such cases.
4706. Members of any board of visitors, etc., or officers, etc., of any State institution, or, etc., contracting therewith, how punished.
4707. Unauthorized credit to minor students.
4708. Inspector or sampler of tobacco issuing false receipt or note, how punished.
4709. Importing convicts, how punished.
4710. Digging gensing within certain period, how punished.
4711. Junk dealers to keep certain books and exhibit the same; to make report of certain articles received or purchased by them, and prescribing penalties for failing to do so.
4712. Corruptly influencing agents, servants, or employees; penalty for influencing or being influenced.

Digitized by Google

Sec.
4713. Witness testifying under the preceding section to be immune from punishment thereunder.
4714. Definition of words and phrases used in the three following sections relating to bucketing and bucket-shopping.
4715. Prohibiting bucketing and bucket-shopping; penalty; second offense.
4716. Quotation of prices of securities, etc., in order to induce contracts prohibited by preceding section.
4717. Effect of failure or neglect to furnish on request information as to sale and purchase of securities or commodities.
4718. Effect of payment of license or other tax.
4719. Prohibiting unlawful use or wearing of any insignia or button of any association, or society, or trade's union, or any Southern cross of honor.
4720. To regulate the sale of seed cotton and prohibit the sale thereof at night.
4721. Hypnotism and mesmerism prohibited.
4722. Running automobiles, engines, etc., while intoxicated, how punished.

Sec. 4676. Keeping gaming bank, gaming tables, etc., how punished; seizure of money, tables, etc.; money to be forfeited and tables, etc., burned.—If any person keep or exhibit, for the purpose of gaming, any gaming table or bank of any name or description whatever, or any table or bank used for gaming which has no name, wheel of fortune or slot machine, any pigeon hole table or Jennie Lynn table, whether the game or table be played with cards, dice or otherwise, or be a partner or concerned in interest in the keeping or exhibiting such table or bank, he shall be confined in jail not less than two nor more than twelve months, and fined not less than one hundred nor more than one thousand dollars. Any such table, bank or wheel of fortune, and all the money, stakes or exhibits to allure persons to bet at such table, bank or wheel, may be seized by order of court, or under warrant of a justice, and the money so seized shall be forfeited, one-half to the person making the seizure, and the other half to the Commonwealth, and the table, bank, machine or wheel shall be burned. (Code 1887, § 3815.)

Revisors' Note.—The changes in this section were made for the purpose of making its langugae more comprehensive.

For cases under this section as it formerly stood, see Wyatt's Case, 6 Rand. 694; Huff's Case, 14 Grat. 648; Nuckolls' Case, 32 Grat. 884; Leath's Case, 32 Grat. 873; Rasnick's Case, 2 Va. Cas. 356; Angel's Case, Id., 231; Tiernan's Case, 4 Grat. 545; Morganstern's Case, 94 Va. 789, 26 S. E. 402. Lewis' Case, 115 Va. 962, 80 S. E. 575.

See note, Neal's Case, 22 Grat. 917; and note, Boyle's Case, 14 Grat. 674, Va. Rep. Anno.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 151, section 1.

Sec. 4677. Occupant of premises permitting gaming tables, gaming bank, etc., how punished.—If any person knowingly permit a gaming table, gaming bank or wheel of fortune, such as is mentioned in the preceding section, to be kept or exhibited on any premises in his

Digitized by Google

occupation, or who shall keep a place resorted to for the purpose of gaming, or a place frequented for such purposes, or who shall reside in such place for such purposes, he shall be confined in jail not exceeding one year, and fined not less than one hundred nor more than one thousand dollars. (Code 1887, § 3816.)

Revisors' Note.—The words, "or who shall keep a place resorted to for the purpose of gaming, or a place frequented for such purposes, or who shall reside in such place for such purposes," are new.

Under this section, a presentment is sufficient without information. Maddox's Case, 2 Va. Cas. 19.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 151, section 2.

Sec. 4678. Persons aiding as doorkeepers, etc., how punished.—If any person act as doorkeeper, guard or watch, or employ another person to act as such, for a keeper or exhibitor of a gaming table, gaming bank, or wheel of fortune, or a place resorted to for the purpose of gaming, or resist, or by any means or device hinder or delay the lawful arrest of such keeper or exhibitor, or person conducting such place, or the seizure of the table, bank, wheel or money exhibited or staked thereat, or unlawfully take the same from the person seizing it, he shall be confined in jail not exceeding one year, and fined not exceeding one thousand dollars. (Code 1887, § 3817.)

Revisors' Note.—The language of this section is made more comprehensive in order to conform to the preceding section.

Sec. 4679. Betting or playing at faro or at the said games, or at any game except, etc., at a public place, how punished.—If any person bet or play at any such table, bank or wheel of fortune as is mentioned in section forty-six hundred and seventy-six, or if at any ordinary, race field, store-house, tavern, inn or other public house, or in any street, highway, or other public place, or in any out-house or other place where people resort for the purpose of gaming, he play at any game except billiards, bowls, chess, backgammon, drafts, dominoes or a licensed game, or bet on the sides of those who play, he shall be fined thirty dollars and shall, if required by the court, give security for his behavior for one year or in default thereof, shall be confined in jail not exceeding three months. (Code 1887, § 3818.)

Revisors' Note.—The language of the present section is intended to be more comprehensive than that of the former section. The word "shall" in line two from the bottom of the text is used in lieu of "may."

A presentment for playing cards must allege the place to be public at the time of the playing, the name of the place not importing ex vi termini that it was at all times a public place. Bishops' Case, 13 Grat. 785; Hord's Case, 4 Leigh 674, 26 Am. Dec. 340; Robert's Case, 10 Leigh 686.

The true construction of this statute is that it is unlawful to bet at any game at a public place. Neal's Case, 22 Grat. 917. Therefore betting on the game of bagatelle at an auction is within the statute (Neal's Case, 22 Grat. 917); but betting on a horse race was not within the act of March, 1848 (Shelton's Case, 8 Grat. 592).

Digitized by Google

Playing cards at a tavern is unlawful gaming, whether the party bets or not. Terry's Case, 2 Va. Cas. 77.

The following have been held to be public places, within the meaning of the statute: Disused jail, on public square, accessible to all citizens. Walker's Case, 2 Va. Cas. 515. A house of entertainment, whether licensed or not. Linkous' Case, 9 Leigh 608; Hord's Case, 4 Leigh 674; Wortham's Case, 5 Rand. 675. Barn near a tavern on muster day. Farmer's Case, 8 Leigh 741. Racefield, where horses are training for approaching race. Wilson's Case, 9 Leigh 648. Licensed eating house in a town. Neal's Case, 22 Grat. 917. A church while the people are assembled (but at other times a church may be a strictly private place). Bishop's Case, 13 Grat. 785.

The following have been held not to be public places, within the meaning of the statute: A storehouse not within the curtilage of the tavern, nor used therewith, though leased by lessee of the tavern. Sanders' Case, 5 Leigh 751. Secluded spot in the open air, thickly surrounded by brush and briars, and two hundred yards from a shooting match. Vandine's Case, 6 Grat. 689. Storehouse at night, after business hours, and with door closed. Feazle's Case, 8 Grat. 586; Windsor's Case, 4 Leigh 680. A room in an outhouse, within the enclosure of the tavern lot, but not under control of tavern keeper. Purcell's Case, 14 Grat. 680.

Presentment for gaming at the booth of one man cannot be supported by proof of gaming at booth of a different man. Butts' Case, 2 Va. Cas. 18. But an indictment for playing at cards at a public place may be sustained by proof that the party bet at faro at the time and place stated. Gibboney's Case, 14 Grat. 582. But see Windsor's Case, 4 Leigh 680.

A presentment for playing cards "at or near" a place is objectionable for uncertainty. Bishop's Case, 13 Grat. 785.

Expert witness need not be a professional gambler. Nuckolls' Case, 32 Grat. 884.

Witness not justified in refusing to testify before grand jury on ground that his answer will tend to criminate himself. Kendrick's Case, 78 Va. 490; sections 4780, 4781.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 151, section 4.

Sec. 4680. What included in preceding section.—All houses and offices commonly known as public, and all gaming houses, are included within the meaning of the preceding section. Any room attached to such public house, and commonly used for gaming, is also included, whether the same be kept closed or open.

A business office after business hours, or a private residence, is not to be construed as within the meaning of a public house or place, unless such office after business hours, or private residence, is commonly used for gaming.

Revisors' Note.—This section is new.

Sec. 4681. Offense complete without betting.—In prosecutions under the two preceding sections, it shall not be necessary for the Commonwealth to prove that any money, or article of value, or the representation of either, was bet at such game.

Revisors' Note.—This section is new.

Sec. 4682. To prevent and punish betting, gambling, and the making, writing, or selling of books or pools or mutuals on the results of any trotting race or running race of horses or race of any kind, or on any game of ball.—It shall be unlawful for any person or per-

Digitized by Google

sons or association of persons, corporation, or corporations, to occupy any room, shed, tenement, or building, or any part thereof, or to occupy any place upon any grounds with books, apparatus, or paraphernalia for the purpose of recording or registering bets or wagers or of selling or making books, pools, or mutuals upon the result of any game of baseball, football, or any trial of speed or power of endurance of animals or beasts, or being the owner or lessee or occupant of any room, tent, tenement, shed, booth, or building or part thereof, knowingly to permit the same to be used or occupied for any such purposes, or therein to keep, exhibit, or employ any device or apparatus for the purpose of recording or registering such bets or wagers or the selling or making of such books, pools, or mutuals, or to become the custodian or depository for gain, hire, or reward of any money, property, or thing of value bet or wagered or to be wagered or bet contrary to the provisions of this section, or to receive, register, record, forward, or purport or pretend to forward to or for any game of baseball, football, or any race course any money, thing, or consideration of value offered for the purpose of being bet or wagered upon any game of baseball, football, or the speed or endurance of any animal or beast, or to occupy any place or building or part thereof with books, papers, apparatus, or paraphernalia for the purpose of receiving or pretending to receive or for recording or registering or for forwarding or pretending or attempting to forward in any manner whatever any money, thing, or consideration of value bet or to be bet contrary to the provisions of this section, or to aid or assist or abet at any race track or place in any manner in any of the acts forbidden by this statute.

Any person or persons or association of persons, corporation, or corporations violating the provisions of this section shall be fined not less than two hundred nor more than five hundred dollars, one-fourth of which shall be paid to the informer, and be imprisoned not less than thirty days nor more than ninety days.

But nothing in this section shall be construed to prevent agricultural associations and riding and driving clubs or associations offering a purse or premium at such trials of speed of animals or beasts as may be held by them. (1891-2, p. 626; 1893-4, p. 646; 1895-6, p. 579.)

Revisors' Note.—This section is a combination of Acts 1893-4, p. 646 and Acts 1895-6, p. 579.

The title of the act of 1891-2, p. 626 (cited in the parentheses above) was held to be a sufficient compliance with section 15, art. 5, Const. 1869, providing that no law shall embrace more than one object, which shall be exprssed in its title. Same provision as section 52, Const. 1902. Lescallett's Case, 89 Va. 878, 17 S. E. 546.

The court in Lescallett's Case, 89 Va. 878, 17 S. E. 546, decided that this statute being penal should be strictly construed, apparently overlooking the provisions of section 4704, which provides that all laws for suppressing gaming shall be construed as remedial.

(1920)

Digitized by Google

Sec. 4683. Pool selling, etc., upon the results of any trials of speed of any animals or beasts taking place without the limits of the Commonwealth forbidden.—It shall be unlawful for any person or persons, or association of persons, corporation or corporations by any ways, means, or devices to make any bet or wager or receive or record or register or forward or purport or pretend to forward any money, thing, or consideration of value to be bet or wagered upon the result of any trial of speed or power of endurance or skill of animals or beasts which is to take place beyond the limits of this Commonwealth, or by any ways, means, or devices to aid, assist, or abet in the making of any bet or wager or the receiving, recording, or registering, or forwarding or purporting or pretending to forward any money, thing, or consideration of value to be bet or wagered upon the result of any trial of speed or power of endurance or skill of animals or beasts which is to take place beyond the limits of this Commonwealth, or to aid or assist or abet in any way or in any manner in any of the acts forbidden by this section.

Any person or persons or association of persons or corporation or corporations violating the provisions of this section shall be fined not less than two hundred nor more than five hundred dollars and be imprisoned not less than thirty nor more than ninety days. (1895-6, p. 576.)

The act upon which this section is based was held not to be repugnant to the interstate commerce clause of the United States Constitution; nor was it inoperative because it was signed by the Governor on the same day as section 3818c of Pollard's Code (1904), which was inconsistent with the same. Lacey v. Palmer, 93 Va. 159, 24 S. E. 930, 31 L. R. A. 822, 57 Am. St. Rep. 795. For note to same, see 2 Va. Law Reg. 94.

The act was unconstitutional as to all offenses created by it, except "pool-selling on horse races." The words "and so forth" express nothing as a compliance with the constitutional provision as to article 5, section 15, Const. 1869. (Same provision in Const. 1902, section 52.) Lacey v. Palmer, 93 Va. 159, 24 S. E. 930, 31 L. R. A. 822, 57 Am. St. Rep. 795.

Sec. 4684. Relating to the entry and riding or driving of horses at places where purses, premiums, or stakes are competed for.—Whoever for the purpose of competing for a purse, premium, or stake offered by any agricultural society or by any person or association in this State knowingly and designedly enters, rides, or drives any horse that is painted, stained, or in any way marked or disguised, or that is a different horse from the one which is purported to be entered, ridden, or driven, or knowingly and designedly for the purpose of competing for a purse, premium, or stake, enters, rides, or drives a horse in a class to which it does not belong shall be punished by a fine not less than fifty dollars and not exceeding three hundred dollars or by imprisonment not less than thirty days and not exceeding six months. (1893-4, p. 265.)

Sec. 4685. Prohibiting keeping or exhibiting, or being concerned

Digitized by Google

the same punishment and incur the same forfeiture as if such unlawful gaming were permitted at his own principal house; and, in a prosecution therefor, if the gaming be proved, it shall be presumed that such out-house or other place was let or hired with intent aforesaid, unless the presumption be repelled in the manner mentioned in the preceding section. (Code 1887, § 3822.)

See notes to section 4688.

Sec. 4691. Winning by cheating or other fraud, how punished.—If any person playing at any game, or making a wager, or having share in any stake or wager, or betting on the hands or sides of others playing at any game, or making a wager, cheat, or by fraudulent means win or acquire, for himself or another, money or other valuable thing, he shall be confined in jail not exceeding one year, and fined not less than five times the value of the money or thing won or acquired. (Code 1887, § 3823.)

Sec. 4692. Betting on election or appointment to office, how punished.—If any person bet or wager money or other thing over the value of five dollars, on any election or appointment to any office or place, to be made under authority of the Constitution and laws of this State, or of the United States, he shall be fined not less than the value of such money or thing, and not more than five times the value thereof. (Code 1887, § 3824.)

This is to be construed as a remedial (not penal) statute. Shumate's Case, 15 Grat. 653. See section 4704.

A bet implies a risk, but not necessarily a risk in both parties. There must be between them a chance of gain and a chance of loss, but the terms may be such that it is impossible for one to lose and yet the transaction may be a wager. Shumate's Case, 15 Grat. 653.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 5, section 9.

Sec. 4693. Persons concerned in managing, etc., a lottery or raffle, or permitting same in his house, or buying, selling, etc., chances or tickets in a lottery, how punished.—If any person set up or promote, or be concerned in managing or drawing a lottery or raffle, for money or other thing of value, or knowingly permit such lottery in any house under his control, or knowingly permit money or other property to be raffled for in such house, or to be won therein, by throwing or using dice, or by any other game of chance, or knowingly permit the sale in such house of any chance or ticket in or share of a ticket in a lottery, or any writing, certificate, bill, token, or other device purporting or intended to guarantee or assure to any person, or entitle him to a prize or share of, or interest in a prize to be drawn in a lottery, or, for himself or another person, buy, sell, or transfer, or have in his possession for the purpose of sale, or with intent to exchange, negotiate, or transfer, or aid in selling, exchanging, negotiating, or transferring a chance or ticket in or share of a ticket in a lottery, or any such writing, certificate, bill, token, or device, he shall be confined in jail not

Digitized by Google

exceeding one year, and fined not exceeding five hundred dollars. (Code 1887, § 3825, 3826.)

A witness cannot be required to give evidence in a prosecution for managing and conducting a lottery, if he will thereby criminate himself. Temple's Case, 75 Va. 892.

Is a drawing for distribution of lots of unequal value among subscribers to stock of a corporation a violation of this section? Cardwell v. Kelly, 95 Va. 573, 28 S. E. 953, 40 L. R. A. 240.

As the law was by the Code of 1819, the taking chance in a raffle was not the same offense as the purchase of a foreign lottery ticket. Garland's Case, 5 Rand. 652.

For an article on "Advertising Schemes and the Lottery Law," see 2 Va. L. Reg. N. S. 178.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 151, section 11.

Sec. 4694. Money, etc., drawn or proposed to be drawn in such lottery, forfeited to the State.—All money and things of value, drawn or proposed to be drawn by an inhabitant of this State and all money or things of value received by such person by reason of his being the owner or holder of a ticket or share of a ticket in any lottery, or pretended lottery, contrary to this chapter, shall be forfeited to the Commonwealth, and may be seized by an officer and held to await proceedings for condemnation. (Code 1887, § 3827.)

Sec. 4695. Furnishing cigarettes or tobacco in any form or pistols, etc., to minors.—If any person sell, barter, give, or furnish, or cause to be sold, bartered, given or furnished to any minor under sixteen years of age cigarettes or tobacco in any form, or pistols or dirks or bowie-knives, having good cause to believe him or her to be a minor under sixteen years of age, said person shall be fined not less than ten nor more than one hundred dollars. (1889-90, p. 118; 1893-4, p. 425.)

Sec. 4696. Use of opium in the manufacture of cigarettes prohibited.—Any manufacturer or manufacturers of cigarettes who shall employ opium, either in the tobacco used or the paper wrappers of cigarettes, shall be guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense, or imprisoned not less than six months, or both. (1910, p. 358.)

Revisors' Note.—The act from which this section is taken provided that the offender should "be fined not less than one hundred dollars nor more than one thousand dollars for each offense, AND imprisoned, IN THE DISCRETION OF THE TRIAL COURT, not less than six months." The revisors deemed it better to leave the whole subject of the punishment to the jury, within the limits prescribed.

Sec. 4697. Selling or giving toy firearms to persons under twelve years of age a misdemeanor.—It shall be unlawful for any person, firm, corporation, or association, to sell, barter, exchange, furnish, or dispose of by purchase, gift, or in any other manner, any toy gun, pistol, rifle, or other toy firearm, if the same shall, by means

Digitized by Google

of powder or other explosive discharge blank or ball charges, to any person under the age of twelve years. Any firm, corporation, or association violating the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars, or confined in jail for a period not less than thirty nor more than ninety days, or both. Each sale of any of the articles hereinbefore specified to any person under the age mentioned shall constitute a separate offense, and any person over the age of twelve years who shall purchase, accept, or in any manner acquire any of the toy articles of the kind hereinbefore enumerated for any person under the age of twelve years, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars, or confined in jail not less than thirty nor more than sixty days, or both. (1902-3-4, p. 261.)

Revisors' Note.—The punishment for violating the latter part of this section has been reduced. Formerly, it was by fine of not less than one hundred nor more than two hundred dollars, or confinement in jail not less than thirty days nor more than six months, or both.

The revisors have reduced penalties in a number of instances because it is the certainty of punishment rather than its severity that tends to prevent crimes, and if the penalties are put too high, there are many cases where juries will not convict.

Sec. 4698. Persons issuing notes for circulation without authority of law, how punished.—Every person who, with intent to create a circulating medium, shall issue without authority of law, any note or other security, purporting that money or other thing of value is payable by or on behalf of such person, and every officer and agent of such person aiding or assisting therein shall be confined in jail not exceeding six months and fined not less than one hundred dollars nor more than five hundred dollars. But this section shall not apply to any bank or association for carrying on the business of banking, organized under the laws of Virginia for the issue of notes for circulation. (Code 1887, § 3830; 1899-00, p. 804.)

Sec. 4699. Persons passing, etc., such circulating medium, how punished.—If any person pass or receive in payment, any note or security issued in violation of the preceding section or section forty-one hundred and thirty-six, knowing the same to have been illegally issued, he shall be fined not less than twenty nor more than one hundred dollars. (Code 1887, § 3831.)

Revisors' Note.—The words, "knowing the same to have been illegally issued" are new. This qualification seemed to be not only proper, but necessary.

Sec. 4700. Persons bringing into the State for circulation notes under five dollars, or passing, etc., same, how punished.—If any person bring into this State, with intent to put the same in cir-

Digitized by Google

culation, any bank note of less denomination than five dollars, issued in another State, or pass or receive such note in payment, he shall be fined not less than twenty nor more than one hundred dollars; but this section shall not apply to a non-resident of this State traveling or temporarily sojourning therein. (Code 1887, § 3832.)

Sec. 4701. Issuing such notes, how punished; who deemed an issuer.—In every case where a note of less denomination than five dollars is offered or issued as money, whether the said note be issued by a bank, corporation, or by individuals, the person, firm, or association of persons, corporation, or body politic, so offering or issuing such note, shall be fined ten dollars; and every person whose name is signed on the face of such note, shall be deemed an issuer in the meaning of this chapter. (Code 1887, § 3833.)

Sec. 4702. Private action given; penalty cumulative.—Any person may recover, by motion before a justice or court, from any person whose name is on the face of a note of a denomination less than five dollars, five times the amount of such note; and such recovery shall be in addition to the fine hereinbefore imposed. (Code 1887, § 3835.)

Revisors' Note.—The words "or alderman, or before any" formerly appearing in this section after "justice," have been omitted.

Sec. 4703. Scrip prohibited as well as notes.—The five preceding sections shall apply as well to interest-bearing scrip for sums less than five dollars, as to notes of other descriptions. (Code 1887, § 3836.)

Sec. 4704. Law construed as remedial.—All laws for suppressing gaming, lotteries, unchartered banks, and the circulation of bank notes for less than five dollars, shall be construed as remedial. (Code 1887, § 3837.)

See Shumate's Case, 15 Grat. 653.

Sec. 4705. Attorney's fee; officers not allowed fees out of the treasury in such cases.—In every case of conviction for an offense under any preceding section of this chapter, an attorney's fee of ten dollars shall be taxed in the costs and paid by the defendant, but no attorney or officer shall be entitled to the payment of any fees out of the treasury for services rendered in a prosecution for such offense. (Code 1887, § 3838; 1889-90, p. 172; 1899-00, p. 329.)

Sec. 4706. Members of any board of visitors, etc., or officers etc., of any State institution, or, etc., contracting therewith, how punished.—If any member of the board of visitors or directors of any State institution, or employee or agent thereof, or any trustee of any public trust or fund, or any salaried officer of any such State institution, or of any such public trust or fund, contract or be interested in any contract with such institution or with the gov-

Digitized by Google

erning authority of such public trust or fund in any manner for furnishing supplies or performing any work for said institution, or for the governing authority of said trust or fund, he shall be fined not exceeding five hundred dollars. (Code 1887, § 3839.)

Sec. 4707. Unauthorized credit to minor students.—Any person who shall give credit to a minor student of any college or university, or other institution of learning of this State, without the written consent of his parent or guardian, or of an authorized officer of such institution, shall be guilty of a misdemeanor, and fined not less than fifty dollars. (Code 1887, § 2835, 3840; 1897-8, p. 253.)

Revisors' Note.—This section is based upon the statutes cited at the end of the section, and is intended to carry out the policy thereof. As it now reads it seems to carry out that policy better than the former statutes.

Sec. 4708. Inspector or sampler of tobacco issuing false receipt or note, how punished.—If any inspector or sampler of tobacco, issue, or cause to be issued, his receipt or note for any tobacco not received into the warehouse of which he is inspector or sampler, or more than one receipt or note for the same tobacco, except when authorized by law to do so, or re-issue or pass away a tobacco receipt or note, after the delivery of the tobacco for which it was given, he shall be confined in the penitentiary not less than two nor more than five years. (Code 1887, § 3841.)

Sec. 4709. Importing convicts, how punished.—If a master of a vessel, or other person, knowingly import or bring into this State from any place out of the United States, any person convicted of crime, he shall be confined in jail for three months, and be fined one hundred dollars. (Code 1887, § 3842.)

Sec. 4710. Digging gensing within certain period, how punished.—If any person dig gensing between the fifteenth day of March and the fifteenth day of September, elsewhere than on his own land, he shall be fined not less than five nor more than ten dollars for each offense, one-half to go to the informer, and the residue to the Commonwealth. (Code 1887, § 3845.)

Revisors' Note.—The words, "elsewhere than on his own land" are new.

Sec. 4711. Junk dealers to keep certain books and exhibit the same; to make report of certain articles received or purchased by them, and prescribing penalties for failing to do so.—Every junk dealer shall keep at his place of business a book or books, in which shall be fairly written in English an accurate description of each article purchased or received by him (except rags, bones, old scrap iron other than gas-pipe, and paper), with the price paid therefor, together with the name, residence, occupation, and a correct description of the person from whom he received the same. The said book shall at all times be open to the inspection of any

Digitized by Google

sheriff, sergeant, constable, or police officer of the county or corporation in which such junk dealer shall do business. Every junk dealer doing business in any city or town shall every day (except Sunday) before eleven o'clock in the forenoon deliver to the chief of police of such city or town on a blank form to be prescribed by such chief of police a legible and correct transcript from his book or books of his transactions of the previous day. No junk dealer shall sell, melt, change the form of, or dispose of any article bought or received by him which he is required by this section to make record of and report within five days after such report. Any junk dealer who shall fail to keep such book or who shall on demand fail or refuse to exhibit the same to any sheriff, sergeant, constable, or police officer, or who shall fail or refuse to make a correct report as required by this section, or who shall in any other respect violate its provisions, shall be deemed guilty of a misdemeanor, and for each offense shall on conviction thereof be punished with a fine of not less than ten nor more than one hundred dollars. If any junk dealer shall have in his possession any article which is proved to have been stolen, except rags, bones, old scrap iron other than gas-pipe, and paper, the receipt or purchase of which he has not recorded in the book which he is required to keep or which he has not reported as prescribed by this section he shall be deemed guilty of the larceny thereof. (1897-8, p. 521.)

Sec. 4712. Corruptly influencing agents, servants or employees; penalty for influencing or being influenced.—Any person who gives, offers, or promises to an agent, employee, or servant, any gift or gratuity whatever, without the knowledge and consent of the principal, employer, or master of such agent, employee, or servant, with intent to influence his action to the prejudice of his principal's, employer's, or master's business;

Or an agent, employee, or servant who, without the knowledge and consent of his principal, employer, or master, requests or accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to himself, under an agreement or with an understanding that he shall act in any particular manner as to his principal's, employer's, or master's business;

Or an agent, employee, or servant, who being authorized to procure materials, supplies, or other articles either by purchase or contract for his principal, employer, or master, or to employ service or labor for his principal, employer or master, receives directly or indirectly, for himself or for another, a commission, discount, or bonus from the person who makes such sale or contract, or furnishes such materials, supplies, or other articles, or from a person who renders such service or labor;

Digitized by Google

Or any person who gives or offers such an agent, employee, or servant such commission, discount, or bonus;

Shall be guilty of a misdemeanor. (1906, p. 458.)

Revisors' Note.—This section is taken from the first part of section 1 of the act cited, with the omission of the proviso. For punishment of misdemeanors where no other is provided, see section 4782. It is not intended by the omission of the proviso to change the meaning of the section in this respect.

This statute is similar to one which had previously been adopted in New York.

Sec. 4713. Witness testifying under the preceding section to be immune from punishment thereunder.—No witness called by the attorney for the Commonwealth, or by the court, and giving evidence for the prosecution in a proceeding under the preceding section shall ever be proceeded against for any offense under that section, but such witness shall be compelled to testify, and for refusing to do so, may be punished for contempt. (1906, p. 458.)

Revisors' Note.—The immunity furnished by the original act was not complete. The change made in the phraseology is intended to give complete immunity.

Sec. 4714. Definition of words and phrases used in the three following sections relating to bucketing and bucket-shopping.—The following words and phrases used in the three following sections shall, unless a different meaning is plainly required by the context, have the following meaning:

"Person" shall mean an individual, partnership, corporation or association, whether acting in his or their own right, or as the officer, agent, servant, correspondent or representative of another.

"Contract" shall mean any agreement, trade or transaction.

"Securities" shall mean all evidences of debt or property and options for the purchase and sale thereof, shares in any corporation or association, bonds, coupons, scrip, rights, choses in action and other evidences of debt or property and options for the purchase or sale thereof.

"Commodities" shall mean anything movable that is bought and sold.

"Bucket shop" shall mean any room, office, store, building or other place where any contract prohibited by the said three following sections is made, or offered to be made.

"Keeper" shall mean any person owning, keeping, managing, operating or promoting a bucket shop, or assisting so to do.

"Bucketing" or "bucket-shopping" shall mean:

The making of, or offering to make, any contract respecting the purchase or sale, either upon credit, or upon margin,, of any securities or commodities wherein both parties thereto intend. or such keeper intends, that such contract shall be, or may be, terminated, closed or settled according to, or upon the basis of, the public market quotations of prices made on any board of trade or

Digitized by Google

exchange, upon which said securities or commodities are dealt in, and without a bona fide purchase or sale of the same; or

The making of, or offering to make, any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities, wherein both parties intend, or such keeper intends, that such contract shall be, or may be, deemed terminated, closed or settled, when such public market quotations of prices for the securities or commodities named in such contract shall reach a certain figure without a bona fide purchase or sale of the same; or

The making of, or offering to make, any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities, wherein both parties do not intend, or such keeper does not intend, the actual or bona fide receipt or delivery of such securities or commodities, but do intend, or such keeper does intend, a settlement of such contract based upon the differences in such public market quotations of price at which said securities or commodities are, or are asserted to be, bought and sold. (1908, p. 605, § 1.)

Sec. 4715. Prohibiting bucketing and bucket-shopping; penalty; second offense.—Any person who makes, or offers to make, any contract defined in the preceding section, or who is the keeper of any bucket shop, shall, upon conviction therefor, be deemed guilty of a misdemeanor. Any person who shall be convicted of a second offense shall be punished by imprisonment in the penitentiary for not more than five years. The continuing of the keeping of a bucket shop, by any person, after the first conviction therefor, shall be deemed a second offense under this section. (1908, p. 605, § 2.)

Revisors' Note.—The only change made in this section is as to the punishment in the first sentence of the section.

Sec. 4716. Quotation of prices of securities, etc., in order to induce contracts prohibited by preceding section.—Any person who shall communicate, receive, exhibit or display in any manner any statement of quotations of prices of any securities or commodities with an intent to make, or offer to make, or to aid in making, or offering to make, any contract prohibited by the preceding section, upon conviction thereof shall be subject to the penalties provided in the said section. (1908, p. 605, § 3.)

Sec. 4717. Effect of failure or neglect to furnish on request information as to sale and purchase of securities or commodities.—Every person shall furnish, upon demand, to any customer or principal for whom such person has executed any order for the actual purchase or sale of any securities or commodities, either for immediate or future delivery, a written statement containing the names of the persons from whom such property was bought, or to whom it has been sold, as the fact may be, the time when, place

Digitized by Google

where, and the price, at which time the same was either bought or sold; and if such person shall refuse or neglect to furnish such statement within twenty-four hours after such demand, such refusal or neglect shall be prima facie evidence that such purchase or sale was bucketing or bucket-shopping. (1908, p. 605, § 4.)

Sec. 4718. Effect of payment of license or other tax.—No person committing any of the acts or things prohibited in the three preceding sections shall be allowed to plead in defense thereof the payment of any license or other tax to the State, or to any county or municipality thereof; nor shall the payment of any such license or tax in any wise operate to relieve such offender from the penalties imposed by the said sections. (1908, p. 605, § 5.)

Sec. 4719. Prohibiting unlawful use or wearing of any insignia or button of any association or society, or trade's union, or any Southern cross of honor.—Any person who shall wilfully wear any insignia or button of any association, society or trade's union or who shall use the same to obtain aid or assistance within this State, unless he shall be entitled to use or wear the same under the constitution, by-laws, rules and regulations of such association, society or trade's union, or any person who shall wilfully wear or use, to obtain assistance, any Southern cross of honor, not being entitled to do so under the regulation under which such crosses of honor are given, shall be guilty of a misdemeanor. (1908, p. 52; 1910, p. 331.)

Revisors' Note.—The only change made in this section is as to the punishment.

As to the constitutionality of this section, see 24 L. R. A. (N. S.), 795.

Sec. 4720. To regulate the sale of seed cotton and prohibit the sale thereof at night.—It shall be unlawful for any person in the night-time to sell, buy, or to store for sale at a future time, or allowed to be stored at his place of business for future sale, any seed cotton; but this section shall not apply to storing cotton in public gin houses for the purpose of ginning. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor. All purchasers of seed cotton shall keep a strict account of their purchases, the name of the seller, the quantity purchased, and the date of sale, which shall be open to inspection at all times to any person having a pecuniary interest therein. (1912, p. 570.)

Revisors' Note.—The only material change made in this section is as to the punishment.

Sec. 4721. Hypnotism and mesmerism prohibited.—If any person or persons shall hypnotize or mesmerize or attempt to hypnotize or mesmerize any person or persons, he shall be deemed guilty of a misdemeanor. But this section shall not apply to hypnotism or

Digitized by Google

mesmerism performed by a licensed physician or surgeon, or at his request, in the practice of his profession. (1912, p. 136.)

Revisors' Note.—The act from which this section is taken also made it unlawful for any one to consent to be hypnotized or mesmerized, except by a regularly practicing physician. This feature is omitted. For punishment of misdemeanors where no other is provided by statute, see section 4782.

Sec. 4722. Running automobiles, engines, etc., while intoxicated; how punished.—It shall be unlawful for any person to drive or run any automobile, car, truck, engine, or train while under the influence of intoxicants. If any person violates the provisions of this section he shall be guilty of a misdemeanor. (1916, p. 640.)

Revisors' Note.—The act from which this section is taken provided that "It shall be unlawful for any CHAUFFEUR, MOTORMAN, ENGINEER OR OTHER person to drive," etc. The capitalized words are omitted to obviate the question of the application of the rule ejusdem generis. The punishment is now as for a misdemeanor, for which see section 4782.

CHAPTER 186.

Offenses Against the Election Laws.

Sec.
4723. Judge, clerk, etc., failing to attend election, how punished.
4724. Officer, etc., neglecting his duty in regard to election, or doing it corruptly, how punished.
4725. Person voting unlawfully, or advising another to do so, or attempting by threats or bribe to influence vote of elector, or furnishing false ballot, or fraudulently putting ballot in box, or, etc., how punished.
4726. Non-residents voting at election in this State, how punished.
4727. Giving or receiving bribe for vote, how punished.
4728. Wilfully rejecting, or corruptly registering a voter, how punished.
4729. Altering, destroying, etc., books, etc., of registration, how punished.

Sec. 4723. Judge, clerk, etc., failing to attend election, how punished.—If any judge, clerk or commissioner of election fail to attend at the time and place appointed for such election, or to perform any of the duties imposed on him by law, without good and sufficient reason, he shall be fined not less than ten nor more than one hundred dollars. (Code 1887, § 3849.)

Sec. 4724. Officer, etc., neglecting his duty in regard to election, or doing it corruptly, how punished.—If any officer, messenger, or other person on whom any duty is enjoined by law relative to general, primary or special elections, be guilty of any wilful neglect of such duty, or of any corrupt conduct in the execution of the same, he shall be fined not exceeding five hundred dollars, and con-

Digitized by Google

fined in jail not exceeding one year; and if any officer be convicted as aforesaid, he shall be removed from office. (Code 1887, § 3850.)

Revisors' Note.—The word, "primary," found in line three of the text, is new. See section 224.

The county or corporation courts have the right to remove a judge of elections for malfeasance in office or for gross neglect of duty, though he has not been convicted by the jury of any offense, but on the contrary has been acquitted. McDougal v. Guigon, 27 Grat. 133. It should be remembered that at the time of this decision the courts appointed the judges of election.

Sec. 4725. Person voting unlawfully, or advising another to do so, or attempting by threats or bribe to influence vote of elector, or furnishing false ballot, or fraudulently putting ballot in box, or, etc., how punished.—If any person knowingly vote in any election district in which he does not actually reside, or, in which he is not a registered voter; or vote more than once at the same election; or not being a qualified elector, vote at any election with an unlawful intent; or procure, aid, assist, counsel, or advise another to vote, knowing that such person is not duly qualified to vote at the place where, and the time when, the vote is to be given; or, by threat or bribery, attempt to influence any elector in giving his vote or ballot, or, by such means, attempt to deter him from giving his vote or ballot; or procure, aid, assist, counsel, or advise another to go or come into any county, corporation, or election district for the purpose of illegally giving his vote in such county, corporation, or election district, knowing that such person is not legally qualified to vote therein; or furnish a ballot to an elector, who cannot read the language in which such ballot is printed or written, informing him that it contains a name or names different from those which are written or printed thereon, with an intent to deceive and induce him to vote contrary to his inclination; or fraudulently or deceitfully change a ballot of an elector, by which such elector is prevented from voting for such candidate or candidates as he intended; or, after proclamation made of the opening of the polls and at any time before the vote is fully canvassed, fraudulently put a ballot or ticket in the box, he shall be confined in jail not exceeding one year, and fined not exceeding one thousand dollars. (Code 1887, § 3851.)

Sec. 4726. Non-residents voting at election in this State, how punished.—If any person, not a resident of this State, vote at any election held in this State, he shall be confined in the penitentiary not less than six nor more than twelve months and fined not exceeding five hundred dollars; or, in the discretion of the jury, be confined in jail not exceeding twelve months and fined not exceeding one thousand dollars. (Code 1887, § 3852.)

Sec. 4727. Giving or receiving bribe for vote, how punished.—If any person, directly or indirectly, give to a voter in any election any money, goods, or chattels under an agreement, express or im-

Digitized by Google

plied, that such voter shall give his vote for a particular candidate, or for or against any question voted on at any such election, such person shall be fined not less than one hundred dollars nor more than one thousand dollars, or confined in jail not less than one nor more than twelve months. And the voter receiving such money, goods, or chattels, in pursuance of such agreement, shall be punished in like manner with the person giving the same. (Code 1887, § 3853; 1902-3-4, p. 880.)

In an information against a justice of the peace for bribery in the election of a clerk, it ought to be stated with certainty that an election was holden, and that at that election the vote was given. Newell's Case, 2 Wash. 88.

On the trial of an indictment under this section, against a voter for receiving a bribe, a witness who is asked to testify as to his knowledge of any violation of section 145a of Pollard's Code (see chapter 16 of this Code), and "of any other election laws," is entitled to the immunity afforded by clause 9 of said section 145a (section 258 of this Code), and is compellable to testify. Flanary's Case, 113 Va. 775, 75 S. E. 289.

Cited but not construed in Rose's Case, 116 Va. 1023, 82 S. E. 699.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 5, section 8.

Sec. 4728. Wilfully rejecting, or corruptly registering a voter, how punished.—If any registrar wilfully or maliciously reject from registration, or corruptly register any person, contrary to law, he shall be deemed guilty of a misdemeanor. (Code 1887, § 3854.)

Revisors' Note.—No change, except as to the punishment.

Sec. 4729. Altering, destroying, etc., books, etc., of registration, how punished.—If any officer or other person illegally change, alter, amend, or destroy any books or lists of registration, he shall be fined not less than fifty nor more than one hundred dollars, and confined in jail not less than three nor more than twelve months. (Code 1887, § 3855.)

CHAPTER 187.

Offenses Concerning Highways; Obstructions in Water Courses; Hindrance to Travelers.

Sec.
4730. Killing trees near highways, injuring bridges, obstructing roads, or driving on sidewalk, or, etc., how punished.
4731. Encroachment on or changing the lines or direction of any public road without permission of the circuit court; penalty.
4732. Injuring sidewalks or shade trees of owner of land in an unincorporated town, how punished.
4733. Prohibiting riding or driving on sidewalks in unincorporated towns and villages.
4734. Railroad company, etc., obstructing free passage on street or road, or any one standing a vehicle on track of a railroad, how punished.

Digitized by Google

Sec.
4735. Moving engine with steam on road without keeping messenger ahead to warn persons, or without spark arrester, how punished.
4736. How a person riding a bicycle shall pass a vehicle or person on horseback on the public highways and bridges; penalties.
4737. Leading or driving a bear along the street or road, how punished.
4738. Shooting in or along a road, or, etc., or in a street, how punished.
4739. How travelers to pass on road or bridge, how punished for failure.
4740. Fast riding or driving over bridge, how punished.
4741. Fast riding or racing on highways, streets, etc., prohibited, how punished.
4742. Driving sheep along road more than ten miles without branding them, how punished.
4743. Casting dead animal into road, how punished.
4744. Restraint of unaltered horses, jacks, and bulls.
4745. Putting or casting glass, etc., into public road, a misdemeanor.
4746. Felling timber or casting wood into a river or creek, whereby a bridge, or, etc., is injured, how punished.
4747. Dams, etc., which obstruct navigation or passage of fish, prohibited; punishment therefor.
4748. Obstructing navigation of Mattaponi or Pamunkey river, how punished.
4749. Obstructing navigation of Sycamore creek, or passage of fish therein, how punished.
4750. Placing weirs in Rappahannock creek, how punished.
4751. Throwing oyster shells, etc., into waters near landings in certain counties, how punished.
4752. Obstructing navigation of prongs of Big Sandy river, how punished.
4753. Landowners in Rockingham county to keep streams flowing through their lands free from obstructions; punishment for failure.
4754. Obstructing Louisa fork of Sandy river, how punished.
4755. Failure to sound steam whistle on James river, how punished.
4756. For the protection of aids to navigation established by the United States Lighthouse Board.
4757. The word "road" construed.

Sec. 4730. Killing trees near highways injuring bridges, obstructing roads, or driving on sidewalks, or, etc., how punished.—If any person kill a tree within the distance of fifty feet of a road, or so cut or injure it as to render it liable to fall, and leave it standing;

Or knowingly and wilfully, without lawful authority, break down, destroy, or injure any bridge, bench or log placed across a stream for the accommodation of pedestrians, or any sign board, mile-stone, or post, for the direction of travelers;

Or obstruct any road or any ditch made for the purpose of draining any such road,

Or wilfully ride any horse, mule, or other animal, upon any sidewalk, constructed of any material other than dirt or earth, along any highway through any unincorporated village;

(1936)

Digitized by Google

He shall be guilty of a misdemeanor. (Code 1887, § 3856; 1897-8, p. 895; 1899-00, p. 1114.)

Revisors' Note.—The words, "or use a bicycle, or drive any vehicle," formerly appearing in this section after "animal" found in the next to the last paragraph, have been omitted in view of section 4733. The penalty for violating the section is prescribed by section 4782. Before the revision the penalty was a fine of not less than one dollar nor more than one hundred dollars.

The onus of proving that the road alleged to have been obstructed was at the time of the offense a regularly established and open road rests on the Commonwealth. Bailey's Case, 78 Va. 19.

Under Act 1877-8, p. 379, similar in effect to this, it was held that failure of the indictment to aver scienter is fatal. Bailey's Case, 78 Va. 19.

Under this section a road which has merely been ordered to be opened, but has never been actually opened, is not a road, such as this section prescribes a penalty for obstructing. Id.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 43, section 45.

Sec. 4731. Encroachment on or changing the lines or direction of any public road without permission of the circuit court; penalty. —Any person other than a duly authorized officer, changing the line of any public road, on either side thereof, as the lines have existed for twenty years or more, shall be guilty of a misdemeanor, unless he shall have first obtained, upon petition, the permission of the circuit court of the county in which the road lies, which petition and permission shall be entered of record, showing how, and to what extent, the line of a public road has been changed. It shall be the duty of the supervisor of the district to give notice in writing to all persons making, or who have made, such encroachment on any public road in his district, by changing the lines or the direction thereof, without permission of the circuit court as aforesaid, to remove any fence or obstruction, whether heretofore or hereafter made, and to restore the original line or lines of the said road, and on failure to do so within twenty days after said notice, the person so offending shall be liable to a fine of five dollars for each day the said fence or other obstruction remains in said road, after the expiration of the said twenty days aforesaid. (1902-3-4, p. 489.)

Revisors' Note.—The act from which this section is taken prescribed no mode by which the application could be made. Under the revised section, the application is by petition, which petition, together with the permission of the court, when obtained, is to be entered of record, "showing how, and to what extent, the line of a public road has been changed." The penalty for violating the first part of the section is prescribed by section 4782. Before the revision the penalty was a fine of not less than five nor more than fifty dollars.

Cited but not construed. Martin v. Richmond, 108 Va. 765; 62 S. E. 800.

Sec. 4732. Injuring sidewalks or shade trees of owner of land in an unincorporated town, how punished.—It shall be lawful for any person, owning property in a town not incorporated, to construct,

Digitized by Google

upon any public road, street or public square, at an illegal speed, or at a speed tending to endanger human life or bodily safety, or to cause the destruction of the property of another, or causes such vehicle, conveyance or car to run at an illegal or dangerous speed in attempting to pass another vehicle, conveyance or car, or to prevent such other vehicle, conveyance or car from passing his own, and any person who rides or drives any animal or animals over or upon any public road, street, highway, bridge, or landing, at a speed tending to endanger human life or bodily safety, or to cause the destruction of property, or if any horse race be run on any road, bridge, or landing or street, the rider of such horse in such race, the owner, if he assent thereto, and every person who shall bet on the race, shall be deemed guilty of a misdemeanor. (Code 1887, § 3864.)

Revisors' Note.—This section is largely new, and is much more comprehensive than the section as it stood before the revision. Formerly the section applied to horse-racing only. For punishment of misdemeanors where no other is prescribed by statute, see section 4782.

Sec. 4742. Driving sheep along road more than ten miles without branding them, how punished.—If any drover drive, or cause to be driven, sheep along a road for a greater distance than ten miles without having the same branded or marked with paint, he shall be fined five dollars for each offense, and every ten miles any such sheep may be so driven, shall constitute a separate offense. (Code 1887, § 3865.)

Cited but not construed in Wells' Case, 107 Va. 834, 57 S. E. 588.

Sec. 4743. Casting dead animal into road, how punished.—If any person cast any dead animal into a road, or having in custody any maimed, diseased, disabled or infirm animal, leaves it to lie or be in a street, road or public place, he shall be fined not exceeding twenty dollars. (Code 1887, § 3866.)

Revisors' Note.—The words, "or having in custody any maimed, diseased, disabled or infirm animal, leaves it to lie or be in a street, road or public place." appear in this section for the first time. They are taken from a later act. See revisors' note to section 4554.

Sec. 4744. Restraint of unaltered horses, jacks and bulls.—If any person wilfully or negligently permit any unaltered horse or jack of the age of two years or more, or any bull of the age of one year or more, to go at large out of the enclosed grounds of the owner or keeper, or take such horse or jack to any place of public worship, after being admonished by any person not to do so, he shall forfeit ten dollars for the first offense, and for the second offense double that amount, to be recovered before a justice; and for the third offense said horse, jack or bull shall be the property of any person who will take him up: but the provisions of this section, as to bulls, shall not apply to any county until adopted by a major-

Digitized by Google

ity vote of the board of supervisors of such county. (Code 1887, § 2191; 1910, p. 325.)

Sec. 4745. Putting or casting glass, etc., into public road, a misdemeanor.—If any person shall put or cast into any public road of this Commonwealth any glass, bottles, glassware, crockery, porcelain, or pieces thereof, or any pieces of iron or hard or sharp metal, or any nails, tacks, or sharp-pointed instruments of any kind, likely in their nature to cut or puncture any tire of any vehicle, or injure any animal traveling thereon, he shall be deemed guilty of a misdemeanor. (1916, p. 627.)

Revisors' Note.—The act from which this section is taken expressly made a distinction in the punishment between a wilful and malicious violation and a careless violation, prescribing the punishment in each case. The revised section leaves the punishment to be regulated by section 4782, thus giving the court, jury, or justice much discretion in fixing it, according to the circumstances of the particular case. Section 8 of the act expressly gave an action of damages against any person violating the act, for loss or injury sustained, by any one so aggrieved. It is believed this section would lie independently of section 8, hence this section has been omitted.

Sec. 4746. Felling timber or casting wood into a river or creek, whereby a bridge, or, etc., is injured, how punished.—If any person knowingly and wilfully fell timber into any of the rivers or creeks in this State, or cast any waste wood into the same, which shall damage or destroy any bridge or boat, or injure any other property by drifting against such property, he shall be fined not less than ten nor more than one hundred dollars. (Code 1887, § 3867.)

Sec. 4747. Dams, etc., which obstruct navigation or passage of fish, prohibited; punishment therefor.—Any dam or other thing, in a water course, which obstructs navigation or the passage of fish, shall be deemed a nuisance, unless it be to work a mill, manufactory, or other machine or engine useful to the public, and is allowed by law or order of court. And though a dam may have been so allowed in a water course before the first day of January, seventeen hundred and eighty-seven, yet if it cause obstruction, it shall not be rebuilt, if destroyed, until leave for that purpose has been obtained under chapter one hundred and forty. For every twenty-four hours that a dam or other thing may remain in a water course, in violation of this section, the person causing or permitting such violation shall forfeit two dollars, whereof the informer shall have one-half. This section shall not apply to mill dams across rivers, creeks, or branches within the counties of Floyd, Carroll, and Grayson. (Code 1887, § 3868.)

Revisors' Note.—The words, "if destroyed" found in line eight of the text, are new, but not intended to change the existing law.

On a prosecution for the abatement of a public nuisance consisting of a milldam, it was error to refuse a requested instruction that a milldam lawfully established is not prima facie a nuisance. Jeremy Impl. Co. v. Com., 106 Va. 482, 56 S. E. 224.

Digitized by Google

See note, 13 Va. Law Reg. 213.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 44, section 24.

Sec. 4748. Obstructing navigation of Mattaponi or Pamunkey river, how punished.—If any person fell any timber, or make or cause to be made any weir, hedge, or other obstruction, in the channel or in the navigable waters of the Mattaponi and Pamunkey rivers he shall be fined not less than ten nor more than fifty dollars, one-half to go to the informer and the residue to the Commonwealth, and, in addition thereto, may be confined in jail not exceeding six months; but nothing in this section shall be construed to prevent placing fish traps, weirs, and nets in the shoal waters of these rivers below navigable points, unless the same be prohibited by some other section. (Code 1887, § 3869.)

Sec. 4749. Obstructing navigation of Sycamore creek, or passage of fish therein, how punished.—If any person fell any timber, or make or cause to be made any weir or hedge, or put any stakes, brush, fence, or other obstruction in Sycamore Mill creek, in the county of New Kent, leading from low water mark on the Pamunkey river to the mill of R. P. Cooke, on Sycamore Mill creek, so as to obstruct the free passage of boats, canoes,, or other floating vessels, or fish, from coming to said Cooke's mill, and the free passage of water from the mill to the river, he shall be fined not less than twenty-five nor more than fifty dollars, and, in addition, may be confined in jail not less than thirty nor more than ninety days. (Code 1887, § 3870.)

Sec. 4750. Placing weirs in Rappahannock creek, how punished.—If any person set or keep a weir or hedge in Rappahannock creek, in the county of Richmond, in the month of December, he shall be fined not less than five nor more than twenty dollars. (Code 1887, § 3871.)

Sec. 4751. Throwing oyster shells, etc., into waters near landings in certain counties, how punished.—If any person throw oyster shells, clam shells, or other substances, tending to obstruct navigation, into the waters adjacent to the landings in the counties of Accomac, Lancaster, and Northampton, or into the navigable channels leading thereto, he shall be fined not less than five nor more than twenty dollars. (Code 1887, § 3872.)

Sec. 4752. Obstructing navigation of prongs of Big Sandy river, how punished.—If any person fell timber, or roll rocks into, or otherwise obstruct the navigation of, the prongs of Big Sandy river known as Levisa, Russel's, McClure, Crane's Nest, and Pound and Guesses' river, Bear creek, Powel's river, Luna creek, and south fork of Powel's river in Wise and Buchanan counties, he shall be fined not less than five nor more than twenty dollars. This section shall not apply to water gates and mill dams. (Code 1887, § 3873.)

Digitized by Google

Sec. 4753. Land owners in Rockingham county to keep streams flowing through their lands free from obstructions; punishment for failure.—All persons owning lands in the county of Rockingham, lying along the following streams, and between the points on the said streams herein designated—to-wit: On the North river, between the Augusta county line and the town of Bridgewater; on the Briery branch, between the old Cook farm, and where said branch flows into Beaver creek between the head of said stream, and where the same flows into North river, on Dry river, between Rawley springs and where the same flows into North river, and on the north branch of the Shenandoah river, between Coote's store, and the Shenandoah county line, shall keep the channels of the said streams free from fallen timber, drift wood and other obstructions, where said streams flow through their land. If any person violate this section, he shall be fined not less than three nor more than twenty dollars for each week such violation continues. (Code 1887, § 3874; 1899-00, p. 587.)

Sec. 4754. Obstructing Louisa fork of Sandy river, how punished.—If any person place any dam or other obstruction in the Louisa fork of Sandy river so as to prevent the free passage of timber, or any raft or boat, he shall be fined not less than fifty nor more than five hundred dollars; and, upon conviction thereof, the court or justice shall order the dam or other obstruction to be removed at his expense. (Code 1887, § 3876.)

Revisors' Note.—The words, "or justice" found in lines two and three from the bottom of the text, are new. They are inserted because the case may be tried by a justice, and if so, he should have this power.

Sec. 4755. Failure to sound steam whistle on James river, how punished.—If any person having command or control of any steam vessel navigating James river, fail to sound the steam whistle on approaching any bend of said river above City Point, he shall be fined not less than fifty nor more than two hundred dollars. (Code 1887, § 3877.)

Sec. 4756. For the protection of aids to navigation established by the United States light-house board.—Any person or persons who shall moor any vessel or vessels of any kind or name whatsoever or any raft or any part of a raft to any buoy, beacon, or day mark placed in the waters of Virginia by authority of the United States light-house board, or shall in any manner hang on with any vessel or raft or any part of a raft to any such buoy, beacon, or day mark, or shall wilfully remove, damage, or destroy any such buoy, beacon, or day mark, or shall cut down, remove, damage, or destroy any beacon or beacons erected on land in this State by the authority of the said United States light-house board, or through unavoidable accident run down, drag from its position, or in any way injure any buoy, beacon, or day mark as aforesaid and shall fail to give notice as soon as practicable of having done so to the light-house

Digitized by Google

inspector of the district in which said buoy, beacon, or day mark may be located or to the collector of the port, or if in charge of a pilot to the collector of the port from which he comes, shall for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed two hundred dollars or by imprisonment not to exceed three months or both; one-third of the fine in each case shall be paid to the informer and two-thirds thereof to the light-house board to be used in repairing the said buoys and beacons.

It shall be unlawful for any vessel to anchor on the range of any rangle lights established by the United States light-house board unless such anchorage is unavoidable, and the master of any vessel so anchoring shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed fifty dollars, one-half of the fine in each case to be paid to the informer and one-half to the State.

The cost of repairing or replacing any such buoy, beacon, or day mark which may have been misplaced, damaged, or destroyed by any vessel or raft whatsoever having been made fast to any such buoy, beacon, or day mark shall, when the same shall be legally ascertained, be a lien upon such vessel or raft and may be recovered against said vessel or raft and the owner or owners thereof in an action of debt in any court of competent jurisdiction in this State.

Any person having charge of any raft passing any buoy, beacon, or day mark who shall not exercise due diligence in keeping clear of it, or if unavoidably fouling it shall not exercise due diligence in clearing it without dragging from it such buoy, beacon, or day mark shall be guilty of a misdemeanor, and upon conviction shall be punished by fine not to exceed fifty dollars. (1887, p. 450.)

Sec. 4757. The word "road" construed.—In this chapter, the word "road" shall be construed to mean any turnpike, State road, or county road. (Code 1887, § 3878.)

Section 1977 provides a certain width and grade, with authority of board to order a different grade, but this discretionary power does not give authority for establishing a bridleway for horseback travel. Terry v. McClung, 104 Va. 599, 52 S. E. 355.

CHAPTER 188.

General Provisions Concerning Crimes and Punishments.

Sec.		Sec.	
4758.	Felonies and misdemeanors defined.	4760.	How common law offenses punished.
4759.	When capital punishment inflicted.	4761.	Benefit of clergy disallowed; how petit treason punished.

Digitized by Google

Sec.
4762. Suicide or attainder.
4763. Felony not to merge civil remedy.
4764. How principal in second degree and accessaries punished.
4765. Who not deemed accessaries after the fact.
4766. Accessaries, when and where tried; how indicted.
4767. How attempts to commit offenses punished.
4768. Limitation of prosecutions.
4769. Offenses committed without and made punishable within the State; where prosecuted.
4770. Injury inflicted by a person within the State upon one outside the same.
4771. Offenses committed on boundary of two counties, or, etc., where prosecuted.
4772. Where mortal wound, or, etc., inflicted in one county and death ensues in another, where offense prosecuted.
4773. Acquittal by jury on merits, a bar to further prosecution for the same offense.
4774. When acquittal not a bar to further prosecution for same offense.
4775. Offense against two or more statutes or two or more municipal ordinances.
4776. How accused may be convicted of felony.
4777. Approvers.
4778. Right of accused to testify.
4779. Convicts as witnesses.
4780. Person prosecuted for unlawful gaming disqualified to testify against witness for State; witness for State exempt from such prosecution; compelled to testify, etc.
4781. When statement by accused as a witness not received as evidence.
4782. How misdemeanors punished.
4783. How term of confinement, or amount of fine, of person convicted of felony is ascertained.
4784. Who to ascertain the punishment in criminal cases tried by jury.
4785. When person convicted of petit larceny has been before sentenced for like offense, how to be confined.
4786. In convictions for two or more offenses confinement to commence after previous term expires.
4787. Clerks to keep registers of descriptive lists of persons convicted of felony, etc.; form of register; photographs of convict may be taken; copy of lists and protographs to be evidence of identity, etc.
4788. Judges to see that clerk observes, these provisions.

Sec. 4758. Felonies and misdemeanors defined.—Offenses are either felonies or misdemeanors. Such offenses as are punishable with death or confinement in the penitentiary are felonies; all other offenses are misdemeanors. (Code 1887, § 3879.)

For changes in the meaning of the word "felony" and first announcement of the doctrine incorporated in this section, see Barker's Case, 2 Va. Cas. 122; also Benton's Case, 89 Va. 573, 16 S. E. 725; Trimble's Case, 2 Va. Cas. 144; Randall's Case, 24 Grat. 644.

A felony is such an offense as may be (not must be) punished by death or confinement in the penitentiary. Benton's Case, 89 Va. 570, 16 S. E. 725.

The committing magistrate does not by his warrant fix the grade of the offense with which the accused is charged. Hawley's Case, 75 Va. 847.

An indictment for petit larceny, which proceeds to charge that the person indicted had been previously indicted, tried, and sentenced for

Digitized by Google

another petit larceny, is an indictment for felony. Rider's Case, 16 Grat. 499.

Under this section a person having in his possession any goods on which taxes are imposed by law of United States, for the purpose of selling them in fraud of United States law, is guilty of a misdemeanor. Section 3452, Rev. St. U. S. [U. S. Comp. St. 1901, p. 2278]; Carico v. Wilmore (D. C.), 51 Fed. 198.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 152, section 1

Cited but not construed in Jernigan v. Com., 104 Va. 850, 52 S. E. 361.

Sec. 4759. When capital punishment inflicted.—No crime shall be punished with death unless it be directed by statute. (Code 1887, § 3880.)

Sec. 4760. How common law offenses punished.—A common law offense, for which punishment is prescribed by statute, shall be punished only in the mode so prescribed. (Code 1887, § 3881.)

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 152, section 3.

Sec. 4761. Benefit of clergy disallowed; how petit treason punished.—There shall be no plea of benefit of clergy, nor any distinction between murder and petit treason; but the last mentioned offense shall be punished as murder. (Code 1887, § 3882.)

Sec. 4762. Suicide or attainder.—No suicide, nor attainder of felony, shall work a corruption of blood or forfeiture of estate. (Code 1887, § 3883.)

Sec. 4763. Felony not to merge civil remedy.—The commission of a felony shall not stay or merge any civil remedy. (Code 1887, § 3884.)

Sec. 4764. How principal in second degree and accessaries punished.—In the case of every felony, every principal in the second degree and every accessary before the fact, shall be punished as if he were the principal in the first degree, and every accessary after the fact, shall be confined in jail not more than one year, and fined not exceeding five hundred dollars. (Code 1887, § 3885.)

Principals in the first degree.—Principals in the first degree are those who are the immediate perpetrators of the act. Mitchell's Case, 33 Grat. 868; Horton's Case, 99 Va. 848, 38 S. E. 184; Reynolds' Case, 33 Grat. 834.

Principals in the second degree are those who did not with their own hands commit the act, but were present aiding and abetting it. This presence may be actual or constructive. Id.

Aiding and abetting—Mere presence not sufficient.—Mere presence is not sufficient to render one guilty of aiding and abetting the commission of crime. There must be something done or said by him showing his consent to the felonious purpose and contributing to its execution. Kemp's Case, 80 Va. 443; Reynolds' Case, 33 Grat. 834; Mitchell's Case, 33 Grat. 869.

To constitute an aider or abettor it is essential that the aider and abettor share the criminal intent of the principal, and, if a reasonable doubt exists as to the intention of a party in interfering in a fight between two other persons, he cannot be found guilty as an aider and abettor. Horton's Case, 99 Va. 848, 38 S. E. 184.

Three persons go together to rob a store. One, M., is posted some

Digitized by Google

distance from the house to watch; and the other two obtain admittance into the store-house, kill the owner, and rob the store, and M. shares the booty. Held, M. is principal in the second degree of the crime of murder, and may be punished with death. Mitchell's Case, 33 Grat. 845. See, also, Trim's Case, 18 Grat. 983, 98 Am. Dec. 765.

As to liability of person assisting suicide, see 8 Va. Law Reg. 924.

Accessories before the fact—Definition.—An accessory before the fact is one absent at the commission of the offense, but who procures, encourages, counsels, or commands another to commit it. Min. Syn. 13.

In order to convict one as accessory before the fact, though it is not now necessary to show that the principal felon is convicted, it is necessary to show that the substantive offense to which he is charged as being accessory has been committed by the principal felon. Hatchett's Case, 75 Va. 932; Maybush's Case, 29 Grat. 859.

And if a person has been convicted of subornation of perjury and afterwards the person whom he is alleged to have suborned is acquitted, the court should grant the former a new trial. Maybush's Case, 29 Grat. 859.

It is implied by statute that an accessory before the fact shall be tried and convicted as an accessory before the fact, though he shall be punished as if he were a principal in the first degree. Hatchett's Case, 75 Va. 931. And he is not liable to be convicted on an indictment against him as principal. Id.; Thornton's Case, 24 Grat. 669.

Accessory after the fact is one who, knowing a felony to have been committed, receives, relieves, comforts, or assists the felon. Wren's Case, 26 Grat. 952.

The reason.—Why the common law makes such a one a criminal is that the course of public justice is hindered and justice itself is evaded by facilitating the escape of the felon. Wren's Case, 26 Grat. 952.

What constitutes the offense.—(1) The felony must be completed. (2) He must know that the felon is guilty. (3) He must receive, relieve, comfort, or assist him. Wren's Case, 26 Grat. 956.

Implied notice is not sufficient; actual notice must be brought home to the accused. Whether he had such notice is a matter of fact for the jury. Id.

Test for accessory after the fact.—The true test whether one is accessory after the fact is to consider whether what he did was done by way of personal help to the principal with a view of enabling his principal to elude punishment, the kind of help rendered appearing unimportant. Wren's Case, 26 Grat. 952.

The failure of a police officer to make an arrest when he knows that a felony has been committed does not constitute him an accessory after the fact to the felony committed. Wren's Case, 25 Grat. 989, 995; Wren's Case, 26 Grat. 952.

Indictment.—Indictment against an accessory need not aver the conviction of the principal. Williamson's Case, 2 Va. Cas. 211. The same count may contain a charge of murder against one and a charge of being an accessory against others. Hawley's Case, 75 Va. 847.

Any evidence is admissible which tends to show the relation of the principal with the alleged accessory. Oliver's Case, 77 Va. 590.

A verdict finding a person guilty of being accessory to a murder must determine the degree of the murder; otherwise it is error. Williamson's Case, 2 Va. Cas. 211.

For discussion of the several degrees of guilt, see Min. Syn. 11.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 152, section 6.

Sec. 4765. Who not deemed accessaries after the fact.—But no person in the relation of husband and wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity, or servant to the offender, who, after the commission of a felony, shall aid or assist a principal felon or accessary before the

Digitized by Google

2 Va. Cas. 273; Mortimer's Case, Id. 325; Smith's Case, 7 Grat. 593; Quann's Case, 2 Va. Cas. 89.

Conviction for assault no bar to prosecution for felony. Murphy's Case, 23 Grat. 960.

Identity of person.—The plea must also aver that the defendant is the identical person who was prosecuted once before for the identical offense (Justice's Case, 81 Va. 209, 218); and acquittal of defendant's associate cannot be pleaded as a bar (Williams' Case, 85 Va. 607, 8 S. E. 470).

The first court must have had jurisdiction (Day's Case, 23 Grat. 915); and a pretended judgment of a court in fraud of the jurisdiction of another court cannot bar prosecution before the proper court (Jackson's Case, 2 Va. Cas. 501; Dulin v. Lillard, 91 Va. 718, 20 S. E. 821). But see Jones v. Morris, 97 Va. 43, 33 S. E. 377.

Acquittal must be on merits.—It must appear from the record of the first case, or be averred in the plea and proved, that the acquittal was on the merits. Burress' Case, 27 Grat. 934.

Effect on second trial of verdict of guilty in the first trial.—Where offenses of an equal degree are contained in one count, and a verdict of guilty of one of the offenses has been set aside at the instance of the accused, this is a waiver of his jeopardy as to both, and upon a new trial he may be put upon trial upon the whole indictment. Benton's Case, 91 Va. 783, 21 S. E. 495.

But where there are several counts a verdict of guilty on one, saying nothing as to the others, operates as an acquittal upon those counts of which the verdict takes no notice. Stuart's Case, 28 Grat. 950; Lithgow's Case, 2 Va. Cas. 297; Page's Case, 9 Leigh 683; Canada's Case, 22 Grat. 899; Page's Case, 26 Grat. 943; Kirk's Case, 9 Leigh 627; Richards' Case, 81 Va. 110; Briggs' Case, 82 Va. 554.

And on a new trial this advantage is not waived, whether the verdict is set aside because it is defective or because it is contrary to the evidence. Id.

On a new trial one cannot be tried for a higher offense than that of which he was convicted on the last trial. Section 4918 and notes; also Benton's Case, 91 Va. 790, 21 S. E. 495.

Verdict ascertaining illegal punishment no bar to further prosecution.—A verdict ascertaining a shorter term of imprisonment than the law prescribes will be reversed by the appellate court; but the prisoner will not be discharged, but will be remanded for another trial. Jones' Case, 20 Grat. 848; Nemo's Case, 2 Grat. 558; Gibson's Case, 2 Va. Cas. 111; Smith's Case, Id. 327; Percavil's Case, 4 Leigh 686; Mills' Case, 7 Leigh 751; Hatton's Case, 3 Grat. 623; Marshall's Case, 5 Grat. 663, 693; Scott's Case, Id. 697. See, also, Ex parte Marx, 86 Va. 47, 9 S. E. 475.

Verdict imperfect, no bar.—Discharge of jury after rendering a verdict null and void on account of imperfections therein is no bar to a prosecution under the same or new indictment. Stuart's Case, 28 Grat. 951; Gibson's Case, 2 Va. Cas. 70, 111.

Generally.—Verdict set aside for variance is no bar to a second indictment for same offense. Adcock's Case, 8 Grat. 663; Burress' Case, 27 Grat. 934; Robinson's Case, 32 Grat. 866. Nor will a nolle prosequi support a plea of autrefois acquit. Lindsay's Case, 2 Va. Cas. 345; Wortham's Case, 5 Rand. 669; McCann's Case, 14 Grat. 570; Archer's Case, 10 Grat. 627; Randall's Case, 24 Grat. 644. Nor will the quashing of an indictment for defective replication to a plea in abatement Souther's Case, 7 Grat. 673. The removal of an indictment from county to corporation invalidates that indictment, but is no bar to a new indictment. Marshall's Case, 20 Grat. 845. Nor was acquittal in examining court a bar to indictment in superior court, except when the record showed that the discharge was upon an examination of the facts charged. McCann's Case, 14 Grat. 570; Lindsay's Case, 2 Va. Cas. 345; Wortham's Case, 5 Rand. 669; Myers' Case, 1 Va. Cas. 188; Sorrell's Case, Id. 253. Nor is an examination before a justice a bar to further prosecution. Wolverton's Case, 75 Va. 909. See, also, Ward v. Reasor, (1952)

Digitized by Google

98 Va. 399, 36 S. E. 470. Nor the order of a court without jurisdiction dismissing the case. Dulin v. Lillard, 91 Va. 718, 20 S. E. 821. Nor is a reversal, at the instance of the prisoner, of the judgment of a justice of the peace, for formal defects in the charge of a misdemeanor. Watt's Case, 99 Va. 872, 39 S. E. 706.

A conviction for an assault is a bar to prosecution for a riot; an acquittal for manslaughter a bar to prosecution for murder; an acquittal for murder a bar to prosecution for petit treason. Lambert's Case, 9 Leigh 606; Kinney's Case, 2 Va. Cas. 139.

Since March 4, 1848, discharge of the jury when they fail to agree does not entitle the prisoner to be discharged from prosecution. Wright's Case, 75 Va. 915; Dye's Case, 7 Grat. 662; Jones' Case, 86 Va. 742, 10 S. E. 1004. See article in 7 Va. Law Reg. 498. See section 4903 and notes.

An acquittal is not vitiated by errors not objected to by the prisoner. Jones v. Morris, 97 Va. 43, 33 S. E. 377.

Section 4774 appeared first in the form of decisions (Somerville's Case, 1 Va. Cas. 164, 5 Am. Dec. 514; Myers' Case, 1 Va. Cas. 232; Quann's Case, 2 Va. Cas. 89; Gibson's Case, Id. 111; Vaughan's Case, Id. 273; Lindsay's Case, Id. 345; Wortham's Case, 5 Rand. 669), and should receive the same construction which these cases intended to establish, and therefore was not intended to repeal the three-term law. See Adcock's Case, 8 Grat. 693 (dissenting opinion of Judge Field).

On the subject of autrefois acquit, see note, Page's Case, 26 Grat. 951, Va. Rep. Anno.

Commented on in note, 10 Va. Law Reg. 420, 661.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 152, section 15.

Sec. 4775. Offense against two or more statutes or two or more municipal ordinances.—If the same act be a violation of two or more statutes, or of two or more municipal ordinances, a prosecution or proceeding under one of such acts or ordinances shall be a bar to a prosecution under the other or others.

Revisors' Note.—This section is new. In Arrington v. Com., 87 Va. 96, 12 S. E. 224, it was held that the test of former jeopardy is "not whether defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense. A single act may be an offense against two statutes, and if each statute requires proof of an additi al fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other." And hence, in that case, although the prisoner had committed but a single act, as it violated two statutes, she was convicted under both. The two statutes in the case mentioned ere very similar, and the case presents one of hardship. The same act may be an offense against the State and against the United States, but the general practice has been, by comity, that if the defendant is prosecuted in one jurisdiction, the other does not prosecute. For example, the forging of a national bank note may be prosecuted by the State or the United States, but generally a person prosecuted for such forging in a State court is not prosecuted in the federal court, or vice versa. The court first taking jurisdiction is generally allowed to have exclusive jurisdiction. On the same principle, a person prosecuted under one statute should not for the same act be prosecuted under more than one. There are a great many minor offenses which violate not only State statutes but municipal ordinances. The courts generally hold that a prosecution under one is not a bar to a prosecution under another, but the reasons assigned are far from uniform, and are not satisfactory. Some courts hold that they are two distinct sovereignties; others, that a prosecution

Digitized by Google

under a municipal ordinance is a civil and not a criminal proceeding; and still others, that a city ordinance is a mere by-law or police regulation, and does not punish an offense against the dignity of the State. Beale, in his Criminal Pleading and Practice, says: "The better view in such a case appears to be that punishment under one law bars prosecution under the other." (Beale, Crim. Pl. & Pr., section 68.) Cooley in his Constitutional Limitations, page 242, says the clear weight of authority is the other way, and the monographic note in 92 Am. St. Rep. 100 plainly shows that Cooley is correct. It is not an uncommon thing for a person to be arrested under a municipal ordinance, say, for disorderly conduct, and then when brought before the mayor or police justice, to be fined under several ordinances for different offenses. In some of the States the matter is regulated by statute. See cases referred to in 92 Am. St. Rep., at page 101. The statute as prepared by the revisors extends only to cases where a single act violates two statutes or two ordinances. They are of opinion that it should be extended still further to cases where a single act violates one or more statutes and one or more ordinances. This could be effected by inserting in the section in line two after the word "ordinances" the words "or of one or more statutes and also one or more such ordinances."

Sec. 4776. How accused may be convicted of felony.—No person shall be convicted of felony, unless by his confession of guilt in court, or by his plea, or by the verdict of a jury, accepted and recorded by the court. (Code 1887, § 3895.)

Revisors' Note.—This section as it stood before the revision contained the words "or demurrer" after "plea." At common law a defendant could be convicted of a felony on a demurrer (1 Bish. New Crim. Pro., section 782; Davis' Crim. Law, page 447), but this was never the law in Virginia.

As to confessions of the accused out of court, see note to Schwartz's Case, 27 Grat. 1025, 1033, Va. Rep. Anno.; also the following cases: Moore v. Com., 2 Leigh 701; Earheart v. Com., 9 Leigh 671; Finn v. Com., 5 Rand. 701; Hunter v. Com., 7 Grat. 641, 56 Am. Dec. 121; Smith v. Com., 10 Grat. 734, 739; Shifflet v. Com., 14 Grat. 652; Vaughan v. Com., 17 Grat. 576; Thompson v. Com., 20 Grat. 724; Smith v. Com., 21 Grat. 809; Venable v. Com., 24 Grat. 639; Little v. Com., 25 Grat. 921; Page v. Com., 27 Grat. 954; Wolf v. Com., 30 Grat. 833; Mitchell v. Com., 33 Grat. 845; Parrish v. Com., 81 Va. 1; Sprouse v. Com., Id. 374; Early v. Com., 86 Va. 928, 11 S. E. 795; Hite v. Com., 96 Va. 494, 31 S. E. 895; Flick v. Com., 97 Va. 766, 34 S. E. 39

Sec. 4777. Approvers.—Approvers shall not be admitted in any case. (Code 1887, § 3896.)

The doctrine of approvement has never been the law of this state. Oliver's Case, 77 Va. 590; Byrd's Case, 2 Va. Cas. 492.

Sec. 4778. Right of accused to testify.—In any case of felony or misdemeanor, the accused may be sworn and examined in his own behalf, and if so sworn and examined, he shall be deemed to have waived his privilege of not giving evidence against himself, and shall be subject to cross-examination as any other witness; but his failure to testify shall create no presumption against him, nor be the subject of any comment before the court or jury by the prosecuting attorney. (Code 1887, § 3897.)

Revisors' Note.—Under this section as it stood before the revision, some doubt was expressed as to the meaning of the phrase "subject to

Digitized by Google

cross-examination as any other witness." This doubt was as to whether the accused waives his privilege of not testifying against himself and may stop at any stage when a question is asked which would tend to incriminate him. While the revisors did not concur in this doubt, they thought it well to put the language of the section in such form as would settle the question, expressly declaring that if the accused be "so sworn and examined, he shall be deemed to have waived his privilege of not giving evidence against himself."

Sec. 3900 of the Code of 1887 provided that "No person, who is not jointly tried with the defendant, shall be incompetent to testify in any prosecution by reason of interest in the subject-matter thereof." The history of this section is given in Lazier's Case, 10 Grat. 718, decided in 1858. At that time the common law disqualification of interest existed. This disqualification on account of interest was removed by Acts 1866-67, p. 615 (now section 6208 of the Code), and the right of an accused person to testify in his own behalf was given by Acts 1885-86, p. 31 (now section 4778 of the Code). As these two sections remove all disqualifications of the defendant to testify, whether jointly tried or not, there was no further need for the existence of section 3900 of the Code of 1887. It has, therefore, been omitted and thereby repealed.

The present statute affirms the doctrine of Price's Case, 77 Va. 393.

If exception to the prosecuting attorney's comment on the prisoner's failure to testify is not taken till after verdict, it is too late, if under all the circumstances a proper verdict has been rendered and the accused not injured. Price's Case, 77 Va. 395; Bull's Case, 14 Grat. 613; Read's Case, 22 Grat. 924; Stoneman's Case, 25 Grat. 905.

Remark of prosecuting attorney to the jury that prisoner had not accounted for his whereabouts at time of homicide nor his flight from the state, without allusion to his failure to testify, comes not within this section. Sutton's Case, 85 Va. 128, 7 S. E. 323.

Remark of prosecuting attorney that "though he had no right to swear any man accused of crime, he had the right to prove his statements," is no violation of this section. Sawyer's Case, 88 Va. 356, 13 S. E. 708.

Discussed, 4 Va. Law J. 712; 5 Va. Law J. 342; 6 Va. Law J. 645; 10 Va. Law J. 60; 15 Va. Law J. 553.

Cited but not construed, Saunders v. Baldwin, 112 Va. 431, 71 S. E. 620.

See article, 10 Va. Law Reg. 843.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 152, section 19.

Sec. 4779. Convicts as witnesses.—Conviction of felony or perjury shall not render the convict incompetent to testify, but the fact of conviction may be shown in evidence to affect his credit. (Code 1887, § 3898.)

Revisors' Note.—Section 3898 of the Code of 1887 is as follows: "Except where it is otherwise expressly provided, a person convicted of felony shall not be a witness, unless he has been pardoned or punished therefor, and a person convicted of perjury shall not be a witness, although pardoned or punished." The revisors were of opinion that conviction of felony or perjury should go to the weight of the evidence and not to the competency of the witness. See section 4495 and revisors' note.

For cases under this section as it formerly stood in Code of 1887, see Brown's Case, 86 Va. 935, 11 S. E. 799; 10 Va. L. Reg. 849; Quillin's Case, 105 Va. 874, 54 S. E. 333; Davidson v. Watts, 111 Va. 394, 69 S. E. 328, and note 16 Va. L. Reg. 689; Samuel's Case, 110 Va. 901, 20 Ann. Cas. 380, 66 S. E. 222; Kain v. Angle, 111 Va. 415, 69 S. E. 355.

Digitized by Google

As to what is a felony, see section 4758 and notes; also Benton's Case, 89 Va. 570, 16 S. E. 725. See, also, Barbour's Case, 80 Va. 290.

Sec. 4780. Person prosecuted for unlawful gaming disqualified to testify against witness for State; witness for State exempt from such prosecution; compelled to testify, etc.—No person prosecuted for unlawful gaming shall be competent to testify against a witness for the Commonwealth in such prosecution, touching any unlawful gaming committed by him prior to the commencement of such prosecution; nor shall any witness giving evidence, either before the grand jury or the court in such prosecution, be ever proceeded against for any offense of unlawful gaming committed by him at the time and place indicated in such prosecution; but such witness shall be compelled to testify, and for refusing to answer questions, may by the court be fined a sum not exceeding five hundred dollars, and be imprisoned for a term not exceeding six months. (Code 1887, § 3899.)

This section secures full protection to witnesses testifying in prosecution for unlawful gaming, and a witness before the grand jury is not justified in refusing to testify on the ground that his answer will tend to criminate and disgrace him. Kendrick's Case, 78 Va. 490; Temple's Case, 75 Va. 892. See section 4425 and notes.

Sec. 4781. When statement by accused as a witness not received as evidence.—In a criminal prosecution, other than for perjury, or in an action on a penal statute, evidence shall not be given against the accused of any statement made by him as a witness upon a legal examination, unless such statement was made when examined as a witness in his own behalf. (Code 1887, § 3901.)

Under section 22, chapter 195, Code 1873 (the same as this with the exception that the clause, "unless such statement was made when examined as a witness in his own behalf," does not occur therein), it was held: Evidence that the statements of a witness for the accused conflict with the testimony of the accused as delivered on his examination as a witness at a former trial is inadmissible. Kirby's Case, 77 Va. 681, 46 Am. Rep. 747.

Statements made by a person as a witness for the plaintiff upon a legal examination touching a matter in which he is jointly interested with the plaintiff are not excluded under this section when he is subsequently indicted for crime. Hansel v. Com., 118 Va. 803, 88 S. E. 166.

Cited but not construed, Mullin's Case, 113 Va. 787, 75 S. E. 193.

Discussed, 5 Va. Law. J. 342.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 152, section 20.

Sec. 4782. How misdemeanors punished.—A misdemeanor, for which no punishment or no maximum punishment is prescribed by statute, shall be punished by fine not exceeding five hundred dollars or confinement in jail not exceeding twelve months, or both, in the discretion of the jury or of the justice, or of the court trying the case without a jury. (Code 1887, § 3902; 1902-3-4, p. 784.)

Revisors' Note.—As this section stood before the revision it read as follows: "A misdemeanor, for which no punishment is prescribed by statute, shall be punished by fine or confinement in jail, or both, in the discretion of the jury, or of the court trying the case without a jury." It will be observed that the revised section applies as well to those cases

Digitized by Google

where no maximum punishment is prescribed by statute as to those cases where no punishment whatever is elsewhere prescribed, and that in both classes of cases, this section fixes a maximum. The revisors were of opinion that jail sentences of more than one year should not be permitted. There are numerous misdemeanors throughout the Code which are dependent upon this section for their punishment, in the infliction of which much discretion is allowed the court, jury or justice, as the case may be, in order to make the punishment fit the crime, in view of all the circumstances of the case.

See Gregory's Forms Nos. 694, 701, 702.

Sec. 4783. How term of confinement, or amount of fine, of person convicted of felony is ascertained.—The term of confinement in the penitentiary, or in jail, of a person convicted of felony, if that punishment is prescribed, and the amount of the fine, if the felony be also punishable by fine, shall be ascertained by the jury, if there be one, or by the court trying the case without a jury, so far as the term of confinement and the amount of the fine are not fixed by law. (Code 1887, § 3903; 1902-3-4, p. 784.)

In this section it appears that there may be felonies which are punished otherwise than by death or confinement in the penitentiary. Quillin's Case, 105 Va. 874, 54 S. E. 333.

Sec. 4784. Who to ascertain the punishment in criminal cases tried by jury.—The punishment in all criminal cases tried by a jury shall be ascertained by the jury trying the same within the limits prescribed by law. (Code 1887, § 3904.)

Revisors' Note.—The proviso annexed to the original act has been omitted, because there are many technical misdemeanors which are insignificant, and it was deemed best to leave the punishment to the tribunal trying the case, without a minimum. As the judge or justice trying the case must necessarily impose the punishment within the limits prescribed by law, the portions of the section referring to the judge and justice have been omitted.

If an indictment be against several, the fine should be several against each defendant (Jones' Case, 1 Call 555), even though the two defendants be man and wife (Ray's Case, 1 Va. Cas. 262). There could not be judgment for fine and costs at one term and for imprisonment at another term. The first judgment is final. Pifer's Case, 14 Grat. 710.

As to the power of the court under the law as it was aforetime to superadd punishment to the fine imposed by the jury in all cases of misdemeanor, whether existing at common law or prescribed by statute, in which punishment by imprisonment was not expressly or by necessary implication taken away by some enactment, see Davis' Cr. Law 471; House's Case, 8 Leigh 755; Pifer's Case, 14 Grat. 710; Crump's Case, 1 Va. Cas. 172; Frye's Case, Id. 19.

How person in jail under capias pro fine released, see section 4952.

Sec. 4785. When person convicted of petit larceny has been before sentenced for like offense, how to be confined.—When a person is convicted of petit larceny, and it is alleged in the indictment on which he is convicted, and admitted, or, by the jury or justice before whom he is tried, found, that he has been before sentenced in the United States for the like offense, he shall be confined in jail not less than thirty days nor more than one year; and for a third,

Digitized by Google

or any subsequent offense, he shall be confined in the penitentiary not less than one nor more than two years. (Code 1887, § 3907.)

An indictment under this section, charging previous conviction of and sentence for petit larceny, is an indictment for a felony, even though the second count, because of defects, charges only a misdemeanor. Rider's Case, 16 Grat. 499; Pryor's Case, 2 Va. Dec. 479, 26 S. E. 864.

The redress afforded by this section is cumulative merely, and leaves unimpaired the authority of the Commonwealth to prosecute and punish an offender independently for successive offenses of petit larceny, and when it so elects to proceed the punishment of the crime is unaffected by the fact that he may have before been sentenced in the United States for a like offense and the punishment in such case is that prescribed by section 4440. Satterfield v. Com., 105 Va. 867, 52 S. E. 979.

Where an indictment charged that accused had been twice before convicted for a like offense, describing the warrants, which charged that accused did unlawfully take, steal, and carry away, etc., without averring the taking was felonious, held, that the indictment was sufficient in such cases under this section. Id.

The verdict is not defective for failing to show that it was given for having been twice before convicted of like offense where it finds the prisoner guilty "as charged in the indictment." Id.

As to a record showing a previous conviction for petit larceny, see Pryor's Case, 2 Va. Dec. 479, 26 S. E. 864.

See section 5054.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 152, section 25.

Sec. 4786. In convictions for two or more offenses confinement to commence after previous term expires.—When any person is convicted of two or more offenses, before sentence is pronounced for either, the confinement to which he may be sentenced upon the second, or any subsequent conviction, shall commence at the termination of the previous term or terms of confinement. (Code 1887, § 3908.)

The rule of this section was enunciated in Leath's Cases, 1 Va. Cas. 151.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 152, section 26.

Sec. 4787. Clerks to keep registers of descriptive lists of persons convicted of felony, etc.; form of register; photographs of convict may be taken; copy of lists and photographs to be evidence of identity, etc.—The clerk of the circuit court of each county and of the circuit, corporation, or hustings court of each corporation shall keep a register of full and accurate descriptive lists of every person convicted in his own court of felony or other infamous offense. Such register shall be kept written up, well indexed. Each list shall be duly attested by said clerk, and the same shall be open to public inspection at all reasonable hours: provided, however, that in cities which have both a circuit and a corporation court such register shall be kept by the clerk of the corporation court only, but the clerk of the circuit court shall, within ten days from the date of conviction of any person in his court of any felony or other infamous offense, deliver to the clerk of the corporation court for record in said register an attested descriptive list of the persons so con-

Digitized by Google

victed in the form herein prescribed. For the service mentioned in this section the said clerks shall each be entitled to a fee of fifty cents, to be paid out of the State treasury.

Whenever directed so to do by the judge or any court in which the case has been tried the sheriff, sergeant, or chief of police of such county or corporation shall cause to be taken the photograph of such convict, and the clerk of said court shall file a copy of such photograph with the records of the case: provided, however, that the costs of taking such photograph shall not be paid out of the treasury of the Commonwealth.

A duly certified and attested copy of such descriptive list and such photograph may be used as prima facie evidence of the facts therein stated or shown in any question of identity.

Such register shall be in the following form:

Name in full and aliases.	Present and last known residence.	Color.	Height, eyes, hair, and marks.	Apparent or known age.	Occupation.	Offenses.	Court in which convicted.	Date of conviction and page of record.	Whether judgment reversed and pardon granted, and date thereof.

(Code 1887, § 3909; 1897-8, p. 620; 1902-3-4, p. 784.)

Sec. 4788. Judges to see that clerk observes these provisions.— The judges of the respective courts shall take care that the provisions of the preceding section are punctually and properly carried out by their respective clerks. (Code 1887, § 3911; 1902-3-4, p. 784.)

Digitized by Google

TITLE 41.

Proceedings in Criminal Cases.

Ch. 189. For preventing the commission of crimes.
190. Coroners' inquests.
191. Search warrants.
192. Arrest, commitment, and bail.
193. Grand juries.
194. Presentments, indictments, and informations, and process thereon.
195. Trial and its incidents.
196. Exceptions, writs of error, and execution of judgment.
197. Taxation and allowance of costs in criminal cases.
198. General provisions as to proceedings in criminal cases.

CHAPTER 189.

For Preventing the Commission of Crimes.

Sec.
4789. Who conservators of the peace may bind to good behavior.
4790. Their duty, on complaint that a crime is intended.
4791. The proceeding when accused appears.
4792. When appeal may be taken; witnesses to be recognized.
4793. Power of the court when appeal taken.
4794. Its power when accused committed to jail.
4795. When person going armed required to give recognizance, with right of appeal.
4796. When court, or conservator, etc., may, without process or proof, require recognizance.
4797. Circuit courts may appoint special police; their pay, etc.; how allowed and paid.
4798. May remove any of them and appoint others.
4799. Removal from county creates vacancy; how filled.
4800. Bond of police.
4801. Their authority, etc., confined to limits of county; what, evidence of their office.
4802. Their duties and powers.
4803. Duty of justice; may bind to good behavior, etc.
4804. Appointment of conservator of the peace at watering place, university or college, or manufacturing plant; his jurisdiction.
4805. Appointment of policeman; bond required.

Sec. 4789. Who conservators of the peace may bind to good behavior.—Every judge throughout the State and every justice, commissioner in chancery, notary, and county surveyor while in the

Digitized by Google

performance of the duties of his office within his county or corporation shall be a conservator of the peace, and may require from persons not of good fame security for their good behavior for a term not exceeding one year. It shall be the duty of every conservator of the peace to arrest without a warrant for felonies committed in his presence, or upon reasonable suspicion of felony, and for breaches of the peace and all misdemeanors of whatever character committed in his presence. (Code 1887, § 3912; 1891-2, p 980.)

Revisors' Note.—The last sentence is new.

It seems that courts, as well as individual magistrates, are conservators of the peace. Marshall, J., in U. S. v. Burr, 1 Burr's Trial (Phila. Ed.) 79, 80.

The county court had authority to require a party to enter into a recognizance to keep the peace. Welling's Case, 6 Grat. 670.

Sec. 4790. Their duty, on complaint that a crime is intended.—If complaint be made to any such conservator that there is good cause to fear that a person intends to commit an offense against the person or property of another, he shall examine on oath the complainant, and any witness who may be produced, reduce the complaint to writing, and cause it to be signed by the complainant; and if it appear proper, such conservator shall issue a warrant, reciting the complaint, and requiring the person complained of forthwith to be apprehended and brought before him or some other conservator. (Code 1887, § 3913, 3914.)

"Probable cause" (or good cause) is a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in his belief that the person accused is guilty of the offense with which he is charged. Spengler v. Davy, 15 Grat. 388. See, also, Scott & Boyd v. Shelor, 28 Grat. 891.

A warrant directing the "associates" of the person named to be arrested, without mentioning the names of such associates, is illegal and void as to them. Wells v. Jackson, 3 Munf. 458.

The warrant must be executed by a sworn officer, and not by an individual selected by the prosecutor. Wells v. Jackson, 3 Munf. 458.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 153, sections 2, 3.

Sec. 4791. The proceeding when accused appears.—When such person appears, if the conservator, on hearing the parties, consider that there is not good cause for the complaint, he shall discharge the said person, and may give judgment in his favor against the complainant for his costs. If he consider that there is good cause therefor, he may require a recognizance of the person against whom it is, and give judgment against him for the costs of the prosecution, or any part thereof; and, unless such recognizance be given, he shall commit him to jail by a warrant, stating the sum and time in and for which the recognizance is directed. The person, giving judgment under this section for costs, may issue a writ of fieri facias thereon, if an appeal be not allowed; and proceedings thereupon may be according to sections six thousand and thirty and six thousand and thirty-two. (Code 1887, § 3915.)

Digitized by Google

ment made by the court, attested by the clerk of such court, shall in all cases be received as evidence of their official character. (Code 1887, § 3926.)

Sec. 4802. Their duties and powers.—It shall be the duty of said police to apprehend and carry before a justice, to be dealt with according to law, all persons whom they may be directed by the warrant of a justice to apprehend, or whom they have cause to suspect have violated, or intend to violate any law of the State; and they may execute any search warrant issued by a justice of their county under sections forty-eight hundred and nineteen, and forty-eight hundred and twenty. If such property as is mentioned in said sections be found, the police shall proceed as an officer acting under chapter one hundred and ninety-one of this Code, and they shall have the same authority as a justice to require any person to aid in making an arrest. (Code 1887, § 3927.)

Revisors' Note.—Under this section as it formerly stood, the provision for a search warrant was not in harmony with search warrants provided for in other sections of the Code, hence there has been a change in this respect.

A policeman who does not use more force than necessary to arrest a person engaged in disorderly conduct, and who resists the policeman, is not guilty of an assault and battery. Mesmer's Case, 26 Grat. 976.

Sec. 4803. Duty of justice; may bind to good behavior, etc.—In all cases, arising under the preceding section, the justice, before whom the person so arrested is brought, shall examine into the case and dispose of the same according to law; and, if he think the person so apprehended ought to enter into a recognizance to keep the peace and be of good behavior, he shall require him to do so, and in default thereof such person may be committed to jail. (Code 1887, § 3928.)

Sec. 4804. Appointment of conservator of the peace at watering place, university or college, or manufacturing plant; his jurisdiction.—The circuit court, or the judge in vacation of the circuit court of any county in which any watering place or manufacturing plant, or in which the University of Virginia, or any incorporated college, is located, may, upon the application of the proprietors of such watering place, or such manufacturing plant, or of the board of visitors of such university or other constituted authority of such college, appoint some citizen of the Commonwealth conservator of the peace, who shall hold his office for one year from the time of his appointment, and whose jurisdiction shall extend over the grounds attached to such watering place, manufacturing plant, university, or college within such limits as shall be prescribed in the order appointing such conservator. He shall, within the limits for which he is appointed, have the powers and jurisdiction of any other conservator of the peace. (Code 1887, §§ 3929, 3930; 1901-2, p. 372; 1902-3-4, p. 749.)

Revisors' Note.—The last sentence is new, and takes the place of

Digitized by Google

section 3930 of the former Code, as amended. That section has been omitted and repealed as of doubtful constitutionality.

Sec. 4805. Appointment of policeman; bond required.—The court or judge mentioned in the preceding section may also appoint, for the places mentioned in that section, some citizen a policeman, with the powers and duties of a constable, except that he shall not have authority to execute civil process. Before any such policeman as is mentioned in this section shall enter upon the duties of his office, he shall enter into bond with approved security before the county clerk of the county for which he is appointed in the penalty of five hundred dollars, with condition for the faithful discharge of his official duties. (Code 1887, § 3931.)

Revisors' Note.—The provision for an oath has been omitted because covered by section 269. The portion of the section requiring a bond is new. It seemed to the revisors that a bond ought to be required.

CHAPTER 190.

Coroners' Inquests.

Sec.
4806. Upon notice of a sudden, violent, unnatural or suspicious death, what coroner to act; his warrant.
4807. Summons to witnesses.
4808. How warrant and summons executed.
4809. The jury; their oath.
4810. How witnesses compelled to attend; how their evidence taken.
4811. Inquisition of the jury; its form.
4812. Inquisition, evidence, etc., to be returned to court; witnesses to be recognized.
4813. Warrant for arrest of accused, by whom issued and how returnable.
4814. When deceased a stranger, coroner to have body buried; how costs paid; pay of jurors.
4815. Coroner may require physicians to attend inquest; their pay.
4816. Penalty on coroner for failure of duty; where no coroner, justice may act.
4817. Inquest may be taken on Sunday.
4818. Coroners' and constables' fees.

Sec. 4806. Upon notice of a sudden, violent, unnatural or suspicious death, what coroner to act; his warrant.—Upon notice of a sudden, violent, unnatural or suspicious death the coroner of the city of Richmond, if the dead body be in the penitentiary, and in any other case the coroner of the county or corporation in which the dead body is, shall view the body and make inquiry into the circumstances of the said death, and after an inquiry had as aforesaid, if facts are revealed sufficient to create in the mind of the said coroner a reasonable belief that the person whose body he shall have been called to view came to his or her death by murder

Digitized by Google

or manslaughter, or by the contrivance, aiding, procuring, or other misconduct of any person or persons, he shall issue a warrant to the following effect: "..... county (or corporation of .....), to-wit: To the sheriff (or sergeant), or any constable of ..... county (or the corporation of.....): You are required to summon six jurors of the county (or corporation) of ..... to attend before me, a coroner of said county (or corporation), at the dwelling house of ..... (or at a place called .....), in said county (or corporation), at the house of ....., to inquire, upon the view of the body of ..... (or a person unknown), there lying dead, when, how, and by what means he came to his death.

"Given under my hand this ..... day of ....."
(Code 1887, § 3938; 1910, p. 338.)

As to appointment of coroners, bond required, etc., see sections 2815, 2817, 2818, 2819.

For analytical treatment of subject, see 1 Min. (4th Ed.) 118-123. See, also, Mayo's Guide (Ed. 1892) 117-186.

Sec. 4807. Summons to witnesses.—The coroner may issue a summons, directed like the warrant, commanding the officer to summon witnesses to attend before him at such time and place as he may direct. (Code 1887, § 3939.)

Sec. 4808. How warrant and summons executed.—Any such officer to whom the warrant or summons is delivered, shall forthwith execute it, and make return thereof to the coroner at the time and place named therein; if he fail so to execute and return the same without sufficient cause, he shall forfeit twenty dollars; and if any person summoned as a juror fail to attend as required, without sufficient excuse, he shall forfeit ten dollars. (Code 1887, § 3940.)

Revisors' Note.—The words, "without sufficient cause," found in line five of the text, are new.

Sec. 4809. The jury; their oath.—If six jurors do not attend, the coroner may require the officer or any other person to summon others. When the full number of six shall have appeared, the coroner, in view of the body, shall administer to them the following oath: "You swear that you will diligently inquire, and true presentment make, when, how, and by what means the person whose body here lies dead, came to his death, and return a true inquest thereof, upon your own knowledge and the evidence before you. So help you God." (Code 1887, § 3941.)

See Gregory's Forms No. 589.

Sec. 4810. How witnesses compelled to attend; how their evidence taken.—Witnesses, on whom the summons before mentioned is served, may be compelled by the coroner to attend and give evidence, and shall be liable in like manner as if the summons had been issued by a justice in a criminal case. They shall be sworn by

Digitized by Google

the coroner before giving evidence to the inquest, and their evidence shall be reduced to writing by him, or under his direction, and subscribed by them respectively. (Code 1887, § 3942.)

See Jackson's Case, 23 Grat. 919.

A justice of the peace, acting as coroner, has authority to commit to jail for trial a person charged by the inquest with felony. Wormeley's Case, 10 Grat. 658; Jackson's Case, 23 Grat. 919. See section 4813.

Sec. 4811. Inquisition of the jury; its form.—The jury, after hearing the evidence and making all needful inquiries, shall deliver to the coroner their inquisition, wherein they shall state the name of the deceased (if it be known), the material circumstances attending his death, and if they find that he came to his death by unlawful violence, who were guilty thereof, either as principal or accessary. The inquisition may be to the following effect: "..... county (or corporation) of ....., to-wit: An inquisition taken at ....., in the county (or corporation) of ....., on the ..... day of ....., in the year....., before ....., a coroner of the said county (or corporation), upon the view of the body of ....., (or a person unknown), there lying dead. The jurors, sworn to inquire when, how, and by what means the said ..... (or person) came to his death, upon their oaths do say: (Then insert when, how, and by what person, means, weapon, or instrument he was killed, and any material circumstances). In testimony whereof, the said coroner and jurors have hereto set their hands." (Code 1887, § 3943.)

Sec. 4812. Inquisition, evidence, etc., to be returned to court; witnesses to be recognized.—The coroner shall return to the circuit court of his county or corporation court of his corporation the inquisition, written testimony, and recognizances by him taken; and if the jury find that murder, manslaughter, or assault had been committed on the deceased, shall require such witnesses as he thinks proper to give a recognizance to appear and testify at such court when it sits for the trial of the accused. (Code 1887, § 3944; 1902-3-4, p. 840.)

Sec. 4813. Warrant for arrest of accused, by whom issued and how returnable.—If a person charged with the offense by the inquest be not in custody, the coroner may, for his apprehension, issue a warrant for his arrest in the same manner as a justice. It shall be returnable before a justice and proceeded on as directed by chapter one hundred and ninety-four. If he be in custody, the coroner shall direct the officer having him in charge to take him before a justice of the peace to be proceeded against as provided by chapter one hundred and ninety-two of this Code. But if the coroner be himself a justice, he may proceed under said chapter without giving such a direction. (Code 1887, § 3945.)

Revisors' Note.—As revised, this section expressly gives the coroner the right to issue a warrant for the arrest of the person charged with the

Digitized by Google

offense by the inquest. The last two sentences are new, and provide for the case where the accused is in custody.

In line five of the text "ninety-four" should be "ninety-two," and the General Assembly will be asked to correct this error.

It is too late to object to the regularity of commitment after the prisoner has been regularly examined and sent on for trial, and has been indicted by the grand jury. Wormeley's Case, 10 Gratt. 658, and notes thereto, Va. Rep. Anno.

A justice of the peace acting as coroner has authority to commit to jail for trial a person charged by the inquest with felony. Jackson's Case, 23 Grat. 919.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 154, section 7.

Sec. 4814. When deceased a stranger, coroner to have body buried; how costs paid; pay of jurors.—If the dead person be a stranger, whether an inquest be taken, or the coroner called to view the body think it unnecessary to have an inquest, he shall cause the body to be decently buried. If the coroner certify that he believes the deceased has not sufficient estate in this State to pay the expenses of the burial, the coroner's fees, and the expenses of the inquest (if one was taken), including the pay of the jurors, as hereinafter provided for, they shall, when allowed by the court of the coroner's county or corporation, be paid out of the treasury. In other cases, all such charges shall be paid out of the estate of the deceased, or if the estate be insufficient, by the county or corporation aforesaid, unless the inquest be on the body of a convict in the penitentiary, in which case the same shall be paid out of the treasury after being allowed by the executive. Jurors who serve on a coroner's inquest shall be entitled to receive one dollar for such service, to be paid as the other expenses of inquest are herein above directed to be paid. (Code 1887, § 3946.)

Sec. 4815. Coroner may require physicians to attend inquest; their pay.—In taking an inquest, the coroner may require one or more physicians to attend, and give information and render services incident to his profession useful to the jury; and reasonable compensation therefor shall be allowed, as part of the costs of the inquest. (Code 1887, § 3947.)

Sec. 4816. Penalty on coroner for failure of duty; where no coroner, justice may act.—If a coroner wilfully or negligently fail to perform any duty herein required of him, he shall forfeit one hundred dollars. In case of such failure, or if there be no coroner authorized to act, or none in the neighborhood in which the dead body is found, any justice of the county may act as coroner, and shall be entitled to the same fees, and be subject to the same penalties as a coroner. (Code 1887, § 3948.)

Revisors' Note.—The words, "wilfully or negligently," appearing in line one of the text, are new. Without this insertion the section would be more drastic than was probably intended.

Sec. 4817. Inquest may be taken on Sunday.—Under this chapter, proceedings may be had for summoning a jury and witnesses,

Digitized by Google

and an inquest may be held as well on Sunday as any other day. (Code 1887, § 3949.)

Sec. 4818. Coroners' and constables' fees.—A coroner shall have for viewing a dead body, whether an inquest be had or not, three dollars, except where the coroner is a physician and actually makes an examination of the dead body, in which case his fee shall be five dollars, and in the event that the coroner deems it necessary to make an autopsy and does make such autopsy, then he shall be allowed such additional fee as shall seem reasonable to the circuit court of the county or the corporation court of the city in which such autopsy was held; and a sheriff or constable for summoning a coroner's jury and the witnesses shall receive one and a half dollars. (Code 1887, § 3950; 1908, p. 639.)

Revisors' Note.—The words, "or the corporation court of the city," appearing in line four from the bottom of the text, are new.

CHAPTER 191.

Search Warrants.

Sec.
4819. When justice may issue search warrant for property stolen, etc.
4820. When, and in what other cases, he may issue it.
4821. How warrant directed; what it shall command.
4822. What to be done with the property, etc., seized under it.

Sec. 4819. When justice may issue search warrant for property stolen, etc.—If there be complaint on oath that personal property has been stolen, embezzled, or obtained by false pretenses, and that it is believed to be concealed in a particular house or other place the justice to whom complaint is made, if satisfied that there is reasonable cause for such belief, shall issue a warrant to search such place for the property. (Code 1887, § 3951; 1897-8, p. 399.)

Revisors' Note.—The revisors could see no good reason why a search warrant might not be issued by any justice, hence omitted the provisos and restored the section to what it was in the Code of 1887.

General warrants to search suspected places are illegal and void both by common law and our Bill of Rights, section 10, Constitution 1902.

The landlord of a tenant at will may peacefully enter the premises, but an illegal search for stolen goods makes him a trespasser ab initio. Faulkner v. Alderson, Gilmer 221.

See Gregory's Forms No. 84.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 155, section 1.

Sec. 4820. When, and in what other cases, he may issue it.—On like complaint, on oath, according to the nature of the case, the justice to whom it is made, if satisfied that there is reasonable cause therefor, shall issue a warrant to search specified places for the following things:

Digitized by Google

First, Counterfeit or spurious coin, forged bank notes, and other instruments or writings, or any tools, machines, or materials for making them;

Second, Any book or other thing containing obscene language, or any print, picture, figure, or description manifestly tending to corrupt the morals of youth, and intended to be sold, loaned, circulated, or distributed, or to be introduced into a family, school, or place of education;

Third, Lottery tickets, or materials unlawfully made, provided, or procured for drawing a lottery;

Fourth, Any gaming apparatus or implements used, or kept and provided to be used, in unlawful gaming, or in any place resorted to for unlawful gaming. (Code 1887, § 3952.)

Sec. 4821. How warrant directed; what it shall command.—Every search warrant shall be directed to the sheriff, sergeant, policeman or constable of the county or corporation in which the place to be searched is, and shall command him to search the place designated either in day or night and seize such stolen property or other things and bring the same and the person in whose possession they are found before a justice or court having cognizance of the case. (Code 1887, § 3953; 1897-8, p. 399.)

Revisors' Note.—With the exception of the insertion of the word "policeman" in line two of the text, this section is as it stood in the Code of 1887, and the amendment of 1897-8, page 399, has been omitted. See Gregory's Forms No. 84.

Sec. 4822. What to be done with the property, etc., seized under it.—If any search warrant be executed by the seizure of property, or of any other of the things aforesaid, the same shall be safely kept by the direction of such justice or court, to be used in evidence; and as soon as may be afterwards, such stolen or embezzled property shall be restored to its owner, and the other things specified aforesaid, burnt or otherwise destroyed under such direction. (Code 1887, § 3954.)

CHAPTER 192.

Arrest, Commitment, and Bail.

Sec.
4823. Who may issue process of arrest.
4824. When it may issue; what to recite and require.
4825. When officer may pursue and arrest accused anywhere in the State.
4826. Before whom he shall be brought.
4827. When warrant issued in county, etc., other than where trial ought to be, what to be done with accused.
4828 Bail by justice.
4829. Bail by court or judge.
4830. Bail by bail commissioner of county.
4831. Bail by bail commissioner of adjoining county.

Digitized by Google

Sec.
4832. Bail where judge of corporation court is sick or absent.
4833. When court or judge may increase amount of bail fixed by the bail commissioner.
4834. Procedure.
4835. Fees of bail commissioner.
4836. When bail may be increased, or new sureties required; surety may take indemnity.
4837. Bail for accused arrested out of county in which offense was committed.
4838. When bail-piece to be delivered to bail; its form.
4839. Power of justice to adjourn case; when to commit accused to jail; when to recognize him.
4840. Proceedings, when accused fails to appear.
4841. When committed, what the order of the justice to state; how accused again brought before him.
Sec.
4842. Examination by the justice.
4843. Witnesses may be separated.
4844. Their testimony may be reduced to writing and subscribed.
4845. When the justice to discharge or not to discharge the accused.
4846. Commitment for trial; recognizance; notice to attorney for the Commonwealth.
4847. To whom, and when, examination and recognizance to be certified.
4848. Justice may associate other justices; if they disagree whose opinion to prevail.
4849. Person committed for misdemeanor may be discharged on acknowledgment of satisfaction by party injured.
4850. When and to whom order discharging recognizance, or superseding commitment, to be returned; judgment against accused for costs.

Sec. 4823. Who may issue process of arrest.—A judge of a circuit or corporation court, in vacation as well as in term, or a justice, may issue process for the arrest of a person charged with an offense. (Code 1887, § 3955; 1897-8, p. 398; 1899-00, p. 339; 1901, p. 286; 1902-3-4, p. 841.)

See Gregory's Forms Nos. 692, 693, 694, 695, 696, 697, 698, 699.

Sec. 4824. When it may issue; what to recite and require.—On complaint of a criminal offense to any such officer, he shall examine, on oath, the complainant and any other witnesses, or when such officer shall suspect that an offense, punishable otherwise than by a fine, has been committed, he may, without formal complaint, issue a summons for witnesses, and shall examine such witnesses; and if he sees good reason to believe that an offense has been committed, shall issue his warrant reciting the offense and requiring the person accused to be arrested and brought before a justice of the county or corporation, and in the same warrant, require the officer to whom it is directed to summon such witnesses as shall be therein named, to appear and give evidence on the examination: provided, that in cities and towns having a police force, the warrant shall be directed "To any policeman of said city (or town)," and shall be executed by the policeman into whose hands it shall come or be delivered: and provided further, that in cases of misdemeanor, where the warrant is issued by a justice or other person lawfully

Digitized by Google

authorized to issue the said warrant in the county wherein the offense has been committed, the warrant shall be made returnable and tried in the magisterial district in which the offense was committed by a justice of the said district unless for good cause shown by affidavit of the defendant, the justice before whom the said warrant is made returnable shall, in his discretion, remove the trial to some point in another magisterial district of the said county. (Code 1887, § 3956; 1897-8, p. 398; 1899-00, p. 339; 1901, p. 286; 1902-3-4, p. 841; 1904, p. 157.)

A description, "A. and his associates," is void as to the latter, if it does not name them. Wells v. Jackson, 3 Munf. 458. Warrants of arrest are required to recite the offense charged, but the same particularity is not expected or required as in indictments. Lacey v. Palmer, 93 Va. 160, 24 S. E. 930, 31 L. R. A. 822, 57 Am. St. Rep. 795.

As to "good cause, probable cause," see section 4790 and notes; Spengler v. Davy, 15 Grat. 381, 383; Scott v. Shelor, 28 Grat. 891, 905, 906.

See Gregory's Forms Nos. 692, 693, 694, 695, 696, 697, 698, 699.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 156, section 2.

Sec. 4825. When officer may pursue and arrest accused anywhere in the State.—If a person charged with an offense shall, after or at the time the warrant is issued for his arrest, escape from or be out of the county or corporation in which the offense is alleged to have been committed, the officer to whom the warrant is directed, may pursue and arrest him anywhere in the State; or a justice of a county or corporation other than that in which it was issued, on being satisfied of the genuiness thereof, may endorse thereon his name and official character, and such endorsement shall operate as a direction of the warrant to an officer of such justice's county or corporation. (Code 1887, § 3957.)

Although an escape warrant ought to show on the face of it that the person who issued it is a justice of the peace, yet on a habeas corpus sued out by the person arrested under it, if it is proved that he is a justice, the prisoner ought not to be discharged. Jones v. Timberlake, 6 Rand. 678.

See Gregory's Forms Nos. 692, 693, 694, 695, 696, 697, 698, 699.

Sec. 4826. Before whom he shall be brought.—An officer arresting a person under a warrant for an offense, shall bring such person before and return such warrant to a justice of the county or corporation in which the warrant issued, unless such person be let to bail as hereinafter mentioned, or it be otherwise provided. (Code 1887, § 3958; 1902-3-4, p. 841; 1904, p. 157.)

Revisors' Note.—This section is identical with section 3958 of the Code of 1887. The amendment found on page 157 of the Acts of 1904 has been omitted.

See Gregory's Forms Nos. 692, 693, 694, 695, 696, 697, 698, 699.

Sec. 4827. When warrant issued in county, etc., other than where trial ought to be, what to be done with accused.—Where a warrant is issued in a county or corporation. other than that in which the charge ought to be tried, the justice before whom the accused is

Digitized by Google

brought, shall, by warrant, commit him to an officer, that he may, and such officer shall, carry him to the county or corporation in which the trial should be, and there shall take him before, and return such warrant to, a justice thereof, unless otherwise provided. (Code 1887, § 3959.)

But where the justice has jurisdiction of his person and of the offense with which he is charged, and hears the charge on its merits, the judgment of the justice acquitting the accused is final and conclusive, and the guilt or innocence of the accused of that charge can never again be called in question. Jones v. Morris, 97 Va. 46-48, 33 S. E. 377.

Sec. 4828. Bail by Justice.—A justice before whom a person charged with a misdemeanor or a felony, if only a light suspicion of guilt falls on him in the latter case, may, pending examination before him, or upon committing such person for trial, admit him to bail. If the offense be a felony, and there is good cause to believe such person guilty, he shall not be let to bail by any justice, nor shall any person in jail under an order of commitment be admitted to bail by any justice, except the one committing him, nor in a less sum than was required by said order. (Code 1887, § 3960; 1895-6, p. 365; 1902-3-4, p. 317.)

For case construing the statute as it was in 1846, see Hamlett's Case, 3 Grat. 82.

As to "good cause," see section 4790 and notes; also Spengler v. Davy, 15 Grat. 381, 383; Scott & Boyd v. Shelor, 28 Grat. 891, 905, 906. See notes to section 4829.

Sec. 4829. Bail by court or judge.—But a court, or a judge thereof in vacation, in which any person is held and to be tried for a criminal offense, may, upon motion before said court, or upon a petition to the judge thereof in vacation, hear testimony and admit such person to bail before conviction and when such petition is filed before such judge in vacation, he shall at once order such person to be brought before him, that he may hear the petition for bail; if a circuit or corporation court, or a judge thereof in vacation, refuses to admit said person to bail, or require excessive bail, then the Supreme Court of Appeals, or any one judge thereof in vacation, upon petition of said person, shall at once order him to be brought before said court or judge in order that a motion may be made to admit him to bail, and upon such motion the said Supreme Court of Appeals, or judge thereof in vacation, may hear testimony and admit him to bail or remand him to jail. No other court or judge shall admit a person accused of a criminal offense to bail otherwise than is hereinbefore provided, except that such person may be admitted to bail under section forty-eight hundred and thirty-seven, and except also as hereinafter provided. (Code 1887, § 3960; 1895-6, p. 365; 1902-3-4, p. 317.)

A severe and dangerous disease, contracted in prison, and likely to terminate fatally, is good cause for admitting the prisoner to bail. Semmes' Case, 11 Leigh 665. See, also, Archer's Case, 6 Grat. 705.

An acquittal on one of several indictments, found on same transaction, and which might have been included in one indictment, furnishes

Digitized by Google

such a presumption of innocence in the others as entitles him to be bailed. Green's Case, 11 Leigh 677. But the acquittal of the prisoner of passing a counterfeit coin to one man is no ground for bail when he is under indictment for passing a second counterfeit coin to another person on the same day. Summerfield's Case, 2 Rob. 767.

The question of allowing bail on the ground that only a light suspicion of guilt falls on the accused is one for exercise of the sound discretion of the court, and if the court is satisfied that there is material evidence for the Commonwealth that is not before the court, was not before the examining court, or spread upon the record, the court ought not to sustain the motion. Rutherford's Case, 5 Rand. 646.

And the judgment of the examining court and the finding of the bill of indictment by the grand jury are not conclusive evidence against the application, but the court may examine other evidence. Id.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 156, section 6.

Sec. 4830. Bail by bail commissioner of county.—A bail commissioner of any county shall have the same powers to admit to bail as the circuit court of his said county, or the judge thereof would have, if application as hereinbefore provided had been made to said court or judge; but no application may be made to said bail commissioner after said court or judge has acted upon the application for bail or pending proceedings before said court or judge to obtain bail. If the bail commissioner shall refuse to admit to bail or require excessive bail, then application may be made to said court or judge, and the same proceedings may be had as if application had been made in the first instance to said court or judge. (Code 1887, § 3960; 1895-6, p. 365; 1902-3-4, p. 317.)

Sec. 4831. Bail by bail commissioner of adjoining county.—If said bail commissioner and the judge of said court be incapable for any reason of hearing said application, then application may be made to the bail commissioner of an adjoining county to the one in which the said applicant is held for trial, and if bail be refused, or excessive bail be required by said commissioner, then application may be made to the Supreme Court of Appeals, or a judge thereof in vacation as provided by section forty-eight hundred and twenty-nine in cases where the said circuit court, or the judge thereof in vacation, had refused to admit to bail, or had required excessive bail. (Code 1887, § 3960; 1895-6, p. 365; 1902-3-4, p. 317.)

Sec. 4832. Bail where judge of corporation court is sick or absent.—If such applicant for bail is held for trial in a corporation court, and said court is not in session, and the judge thereof is sick or absent from the city, then the proceedings to secure bail which would have been proper as hereinbefore stated, before such court or the judge thereof in vacation, shall be allowed before the nearest circuit or corporation court to the city in which such person is held for trial, or the judge thereof in vacation. Upon the refusal of said court or judge to admit to bail, or upon excessive bail being required, like proceedings may be had in the Supreme Court of Appeals, or before a judge thereof in vacation, as if the action had

Digitized by Google

been by the court in which such person is held for trial. (Code 1887, § 3960; 1895-6, p. 365; 1902-3-4, p. 317.)

Sec. 4833. When court or judge may increase amount of bail fixed by the bail commissioner.—If the amount of the bail fixed by the bail commissioner be deemed inadequate, the attorney for the Commonwealth of the county in which the accused is held for trial, may, on reasonable notice to the accused, move the court, or the judge thereof in vacation, to increase the amount of such bail. (Code 1887, § 3960; 1895-6, p. 365; 1902-3-4, p. 317.)

Revisors' Note.—This section is new, and should be read in connection with section 4836, which is also new. The objects to be accomplished are manifest, and need no explanation.

Sec. 4834. Procedure.—Any bail commissioner, or any court or judge thereof in vacation, to whom application is made as herein provided, shall at once order said person held for trial to be brought before said commissioner, court or judge, and upon motion shall hear testimony and admit to bail or remand him to jail. (Code 1887, § 3960; 1895-6, p. 365; 1902-3-4, p. 317.)

Sec. 4835. Fees of bail commissioner.—The fees of said commissioner shall be double those of a justice of the peace for the trial of a criminal case, and shall be paid out of the treasury. (Code 1887, § 3960; 1895-6, p. 365; 1902-3-4, p. 317.)

Sec. 4836. When bail may be increased, or new sureties required; surety may take indemnity.—Although a party has been admitted to bail, if the amount thereof is subsequently deemed insufficient, or the security taken inadequate, it shall be lawful for the court having jurisdiction to try the case in which the bail was required, or the judge thereof in vacation, or the officer before whom the bail was given, to increase the amount of such bail, or to require new or additional sureties therefor, or both. Any surety in a bail bond or a recognizance for the appearance of one charged with crime may take from his principal collaterals or other security to indemnify such surety against liability.

Revisors' Note.—This section is new. See revisors' note to section 4833.

Sec. 4837. Bail for accused arrested out of county in which offense was committed.—A person charged with a misdemeanor, and to be carried to another county or corporation, shall, if he request it in the county or corporation wherein he is arrested, be brought before a court, judge, or justice thereof. In such case, if he desire it, such court, judge, or justice before whom he is brought, may, without trial or examination, let him to bail, upon taking a recognizance for his appearance before the court or justice having cognizance of the case; the fact of taking which shall be certified, by the court or officer taking it, upon the warrant under which such person was arrested, and the warrant and recognizance shall be returned forthwith to the clerk of the court or to the justice before

Digitized by Google

whom the accused is to appear; to which court or justice, the judge or justice, who issued such warrant, shall recognize or cause to be summoned such witnesses as he may think proper. (Code 1887, § 3961.)

Sec. 4838. When bail-piece to be delivered to bail; its form.—In all cases in which recognizances, at the suit of the Commonwealth, may have been, or shall hereafter be entered into, it shall be the duty of the clerk of the court in which, or in the clerk's office of which, any recognizance is filed, to deliver to the bail, on his applying therefor, a bail-piece, in substance, as follows: "A. B. of the county (or corporation) of ....., is delivered to bail, unto C. D. of the county (or corporation) of ....., at the suit of the Commonwealth. Given under my hand, this ..... day of ....., in the year ....." (Code 1887, § 3962.)

Sec. 4839. Power of justice to adjourn case; when to commit accused to jail; when to recognize him.—A justice may adjourn an examination or trial pending before him, not exceeding ten days at one time, without the consent of the accused, and to any place in the county or corporation. In such case, if the accused be charged with a felony, unless it be a case in which only a light suspicion of guilt exists, he shall be committed to jail; otherwise, he may be recognized for his appearance at the time appointed for such further examination or trial, or for want of bail be committed to jail. (Code 1887, § 3963.)

See notes to section 4840.

Cited but not construed in Hill v. Smith, 107 Va. 848, 59 S. E. 475.

Sec. 4840. Proceedings, when accused fails to appear.—If a person recognized to appear before a justice do not appear at the time so appointed, the said justice shall certify the recognizance and the fact of such default to the circuit or corporation court at its next term, and like proceedings shall be had thereon as on breach of a recognizance for appearance before such court. (Code 1887, § 3964.)

As to recognizances for appearance before court, and scire facias thereon, see Com. v. Murray, 2 Va. Cas. 504; Com. v. Craig, 6 Rand. 731; Bias v. Floyd, 7 Leigh 640; Young v. Com., 1 Rob. 744; Gedney v. Com., 14 Grat. 318; Caldwell v. Com., Id. 698; Philips v. Com., 19 Grat. 528; Bolanz v. Com., 24 Grat. 31.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 156, section 10.

Sec. 4841. When committed, what the order of the justice to state; how accused again brought before him.—If the accused be committed, it shall be by an order of the justice, stating that he is committed for further examination on a day specified in the order, and on that day he may be brought before the justice, by his verbal order to the officer by whom he was committed, or by a written order to a different person. (Code 1887, § 3965.)

Digitized by Google

A mistake of the justice in the date of the warrant of commitment is no ground for setting aside subsequent proceedings. Murray's Case, 2 Va. Cas. 504.

"It is safe that a warrant of commitment should set forth that the party is charged on oath or affirmation, but it is not necessary." Murray's Case, 2 Va. Cas. 504.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 156, section 11.

Sec. 4842. Examination by the justice.—The justice before whom any person is brought for an offense, shall, as soon as may be, in the presence of such person, examine on oath the witnesses for and against him, and he may be assisted by counsel. (Code 1887, § 3966.)

In a criminal trial the prosecutor may employ counsel to aid the attorney for the Commonwealth, and such counsel will be permitted to aid in the prosecution. Hopper's Case, 6 Grat. 684.

See Wormeley's Case, 10 Grat. 667.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 156, section 12.

Sec. 4843. Witnesses may be separated.—While a witness is under such examination, all other witnesses may, by order of the justice, be excluded from the place of examination, and kept separate from each other. (Code 1887, § 3967.)

See Hopper's Case, 6 Grat. 684.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 156, section 13.

Sec. 4844. Their testimony may be reduced to writing and subscribed.—When the justice deems it proper, the testimony of the witnesses may be reduced to writing, and the same, if required by him, shall be signed by them respectively. (Code 1887, § 3968.)

Sec. 4845. When the justice to discharge or not to discharge the accused.—The justice shall discharge the accused if he consider that there is not sufficient cause for charging him with the offense; if he consider that there is sufficient cause to charge the accused with a misdemeanor only, then he shall try the accused for said offense and convict him if he deem him guilty and pass judgment upon him in accordance with the provisions of section forty-nine hundred and eighty-seven just as if the accused had first been brought before him on a warrant charging him with said misdemeanor; if he consider that there is just and sufficient cause for charging the accused with a felony, then he shall commit him to jail or let him to bail under section forty-eight hundred and twenty-eight. He shall require recognizance with or without sureties as he deems proper from all material witnesses against the accused and also for the accused if he desires it. (Code 1887, § 3969; 1895-6, p. 935.)

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 156, section 15.

Sec. 4846. Commitment for trial; recognizance; notice to attorney for the Commonwealth.—When a justice considers that there

Digitized by Google

is sufficient cause for charging the accused with a felony, unless it be a case wherein it is otherwise specially provided, the commitment shall be for trial, and the recognizance be for appearance in the court having jurisdiction of the offense, at such time as the case can be proceeded in before such court. The justice shall return to the clerk of the court, as soon as may be, a certificate of the nature of the offense, showing whether the accused was committed or recognized therefor; and the clerk, as soon as may be, shall inform the attorney for the Commonwealth in said court of such certificate. (Code 1887, § 3970.)

As to sufficient cause, see notes to section 4790; and Spengler v. Davy, 15 Grat. 381, 383; Scott & Boyd v. Shelor, 28 Grat. 891, 905, 906.

The Supreme Court, after discharging prisoner by habeas corpus, because the order of commitment did not sufficiently specify the offense, forthwith remanded him before justice to be further dealt with according to law. Young's Case, 1 Rob. 744; Ex parte Marx, 86 Va. 47, 9 S. E. 475.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 156, section 16.

Sec. 4847. To whom, and when, examination and recognizance to be certified.—Every examination and recognizance for a felony taken under this chapter, shall, by the judge, bail commissioner, or justice taking it, be certified to the clerk of the circuit court of the county or corporation court of the city in which the party charged is to be tried, or the witness is to appear, on or before the first day of its next session. If he fail, he may be compelled to do so by attachment, as for a contempt. (Code 1887, § 3971.)

Revisors' Note.—The words "for a felony" have been inserted in line one of the text, as it is manifest that it was not intended that the section should apply to misdemeanors. The verbal changes made were not intended to change the law.

Sec. 4848. Justice may associate other justices; if they disagree whose opinion to prevail.—A justice to whom complaint is made, or before whom a prisoner is brought, may associate with himself other justices of the county or corporation, not exceeding two, and they may together execute the powers and duties before mentioned, but in case of disagreement in opinion, the opinion of the justice to whom the complaint is made, or before whom the prisoner is brought, shall prevail when one justice is so associated with him, but in case there be two justices associated with him, the opinion of the majority shall prevail. (Code 1887, § 3972; 1902-3-4, p. 116.)

Sec. 4849. Person committed for misdemeanor may be discharged on acknowledgment of satisfaction by party injured.—When a person is in jail or under a recognizance to answer a charge of assault and battery or other misdemeanor, or has been indicted for an assault and battery, or other misdemeanor, for which there is no remedy by civil action, unless the offense was committed by or
(1976) sheriff or other officer of justice, or riotously, or with intent

Digitized by Google

to commit a felony, if the party injured appear before the judge or justice, who made the commitment, or took the recognizance, or before the court in which the indictment is pending, and acknowledge in writing that he has received satisfaction for the injury, such judge, justice, or court may, in his or its discretion, by an order, supersede the commitment, discharge the recognizance, or dismiss the prosecution, upon payment by the defendant of costs accrued to the Commonwealth, or any of its officers. (Code 1887, § 3973.)

Revisors' Note.—This section as it stood before the revision did not provide for a case where there was AN INDICTMENT pending. The revised section does. The words, "upon payment by the defendant of costs accrued to the Commonwealth, or any of its officers," appearing at the end, are new.

Sec. 4850. When and to whom order discharging recognizance, or superseding commitment, to be returned; judgment against accused for costs.—Every order discharging a recognizance shall be filed with the clerk before the session of the court at which the party was to appear, and an order superseding a commitment shall be delivered to the jailor, who shall forthwith discharge the witnesses (if any) and the accused, and against him judgment shall be entered in the said court for the costs of the prosecution. (Code 1887, § 3974.)

CHAPTER 193.

Grand Juries.

Sec.
4851. Grand juries; regular and special terms; when.
4852. When and how grand jurors to be selected by judges of circuit courts of counties and corporation or hustings courts of cities; lists to be delivered to clerk; when and how jurors summoned.
4853. Who are qualified; number of grand jury, regular and special.
4854. When special grand jury may be ordered; by whom and how.
4855. How deficiency of jurors supplied.
4856. Foreman of grand jury; his oath, and oath of other jurors.
4857. When new foreman or juror may be sworn in.
4858. Judge to charge grand jury.
4859. Duties of grand jury.
4860. How indictments found and presentments made.
4861. Indictments ignored may be sent to another grand jury; what irregularities not to vitiate indictment, etc.
4862. Penalties on officers and jurors for failure of duty.
4863. Pay and mileage of grand jurors.
4864. Commissioners, sheriffs, constables, etc., to give information of violation of penal laws to attorney for the Commonwealth.

Sec. 4851. Grand juries; regular and special terms; when.—There shall be a regular grand jury at two terms in each year of the cir-

Digitized by Google

cuit courts of the counties and of the corporation or hustings courts of the corporations, to be designated by the judges of said courts, respectively, and special grand juries whenever ordered, as hereinafter provided. (Code 1887, § 3975; 1902-3-4, p. 877.)

See notes to section 4854.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 157, section 1.

Sec. 4852. When and how grand jurors to be selected by judges of circuit courts of counties and corporation or hustings courts of cities; lists to be delivered to clerk; when and how jurors summoned.—The judges of the said courts shall annually, in the month of June, July, or August, select from the male citizens of each county of their respective circuits and in their several cities forty-eight persons twenty-one years of age and upwards, of honesty, intelligence, and good demeanor, and suitable in all respects to serve as grand jurors, who shall be the grand jurors for the county or city from which they are selected for twelve months next thereafter. Such jurors shall be selected in each county from the several magisterial districts of the county, and in each city from the several wards of the cities in proportion to the population thereof, and the judge making the selection shall at once furnish to the clerk of his court in each county of his circuit or in his city a list of those selected for that county or city. The clerk, not more than twenty days before the commencement of each term of his court at which a regular grand jury is required, shall issue a venire facias to the sheriff of his county or sergeant of his city, commanding him to summon not less than twelve nor more than sixteen of the persons selected as aforesaid (the number to be designated by the judge of the court by an order entered of record) to be named in the writ, to appear on the first day of the court to serve as grand jurors. No such person shall be required to appear more than once until all the others have been summoned once, nor more than twice until the others have been twice summoned, and so on: provided, that no male citizen over sixty years of age shall be compelled to serve as a grand juror. The clerk, in issuing the venire facias, shall apportion the grand jurors, as nearly as may be, ratably among the magisterial districts or wards; but the Circuit Court of James City county, or the judge thereof in vacation, shall select the grand jurors for such court from said county and the city of Williamsburg in such proportion from each as he may think proper. (Code 1887, § 3976; 1889-90, p. 90; 1902-3-4, pp. 22, 878.)

Revisors' Note.—Under this section as it stood in the Code of 1887, the venire facias issued by the clerk for a regular grand jury commanded the sheriff or sergeant to summon TWENTY-FOUR persons. Acts 1889-90, p. 90, reduced the number to TWELVE, and this continued to be the number required until the present revision. Under the revised section, the venire facias commands the officer to summon "not less than TWELVE nor more than SIXTEEN of the persons selected as afore-

Digitized by Google

said (the number to be designated by the judge of the court by an order entered of record)." See the following section, and revisors' note.

This section having been amended in July, 1902, it was not error for the judge, in selecting grand jurors for the August term, to quash a venire issued under the prior law, and to issue a new venire in accordance with the amendment. Nor was it error to summon a regular instead of a special jury, under section 4854. Litton's Case, 101 Va. 838, 44 S. E. 923.

Objection to the mode of summoning a grand jury must be made before a plea to the merits. Curtis' Case, 87 Va. 592, 13 S. E. 73.

See notes to section 4853.

Sec. 4853. Who are qualified; number of grand jury, regular and special.—A regular grand jury shall consist of not less than eleven nor more than sixteen persons, and a special grand jury of not less than six nor more than nine persons. Each grand juror shall be a citizen of this State, twenty-one years of age, and shall have been a resident of this State two years, and of the county or corporation in which the court is to be held one year, and in other respects a qualified juror, and not a constable, or overseer of a road, and, when the grand juror is for a circuit court of a county, not an inhabitant of a city. (Code 1887, § 3977; 1889-90, p. 91; 1902-3-4, p. 878; 1916, p. 764.)

Revisors' Note.—Under the Code of 1887 a regular grand jury consisted of not less than sixteen nor more than twenty-four persons, and a special grand jury of not less than six nor more than nine persons. The number of the regular grand jury was reduced by Acts 1889-90, p. 91, to not less than nine nor more than twelve persons, and this continued to be the law until the present revision. The revised section provides that a regular grand jury shall consist of not less than ELEVEN nor more than SIXTEEN persons. See the preceding section increasing the number to be summoned. The changes in this and the preceding section were made because the revisors were of opinion that larger grand juries, especially for the larger counties and cities, would be conducive to law enforcement, although, of course, more expensive.

Requisites for grand juror.—The phrase, "in other respects a qualified juror," must be interpreted according to the common-law and statutory requirements for jurors. The common-law requirement is that they should be probi aut liberi et legales homines. Therefore it is a good exception at common law to one returned on a grand jury that he is an alien or a minor, or was not returned by proper officer, or that he was returned at the instance of the prosecutor. Also infamy is a good cause for challenge to a juror, or that he hath been convicted of treason, felony, perjury, etc. Booth's Case, 16 Grat. 519, 527.

For present statutory requirements, see sections 5984 et seq.

Census enumerators, appointed under a law of Congress, may be members of the grand jury (Strother's Case, 1 Va. Cas. 187); also a naturalized citizen of the United States or a native citizen of any other state domiciled in Virginia (Towles' Case, 5 Leigh, 743); but not an alien (Cherry's Case, 2 Va. Cas. 20). As to freeholder under the old law serving on grand jury, see Kerby's Case, 7 Leigh, 747.

Formerly, ordinary keepers and owners and occupiers of grist-mills were ineligible to serve as grand jurors, but they were made eligible by the amendment of 1916 (Acts 1916, p. 764).

Persons over sixty years of age are not disqualified from serving on grand juries, though they are exempted from service if they choose to claim the exemption. Booth's Case, 16 Grat. 519.

A supervisor of a county who, under certain circumstances, has supervision and control over the roads in his district, is not an "overseer of

Digitized by Google

roads," within the meaning of this section. Cook's Case, 114 Va. 882. 77 S. E. 608.

Generally.—This section is not repugnant to articles 5 and 14 of the amendments to the United States Constitution. Hausenfluck's Case, 85 Va. 702, 8 S. E. 683.

Objection to mode of summoning grand jury or to the qualification of particular grand jurors must be made by a plea in abatement at a preliminary stage of the case and before a plea to the merits. Cherry's Case, 2 Va. Cas. 20, and note; Long's Case, Id. 318; Kerby's Case, 7 Leigh, 747; Booth's Case, 16 Grat. 519, 523; Moran's Case, 9 Leigh, 651; Curtis' Case, 87 Va. 590, 13 S. E. 72; Early's Case, 86 Va. 921, 11 S. E. 795.

Objections as aforesaid cannot be raised for the first time in appellate court. Taylor's Case, 90 Va. 109, 17 S. E. 812.

And this plea in abatement is waived by pleading to the general issue alone. Early's Case, 86 Va. 921, 11 S. E. 795. But it is admissible although another plea in abatement was at the same time pleaded and issue joined thereon. Long's Case, 2 Va. Cas. 318.

For objection to the method of constituting a grand jury not sustained, see Mesmer's Case, 26 Grat. 976.

Cited in Litton's Case, 101 Va. 833, 44 S. E. 923.

Under this section, as amended (1889-90, p. 91), special or regular grand jury may find indictment for murder. Lyle v. Com., 88 Va. 396, 13 S. E. 802.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 157, section 3.

Sec. 4854. When special grand jury may be ordered; by whom and how.—A special grand jury may be ordered at any time by a circuit court of a county or corporation, or corporation or hustings court of a corporation, or the judge thereof in vacation, the jurors to be summoned from a list furnished by the judge, and where a grand jury, regular or special, has been discharged, the court, during the term, may impanel another grand jury, which may be a special grand jury. A special grand jury may be summoned for and impanelled at a special term of the court as well as at a regular term. (Code 1887, § 3978; 1902-3-4, p. 878; 1904, p. 92.)

No venire facias is required to summon a special grand jury. Robinson's Case, 88 Va. 903, 14 S. E. 627.

Where one of the grand jury finding an indictment was incompetent, and for that reason the grand jury was dismissed and the indictment quashed, the court may direct a special grand jury to be summoned at the same term, and an indictment found by this grand jury is valid. Shinn's Case, 32 Grat. 899.

The fact that two of the jurors who were members of the grand jury which found the indictment against the defendant had served on another special grand jury at the same term of the court did not disqualify them to serve upon the grand jury which found the indictment. Richardson's Case, 76 Va. 1007.

Under this section and section 4851 special grand juries may be summoned and impaneled at any regular or special term of the court when so ordered by the judge. Wright's Case, 114 Va. 872, 77 S. E. 503.

Sec. 4855. How deficiency of jurors supplied.—If a sufficient number of grand jurors do not appear, the court may order the deficiency to be supplied from the bystanders, or from a list furnished by the judge to the sheriff or sergeant. (Code 1887, § 3979.)

Plea in abatement will not lie to an indictment, for that the court, if sufficient number of the jurors summoned are not in attendance, (1982)

Digitized by Google

causes the required number to be returned from the county at large. Richardson's Case, 76 Va. 1007.

If it be discovered that one of the grand jurors lacks the legal qualifications, the court must discharge him and order another to be sworn in his place. Burton's Case, 4 Leigh 645, 26 Am. Dec. 337; Richardson's Case, 76 Va. 1007.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 157, section 4.

Sec. 4856. Foreman of grand jury; his oath, and oath of other jurors.—From among the persons summoned who attend, the court shall select a foreman, who shall be sworn as follows: "You shall diligently inquire, and true presentment make, of all such matters as may be given you in charge, or come to your knowledge, touching the present service. You shall present no person through prejudice or ill-will, nor leave any unpresented through fear or favor, but in all your presentments you shall present the truth, the whole truth, and nothing but the truth. So help you God." The other grand jurors shall afterwards be sworn as follows: "The same oath that your foreman has taken on his part, you and each of you shall observe and keep on your part. So help you God." (Code 1887, § 3980.)

It appears that this section is merely declaratory of the common law. See 11 Va. Law Reg. 544.

See Gregory's Forms, Nos. 585, 586.

Sec. 4857. When new foreman or juror may be sworn in.—If the foreman or any grand juror, at any time after being sworn, fail or be unable to attend, another may be sworn in his stead. (Code 1887, § 3981.)

Sec. 4858. Judge to charge grand jury.—The grand jury, after being sworn, shall be charged by the judge of the court, and shall then be sent to their room. (Code 1887, § 3982.)

Failure to charge grand jury does not vitiate an indictment found by them. The provision is directory only. Porterfield's Case, 91 Va. 802, 22 S. E. 352.

It appears that this section is merely declaratory of the common law. See 11 Va. Law Reg. 544.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 157, section 6.

Sec. 4859. Duties of grand jury.—The grand jury shall inquire of and present all felonies, misdemeanors, and violations of penal laws, committed within the jurisdiction of the respective courts wherein they are sworn; except that no presentment shall be made of a matter for which there is no corporal punishment, but only a fine, where the fine is limited to an amount not exceeding five dollars. (Code 1887, § 3983.)

It appears that this section is merely declaratory of the common law. See 11 Va. Law Reg. 544.

Cited but not construed in Wells' Case, 107 Va. 834, 57 S. E. 588.

Sec. 4860. How indictments found and presentments made.—At least nine of a regular grand jury and five of a special grand jury must concur in finding or making an indictment or presentment.

Digitized by Google

They may make a presentment or find an indictment upon the information of two or more of their own body, or on the testimony of witnesses called on by the grand jury, or sent to it by the court. If only one of their number can testify as to an offense, he shall be sworn as any other witness. When a presentment or indictment is so made or found, the names of the grand jurors giving the information, or of the witnesses, shall be written at the foot of the presentment or indictment. (Code 1887, § 3984; 1889-90, p. 91.)

Revisors' Note.—Under section 3984 of the Code of 1887 the concurrence of at least twelve of a regular grand jury was necessary in finding or making an indictment or presentment. This was in conformity with sections 3976 and 3977 of that Code. When these sections were amended by Acts 1889-90, p. 91, section 3984 was amended also, and the concurrence of at least SEVEN of a regular grand jury was necessary from the time of the amendment to the present revision. In consequence of the changes made in the revised sections 4852 and 4853, section 4860 now provides for a concurrence of at least NINE of a regular grand jury.

The provision that "if only one of their number can testify as to an offense, he shall be sworn as any other witness" is new, but not intended to change the existing law.

The provision that the names of the witnesses upon whose evidence the grand jury make their indictment shall be written at the foot of the indictment or presentment is merely directory, and not mandatory. Porterfield's Case, 91 Va. 802, 22 S. E. 352; Dever's Case, 10 Leigh 685; Williams' Case, 5 Grat. 702; Shelton's Case, 89 Va. 450, 16 S. E. 355; Clopton's Case, 109 Va. 813, 63 S. E. 1022.

The omission of the names of the witnesses in the indorsement of an indictment will not operate to exclude such witnesses from testifying at the trial. Lawrence's Case, 30 Grat. 853.

Indorsement on separate sheet enveloping indictment, indictment not vitiated. Burgess' Case, 2 Va. Cas. 483.

In reference to the number who must agree, see Sayers' Case, 8 Leigh 722, 725.

Under Acts 1869-70, p. 550, chapter 397, section 4, it was held that, in the absence of evidence to the contrary, it must be presumed that the indictment was found at a term when a jury might lawfully consist of only eight members (a special grand jury). Price's Case, 21 Grat. 855.

As to the right of the accused to appear before the grand jury, see Editorial, 1 Va. L. R. N. S. 228.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 157, section 8.

Sec. 4861. Indictments ignored may be sent to another grand jury; what irregularities not to vitiate indictment, etc.—Although a bill of indictment be returned not a true bill the same or another bill of indictment against the same person, for the same offense, may be sent to, and acted on, by the same or another grand jury. No irregularity in the time or manner of selecting the jurors, or in the writ of venire facias, or in the manner of executing the same, shall vitiate any presentment, indictment, or finding of a grand jury. (Code 1887, § 3985.)

Revisors' Note.—The words, "the same or," found in line two of the text, are new, but not supposed to change the existing law.

Digitized by Google

Sec. 4862. Penalties on officers and jurors for failure of duty.—A court, whose officer fails without good cause, when it is his duty, to summon a grand jury and return a list of their names, shall fine him twenty dollars. A person summoned, and failing to attend a court as a grand juror, shall be fined by said court not less than five dollars, unless, after being summoned to show cause against the fine, he give a reasonable excuse for his failure. (Code 1887, § 3986.)

Revisors' Note.—The words, "without good cause," found in line two of the text, are new.

Sec. 4863. Pay and mileage of grand jurors.—Every person who serves upon a grand jury shall receive the same compensation and mileage allowed jurors in civil cases by section six thousand and seven, and the same shall be paid out of the county or corporation levy. (Code 1887, § 3987.)

Sec. 4864. Commissioners, sheriffs, constables, etc., to give information of violation of penal laws to attorney for the Commonwealth.—Every commissioner of the revenue, sheriff, constable, or other officer shall give information of the violation of any penal law to the attorney for the Commonwealth, who shall forthwith institute and prosecute all necessary and proper proceedings in such case, whether in the name of the Commonwealth or of a county or corporation, and may in such case issue or cause to be issued a summons for any witness he may deem material to give evidence before the court or grand jury. It shall, however, be unlawful for any attorney for the Commonwealth to go before any grand jury during their deliberations except when duly sworn to testify as a witness, but he may advise the foreman of the grand jury or any member or members thereof in relation to the discharge of their duties. (Code 1887, § 3988.)

This section makes it duty of sheriff to give information of violation of any penal law to Commonwealth's attorney, and this duty necessarily carries with it the implied power to investigate, inquire into, and ascertain if an offense has been committed. Under section 788, Rev. St. U. S. [U. S. Comp. St. 1901, p. 608], United States marshal has same powers. Carico v. Wilmore (D. C.), 51 Fed. 198.

An indictment will not be quashed because the attorney for the Commonwealth appeared before the grand jury when not sworn as a witness, where it appears from the evidence that he did not advise them to find the indictment, did not know of their finding until the presentment was made, and was not in the room when they had the indictment under consideration. Mullin's Case, 115 Va. 945, 79 S. E. 324.

Digitized by Google

CHAPTER 194.

Presentments, Indictments, and Informations, and Process Thereon.

Sec.
4865. Form of prosecutions.
4866. When information filed; prosecutions for felony to be by indictment.
4867. Name of prosecutor to be written on indictment, etc., for misdemeanor; when required to give security for costs.
4868. When judgment for costs against him.
4869. What sufficient statement in indictment for perjury or subornation of perjury.
4870. In prosecution for embezzlement any number of offenses may be charged if committed within six months; what description of money sufficient in prosecution for embezzlement; what for larceny.
4871. In prosecution for forgery, unnecessary to set forth copy of forged instrument.
4872. In prosecution for offense relating to property, what proof of ownership sufficient.
4873. Where intent an ingredient of offense, what allegation thereof sufficient.
4874. Unnecessary allegations may be omitted.
4875. What defects in indictments not to vitiate them.
4876. Amendment of indictments for misdemeanors.
4877. Amendment of indictments for treason or felony before the defendant pleads.
4878. Amendment of indictments for treason or felony after the defendant pleads for defects of form, or for variance.
4879. When judgment not to be arrested or reversed.
4880. Accused discharged from imprisonment, if not indicted in time.
4881. What process to be awarded against accused on indictment, etc.
4882. How awarded, directed, returnable, and executed.
4883. Capias to hear judment for a misdemeanor unnecessary; judgment may be entered in absence of accused, and order made for his arrest; powers, duties, etc., of officer under such order.
4884. Clerks to mail process to officers in other counties, etc.
4885. Where process of arrest issued during term may be executed.
4886. To whom person arrested may be delivered.
4887. Person arrested to answer indictment, etc., or to hear judgment on, etc., for misdemeanor, or on attachment, may be bailed by officer; in what sum; recognizance to be returned to court; penalty for failure, or for insufficient bail.
4888. When information need not be filed, but a summons issued; when and how judgment given.
4889. Process on indictment or presentment for misdemeanor.
4890. What not to work discontinuance.
4891. Outlawry abolished.
4892. How summons against a corporation to answer indictment, etc., is served; proceedings, if it fail to appear and plead; how expense of publication is certified, paid, and taxed in costs.

Digitized by Google

Sec. 4865. Form of prosecutions.—Prosecutions for offenses against the Commonwealth, unless otherwise provided, shall be by presentment, indictment, or information. (Code 1887, § 3989.)

As to indictments, presentments, etc., generally, see Min. Syn. 249-255; note to Boyle's Case, 14 Grat. 674, 676, Va. Rep. Anno.

As to the distinction between presentments and indictments, see Towles' Case, 5 Leigh 743; Jones' Case, 19 Grat. 481; also Min. Syn. 250; Christian's Case, 7 Grat. 637.

The presentment, not the time of filing the information upon it, is the date of the prosecution. Christian's Case, 7 Grat. 631.

Presentment on indictment of a grand jury must be brought into court by them, and publicly presented and recorded. Cawood's Case, 2 Va. Cas. 527; Simmons' Case, 89 Va. 156, 15 S. E. 386; McKinney's Case, 8 Grat. 589; Shifflet's Case, 14 Grat. 652; Price's Case, 21 Grat. 846.

Presentment need not appear on the record book in extenso. Tiernan's Case, 4 Grat. 545.

Presentments for misdemeanors need not conclude "against the peace and dignity of the Commonwealth." Section 106 of the Constitution requiring such conclusion applies only to indictments. Bracy v. Com., 119 Va. 867, 89 S. E. 144.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 158, section 1.

Sec. 4866. When information filed; prosecution for felony to be by indictment.—An information may be filed upon a presentment or indictment by a grand jury, or upon a complaint in writing verified by the oath of a competent witness; but no person shall be put upon trial for any felony, unless an indictment shall have first been found by a grand jury in a court of competent jurisdiction. If the accused be in custody, or has been recognized or summoned to answer such presentment, indictment, or information, no other process shall be necessary; but the court may, in its discretion, issue process to compel the appearance of the accused. (Code 1887, § 3990.)

Revisors' Note.—An act was passed in 1916 (Acts 1916, p. 728) authorizing attorneys for the Commonwealth to supply lost, destroyed or stolen indictments. The revisors omitted this act from the Code, and it has therefore been repealed. While they were of opinion that the act might prove of substantial value in some instances, on the whole they did not consider its value great enough to offset its dangers.

Foundation for information—Quashed indictment.—A quashed indictment is insufficient foundation for a rule upon the party to show cause why an information should not be filed against him. Ayres' Case, 6 Grat. 668.

Presentment, though technically defective, is a good foundation for an information. Christian's Case, 7 Grat. 631; also Bishop's Case, 13 Grat. 785.

Under this section an information filed not upon the basis of a presentment, indictment, or complaint in writing, verified by oath of a competent witness, is insufficient. Wilson's Case, 87 Va. 94, 12 S. E. 108; Christian's Case, 7 Grat. 637; Ayres' Case, 6 Grat. 668.

Presentment—Requisites as foundation for information.—A presentment of a grand jury, to be a proper foundation for an information, must contain every matter necessary to render the act imputed to the defendant unlawful, and the supposed offense must be described with at least reasonable certainty. Bishop's Case, 13 Grat. 785.

Digitized by Google

Upon presentment for assault and battery it is not irregular to try the case without filing information. Towles' Case, 5 Leigh 743.

As to amendment of information, see Lodge's Case, 6 Grat. 699; Williamson's Case, 4 Grat. 554.

Lost indictment.—In a prosecution for a felony or misdemeanor, if the indictment is lost at any time before trial, though after arraignment and plea, the party cannot be tried. Bradshaw's Case, 16 Grat. 507, 86 Am. Dec. 722. But see 10 Enc. Pl. & Pr. 418.

A felony cannot be prosecuted by information. Barrett's Case, 9 Leigh 665; Matthews' Case, 18 Grat. 989.

Indorsement by foreman not necessary.—It is not necessary that a bill, in order to be made a good indictment, should have on it an indorsement by the grand jury or foreman that it is a true bill. It is sufficient that the bill was actually found to be a true bill; that such finding was announced in court by clerk on the return, and with the acquiescence of the grand jury. White's Case, 29 Grat. 824, 828; Price's Case, 21 Grat. 846, 855, 862.

And so the indorsement, "A true gun," cannot invalidate indictment. White's Case, 29 Grat. 824.

Generally.—The construction put upon the former statute in Matthews' Case, 18 Grat. 989, is confirmed by the present statute.

Denial of a motion to quash an information on the ground that it was not founded on a complaint in writing sworn to by a competent witness as required by this section, cannot be review. Quillin's Case, 105 Va. 874, 54 S. E. 333.

Sec. 4867. Name of prosecutor to be written on indictment, etc., for misdemeanor; when required to give security for costs.—In a prosecution for a misdemeanor the name of the prosecutor if there be one and the county or corporation of his residence shall be written at the foot of the presentment, indictment or information when it is made, found, or filed, and in case the grand jury that brings in such presentment or indictment or the attorney for the Commonwealth that files such information fail to write the name of a prosecutor at the foot of the presentment, indictment, or information, then the name of a prosecutor may be entered of record as such by the court on the motion of the defendant or the Commonwealth's attorney at any time before the judgment. And for good cause the court may require a prosecutor to give security for the costs, and if he fails to do so dismiss the prosecution at his costs. (Code 1887, § 3991; 1895-6, p. 35.)

Prosecutor in assault and battery competent witness.—A prosecutor, in an information or indictment for assault and battery, who is liable for the costs, is a competent witness for the Commonwealth. Baker's Case, 2 Va. Cas., 353; Gilliam's Case, 4 Leigh 688, Hart's Case, 2 Rob. 822.

What is sufficient evidence of one being prosecutor and liable for costs. Dove's Case, 2 Va. Cas. 29.

After verdict the prosecutor cannot be allowed to show by parol evidence that he was called on by the grand jury, and did not voluntarily give the information. Id.

Statute not penal.—This section is not a penal statute. Therefore, in interpreting the same, there is no reason why we should stick to the letter. Wortham's Case, 5 Rand. 672.

Statute does not apply to one compelled to inform.—A volunteer informer ought to be made prosecutor, and liable for costs in case of failure; but one who is compelled to be an informer cannot be considered a prosecutor. Wortham's Case, 5 Rand. 669.

Digitized by Google

This provision not a sine qua non to indictment.—The provision that the name of the prosecutor shall be written on the foot of the presentment, etc., is directory only, and failure to comply therewith does not vitiate the presentment, etc. Porterfield's Case, 91 Va. 802, 22 S. E. 352. See note to section 4860; Thompson's Case, 88 Va. 45, 49, 13 S. E. 304; also Shelton's Case, 89 Va. 450, 16 S. E. 355; Dever's Case, 10 Leigh 685; Williams' Case, 5 Grat. 702.

If, in the opinion of the court, public justice requires that the prosecution should proceed, it may refuse to dismiss the indictment, though the prosecutor be insolvent and security for costs be not given. Hill's Case, 9 Leigh 601.

Indictment quashed—Costs against prosecutor.—Under Act Feb. 17, 1823 (Sess. Acts 1823, p. 12), it was held that where an indictment is quashed because of incapacity of one of the grand jurors the court should give judgment for the costs against the prosecutor. St. Clair's Case, 1 Grat. 556.

Generally.—See Wortham's Case, 5 Rand. 669.

Under former law requiring the occupation to be stated, held a plea in abatement of an indictment for a misdemeanor, alleging that the prosecutor is not a laborer, but a husbandman, is bad on demurrer. Haught's Case, 2 Va. Cas. 3.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 158, section 2.

Sec. 4868. When judgment for costs against him.—If any proceeding for an offense, had or moved at the instance of a prosecutor, be dismissed, or the accused discharged from accusation, the court or justice before whom the proceeding is, may give judgment against the prosecutor in favor of the accused for his costs. (Code 1887, § 3992.)

See notes to section 4867.

Sec. 4869. What sufficient statement in indictment for perjury or subornation of perjury.—In an indictment or accusation for perjury or subornation of perjury, it shall be sufficient to state the substance of the offense charged against the accused, in what court or by whom the oath was administered which is charged to have been falsely taken, and to aver that such court or person had competent authority to administer the same, together with proper averments to falsify the matter wherein the perjury is assigned, without setting forth any part of any record or proceeding at law or equity, or the commission or authority of the court or person before whom the perjury was committed; but nothing herein shall be construed to allow, without the consent of the accused, a part only of any record, proceeding, or writing to be given in evidence on the trial of such indictment or accusation. A distinct allegation, averment, or statement in any part of the indictment that the defendant did corruptly swear falsely, or did, on the occasion mentioned in the indictment, commit wilful perjury, shall be a sufficient allegation of the falsity of the oath alleged to have been taken. (Code 1887, § 3993.)

Revisors' Notes.—The last sentence is new, and the object of it is to meet the objection to the indictment sustained in Fitch's Case, 92 Va. 824, 24 S. E. 272. While not intending in any way to criticise the holding in that case, it would seem that the former law was defective in

Digitized by Google

not providing for the contingency which there arose. The defendant had a fair and impartial trial, but because the charge of the falsity of the oath was contained in the concluding part of the indictment instead of in the charging part, the court felt compelled to give him a new trial.

The common law indictment for perjury is no longer necessary. Fitch's Case, 92 Va. 831, 24 S. E. 272, changing rule in Lodge's Case, 2 Grat. 580.

It is not now necessary to set forth the facts to show the jurisdiction of the court over the case. Fitch's Case, 92 Va. 832, 24 S. E. 272, overruling Pickering's Case, 8 Grat. 628, 56 Am. Dec. 158. But the day in which the perjury was committed must be truly laid. Rhodes' Case, 78 Va. 692, 696.

Indictment held bad in Fitch's Case, 92 Va. 824, 835, 24 S. E. 272; Thomas' Case, 2 Rob. 795; Roach's Case, 1 Grat. 561. See revisors' note above. See, also, sections 4493, 4494 and notes thereto; also note to Boyle's Case, 14 Grat. 674, 676, Va. Rep. Anno.; Id., 50th head, p. 665 (bottom paging).

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 158, section 4.

Sec. 4870. In prosecution for embezzlement any number of offenses may be charged if committed within six months; what description of money sufficient in prosecution for embezzlement: what for larceny.—In a prosecution against a person accused of embezzling or fraudulently converting to his own use bullion, money, bank notes, or other security for money it shall be lawful in the same indictment or accusation to charge and thereon to proceed against the accused for any number of distinct acts of such embezzlements or fraudulent conversions which may have been committed by him within six months from the first to the last of the acts charged in the indictment; and it shall be sufficient to allege the embezzlement or fraudulent conversion to be of money without specifying any particular money, gold, silver, note, or security, and such allegation, so far as it regards the description of the property, shall be sustained if the accused be proved to have embezzled any bullion, money, bank note, or other security for money although the particular species be not proved.

And in a prosecution for the larceny of United States currency or for obtaining United States currency by a false pretense or token, or for receiving United States currency knowing the same to have been stolen, it shall be sufficient if the accused be proved guilty of the larceny of national bank notes or United States treasury notes, certificates for either gold or silver coin, fractional coin, currency, or any other form of money issued by the United States government, or of obtaining the same by false pretense or token, or of receiving the same knowing it to have been stolen although the particular species be not proved. (Code 1887, § 3994; 1897-8, p. 638.)

In Leftwich's Case, 20 Grat. 716, it was held that an indictment charging the obtaining of "United States currency" was bad, since that was a general term, and not a sufficient description. In consequence of this decision this section was enacted (February 28, 1874); and afterwards it was held that the words "national currency of the United

Digitized by Google

States" were equivalent to the phrase in the statute. Dull's Case, 25 Grat. 965.

The indictment is for the stealing of six dollars of "U. S. treasury notes." The certificate of the facts was that A. was holding "some money," etc. The facts certified do not sustain the verdict. Johnson's Case, 24 Grat. 555. See, also, Fay's Case, 28 Grat. 912, 921, where the indictment charged larceny of notes of United States currency amounting to $208, while the evidence showed that prisoner received $50 in cash and "promises to pay," the balance in monthly instalments, and the verdict against the prisoner was reversed.

The charge of larceny of three notes of United States currency, of the value of twenty dollars, is the equivalent of the charge of larceny of three notes, one for ten dollars, and two for five dollars each. Holly's Case, 113 Va. 769, 75 S. E. 88.

In indictment for larceny of money, it is sufficient to describe it as United States currency. Holly's Case, 113 Va. 769, 75 S. E. 88.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 158, section 5.

Sec. 4871. In prosecution for forgery, unnecessary to set forth copy of forged instrument.—In a prosecution for forging or altering any instrument or other thing, or attempting to employ as true any forged instrument or other thing, or for any of the offenses mentioned in chapter one hundred and eighty, it shall not be necessary to set forth any copy or fac simile of such instrument or other thing; but it shall be sufficient to describe the same in such manner as would sustain an indictment for stealing such instrument or other thing, supposing it to be the subject of larceny. (Code 1887, § 3995.)

It is sufficient to charge that the defendant forged a public record, describing it so plainly as to identify the record charged to have been forged. It is not incumbent upon the Commonwealth to state all the facts necessary to show that the document alleged to be a public record was in point of fact such a record. Coleman's Case, 25 Grat. 865, 878, 23 Am. Rep. 711.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 158, section 6.

Sec. 4872. In prosecution for offense relating to property, what proof of ownership sufficient.—In a prosecution for an offense committed upon, relating to, or affecting real estate, or for stealing, embezzling, destroying, injuring, or fraudulently receiving or concealing any personal estate, it shall be sufficient to prove that, when the offense was committed, the actual or constructive possession, or a general or special property, in the whole or any part of such estate, was in the person or community alleged in the indictment or other accusation to be the owner thereof. (Code 1887, § 3996.)

There must be satisfactory proof that the property stolen was the property of the person stated in the indictment. Jones' Case, 17 Grat. 563; Prather's Case, 85 Va. 127, 7 S. E. 178. See, also, note on "Larceny," Johnson's Case, 24 Grat. 555, Va. Rep. Anno., and note to Boyle's Case, 14 Grat. 674, Va. Rep. Anno.

In an indictment for larceny the name of the owner must be stated; and if it appears that the person so stated was a married woman at the time of the larceny, it was [formerly] error, and the prisoner must be acquitted. Hughes' Case, 17 Grat. 565, 94 Am. Dec. 498.

Digitized by Google

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 158, section 7.

Sec. 4873. Where intent an ingredient of offense, what allegation thereof sufficient.—Where an intent to injure, defraud, or cheat is required to constitute an offense, it shall be sufficient, in an indictment or accusation therefor, to allege generally an intent to injure, defraud, or cheat, without naming the person intended to be injured, defrauded, or cheated; and it shall be sufficient, and not be deemed a variance, if there appear to be an intent to injure, defraud, or cheat the United States, or any State, or any county, corporation, officer, or person. (Code 1887, § 3997.)

This section applies to an indictment for an attempt to poison. The word "injure" is more apposite to the offense of poisoning or attempting to poison than to forgery, cheating, and the like offenses. Davis' Case, 99 Va. 838, 38 S. E. 191.

On an indictment for attempt to poison a person who is named "and other persons," the wife of the prisoner may be called to testify against him that the attempt was directed against her also, as she may be one of the persons not necessary to be named under this section. Davis' Case, 99 Va. 838, 38 S. E. 191.

A charge that a forgery of bank notes was committed with intent to injure "citizens of the Commonwealth to the jurors unknown," without setting out the intent to injure a person or body politic by name, is good after verdict. Ervin's Case, 2 Va. Cas. 337.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 158, section 8.

Sec. 4784. Unnecessary allegations may be omitted.—All allegations, unnecessary to be proved, may be omitted in any indictment or other accusation. (Code 1887, § 3998.)

This section should be numbered 4874, not 4784.

Under this section it is not only unnecessary to prove the length and depth of the wound as alleged in the indictment, but even that it was in the same part of the body in which it is alleged to have been. Lazier's Case, 10 Grat. 708, 715.

Cited but not construed in Tisdale's Case, 114 Va. 866, 77 S. E. 482.

See notes to section 4875; also Sledd's Case, 19 Grat. 819.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 158, section 9.

Sec. 4875. What defects in indictments not to vitiate them.—No indictment or other accusation shall be quashed or deemed invalid for omitting to set forth that it is upon the oaths of the jurors, or upon their oaths and affirmation; or for the insertion of the words "upon their oath," instead of "upon their oaths"; or for not in terms alleging that the offense was committed "within the jurisdiction of the court," when the averments show that the case is one of which the court has jurisdiction; or for the omission or misstatement of the title, occupation, estate, or degree of the accused, or of the name or place of his residence; or for omitting the words "with force and arms," or the statement of any particular kind of force and arms; or for omitting to state, or stating imperfectly, the time at which the offense was committed, when time is not the essence of the offense; or for failing to allege the kind or value of an instrument which caused death, or to allege that it was

Digitized by Google

of no value; or for omitting to charge the offense to be "against the form of the statute or statutes;" or for the omission or insertion of any other words of mere form or surplusage. Nor shall it be abated for any misnomer of the accused; but the court may, in case of a misnomer appearing before or in the course of a trial, forthwith cause the indictment or accusation to be amended according to the fact. (Code 1887, § 3999.)

Revisors' Note.—The words, "kind or," found in line fourteen of the text, are new. In Jones v. Com., 86 Va. 950, 12 S. E. 950 (murder), it was held that the kind of instrument must be stated. In Jackson v. Com., 96 Va. 107, 30 S. E. 452 (malicious wounding), it was said that it need not be stated. Johnson v. Com., 111 Va. 877, 69 S. E. 1104 (murder) seems to concede that the kind of instrument should be stated. Seeing no special reason for stating the kind of instrument, the revisors' made the change above in order to make it clear that the kind of instrument need not be stated.

Effect of section.—These provisions of the Code dispense with the necessity of formal allegations in an indictment, and declare that no indictment or other accusation shall be quashed or deemed invalid for any of certain enumerated cases. So far as these provisions extend, they cure the indictment against objection, however raised, and they seem to extend to most, if not all defects of form. Lazier's Case, 10 Grat. 708, 711.

Jurisdiction.—It is not sufficient to aver that the offense was committed "within the jurisdiction of the court," which is a conclusion of law, but the indictment should state the fact which gives the court jurisdiction, e. g., that the offense charged was committed in the city of Roanoke. Early's Case, 93 Va. 767, 24 S. E. 936. It is necessary to aver and prove the place where the offense is alleged to have been committed. Id.; Anderson's Case, 100 Va. 860, 42 S. E. 865; Fitch's Case, 92 Va. 824, 24 S. E. 272.

In an indictment for malicious assault, it is not necessary that the indictment should charge the particular locality in a county or city, but it is always sufficient if charged to have been committed within such county or corporation. Baccigalupo's Case, 33 Grat. 807, 810, 36 Am. Rep. 795; Richard's Case, 1 Va. Cas. 1, 3; Taylor's Case, 2 Va. Cas. 94.

If the county is not alleged with sufficient certainty, it is error for which judgment will be reversed. Bell's Case, 8 Grat. 600.

Though the name of the county be left blank in the margin of an indictment for misdemeanor, it is enough if the county be stated in the body of the indictment. Tefft's Case, 8 Leigh 721.

"Within the jurisdiction of the court."—In this part of the section the language of Act 1847-48 is varied to embrace cases which may be prosecuted out of the county or corporation in which the offense was committed; as, for example, where residents of Virginia fight a duel out of the state. Rep. Rev. 1849, p. 1013, note.

Indictment quashed for uncertainty of place, Bell's Case, 8 Grat. 600.

Mode of stating time.—No mode of stating the time of an offense in an indictment or presentment can vitiate it. Sledd's Case, 19 Grat. 813; Lazier's Case, 10 Grat. 708. Expression of date in figures is good. Lazier's Case, Id.; Cady's Case, 10 Grat. 779. As a general rule, time of commission of offense, as laid in indictment, is not material. Rhodes' Case, 78 Va. 692.

Time of the essence.—Where an act done between two dates is by law not a felony, while if done before the first or after the second it is a felony, time is of the essence of the offense, and must be stated in the indictment. Cool's Case, 94 Va. 799, 26 S. E. 411.

Time not of the essence—Selling liquor.—An indictment for selling intoxicating liquors without license need not state the exact time of

Digitized by Google

the sale, as time is not of the essence. Arrington's Case, 87 Va. 96, 12 S. E. 224, 10 L. R. A. 242; Savage's Case, 84 Va. 584, 5 S. E. 563.

For the old requirement, "contra forman statuti, see Chiles' Case, 2 Va. Cas. 260.

Surplusage.—If the statement in the commencement of the indictment of the name of the court and the term at which the indictment was found is not surplusage, it is useless. Bell's Case, 8 Grat. 600.

The only proper indorsement on an indictment is "a true bill" or "not a true bill," with the name of the foreman; and anything more is not a part of the finding of the grand jury, but mere surplusage. Such additions, therefore, will not vitiate the indictment, even though incorrect or inconsistent with the indictment. Thompson's Case, 20 Grat. 724.

An indictment for keeping an ordinary without license, if good in other respects, is not vitiated by the addition that the defendant continued to keep the ordinary from the day stated to another subsequent day. The continuando is mere surplusage. Burner's Case, 13 Grat. 778.

An indictment charging that the defendant, on a day and time specified, kept an ordinary without obtaining a license to do so, is sufficient without setting out the facts of his furnishing for compensation lodging, etc. Burner's Case, 13 Grat. 778.

The record of the finding of the grand jury, saying, "In commission of rape," which was on the indictment, is mere surplusage. Thompson's Case, 20 Grat. 724.

In an indictment containing three counts, if the conclusion of the count charging the defendants as guilty of murder is not correct, it is not essential to the indictment, and may be struck out as surplusage. Hawley's Case, 75 Va. 847.

Conclusions of law, summing up the offense unnecessarily, may be regarded as surplusage, and as such disregarded. Hawley's Case, 75 Va. 850.

An indictment for murder, which describes the wound in one place as above the nipple of the left breast, and subsequently as below the nipple of the left breast, is not void for repugnancy and inconsistency, as the latter recitation is surplusage. Robertson's Case, 20 S. E. 362, 1 Va. Dec. 851.

An indictment for murder charges the wound to have been inflicted on the 9th of December, of which wound the person wounded died on the said 14th day of December. The word "said" is surplusage, and its insertion not a fatal defect. Lazier's Case, 10 Grat. 708.

Misnomer—Amendment.—The court may, in the absence of defendant, who failed to appear, though duly summoned, amend the indictment against S. C., and make it read "S. S., alias S. C." Shiflett's Case, 90 Va. 386, 18 S. E. 838.

Misnomer cured. Adkinson's Case, 2 Va. Cas. 513.

Inserting wrong name not misnomer.—By mistake a wrong name is inserted in an indictment for misdemeanor, though the record of the court and indorsement on the indictment shows the correct name. The indictment cannot be amended by striking out the wrong name and inserting the name of the person intended. Buzzard's Case, 5 Grat. 694. For present law on subject of amendments, see three following sections.

Amendment generally.—Except for misnomer this section does not authorize the amendment of an indictment. Hatcher & Shaw v. Com., 106 Va. 827, 55 S. E. 678. But see three following sections.

Statutory offense.—If an indictment for a statutory offense, by following the language of the statute, charges expressly, or by necessary implication, every fact necessary to constitute the offense, it is sufficient. Helfrick's Case, 29 Grat. 844. See especially Dull's Case, 25 Grat. 974. See, also, Duff's Case, 92 Va. 770, 23 S. E. 643; Boyd's Case, 77 Va. 52.

An indictment upon a statute should state all the circumstances which constitute the definition of the offense in the act, so as to bring the

Digitized by Google

accused precisely within it. Rose's Case, 116 Va. 1023, 82 S. E. 699; Wiseman's Case, 117 Va. 906, 83 S. E. 1052.

When the facts stated may all be true, and the accused still not be guilty of the offense intended to be charged against him, he cannot be convicted. Rose's Case, 116 Va. 1023, 82 S. E. 699.

Felonies—Necessary averment—"Feloniously."—All the offenses for which the penalty is confinement in the penitentiary are felonies, and the indictment for such an offense must describe it as having been done "feloniously." Randall's Case, 24 Grat. 644; Barker's Case, 2 Va. Cas. 122; Trimble's Case, Id. 143; Taylor's Case, 20 Grat. 825; Thompson's Case, Id. 724, 729; Early's Case, 86 Va. 924, 11 S. E. 795; Peas' Case, 2 Grat. 636. For reason, see Peas' Case, supra.

Conclusion of indictment.—The indictment must conclude "against the peace and dignity of the Commonwealth," and the same rule is applicable to each count thereof. Brown's Case, 86 Va. 466, 10 S. E. 745; Early's Case, 86 Va. 921, 11 S. E. 795; Thompson's Case, 20 Grat. 724; Carney's Case, 4 Grat. 546. But this rule has no application to presentments for misdemeanors. Bracy v. Com., 119 Va. 867, 89 S. E. 144.

Mala grammatica non vitiat.—Bad punctuation does not vitiate an indictment. Webster's Case, 80 Va. 598.

Description of notes insufficient.—An indictment charging prisoner with stealing certain papers of the value of $110, not otherwise describing the papers charged to have been stolen, is fatally defective. Robinson's Case, 32 Grat. 866.

How to take advantage of defective form of pleading.—In criminal cases, defects of form in pleading may be taken advantage of by general demurrer (Jackson's Case, 2 Va. Cas. 501); or by special demurrer (Lazier's Case, 10 Grat. 708). See section 6115.

Provisos of statute.—In an indictment it is not necessary to allege that the defendant is not within the benefit of the provisos of the statute, though the purview should expressly notice them. Hill's Case, 5 Grat. 682; Hendricks' Case, 75 Va. 943.

Ownership of house burned.—Indictment for the burning of a certain storehouse, not adjoining or occupied with the dwelling house of one S., sufficiently describes the storehouse as the property of S. Butler's Case, 81 Va. 159; Speers' Case, 17 Grat. 570.

The joinder of two or more offenses in one count is not permitted. Sprouse's Case, 81 Va. 374.

When superior court will quash indictment.—In general, it rests in the sound discretion of the court whether it will quash an indictment. Nevertheless, if the fact for which the defendant has been examined by the examining court cannot be ascertained by the record of that court, but can only be ascertained by testimony dehors, it is the duty of the superior court to quash indictment. McCaul's Case, 1 Va. Cas. 271.

In felonies the court will, on motion of prisoner, quash the indictment only where the court has no jurisdiction, where no indictable offense is charged, or where there is some other substantial and material defect. In other cases he will be left to his demurrer, motion in arrest of judgment, or writ of error. Bell's Case, 8 Grat. 600.

Attempt to commit offense—General terms not sufficient.—An indictment for an attempt to commit offense ought to allege some act done by the defendant of such a nature as to constitute an attempt to commit the offense mentioned in the indictment. Clark's Case, 6 Grat. 675. If no criminal offense is charged, the court may, on motion of defendant, quash the indictment. Huff's Case, 14 Grat. 648.

If one count in an indictment be good, there is no error in overruling motion to quash. Kirk's Case, 9 Leigh 627; Huffman's Case, 6 Rand. 685 (2d Ed. 769); Vance's Case, 2 Va. Cas. 162.

Generally.—Cited but not construed, Johnson's Case, 111 Va. 877, 69 S. E. 1104; Tisdale's Case, 114 Va. 866, 77 S. E. 482; Shiflett's Case, (No. 1), 114 Va. 876, 77 S. E. 606.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 158, section 10.

Digitized by Google

Sec. 4876. Amendment of indictments for misdemeanors.—An amendment of any defect in an indictment or presentment for a misdemeanor that does not change the nature of the offense charged, may be made by the court before which the trial is had, at any time before judgment is entered; but if such amendment operates as a surprise to the defendant, he shall be entitled, upon request, to a continuance of the case. (Code 1887, § 4011.)

Revisors' Note.—This section is new, in consequence of which section 4011 of the Code of 1887 has been omitted. That section was as follows: "No exception shall be allowed for any defect or want of form in any presentment, indictment, or information mentioned in either of the two preceding sections, [sections 4009 and 4010 of the Code of 1887], but the court shall give judgment thereon, according to the very right of the case."

Sec. 4877. Amendment of indictments for treason or felony before the defendant pleads.—At any time before the defendant pleads, a defective indictment for treason or felony may be amended by the court before which the trial is had that does not change the character of the offense charged. After such amendment has been made, the defendant shall be arraigned on the indictment as amended, and the trial shall proceed as if no amendment had been made; but if such amendment operates as a surprise to the defendant, he shall be entitled, upon request, to a continuance of the case.

Revisors' Note.—It has been the policy of the State to have criminal cases as well as civil cases tried on their merits, and as far as possible to ignore mere formal defects. This is well illustrated by the powers given the court on appeals in misdemeanor cases under section 4089. The revisors have adopted the same policy with reference to all crimes so far as objections apply only to technical difficulties. It is desirable, indeed it is essential, that one accused of crime shall have a fair trial on the facts and merits of his case, but he has no right to insist upon mere technical objections. The revisors were of opinion that all charges of felony should be preferred by a grand jury, and while the court should not be given the power to prefer a charge, yet when the charge has been preferred by the grand jury, they could see no reason why the court might not make such changes in the way of amendments which do not change the nature of the offense charged. There is no constitutional requirement that prosecutions for felonies shall be by indictment. The changes allowed by the section do not go to the extent of allowing the court to prefer an entirely new and different charge, but they do allow the court to make such changes as may be deemed technical, and other changes arising out of variance between the allegations and the proof, or which would result in mere delay without substantial benefit to the accused. If the amendment or alteration does not change the nature of the offense charged, there would appear to be no good reason why it may not be made. This section is taken in part from section 58 of the Criminal Code of South Carolina. Every substantial right of the accused, so far as could be anticipated, has been preserved.

Sec. 4878. Amendment of indictments for treason or felony, after the defendant pleads, for defects of form, or for variance.—If there be any defect in form in any indictment for treason or felony, it shall be competent for the court in which the case is pending for

Digitized by Google

trial, after the defendant pleads, to amend the said indictment, provided such amendment does not change the nature of the offense charged; and if, on the trial of any case, there shall appear to be any variance between the allegations of the indictment and the evidence offered in proof thereof, it shall be competent for the court before which the trial is had to amend the said indictment, according to the proof, provided such amendment does not change the nature of the offense charged; and after such amendment the indictment as amended shall be read to the accused, and he shall be allowed to plead anew, if he so desires, and the trial shall proceed in all respects, and with the same consequences, as if no variance had occurred, unless such amendment shall operate as a surprise to the defendant, in which case the defendant shall be entitled, upon request, to a continuance of the cause.

Revisors' Note.—This section is new. See revisors' note to preceding section.

Sec. 4879. When judgment not to be arrested or reversed.—Judgment in any criminal case shall not be arrested or reversed upon any exception or objection, made after a verdict, to the indictment or other accusation, unless it be so defective as to be in violation of the Constitution. (Code 1887, § 4000.)

Revisors' Note.—As this section stood before the revision it read as follows: "Judgment in any criminal case, after a verdict, shall not be arrested or reversed upon any exception to the indictment or other accusation, if the offense be charged therein with sufficient certainty for judgment to be given thereon, according to the very right of the case." The new language is intended to be broader than the old, preserving, however, as it must, constitutional rights.

Statute of criminal jeofails—Interpretation.—For the strictness required in indictments before the statute, the defects which it cures, and the interpretation thereof, see Peas' Case, 2 Grat. 637-641.

Object of statute.—It was not intended to produce carelessness or laxity of pleading, but merely to cure those defects which the overnicety of courts had introduced into the common law, and which did not put the rights of the Commonwealth or accused in jeopardy. Barker's Case, 2 Va. Cas. 126; Old's Case, 18 Grat. 930; Ervin's Case, 2 Va. Cas. 337.

Errors not cured by the statute.—Omission to state owner of property alleged to have been stolen or that it belonged to a person unknown. Barker's Case, 2 Va. Cas. 122. Omission, in charging misbehavior and corruption against the justices of the county court, to state the scienter that they knew what they did was wrong. Jacobs' Case, 2 Leigh 709. Omitting, in an indictment for rescuing property from sheriff's bailee, to state that the defendant knew that he was such bailee. Israel's Case, 4 Leigh 675. Failure of indictment or any count thereof to conclude, "Against the peace and dignity of the Commonwealth." Early's Case, 86 Va. 921, 11 S. E. 795; Thompson's Case, 20 Grat. 724; Carney's Case, 4 Grat. 546.

Where no offense is charged in an indictment the appellate court cannot look to the evidence to see whether the offense intended to be charged has been proved, but must render judgment in favor of the accused. Rose's Case, 116 Va. 1023, 82 S. E. 699.

Where no offense is charged the appellate court will reverse the judgment against the accused, though no motion in arrest of judgment was made in the trial court. Rose's Case, 116 Va. 1023, 82 S. E. 699.

Errors cured by the statute.—Reference made in the indictment to

Digitized by Google

notes said to be forged, and appending the same thereto, instead of setting out the tenor of said notes in the body of the indictment. Ervin's Case, 2 Va. Cas. 340. For various defects in an indictment for forgery of bank notes cured by statute, see Ervin's Case, 2 Va. Cas. 340. In indictment for rape, employing word "female" child instead of statutory phrase "woman" child. Bennet's Case, Id. 235. Omission to state impaneling of jury. Trimble's Case, Id. 143. Use of plural for singular number. Id. Omission of a letter of the alphabet in the date of a crime—Thee for three. Aldridge's Case, 2 Va. Cas. 447. Variance between information and presentment. Jones' Case, 2 Grat. 555.

Except some technical words, as "feloniously," the words of the statute may be substituted by synonymous terms; e. g., "voluntarily" by "willfully." Trimble's Case, 2 Va. Cas. 143. Dull's Case, 25 Grat. 965.

For essentials of an indictment under statute, see Dull's Case, 25 Grat 967; Howel's Case, 5 Grat. 664; Hampton's Case, 3 Grat. 590; Cousins' Case, 19 Grat. 807; Boyd's Case, 77 Va. 54; Duff's Case, 92 Va. 770, 23 S. E. 643.

Indictment charging no offense.—When in the indictment or presentment no offense is charged at all, much less charged with sufficient certainty for judgment to be given thereon, according to the very right of the case, the appellate court will not look to the evidence to see whether the offense has been proved, but must render judgment in favor of the accused. Old's Case, 18 Grat. 931. See, also, Boyd's Case, 77 Va. 54.

Cases in which indictments brought under statutes have been pronounced fatally defective because some averment made essential by the statute has been omitted. Peas' Case, 2 Grat. 631; Hampton's Case, 3 Grat. 590; Howel's Case, 5 Grat. 664; Young's Case, 15 Grat. 664; Old's Case, 18 Grat. 915; Morgan's Case, 26 Grat. 992; Bailey's Case, 78 Va. 19.

Anything which is good cause for arresting judgment is good cause for reversing it, though no motion in arrest of judgment was made. Matthews' Case, 18 Grat. 989; Randall's Case, 24 Grat. 644; Old's Case, 18 Grat. 915.

Generally.—For the doctrine as to the statute of jeofails, Min. Syn. 302.

Cited, but not construed, Richard's Case, 1 Va. Cas. 1; Taylor's Case, 2 Va. Cas. 94; Puryear's Case, 83 Va. 57, 1 S. E. 512. See Johnson's Case (Va.) 46 S. E. 789; Johnson's Case, 111 Va. 877, 69 S. E. 1104; Tisdale's Case, 114 Va. 866, 77 S. E. 482.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 158, section 11.

Sec. 4880. Accused discharged from imprisonment, if not indicted in time.—A person in jail on a criminal charge shall be discharged from imprisonment, if a presentment, indictment, or information be not found or filed against him before the end of the second term of the court at which he is held to answer, unless it appear to the court that material witnesses for the Commonwealth have been enticed or kept away, or are prevented from attendance by sickness or inevitable accident, and except, also, in the case provided in section forty-nine hundred and nine; and in those cases where such criminal charge is one of felony, the second term of the court shall be construed to mean the second term thereof at which a grand jury was impaneled; but in all other cases of a criminal charge, it shall have no such restricted meaning. A discharge under the provisions of this section, shall not, however, prevent a re-incarceration after a presentment or indictment has been found. (Code 1887, § 4001.)

Digitized by Google

Revisors' Note.—The last sentence is new. The object of the statute was merely to prevent keeping a person in jail without preferring a charge against him, but some doubt was expressed, under the section as it stood before the revision, as to whether he could be re-incarcerated after the charge had been preferred. This doubt is put at rest by this addition.

"Term" means actual session.—The word "term" ought to be construed to mean, not the stated time when the court should be held, but the actual session of the court. Santee's Case, 2 Va. Cas. 363; Cawood's Case, Id. 546; Brown v. Hume. 16 Grat. 463; Adcock's Case, 8 Grat. 679; Lovett's Case, 2 Va. Cas. 74.

Prisoner sent on during term—What term is excluded.—When during a term of the court accused is sent on for indictment, that term is not considered one of the two terms at which he must be indicted. Glover's Case, 86 Va. 382, 10 S. E. 420, overruling Hall's Case, 78 Va. 678. See, also, Bell's Case, 8 Grat. 600; Jones' Case, 19 Grat. 478, in accord with Glover's Case.

Interpretation of statute.—The statute should be construed distributively—reddendo singula singulis. "Presentment" and "information" refer to misdemeanors only, while "indictment" refers to felonies also. Jones' Case, 19 Grat. 482.

If the offense be a felony, it is necessary, therefore, that an indictment (not information) be found against the prisoner "before the end of the second term of the court in which he is held to answer," etc. Jones' Case, 19 Grat. 482.

First indictment in time—Trial on later indictment.—Under this section it suffices that any indictment be found against the accused before the end of the second term at which he is held to answer, though he be actually tried upon an indictment found after that time. Waller's Case, 84 Va. 492, 5 S. E. 364; Adcock's Case, 8 Grat. 661.

A case in which the prisoner was indicted in the county court, elected to be tried in the circuit court, which dismissed the case for want of jurisdiction; prisoner at next term of county court was indicted for same offense; and it was held he was not entitled to be discharged under this statute. Dulin's Case, 91 Va. 718, 20 S. E. 821.

Enumeration of exceptions not exclusive.—The exceptions or excuses for failure to try the prisoner, enumerated in the statute, are not intended to exclude others of a similar nature or in pari ratione. Adcock's Case, 8 Grat. 662.

Generally.—Cited, but not construed, Forbes' Case, 90 Va. 551, 19 S. E. 164; Hall's Case, 78 Va. 678. See section 4926 and notes.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 158, section 12.

Sec. 4881. What process to be awarded against accused on indictment, etc.—When an indictment or presentment is found or made, or information filed, the court, or the judge thereof in vacation, shall award process against the accused to answer the same, if he be not in custody. Such process, if the prosecution be for a felony, shall be a capias; if it be for a misdemeanor, for which corporal punishment may be inflicted, it may be a capias or summons, in the discretion of the court or judge; in all other cases, it shall be, in the first instance, a summons, but if a summons be returned executed and the defendant do not appear, or be returned not found. the court or judge may award a capias. (Code 1887, § 4003.)

Statute a remedial one.—This statute is a remedial one, and governs the procedure in crimes committed before the passage, but tried afterwards, as by its passage no existing right was taken away or impaired, and no additional burden placed upon the prisoner. Jones' Case, 86

Digitized by Google

Va. 661, 10 S. E. 1005. See, also, Wilson's Case, 86 Va. 666, 10 S. E. 1007.

No preliminary examination before justice of the peace required.—There was at one time some confusion as to the necessity of sending one under indictment for a felony before a justice of the peace for a preliminary examination. Chahoon's Case, 20 Grat. 733, 764; Jackson's Case, 23 Grat. 919; Shelly's Case, 19 Grat. 653; Wright's Case, Id. 626; Stuart's Case, 28 Grat. 950; Butler's Case, 81 Va. 161; Jones' Case, 86 Va. 662, 10 S. E. 1005. By Acts 1885-6 the law required that the prisoner should be sent before the justice of the peace to be examined; but in the present statute that requirement is omitted, and, therefore, since May 1, 1888, the accused need not have such preliminary examination. Jones' Case, 86 Va. 661, 665, 10 S. E. 1005.

How infant appears.—Upon a presentment against an infant for a misdemeanor, the infant has a right to appear and defend himself in person or by attorney, and it is error to assign him a guardian, and to try the case on a plea pleaded for him by a guardian. Word's Case, 3 Leigh 743.

Generally.—See Towles' Case, 5 Leigh 743; McClenegan's Case, 3 Hen. & M. 575, 1 Va. Cas. 155; Goode's Case, 2 Va. Cas. 200.

If accused be in custody already when indictment is found, a formal warrant of arrest is unnecessary. Waller & Boggs' Case, 84 Va. 492, 494, 5 S. E. 364.

See Burks' Address, 2 Barton L. Pr. (2 ed.), 1393.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 158, section 14.

Sec. 4882. How awarded, directed, returnable, and executed.—Section six thousand and fifty-five shall apply to process in criminal, as well as in civil cases; and the court may, in the same case against the same person, award at the same time, or different times, several writs of summons or capias directed to officers of different counties or corporations. An officer having a capias under which the accused is let to bail, shall give a certificate of the fact, which shall protect him against any other capias which may have been issued for the same offense. A summons shall be served by delivering a copy thereof to the party in person, and the clerk issuing such summons shall deliver or transmit therewith as many copies thereof as there are persons named therein, on whom it is to be served. (Code 1887, § 4004.)

Sec. 4883. Capias to hear judgment for a misdemeanor unnecessary; judgment may be entered in absence of accused, and order made for his arrest; powers, duties, etc., of officer under such order.—No capias to hear judgment shall be necessary in any prosecution for a misdemeanor, but the court may proceed to judgment in the absence of the accused; and, if such judgment requires confinement in jail, the court may make such order as may be necessary for the arrest of the person against whom such judgment is, and for the execution thereof. The proceedings upon such order shall conform, as nearly as may be, to those upon a capias to hear judgment, and all officers charged with its execution shall have the same powers, be charged with the same duties, and be subject to the same responsibilities, as provided by law in case of a capias to hear judgment. (Code 1887, § 4076.)

Digitized by Google

This statute displaces the rule of the common law that judgment for corporal punishment can be pronounced against a man only when he is personally present. Shiflett's Case, 90 Va. 388, 18 S. E. 838. See, also, Price's Case, 33 Grat. 819, 36 Am. Rep. 797.

Sec. 4884. Clerks to mail process to officers in other counties, etc.—The clerk of every court shall forward, by mail, all process issued for the Commonwealth, directed to the officer of any county or corporation other than his own, and pay the postage thereon, which, on being duly certified by the court, shall be paid out of the treasury. (Code 1887, § 4005.)

Sec. 4885. Where process of arrest issued during term may be executed.—When process of arrest in a criminal prosecution is issued from a court during its session, either against a party accused or a witness, the officer to whom it is directed or delivered may execute it in any part of the State. (Code 1887, § 4006.)

Sec. 4886. To whom person arrested may be delivered.—An officer who, under a capias from a court, arrests a person accused of an offense not bailable, or for which bail is not given, shall deliver the accused to such court, if sitting, or to the jailor thereof, who shall receive and imprison him. (Code 1887, § 4007.)

Sec. 4887. Person arrested to answer indictment, etc., or to hear judgment on, etc., for misdemeanor, or on attachment, may be bailed by officer; in what sum; recognizance to be returned to court; penalty for failure, or for insufficient bail.—A person arrested on a capias, to answer, or hear judgment on, a presentment, indictment, or information for a misdemeanor (other than such as is mentioned in section forty-six hundred and seventy-six), or on an attachment (other than an attachment to compel the performance of a judgment, or of an order or decree in a civil case), may be admitted to bail by the officer who arrests him, the said officer taking a recognizance in such sum, not being less than two hundred dollars, unless by general or special order of the court a less sum be authorized, as he, regarding the case and estate of the accused, may deem sufficient to secure his appearance, before the court from which the process issued, at the time required thereby. The officer shall return the recognizance to said court on or before the return day of such process. If without sufficient cause he fail to make such return, he shall forfeit twenty dollars; and if he take insufficient bail, he shall be fined at the discretion of a jury. (Code 1887, § 4008.)

Revisors' Note.—The words, "in a civil case," found in line six of the text, are used in lieu of "in chancery." In the last sentence, the words "without sufficient cause," are new. The forfeiture should not take place if the failure to make the return was for sufficient cause, and many sufficient causes may be conceivable.

Sec. 4888. When information need not be filed, but a summons issued; when and how judgment given.—No information need be filed on a presentment of an offense for which there is no punish-

Digitized by Google

ment but a fine or forfeiture, limited to an amount not exceeding twenty dollars; but a summons to answer such presentment may be issued against the accused; and if it be served ten days before the return day thereof, and he do not appear, judgment may be rendered against him for the penalty. If he appear, the court may, unless he demand a jury, hear and determine the matter, and give judgment thereon. (Code 1887, § 4009.)

See Webb's Case, 2 Leigh 721.

Sec. 4889. Process on indictment or presentment for misdemeanor.—On any indictment or presentment for a misdemeanor, process shall be issued immediately. If the accused appear and plead to the charge, the trial shall proceed without delay, unless good cause for continuance be shown. If, being summoned, he fail to appear and plead, and the indictment or presentment be founded on any provision of chapter one hundred and eighty-five, or on a violation of any provision of the laws relating to the public revenue, the court may render judgment in the same manner as if he had confessed the charge in court; and if the offense be punishable by a fine not fixed by law, a jury shall be impaneled to assess the same. But on indictment or presentment for any other misdemeanor, after the summons has been executed ten days, the court may either award a capias or proceed to trial, in the same manner as if the accused had appeared and pleaded not guilty. (Code 1887, §§ 4010, 4012.)

Revisors' Note.—Section 4010 of the Code of 1887 provided that "On any indictment or presentment (NOT EMBRACED IN THE PRECEDING SECTION) FOUNDED ON ANY PROVISION OF CHAPTER ONE HUNDRED AND EIGHTY-SEVEN OR ON A VIOLATION OF ANY PROVISION OF THE LAWS RELATING TO THE PUBLIC REVENUE, process shall be issued immediately." The capitalized words have been omitted in this connection, and process is to be issued immediately on any indictment or presentment for a misdemeanor. Many persons indicted for misdemeanors escape where process is made returnable to the next term. Especially is this true in border counties, where the person indicted can easily flee into another Commonwealth. Provision is made for a continuance if good cause be shown. If the indictment or presentment be founded on any part of chapter 185 (chapter 187 of the former Code), or on a violation of the revenue laws, the revised section prescribes the procedure which conforms to the former law.

Upon indictment for carrying on a lottery business, accused "appears and pleads to the charge," and moves for a continuance. Held not error to deny the motion. Lawrence's Case, 86 Va. 573, 10 S. E. 840.

See Maddox's Case, 2 Va. Cas. 19.

Prisoners under indictment under section 4576 for a disturbance of religious worship may be tried in their absence. Shiflett's Case, 90 Va. 386, 18 S. E. 838.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 158, section 20, 22.

Sec. 4890. What not to work discontinuance.—There shall be no discontinuance of any criminal prosecution by reason of the fail-

Digitized by Google

ure of the court to award process, or to enter a continuance on the record. (Code 1887, § 4013.)

A case stands continued without order, and failure to enter order of continuance works no discontinuance. Harrison's Case, 81 Va. 491; Sand's Case, 20 Grat. 800; Cleek's Case, 21 Grat. 781; Hill's Case, 2 Va. Cas. 61; Varner's Case, Id. 62; Gourd's Case, Id. 470.

In continuing a case it is no error to pass over a term. Bolanz's Case, 24 Grat. 31; Sands' Case, 20 Grat. 800.

The omission to file an information at the same term of the court at which the rule is made absolute, and leave given to file it, is no discontinuance of the prosecution. Varner's Case, 2 Va. Cas. 62.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 158, section 23.

Sec. 4891. Outlawry abolished.—No proceeding of outlawry shall hereafter be instituted or prosecuted. (Code 1887, § 4014.)

Hale's Case, 2 Va. Cas. 241; Hagerman's Case, Id. 244.

Sec. 4892. How summons against a corporation to answer indictment, etc., is served; proceedings, if it fail to appear and plead; how expense of publication is certified, paid, and taxed in costs.—A summons against a corporation to answer an indictment, presentment, or information may be served as provided in sections six thousand and sixty-three and six thousand and sixty-four; and if the defendant after being so served, fail to appear, the court may proceed to trial and judgment, without further process, as if the defendant had appeared and pleaded not guilty. And where, in any such case, publication of a copy of the process is required according to the said sections, the expense of such publication may be certified by the court to the Auditor of Public Accounts, and shall be paid out of the treasury of the Commonwealth; but the same shall be taxed with other costs, and collected from the defendant, if judgment be for the Commonwealth, and be paid into the treasury by the officer collecting the same. (Code 1887, § 4015.)

Digitized by Google

CHAPTER 195.

Trial and Its Incidents.

Sec.
4893. Criminal offenses committed in counties and in cities not having corporation courts to be tried in circuit courts; when and by whom venire facias issued in case of felony.
4894. On trial for felony, accused to be present; when court may enter plea for him and trial go on.
4895. Venire facias in case of felony; what to command; number of persons to be summoned, and how selected.
4896. When another venire facias may issue, and the panel be completed from bystanders or list; fine of juror for non-attendance.
4897. Court or judge may cause venire facias to issue at any time for trial of felony.
4898. Challenges of jurors; how many allowed; how tried.
4899. When person opposed to capital punishment disqualified.
4900. How panel selected and jury constituted; how trial had upon plea of guilty without a jury.
4901. When and how jurors summoned from another county or corporation.
4902. When jury not to be kept together; when so kept to be boarded; rate of board; how paid.
4903. New juror may be sworn in place of one disabled; when court may discharge jury.
4904. Peremptory challenges restricted; how exercised in case of disagreement.
4905. Counsel for the Commonwealth and the prisoner may make opening statement in all cases.
4906. Courts may exclude from all trials of felony or misdemeanor cases any or all persons whose presence is not deemed necessary.
4907. Defendant allowed to plead several matters of law or fact.
4908. Accused, while insane, not to be tried.
4909. When sanity of accused to be tried; if sane, trial to proceed; if insane when offense committed, or at trial, what the court to do.
4910. Disposition of persons who become insane after conviction; duties of sheriff or sergeant as provided for in this and the preceding section.
4911. When accused to be taken from hospital and committed to jail.
4912. Sentence or trial of prisoner, when restored to sanity.
4913. Verdict of acquittal by reason of insanity to state the fact; court may commit the defendant to hospital for insane.
4914. When and how venue may be changed.
4915. Court may admit accused to bail; if not bailed, what to be done with him.
4916. Duty of clerk of the court ordering change of venue; how court, to which the case is removed to proceed.
4917. When judge cannot sit on trial; how another judge procured to try the case.
4918. When accused found guilty of only part of offense charged, how sentenced; if new trial granted, for what trial to be.
4919. What verdict to specify, when jury find accused guilty of

Digitized by Google

Sec.
murder; if guilt confessed, duty of court.
4920. On indictment for homicide, or malicious shooting, etc., with intent to kill, of what accused may be found guilty.
4921. When, in prosecution for grand larceny, accused may be found guilty of, and sentenced for, petit larceny.
4922. On indictment for felony, accused may be convicted of an attempt; effect of general verdict of not guilty.
4923. Judgment on general verdict of guilty, if any count good.
4924. Verdict and judgment, when jury agree as to some and disagree as to others.
4925. Suspension of judgments.
4926. Within what time an indictment for felony must be tried or accused be forever discharged.
4927. Jurors in case of misdemeanor.
4928. Compensation and mileage of jurors in criminal cases; when and by whom paid.

Sec. 4893. Criminal offenses committed in counties and in cities not having corporation courts to be tried in circuit courts; when and by whom venire facias issued in case of felony.—The circuit courts, except where otherwise provided, shall have exclusive original jurisdiction for the trial of all presentments, indictments, and informations for offenses committed within the counties, and within the cities which may not have corporation courts, of their respective circuits, and also of all presentments, indictments, and informations pending in the county court on the first day of February, nineteen hundred and four.

The clerk of the court in which the trial of a case of felony is to be had shall, as soon as may be, issue a writ of venire facias, directed to the officer of the said court, requiring him to summon jurors for such trial from a list to be furnished him as provided in section forty-eight hundred and ninety-five. When an indictment is found against a person for felony, the accused, if in custody, or if he appear according to his recognizance, shall, unless good cause be shown for a continuance, be arraigned and tried at the same term. (Code 1887, § 4016; 1893-4, p. 270; 1902-3-4, p. 881; 1904, p. 15.)

Object of the statute.—The provision of this section that "the accused shall, unless good cause be shown for a continuance, be arraigned and tried at the same term," was enacted to procure the accused the speedy trial guaranteed by the Constitution. Article 1, section 8, Const. 1902; Benton's Case, 90 Va. 331, 18 S. E. 282; Hall's Case, 89 Va. 171, 15 S. E. 517.

Good cause for continuance—Prejudice not.—Prisoner may move for continuance before arraignment; but affidavits of prevalence of bitter and general prejudice against him do not of themselves constitute good grounds for continuance. Joyce's Case, 78 Va. 287.

Refusal to consider motion for continuance till after arraignment held to be error as the law was in regard to election of trial in circuit court. Anderson's Case, 84 Va. 77, 3 S. E. 803.

No time is required to elapse between the commission of an offense and the trial of a prisoner therefor, and the mere fact that a prisoner was indicted and put upon trial for rape forty-eight hours after its alleged commission is no ground for reversal. Wright's Case, 114 Va. 872, 77 S. E. 503.

Digitized by Google

Skipping a term.—In continuing case on prisoner's motion, skipping a term is not error. Bolanz's Case, 24 Grat. 31.

Generally.—The following cases have reference to the provision of the old law, allowing one indicted for a felony, for which he might be punished with death, to elect to be tried in the circuit court: Sutton's Case, 85 Va. 128, 7 S. E. 323; Anderson's Case, 84 Va. 77, 3 S. E. 803; Stoneham's Case, 86 Va. 523, 10 S. E. 238; Howel's Case, 86 Va. 817, 11 S. E. 238; Early's Case, 86 Va. 921, 11 S. E. 795; Drier's Case, 89 Va. 529, 16 S. E. 672; Mitchell's Case, 89 Va. 826, 17 S. E. 480; Nicholas' Case, 91 Va. 747, 21 S. E. 364; Whitehead's Case, 19 Grat. 640; Boswell's Case, 20 Grat. 860.

Under this section as amended by Acts 1893-4, p. 270, county courts had exclusive original jurisdiction of all felonies committed within their respective counties, and the prisoner no longer had the right to elect to be tried in the circuit court. Gilligan's Case, 99 Va. 816, 818, 37 S. E. 962.

No preliminary examination before justice of the peace necessary. See Jones' Case, 86 Va. 661, 665, 10 S. E. 1005; also section 4881 and notes.

See Dulin's Case, 91 Va. 721, as to the effect of the amendment of 1893-94, page 270.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 159, section 1.

Sec. 4894. On trial for felony, accused to be present; when court may enter plea for him, and trial go on.—A person tried for felony shall be personally present during the trial. If when arraigned he will not plead or answer, and do not confess his guilt, the court shall have the plea of not guilty entered, and the trial shall proceed as if the accused had put in that plea. But for the purposes of this section, a motion for a continuance, whether made before or after arraignment, shall not be deemed to be part of the trial. (Code 1887, § 4017.)

Revisors' Note.—The last sentence is new. In Kibler v. Com., 94 Va. 804, 26 S. E. 858, it was held that the defendant was not prejudiced by such a motion made in his absence before arraignment. In Benton v. Com., 91 Va., at p. 794, 21 S. E. 495, it was intimated that he need not be present when such motion was made after arraignment. See also what is said in O'Boyle v. Com., 100 Va. 785, 40 S. E. 121, and 8 Va. L. Reg., note, p. 107. The very fact that the case is continued shows there was no trial. The defendant is entitled to be present during the trial, but there is no good reason for making it necessary for him to be present when a motion for continuance is made. The above addition settles the question.

Presence must be shown by record—Right cannot be waived.—In a prosecution for felony the accused must be arraigned and must plead in person, and in all subsequent proceedings he must appear in person, not by attorney, and this must be shown by the record, nor can it be waived. Sperry's Case, 9 Leigh 623, 33 Am. Dec. 261; Jones' Case, 87 Va. 63, 12 S. E. 226; Gilligan's Case, 99 Va. 816, 829, 37 S. E. 962; Longley's Case, 99 Va. 807, 37 S. E. 339; Hooker's Case, 13 Grat. 763; Jackson's Case, 19 Grat. 664; Lawrence's Case, 30 Grat. 845; Bond's Case, 83 Va. 581, 3 S. E. 149; Shelton's Case, 89 Va. 453, 16 S. E. 355; Snodgrass' Case, 89 Va. 687, 17 S. E. 238.

If it may be inferred from the record that the prisoner was present that is sufficient, though it is not formally stated that he was present (Benton's Case, 91 Va. 794, 21 S. E. 495; Cluverius' Case, 81 Va. 848; Sperry's Case, 9 Leigh 623, 33 Am. Dec. 261; Lawrence's Case, 30 Grat. 845; Gilligan's Case, 99 Va. 816, 37 S. E. 962); and the record having

Digitized by Google

recited that he was present, the presumption would be that he remained until the court adjourned for the day, unless the contrary is made to appear either directly or by necessary intendment (Williams' Case, 93 Va. 769, 25 S. E. 659).

The statement that the prisoner was arraigned seems to imply, ex vi termini, that he was personally present. Lawrence's Case, 30 Grat. 851.

When at the end of the record of the proceedings of the court on the day of the conviction it is stated, "And thereupon the accused was remanded to jail," this is conclusive that he had been personally present during all the proceedings had that day. Cluverius' Case, 81 Va. 788.

"This case was continued for the defendant" does not show that he was personally present. Shelton's Case, 89 Va. 450, 16 S. E. 355.

Motion for a new trial—Prisoner's presence.—If, in the absence of the prisoner, motion for a new trial is made and overruled, and afterwards during same term, in his presence, the overruling is rescinded, and he is invited to renew the motion, but refuses, the irregularity is thereby cured. Hooker's Case, 13 Grat. 763; Bond's Case, 83 Va. 581, 3 S. E. 149.

Statement of counsel after judgment.—After judgment it is not error to hear the statement of counsel for the prisoner in his absence that he has no bills of exception to offer. Gilligan's Case, 99 Va. 816, 37 S. E. 962.

Presence of prisoner—Jury sent to their room.—It is not necessary for the prisoner to be present when the jury is called and sent to their room, to consider of their verdict, the jury afterwards returning into court, and, in his presence, rendering their verdict. Jones' Case, 79 Va. 215; Lawrence's Case, 30 Grat. 845.

Signing order.—Prisoner need not be present when orders are signed, as this is no step in the prosecution. Weatherman's Case, 91 Va. 796, 22 S. E. 349.

Continuance when prisoner is not present.—Before arraignment the prisoner need not be present when his case is continued. Kibler's Case, 94 Va. 804, 26 S. E. 858; Anderson's Case, 84 Va. 77, 3 S. E. 803; Boswell's Case, 20 Grat. 860. See, also, O'Boyle's Case, 100 Va. 785, 40 S. E. 121, where it is held that it is not error to continue an indictment against prisoner for felony in his absence, if the prisoner is not prejudiced. See note, 3 Va. Law Reg. 107. See the statute as amended by present revision.

Reading evidence.—If the evidence of a witness on the trial, which has been reduced to writing, or any part of it, is read to the jury in the absence of the prisoner, it is error for which the verdict will be set aside. Jackson's Case, 19 Grat. 656.

View by jury of place where crime was committed.—This is held to be no part of trial in New York. See 4 Va. Law Reg. 776. See section 6013.

Where trial, interrupted by a sudden fit and the removal of the prisoner, was resumed upon his restoration, and return into court, this was not error. Curtis' Case, 87 Va. 589, 13 S. E. 73.

Presence of accused not necessary in misdemeanor.—In misdemeanors the personal presence of the defendant is not necessary at the trial; a verdict and judgment for the fine may be found and rendered in his absence, and after the term he can neither move for a new trial nor in arrest of judgment. But until final judgment he can so move. Pifer's Case, 14 Grat. 710, 713. See, also, Price's Case, 33 Grat. 819, 36 Am. Rep. 797, and section 4076 and note.

Generally.—Discussed, 12 Va. Law J. 489.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 159, section 2.

Sec. 4895. Venire facias in case of felony; what to command; number of persons to be summoned, and how selected.—The writ of venire facias in case of felony shall command the officer to whom it

Digitized by Google

is directed to summon twenty persons of his county or corporation, to be taken from a list furnished him by the clerk issuing the writ, who are qualified in all respects to serve as jurors, to attend the court wherein the accused is to be tried on the first day of the next term thereof, or at such other time as the court or judge may direct. At one term of the court only one jury shall be summoned, unless the court or judge thereof otherwise direct; and the jury so summoned may be used for the trial of all the cases which may be tried at that term, both felonies and misdemeanors.

The list mentioned in this section shall contain the names of twenty-four persons drawn for that purpose by the clerk of the court or his deputy from the names and box provided for by sections fifty-nine hundred and eighty-eight and fifty-nine hundred and ninety of this Code. Such drawing shall be in the presence of the judge of the court, or in his absence of one of the commissioners in chancery provided for by section fifty-nine hundred and ninety-two of this Code, and a reputable citizen not connected with the accused or the prosecutor, or, in a case of homicide, with the deceased, who shall be called upon for that purpose by the clerk conducting the drawing. If the presence of the commissioner cannot be obtained, the drawing shall be in the presence of two reputable citizens not connected as aforesaid and called upon by the clerk. The clerk shall notify the commissioner of the time his attendance is desired, and it shall be his duty to attend at such time at the clerk's office. The drawing, except as herein otherwise provided, shall conform as near as may be to the mode prescribed for drawing juries in civil cases.

For good cause shown in any felony case the judge of the court, in term time or vacation, may direct more than twenty-four names to be drawn and placed on the list, and more than twenty persons to be summoned. He shall in such cases specify the number of names to be drawn and the number of persons to be summoned; the number drawn shall not be more than four in excess of the number to be summoned.

If there is drawn from the box the name of a person who has died, removed from the county or city or is related to the accused or to the prosecutor, or, in a case of homicide, to the deceased, or who is known to the clerk or other persons attending the drawing, if the case be in a circuit court of a county, to live within two miles of the place where the crime is charged to have been committed, such name shall not be placed on the list as they are drawn, and when twenty-four names have been so placed the drawing shall cease, and a copy of said list shall at once be made and signed by the clerk and the persons attending the drawing, which copy shall be filed in the clerk's office.

No irregularity in any writ of venire facias or in the drawing, summoning, returning, or impanelling of jurors, or in making out

Digitized by Google

or copying or signing or failing to sign the list or in drawing more persons than four in excess of the number to be summoned, shall be cause for summoning a new panel or for setting aside a verdict or granting a new trial, unless objection thereto specifically pointed out, was made before the jury was sworn, and unless it appears that such irregularity, or error, or failure, was intentional or such as to probably cause injustice to the Commonwealth or to the accused; and no judgment shall be arrested or reversed for the failure of the record to show that there was a venire facias, unless made a ground of exception in the trial court, before the swearing of the jury. (Code 1887, §§ 4018, 4027, 4029; 1895-6, p. 264; 1899-00, pp. 566, 672; 1902-3-4, p. 882; 1904, p. 16.)

Revisors' Note.—This section increases the venire facias from sixteen to twenty persons, and the list from twenty to twenty-four. These changes are made in view of the revised section 4898 allowing the Commonwealth four peremptory challenges and the accused four. Before the revision the Commonwealth was allowed no peremptory challenges in felony cases, as to which see revisors" note to section 4898.

Attention is called to the fourth paragraph of this section, changing, in counties, the distance which a juror must live from the place where the crime was committed from three miles to two miles. The three-mile limit was frequently the cause of delay and inconvenience, and the purpose of the reduction is to decrease this in part.

The last paragraph is substantially a combination of the last paragraph of section 4018 of the Code of 1887, as amended by Acts 1904, p. 16, and Acts 1893-4, p. 494, amending section 3156 of that Code. The latter act provided that "This act shall apply to jurors and juries in all cases, criminal as well as civil." So far as the latter act was applicable to civil cases it is now section 6002, and so far as it was applicable to criminal cases, it is contained in the combination referred to, hence as section 6002 now stands, this sentence is omitted.

Section 4027 of the former Code was omitted and thereby repealed in view of the fact that section 4895 of this Code provides for only one jury in a case unless otherwise directed.

Section 4029 of the Code of 1887 was also omitted in the revision and thereby repealed. The effect of this repeal was probably to take away from persons jointly indicted for felony the right to separate trials. This question should not be left in doubt. At common law the defendants had no such absolute right, and it is presumed the repeal of the statute restored the common law. See Lewis' Case, 25 Grat. 938, 942. The General Assembly will therefore be asked to pass an act giving to persons jointly indicted for a felony the right to elect to be tried separately.

Interpretation.—The provisions of this and the following section are imperative and essential, and the accused is entitled to demand strict compliance with them. Omission of such compliance is error. Hall's Case, 80 Va. 555; Whitehead's Case, 19 Grat. 640; Richard's Case, 81 Va. 110; Honesty's Case, Id. 283; Jones' Case, 100 Va. 842, 847, 41 S. E. 951.

This section and the following apply only to the summoning of jurors from county or corporation in which the trial is had. Clark's Case, 90 Va. 360, 18 S. E. 440.

The trial judges should see that the statutory provisions in reference to the selection of jurors are strictly complied with. The fact that it may sometimes be inconvenient to the court, or cause delay in the

Digitized by Google

trial of a cause is no sufficient reason why the statutes should not be rigidly enforced. Patrick's Case, 115 Va. 933, 78 S. E. 628.

Objection that record does not show that there was a venire must be made before jury is sworn. It was held that "a venire facias was an indispensable process to summon a jury in a felony case, although the writ itself is not part of the record, unless made so by bill of exceptions or otherwise. And the record must show that the jury were brought in under a venire. And failure of the accused to object to the want of a venire before the swearing of the jury does not preclude him from objecting afterwards. He may even do so for the first time in the appellate court." Myers' Case, 90 Va. 786, 20 S. E. 152; Spurgeon's Case, 86 Va. 652, 10 S. E. 979; Vawter's Case, 87 Va. 245, 12 S. E. 339; Jones' Case, 87 Va. 63, 12 S. E. 226; Hall's Case, 80 Va. 555; Coleman's Case, 84 Va. 1, 3 S. E. 878. But see last paragraph of section 4895 as it now reads which declares that "no judgment shall be arrested or reversed for the failure of the record to show that there was a venire facias, unless made a ground of exception in the trial court before the swearing of the jury." See Jones' Case, 100 Va. 847, 41 S. E. 951. For a somewhat similar provision relating to civil cases, see section 6002.

A general objection to a writ of venire facias in a felony case is sufficient to raise any objection apparent on face of record, and failure of counsel to point out such errors as they have knowledge of will not deprive the prisoner of his objection on a writ of error. Jones' Case, 100 Va. 842, 41 S. E. 951, note 8 Va. L. Reg. 351. But see last paragraph of section 4895 as it now reads. Objections must be specifically pointed out.

Drawing, summoning, etc., of jurors.—It is clear from this section and section 5992 that the judge should designate a commissioner who is not the deputy clerk in whose presence the drawing must be made. Ashloch's Case, 108 Va. 877, 6 S. E. 752.

If any person whose name is drawn from the box is for any cause (other than those designated in this section) not a competent person to sit on the jury, that is a question for the court not the clerk, idem.

There is no authority for the presence of the attorney for the Commonwealth when juries are to be drawn in felony cases. Patrick's Case, 115 Va. 933, 78 S. E. 628.

A general order made by a court, of its own motion, directing the clerk, in drawing the list of names thereafter for the trial of criminal cases, to draw the names of thirty persons, made before the offense for which the accused was tried had been committed, was in violation of the provisions of this section, and a venire drawn pursuant to such order should be quashed. Patrick's Case, 115 Va. 933, 78 S. E. 628.

Where the clerk, under a general order of the judge of the court, applicable to all cases arising after its entry, drew the names of thirty persons, instead of twenty (now twenty-four), as required by this section, his action was an intentional irregularity, and is not within the curative provisions of this section. Patrick's Case, 115 Va. 933, 78 S. E. 628.

It is error to draw more than twenty names (now twenty-four) without showing good cause therefor, and it is also error, when the number drawn is more than four in excess of the number to be summoned, when more than twenty (now twenty-four) persons are ordered to be drawn and summoned. Looney's Case, 115 Va. 921, 78 S. E. 625.

Where one venire facias had been quashed and the method adopted by the judge for obtaining the names for the second venire clearly indicated an intention to secure the names of the veniremen under the first venire, this constitutes reversible error. Looney's Case, 115 Va. 921, 78 S. E. 625. But the mere fact that a trial judge quashed the writ of venire facias issued by another judge incompetent to try the case, but used the same names in the new writ issued by himself, could not render them unsuitable. Waller's Case, 84 Va. 492, 5 S. E. 364; Mitchell's Case, 33 Grat. 851; Poindexter's Case, Id. 766; Baccigalupo's Case, 33 Grat.

Digitized by Google

807, 36 Am. Rep. 795; Drier's Case, 89 Va. 531, 16 S. E. 672; Snodgrass' Case, 89 Va. 683, 17 S. E. 238.

Though the order for a writ of venire facias in a felony case directs the sheriff to summon the entire list drawn, it will not be quashed for that reason, in the absence of any evidence that the accused was or could have been prejudiced thereby. Hardy's Case, 110 Va. 910, 67 S. E. 522.

The court entered an order that "for good reasons shown" forty persons be drawn, at least thirty-six of whom be summoned. Thereupon the clerk issued a writ of venire facias directing the sheriff to summon all forty. Held, no error unless it be shown accused was prejudiced. Hardy's Case, 110 Va. 910, 67 S. E. 522.

An objection to the action of the trial court in not directing a venire facias to be issued to complete the panel when a sufficient number of jurors was not obtained from the persons summoned and in attendance, comes too late after verdict. Patrick's Case, 115 Va. 933, 78 S. E. 628.

This section was clearly not intended as a protection to the party to be tried, but to give the sheriff a certain discretion to be used if he did not summon all the jurors drawn, provided the number not summoned did not exceed four. Hardy's Case, 110 Va. 910, 67 S. E. 522.

An indictment against accused was pending in a court when a venire facias was issued for the trial of a third person under indictment for a felony. At time of issuance of writ the accused was in another State though not a fugitive. Held, that he could not complain because the jury summoned under the writ was used for his trial. Bennett v. Com., 106 Va. 834, 55 S. E. 698.

Where a venire facias was issued for a jury for the trial, during the terms of each of three felony cases, including that of the defendant, and defendant was tried by a jury composed of persons thus summoned, such proceeding sufficiently complies with section 4895. Prince's Case, 89 Va. 330, 15 S. E. 863.

An objection that jurors summoned in a criminal case were not free from exception cannot be made in the appellate court, where it does not appear that the objection was made in the trial court, or that the accused was injured thereby. Barnes' Case, 92 Va. 794, 23 S. E. 784.

Objection cannot be made for the first time in the appellate court that a person served on the jury without being selected by the court or summoned by the sheriff. Short v. Com., 90 Va. 98, 17 S. E. 786.

List to be furnished by clerk.—This section should be strictly complied with, and a writ of venire facias directing the officer to summon sixteen (now twenty) persons from a list furnished him by the judge, instead of the clerk, was properly quashed. This section requires the writ to command the officer to summon sixteen (now twenty) persons from a list of twenty (now twenty-four) furnished by the clerk. Hoback v. Com., 104 Va. 871, 52 S. E. 575.

As to the former provisions on this subject, see Coleman's Case, 84 Va. 1, 3 S. E. 878; Spurgeon's Case, 86 Va. 652, 10 S. E. 979; Hall's Case, 80 Va. 555; Williams' Case, 85 Va. 607, 8 S. E. 470. See last paragraph of section 4895.

A letter from the judge directing the clerk to summon thirty first-class men for the first day of the term to serve as venire-men is insufficient to authorize the clerk to draw a list of that number. Hoback v. Com., 104 Va. 871, 52 S. E. 575.

Under the Code of 1887, which required the list to be twenty it was held not improper for the number of persons contained in such list to exceed twenty. Drier's Case, 89 Va. 529, 16 S. E. 672; Sands' Case, 21 Grat. 871; Mitchell's Case, 33 Grat. 845. But see Vawter's Case, 87 Va. 245, 12 S. E. 339, and the comments thereon in Drier's Case, 89 Va. 529, 16 S. E. 672; Jones' Case, 100 Va. 849, 41 S. E. 951.

But a venire facias which directs the summoning of a different number of jurors from that required by the statute is a void process, and there can be no valid trial thereunder. Jones' Case, 100 Va. 842, 41 S. E. 951; Spurgeon's Case, 86 Va. 652, 10 S. E. 979. Section 3156 of

Digitized by Google

the Code of 1887, as amended (Acts 1893-4, p. 494), (corresponding to the last paragraph of section 4895) does not apply. Jones' Case, 100 Va. 842, 847, 848, 41 S. E. 954; note 8 Va. L. Reg. 351.

Where writ commanded sheriff to summon forty persons and no objection was made until after verdict, it was decided that an objection at that time was too late. Lyle's Case, 88 Va. 396, 13 S. E. 802.

Objection to juror for illegal execution of venire—Whole venire set aside.—If the prisoner objects to a juror, on the ground that the venire facias was illegally executed, and the court sustains the objection, it is proper to set aside the whole return and direct another venire facias. Epes' Case, 5 Grat. 676.

Venire varying language of statute—When not error.—The language of the venire facias was "* * * * when the felony was committed," instead of the language of the statute, "* * * * when the offense is charged to have been committed." This is not error. Poindexter's Case, 33 Grat. 766; Baccigalupo's Case, 33 Grat. 807, 36 Am Rep. 795; Mitchell's Case, 33 Grat. 845; Puryear's Case, 83 Va. 51, 1 S. E. 512.

Objection to juror before he is sworn—After trial.—When the prisoner excepts to a juror before he is sworn, it is a matter of right to be adjudged by the court; when he excepts after trial for cause existing before the juror was elected and sworn, it is a matter addressed to the discretion of the court, and the court must consider the whole case and be satisfied that justice has been done. Dilworth's Case, 12 Grat. 698, 65 Am. Dec. 264; Jones' Cases, 1 Leigh 598; Heath's Case, 1 Rob. 735; Hailstock's Case, 2 Grat. 564; Curran's Case, 7 Grat. 619.

Objection to juror for cause existing before he was sworn.—It has been repeatedly held that a new trial will not be granted in a criminal case for matter that is a principal cause of challenge to a juror, which existed before he was elected and sworn as such juror, but which was unknown to the prisoner till after verdict, and which could not have been discovered before the jury was so sworn by the exercise of ordinary diffigence, unless it appear that the prisoner suffered injustice from the fact that such juror served upon the case. Smith's Case, 2 Va. Cas. 6; Poore's Case, Id. 474; Kennedy's Case, Id. 510; Brown's Case, Id. 516; Hughes' Case, 5 Rand. 655; Jones' Case, 1 Leigh 598; Heath's Case, 1 Rob. 735; Hailstock's Case, 2 Grat. 564; Curran's Case, 7 Grat. 619; Dilworth's Case, 12 Grat. 689, 65 Am. Dec. 264; Bristow's Case, 15 Grat. 634; State v. Greer, 22 W. Va. 824; Simmons v. McConnell, 86 Va. 500, 10 S. E. 838; Gray's Case, 92 Va. 777, 22 S. E. 858; Thompson's Case, 8 Grat. 637.

Direction as to remoteness mandatory—And constitutional.—The direction in section 4018 of the Code of 1887 that the list should be of persons "residing remote from the place where the offense is charged to have been committed" was mandatory, and the writ was defective, and should have been quashed if it was omitted. And it was not a violation of the Bill of Rights. Whitehead's Case, 19 Grat. 640; Richards' Case, 81 Va. 110; Hall's Case, 80 Va. 555. Under the present section "if the case be in a circuit court of a county" the names of persons who live "within two miles of the place where the crime is charged to have been committed" are not to be placed on the list.

Objection to the juror for nonremoteness—How made.—When one juror has been summoned from too near scene of crime, objection should be made to him, and not to the array. Lawrence's Case, 81 Va. 484; Prince's Case, 89 Va. 330, 15 S. E. 863; Craft's Case, 24 Grat. 602.

Remote from corporation—Adjoining county.—In the sense of the law, all parts of the adjoining county, outside the limits of a corporation, are remote from the place where the offense is alleged to have been committed, if it is alleged to have been committed within the limits of the corporation. Craft's Case, 24 Grat. 602; Lawrence's Case, 81 Va. 484.

Qualifications for jury.—See section 5984, which by section 4927

Digitized by Google

is made to apply to jurors and juries in all cases, criminal as well as civil.

The phrase in section 4895, "qualified in all respects to serve as jurors," comprehends all things essential to the qualification of jurors by the common law, where unaltered, or by the statute in force. Wash's Case, 16 Grat. 530, 537.

Juror incompetent for affinity or consanguinity.—On a trial for arson the nephew of the deceased wife of the person whose house was burned, if she left children, is an incompetent juror. Jacques' Case, 10 Grat. 690. The fact that uncle of juror is remotely connected by marriage with kindred of the prosecutrix is no disqualification. Doyle's Case, 100 Va. 808, 40 S. E. 925.

Objection to juror for constitutional disability—When should be made.—Objection to a juror for disability created by the Constitution comes too late after verdict. Puryear's Case, 83 Va. 51, 1 S. E. 512; Poindexter's Case, 33 Grat. 766; Hite's Case, 96 Va. 495, 31 S. E. 895; Simmons' v. McConnell, 86 Va. 494, 10 S. E. 838. Nor can objection be made after juror is sworn, unless by leave of court. Spurgeon's Case, 86 Va. 652, 10 S. E. 979.

A person who is qualified to vote by the Constitution of Virginia is a competent juror, though he is disabled from holding office by the fourteenth amendment of the Constitution of the United States. Sands' Case, 21 Grat. 871; Chahoon's Case, 20 Grat. 733.

If a person has the constitutional qualification of a voter, though he has not been registered and has not voted, he is a qualified juror. Craft's Case, 24 Grat. 603.

Persons over sixty not disqualified to serve as jurors.—Persons over sixty years of age are not disqualified to serve on grand juries, though they are exempted from service if they choose to claim the exemption. Booth's Case, 16 Grat. 519.

Member of grand jury finding indictment incompetent—Objection.—Member of the grand jury finding the indictment is incompetent as a juror. Dilworth's Case, 12 Grat. 689, 65 Am. Dec. 264; Hunter v. Matthews, 12 Leigh 228; Bristow's Case, 15 Grat. 648. But if the objection is not taken until after the verdict it will not be set aside on this ground, unless it appears from the whole case that the juror was biased against the prisoner, who therefore has not had an impartial trial. Bristow's Case, supra.

A person on grand jury exempt from serving on jury.—A person serving on the grand jury is not in attendance in the sense of section 4896, and it is not error to refuse to place him on the panel or examine him on his voir dire. Short's Case, 90 Va. 96, 17 S. E. 786.

Juror need not now be a freeholder.—A writ directing the officer to summon freeholders who owned property of a certain value ought to be quashed, as it contains a qualification which the law does not require. Wash's Case, 16 Grat. 530.

Under Acts 1845-6, a juror in a criminal case was required to be a freeholder in the county to the officer of which the venire facias was directed. Day's Case, 3 Grat. 629. It was unnecessary for the record to show that the jury were freeholders. Stephen's Case, 4 Leigh 679.

Under the same state of the law, a juror who had been rejected because he said that he was not a freeholder returned into court before completion of the panel, and said he was mistaken, that he was a freeholder; he was held a lawful juror. Hendrick's Case, 5 Leigh 707.

Colored man cannot demand mixed jury.—A colored man indicted for a felony is not entitled to demand that the jury be made up of both white and colored persons. Lawrence's Case, 81 Va. 484; Mitchell's Case, 33 Grat. 845; Ex parte Virginia, 100 U. S. 313, 25 L. Ed. 667.

Decided opinion.—He who has formed and expressed a decided opinion that the prisoner is guilty or innocent of the offense for which he is about to be tried, whether that opinion be formed on the evidence of the witnesses whose evidence he has heard on a former trial, conversation with witnesses, or common report, is not fit to sit upon his trial.

Digitized by Google

Osiander's Case, 3 Leigh 780, 24 Am. Dec. 693. And it is immaterial whether that opinion has been expressed or not. Armistead's Case, 11 Leigh 657, 662, 37 Am. Dec. 633; Heath's Case, 1 Rob. 735.

For a discussion of what is meant by a decided opinion, see Armistead's Case, 11 Leigh 657, 659, 661, 37 Am. Dec. 633.

On the question of what preconceived opinions render one incompetent as a juror, and what do not, see Lithgow's Case, 2 Va. 297; Sprouce's Case, Id. 375; Poore's Case, Id. 474; Pollard's Case, 5 Rand. 659; Hughes' Case, Id. 655; Mendum's Case, 6 Rand. 704; Jones' Case, 1 Leigh 598; Brown's Case, 2 Leigh 769; Osiander's Case, 3 Leigh 780, 24 Am. Dec. 693; Moran's Case, 9 Leigh 651; Hendrick's Case, 5 Leigh 707; Maile's Case, 9 Leigh 661; Armistead's Case, 11 Leigh 657, 37 Am. Dec. 633; Heath's Case, 1 Rob. 737; McCune's Case, 2 Rob. 771; Hailstock's Case, 2 Grat. 564; Epes' Case, 5 Grat. 676; Smith's Case, 6 Grat. 696, 7 Grat. 593; Clore's Case, 8 Grat. 606; Wormeley's Case, 10 Grat. 658; Montague's Case, Id. 767; Jackson's Case, 23 Grat. 919; Little's Case, 25 Grat. 921; Cluverius Case, 81 Va. 787; Shinn's Case, 32 Grat. 901; Lyles' Case, 88 Va. 397, 13 S. E. 802; Hall's Case, 89 Va. 175, 15 S. E. 517.

For preconceived opinions and circumstances not making one incompetent to serve as a juror, see Maile's Case, 9 Leigh 661; Moran's Case, Id. 651; Sprouce's Case, 2 Va. Cas. 375; Pollard's Case, 5 Rand. 659.

A decided opinion, based upon rumors, by one who declares himself unprejudiced, and able to give accused a fair trial, does not render one incompetent to serve as juror. Moran's Case, supra.

Decided opinion formed from conversation with prosecutor.—A juror who had conversed with the prosecutor, the most material witness for the Commonwealth, and upon his statement of the facts had formed, and still entertained, a decided opinion, was incompetent, though he stated that he would give the prisoner a fair trial; that he was not prejudiced against him; and that he would decide according to the evidence. Armistead's Case, 11 Leigh 663, 37 Am. Dec. 633.

Legal opinion does not render one incompetent.—The formation of a legal opinion upon facts previously presented to his mind does not render a person incompetent as a juror. Heath's Case, 1 Rob. 735.

Hypothetical declarations are not opinion, e. g., "If the prisoner killed the man he ought to be hanged," and they do not make one incompetent to serve on jury. Hughes' Case, 5 Rand. 655.

A juror's having expressed himself before the jury was empaneled, as determined to punish a prisoner if taken on the jury, not from any malice towards him, but from an opinion of his conduct, is no ground for setting aside the verdict and granting a new trial. Curran's Case, 7 Grat. 619; Bristow's Case, 15 Grat. 646; Dilworth's Case, 12 Grat. 692, 698, 65 Am. Dec. 264; Simmons v. McConnell, 86 Va. 500, 10 S. E. 838.

Objection to juror—Improperly overruled—Not cured by being stricken off by prisoner.—If a prisoner's objection to a juror is improperly overruled, the error is not cured by the juror's name stricken off from the panel by the prisoner or his not being drawn as one of the twelve who are to try the prisoner. Dowdy's Case, 9 Grat. 727, 60 Am. Dec. 314.

Exception to juror at first overruled—Juror afterwards set aside.—The prisoner objects to a juror, and his objection is overruled, and he excepts. After the panel is made up, but before the prisoner has exercised his right of challenge, the court, on the motion of the attorney for the Commonwealth, out of abundant caution, sets aside the juror. This is not error. Wormeley's Case, 10 Grat. 658.

Juror set aside on motion of Commonwealth—Can prisoner except?—Quære, if setting aside a person called upon the venire on motion of the attorney for the Commonwealth is a ground for exception by the prisoner. Clore's Case, 8 Grat. 607.

Jurors' perjuring themselves—When court may examine into.—(2014)

Digitized by Google

Whether the jury perjured themselves on their voir dire may be examined into by the court after verdict, if the prisoner alleges that he had no knowledge thereof till verdict had been rendered. Heath's Case, 1 Rob. 735.

Power of court to summon bystander on jury.—A circuit court has the right and power, on the trial of an indictment for felony, to compel a venireman or bystander called on to serve on a jury on the trial to be sworn on his voir dire, and to answer proper questions touching his fitness as a juror in the particular case. Stockley's Case, 10 Leigh 678.

If the original venire be exhausted without completing the panel, the court may order any number of persons to be summoned from the bystanders it may think necessary, and if the sheriff, from want of time or other cause, fails to summon the whole number, his return is valid for as many as are summoned. Wormeley's Case, 10 Grat. 658; Robinson's Case, 88 Va. 900, 14 S. E. 627; Jones' Case, 1 Leigh 598.

Challenges—When accused may except to decision of court.—The decision of a court allowing a challenge on the part of the Commonwealth, or disallowing a challenge on the part of the accused, whether such challenge be a principal challenge or a challenge to the favor, is matter of exception on the part of the accused. Montague's Case, 10 Grat. 767.

Challenges allowed the Commonwealth.—Formerly in felony cases no challenge was allowed the Commonwealth except for cause. It was therefore held that the cause should be shown, and should be a good and legal cause for the exclusion of the juror; otherwise it should be overruled. Montague's Case, 10 Grat. 767.

Under the present Code, the Commonwealth is allowed four peremptory challenges. Section 4898.

After a juryman has been selected and sworn, the court may, in its discretion, allow the prisoner to challenge him for cause, and strike him from the panel. Tooel's Case, 11 Leigh 714.

Generally.—See Min. Syn. 275-285; also note on "Juries," Chahoon's Case, 20 Grat. 733, Va. Rep. Anno.

Cited but not construed in Thurman's Case, 107 Va. 912, 60 S. E. 99, and Richard's Case, 107 Va. 881, 59 S. E. 1104.

Sec. 4896. When another venire facias may issue, and the panel be completed from bystanders or list; fine of juror for non-attendance.—In any case of felony, where a sufficient number of jurors to constitute a panel of twenty free from exception cannot be had from those summoned and in attendance, the court may direct another venire facias, and cause to be summoned from the bystanders, or from a list to be furnished by the court, so many persons as may be deemed necessary to complete the said panel, or when the venire facias, or panel, has been quashed for any cause, the court may direct another venire facias, and cause to be summoned from the bystanders, or from a list to be furnished by the court, so many persons as may be deemed necessary to obtain a panel of twenty, free from exception, and the venire thus summoned may be used for the trial of all criminal cases to be tried at that term, both felonies and misdemeanors, in the same manner as if the venire had been obtained according to the provisions of section four thousand and eighteen.

If any person summoned under any venire facias authorized by this chapter fail to attend, as required, without sufficient excuse, he shall be fined by the court not less than five nor more than twenty dollars. (Code 1887, § 4019.)

Digitized by Google

Revisors' Note.—This section is made to conform to the preceding as to the panel—twenty instead of sixteen. The latter part of the first paragraph of the section is new and provides what the court may do when the venire facias or panel has been quashed for any cause.

Formerly this section did not obtain where the first writ under section 4895 had been quashed, but only gave authority to complete the panel after the return of a valid writ. Hoback v. Com., 104 Va. 871, 52 S. E. 575.

See notes to preceding section.

Sec. 4897. Court or judge may cause venire facias to issue at any time for trial of felony.—Any court in which a person accused of felony is to be tried, or the judge of such court in vacation, may at any time cause a venire facias to issue for his trial. (Code 1887, § 4020; 1910, p. 203.)

Revisors' Note.—This section is identical with section 4020 of the Code of 1887 and the amendment of 1910 (Acts 1910, p. 203) has been omitted. The revisors deemed the original statute preferable.

See Wormeley's Case, 10 Grat. 658, 684; also Wilson's Case, 86 Va. 666, 10 S. E. 1007.

Sec. 4898. Challenges of jurors; how many allowed; how tried.—In every case of felony, the Commonwealth shall be allowed four peremptory challenges and the accused four, and in every case of misdemeanor, whether on an appeal from a justice or an original trial, the Commonwealth and the prisoner shall each be allowed one peremptory challenge. No other challenges shall be allowed except for cause. All challenges shall be tried by the court in which they are made. (Code 1887, § 4021.)

Revisors' Note.—Before the revision, no challenge of a juror was allowed the Commonwealth in felony cases, except for cause. The same right of peremptory challenge existed in selecting juries in cases of misdemeanor as was allowed in civil cases. See section 4048 of the Code of 1887 as last amended by Acts 1904, p. 124. The revised section above allows the Commonwealth four peremptory challenges and the accused four in felony cases, and in misdemeanor cases, the Commonwealth and the prisoner are each given one peremptory challenge. In giving the Commonwealth the right of peremptory challenge in felony cases, this Code follows the principle contained in the criminal laws of almost every state in the Union. See also sections 4895, 4900 and 4927, and revisors' notes.

Challenges for cause are: (1) *Propter defectum.*—Those are for want of necessary qualifications, either common law or statutory. See notes to section 4895, also sections 5984-5985 and notes.

(2) *Propter affectum.*—Here there is prima facie evidence of malice or of commitment to one side or the other.

Principal challenges.—Kinship to accused or party injured. Jacques' Case, 10 Grat. 690; Doyle's Case, 100 Va. 808, 40 S. E. 925. Member of grand jury in same case. Dilworth's Case, 12 Grat. 689, 65 Am. Dec. 264; Hunter v. Matthews, 12 Leigh 228; Bristow's Case, 15 Grat. 634, 648. Already formed a decided opinion, see notes to section 4895. That the juror is opposed to capital punishment, see section 4899; Clore's Case, 8 Grat. 614, 615. And the rule holds where the juror is opposed to inflicting capital punishment on circumstantial evidence. Cluverius' Case, 81 Va. 791.

Generally.—Treasurer of county and a member of town council are competent jurors. Thompson's Case, 88 Va. 467, 13 S. E. 304.

The appellate court will not inquire whether injury has been done

Digitized by Google

the prisoner by improperly setting aside a competent juror, but the law will presume prejudice to the prisoner. Montague v. Com., 10 Grat. 767.

See section 4495.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 159, section 4.

Sec. 4899. When person opposed to capital punishment disqualified.—A person, whose opinions are such as to prevent his convicting any one of an offense punishable with death, shall not be allowed to serve as a juror on a trial for such offense. (Code 1887, § 4022.)

See notes to section 4898, and Clore's Case, 8 Grat. 614; Cluverius' Case, 81 Va. 791.

Sec. 4900. How panel selected and jury constituted; how trial had upon plea of guilty without a jury.—In every case of a felony, there shall be selected from the persons summoned, as aforesaid, a panel of twenty persons, free from exception, from which panel the Commonwealth may strike four and the accused four, and the remaining twelve shall constitute the jury for the trial of the accused. The striking off of jurors shall be done alternately, the Commonwealth beginning. If either the accused or the attorney for the Commonwealth fail to strike off any, or if they strike off a less number than above allowed, twelve of the panel, or of those remaining thereon, shall be selected by lot who shall constitute the jury, provided, however, that upon a plea of guilty, tendered in person by the accused, and with the consent of the attorney for the Commonwealth, entered of record, the court shall hear and determine the case without the intervention of a jury. In such cases the court shall have and exercise all the powers, privileges, and duties given to juries by sections forty-seven hundred and sixty-seven, forty-seven hundred and eighty-three, forty-nine hundred and eighteen, forty-nine hundred and twenty, forty-nine hundred and twenty-one, and forty-nine hundred and twenty-two, or any other statute relating to crimes and punishments. (Code 1887, § 4023; 1902-3-4, p. 882.)

Revisors' Note.—This section has been made to conform to the revised sections 4895 and 4898.

Strict compliance to these provisions required.—This section is imperative and essential. The accused is entitled to demand strict compliance therewith. Hall's Case, 80 Va. 555. See, also, Cluverius' Case, 81 Va. 787, 798.

Objection improperly overruled—Effect.—If a prisoner's objection to a juror is improperly overruled, the error is not cured by the juror's name being stricken off from the panel by the prisoner or his not being drawn as one of the twelve who are to try the prisoner. Dowdy's Case, 9 Grat. 727, 60 Am. Dec. 314.

"Free from exception"—Failure of record—When objection must be taken.—The record shows that sixteen persons were selected (the panel is now twenty), but fails to show that they were free from exception. No objection was made in the trial court at any time to this irregularity, nor does it appear that the accused was injured by it. Objection comes too late in appellate court. Barnes' Case, 92 Va. 794, 801, 23 S. E. 784. See 4895, last paragraph.

Drawing lots to constitute jury.—After panel has been completed the jury may be selected from the remaining sixteen, either by drawing

Digitized by Google

by lot four who shall be discharged, or the twelve who shall constitute the jury. Bristow's Case, 15 Grat. 634. Under the section as it now reads the panel is composed of twenty persons, and the section otherwise conforms to sections 4895 and 4898.

Generally.—As to the mode of selecting jury under former statutes, see Gibson's Case, 2 Va. Cas. 111; Dowdy's Case, 9 Grat. 735, 60 Am. Dec. 314; Bristow's Case, 15 Grat. 634; Sands' Case, 21 Grat. 871; Mitchell's Case, 33 Grat. 845; Hall's Case, 80 Va. 555; Cluverius' Case, 81 Va. 787; Richards' Case, Id. 110; Honesty's Case, Id. 283; Fry's Case, 82 Va. 334.

Sec. 4901. When and how jurors summoned from another county or corporation.—In a criminal case in any court, if qualified jurors, not exempt from serving, cannot be conveniently found in the county or corporation in which the trial is to be, the court may cause so many of such jurors, as may be necessary, to be summoned from any other county or corporation by the sheriff or sergeant thereof, or by its own officer, from a list to be furnished either by the trial judge or by the judge of the circuit court of the county, or the corporation court of the city, from which the said jurors are to be summoned. (Code 1887, § 4024.)

Revisors' Note.—As this section stood before the revision, it seemed to leave it entirely to the officer executing the writ as to who should be summoned, as the section did not prescribe the method. The latter part is therefore new.

In the exercise of the power conferred by this law, the trial court must of necessity have a great deal of discretion, and the appellate court ought not to reverse the judgment for error in this respect, unless it be plain that such discretion has been improperly used. Chahoon's Case, 21 Grat. 833; Wormeley's Case, 10 Grat. 658, 672, 673; Sands' Case, 21 Grat. 871, 882-884.

The court may properly refuse to summon jury from another county because of local prejudice until effort to obtain impartial jury has failed. Puryear's Case, 83 Va. 51, 1 S. E. 512.

It is not error to direct jurors to be summoned from two counties or corporations at the same time. Wormeley's Case, 10 Grat. 658, 672, 673.

The jurors summoned from another county must fulfill the same legal requirements as other jurors. Dowdy's Case, 9 Grat. 736, 60 Am. Dec. 314.

In directing jurors to be summoned from another county the court may make an order directing its officers to summon them, or may direct the clerk to issue a venire facias requiring the officer to summon them. Craft's Case, 24 Grat. 602.

Where a venire facias is directed to sheriff of another county to summon a jury, a list need not be furnished him. Clark v. Com., 90 Va. 360, 18 S. E. 440. But see the statute as amended by the present revision.

It must be made to appear in some manner that it is reasonably necessary to send to another county for a jury in order to obtain qualified jurors. Richard's Case, 107 Va. 881, 59 S. E. 1104.

The trial court, under this section, must of necessity be allowed a wide discretion and the Supreme Court will not reverse the judgment of the lower court unless it plainly appears that such discretion has been improperly exercised. Looney's Case, 115 Va. 921, 78 S. E. 625.

See Souther's Case, 7 Grat. 673, 684.

Sec. 4902. When jury not to be kept together; when so kept to be boarded; rate of board; how paid.—In any case of felony, where

Digitized by Google

the punishment cannot be death or confinement in the penitentiary for more than ten years, the jury shall not be kept together unless the court otherwise direct.

When the jury are so kept together, the court shall direct its officers to furnish them with suitable board and lodging when so confined, the expense thereof not exceeding fifty cents for breakfast, fifty cents for dinner, fifty cents for supper, and fifty cents for lodging, to be paid out of the treasury of the State, when so allowed by the court. (Code 1887, § 4025; 1893-4, p. 223; 1908, p. 239; 1914, p. 485.)

What record must show.—It must affirmatively appear from the record that, in the prosecution of felonies enumerated in this section, the jury, when not in the presence of the court, were kept in custody of the sheriff or other proper officer. Barnes' Case, 92 Va. 795, 803, 23 S. E. 784. But where the record shows that at the beginning of the trial of a criminal case all the officers in charge were duly sworn with the usual oath to keep the jury during the trial when absent from the court it is sufficient, and is unnecessary to show that such oath was administered upon each adjournment. Reed's Case, 98 Va. 818, 36 S. E. 399.

Separation, effect upon verdict.—Separation does not per se annul a verdict (Thompson's Case, 8 Grat. 637; Philips' Case, 19 Grat. 485; Jones' Case, 31 Grat. 830; McCarter's Case, 11 Leigh 633); although two early cases seem to hold the contrary, viz.: McCaul's Case, 1 Va. Cas. 271; Overbee's Case, 1 Rob. 756. But a more recent case decides that when the offense is not punishable with death or (at present) more than ten years' confinement in the penitentiary, an objection that the jury was allowed to separate has no merit, though the court may have ordered that they be boarded at a hotel during the trial. Jones' Case, 79 Va. 213.

When the indictment consists of several counts for cognate offenses, and the sum of the penalties for the different counts is more than ten years' imprisonment, though the penalty for no one count is more than ten years, allowing the jury to separate is error. Johnson's Case, 102 Va. 927, 46 S. E. 789.

But the separation out of the custody and control of the officer is prima facie sufficient to vitiate a verdict, and it is incumbent upon the Commonwealth to refute that presumption by disproving all probabilities or suspicions of tampering. Philips' Case, 19 Grat. 540, 541; Barnes' Case, 92 Va. 803, 23 S. E. 784. See, also, Epes' Case, 5 Grat. 676; Tooel's Case, 11 Leigh 714; Jones' Case, 79 Va. 213; also Martin's Case, 2 Leigh 745; McCarter's Case, 11 Leigh 633; Thompson's Case, 8 Grat. 637, 638.

For separation not sufficient to vitiate verdict, see McCarter's Case, 11 Leigh 633; Thompson's Case, 8 Grat. 637.

It was held under a statute similar to this in People v. Adams (Cal.), 66 L. R. A. 247, that the fact that sheriff divided jury in three groups and locked them in separate rooms on different floors would not entitle defendant to a new trial unless prejudice was affirmatively shown. See note 10 Va. Law Reg. 1028.

Jurors may separate before panel is complete.—In empaneling a jury there is no necessity to keep jurymen who have been elected and sworn together and separate from other persons, under charge of sheriff, until the whole number shall be elected and sworn. Tooel's Case, 11 Leigh 714; Burr's Trial, p. 382; Martin's Case, 2 Leigh 745; Epes' Case, 5 Grat. 676; Dilworth's Case, 12 Grat. 705, 65 Am. Dec. 264.

The separation before the whole jury had been empaneled of an absconding juryman from his fellows, and his subsequent association with

Digitized by Google

them, though he was afterwards struck from the panel, does not vitiate the verdict. Tooel's Case, 11 Leigh 714.

For comment upon keeping jury together before the panel is completed, see 10 Va. Law Reg. 170.

Deputy sheriff a witness.—The fact that the deputy sheriff, who was in charge of the jury sometimes, was a witness in the case is not sufficient grounds for setting aside the verdict. Read's Case, 22 Grat. 925, 945; Reed's Case, 98 Va. 818, 36 S. E. 399.

Generally.—Cited in 14 Va. Law Reg. 497.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 159, section 6.

Sec. 4903. New juror may be sworn in place of one disabled; when court may discharge jury.—If a juror, after he is sworn, be unable from any cause to perform his duty, the court may, in its discretion, cause another qualified juror to be sworn in his place; and in any criminal case, the court may discharge the jury, when it appears that they cannot agree in a verdict, or that there is a manifest necessity for such discharge. (Code 1887, § 4026.)

Prior to the act of 1848 the power of the court to discharge juries upon their non-agreement was confined to cases of misdemeanors (Fells' Case, 9 Leigh 613; Williams' Case, 2 Grat. 570, 44 Am. Dec. 403; Dye's Case, 7 Grat. 662); but since that act, which embodied the present statute, there is no doubt of the power of the court, in any criminal case, when satisfied that the jury could not agree, to withdraw a juror, without consent on part of the prisoner, and to discharge the jury and continue the case (Wright's Case, 75 Va. 915; Jones' Case, 86 Va. 742, 10 S. E. 1004).

And the discharge of the jury is no bar to a second indictment and trial for the same offense. Walton's Case, 32 Grat. 855, 864; Wright's Case, 75 Va. 915; Jones' Case, 86 Va. 742, 10 S. E. 1004. See section 4774 and notes. But see 7 Va. Law Reg. 498.

If the court improperly discharge the jury without consent of the prisoner, he is entitled to be discharged from the prosecution. Williams' Case, 2 Grat. 568, 44 Am. Dec. 403; Fells' Case, 9 Leigh 613; 7 Va. Law Reg. 499.

The practice of finally adjourning the court without noticing the jury or of discharging them simultaneously with the final adjournment of the court, approved. Williams' Case, 2 Grat. 568, 44 Am. Dec. 403.

The modern idea and practice is that whenever the judge is convinced that the jury cannot agree, he may discharge them at his discretion. 10 Va. Law Reg. 414, and note.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 159, section 7.

Sec. 4904. Peremptory challenges restricted; how exercised in case of disagreement.—Persons, indicted for felony, who elect to be tried jointly, shall be allowed to strike from the panel not more than four; but should the accused not agree as to the jurors to be stricken from the panel, the four jurors to be stricken off shall be ascertained by lot. (Code 1887, § 4028.)

But this statutory right of election given to the accused is subject to the right of the Commonwealth, which still exists, to try the accused severally, notwithstanding they may elect to be tried jointly. Curran's Case, 7 Grat. 619, 627; Lewis' Case, 25 Grat. 941; Barnes' Case, 92 Va. 802, 23 S. E. 784; McWhirt's Case, 3 Grat. 594, 46 Am. Dec. 196; Kemp's Case, 18 Grat. 981.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 159, section 8.

Digitized by Google

Sec. 4905. Counsel for the Commonwealth and the prisoner may make opening statement in all cases.—On the trial of any case of felony or misdemeanor and before any evidence is submitted on either side counsel for the Commonwealth and for the prisoner, respectively, shall have the right to make an opening statement of their case to the jury. (1891-2, p. 872.)

Either party has a right to make an opening statement, but neither is obliged to exercise this right. The attorney for the Commonwealth may waive it. Johnson's Case, 111 Va. 877, 69 S. E. 1104.

Sec. 4906. Courts may exclude from all trials of felony or misdemeanor cases any or all persons whose presence is not deemed necessary.—In the trial of all criminal cases, whether the same be felony or misdemeanor cases, the court may, in its discretion, exclude from the trial any or all persons whose presence is not deemed necessary. (1899-00, p. 882.)

Cited but not construed in Doyle's Case, 100 Va. 814, 40 S. E. 925.

Sec. 4907. Defendant allowed to plead several matters of law or fact.—The defendant in any criminal prosecution may plead as many several matters, whether of law or fact, as he shall think necessary, and he may file pleas in bar at the same time with pleas in abatement, or within a reasonable time thereafter, but the issues on the pleas in abatement shall be first tried; but the defendant shall not be convicted of a felony except as provided in section forty-seven hundred and seventy-six.

Revisors Note.—This section is new, and is an adaptation of section 6107 (section 3264 of the Code of 1887) to criminal procedure. In practice there has never been any real difficulty about this, but it has time and again been made a question as to whether section 3264 of the former Code was applicable to criminal cases. The purpose of the new section is to put the question beyond doubt.

Sec. 4908. Accused while insane not to be tried.—No person shall, while he is insane, be tried for a criminal offense. (Code 1887, § 4030.)

The burden of proving insanity in a criminal case is on the prisoner. Hite's Case, 96 Va. 489, 31 S. E. 895. See, also, Miller v. Rutledge, 82 Va. 863, 1 S. E. 202; Porter v. Porter, 89 Va. 118, 15 S. E. 500; Dejarnette's Case, 75 Va. 867; Baccigalupo's Case, 33 Grat. 807, 36 Am. Rep. 795; Boswell's Case, 20 Grat. 860; 1 Va. Law Reg. 932. If the evidence is of such a character as merely to produce a doubt on the minds of the jury as to prisoner's sanity, it is not sufficient to establish that defense. Hite's Case, supra.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 159, section 9.

Sec. 4909. When sanity of accused to be tried; if sane, trial to proceed; if insane when offense committed, or at trial, what the court to do.—If, prior to the time for trial of any person charged with crime, either the court or the attorney for the Commonwealth has reason to believe that such person is in such mental condition that his confinement in a hospital for the insane is necessary for proper care and observation, the said court or the judge thereof may, after hearing evidence on the subject, commit such person to

Digitized by Google

the department for the criminal insane under such limitations as it may order, pending the determination of his mental condition. The superintendent shall, from time to time, or as often as the court may require, inform the court of the condition of the said person while confined in the hospital.

If a court, in which a person is held for trial, see reasonable ground to doubt his sanity at the time at which, but for such doubt, he would be tried, it shall suspend the trial until a jury inquires into the fact as to such sanity. Such jury shall be impaneled at its bar. If the jury find the accused to be sane at the time of their verdict, they shall make no other inquiry, and the trial in chief shall proceed. If they find that he is insane at the time of their verdict, they shall further inquire whether or not he was insane at the time of the alleged offense. If they find that he was insane at the time of the alleged offense, the court may dismiss the prosecution and shall order him to be removed thence to one of the State hospitals for the insane of this State, there to be detained until he is restored to sanity. If they find that he was not insane at the time of the alleged offense, but is now insane, the court shall commit him to jail, or order him to be confined in one of the said State hospitals for the insane until he is so restored that he can be put upon his trial. (Code 1887, § 4002, 4031.)

Revisors' Note.—The first paragraph of this section is taken from the first fourteen lines of section 1682 of the Code of 1887, as amended by Acts 1914, page 542. The residue of the amendment mentioned has been omitted. The last sentence of this paragraph of section 4909 is taken from the second paragraph of the act aforesaid. The omission referred to was made because the examination therein referred to was deemed unnecessary. Provision for disposition of insane persons after restoration to sanity is made by section 1045.

The second paragraph of section 4909 is taken from section 4031 of the Code of 1887, with some slight change suggested by Acts 1914, page 542, amending section 1682 of the Code of 1887.

Plea of "not guilty" puts sanity of accused in issue.—The sanity of one accused of crime is put in issue by his plea of "not guilty," and a verdict of "guilty" is a finding that the accused was sane at the time the offense was committed. Unless something transpires after the trial causing the court to have reasonable doubt as to his sanity, the court should refuse to empanel another jury to determine the question of his sanity. Stover's Case, 92 Va. 787, 22 S. E. 874.

Discussed, 6 Va. Law J. 127.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 159, sections 10, 11.

Sec. 4910. Disposition of persons who become insane after conviction; duties of sheriff or sergeant as provided for in this and the preceding section.—If, after conviction and before sentence of any person, the court see reasonable ground to doubt his sanity, it may impanel a jury to inquire into the fact as to his sanity, and sentence him, or commit him to jail or to a hospital for the insane, according as the jury may find him to be sane or insane. If any person, after conviction of any crime, or while serving sentence in

Digitized by Google

the State penitentiary, or in any other penal institution, or in any reformatory or elsewhere, is declared by a jury or commission of insanity to be insane, he shall be committed by the court to the department for the criminal insane at the proper hospital, and there kept until he is restored to sanity; and the time such person is confined in the department for the criminal insane at the proper hospital shall be deducted from the term for which he was sentenced to such penal institution, reformatory or elsewhere.

The sheriff or sergeant of the court by which any of the orders as provided for in this and the preceding section, shall have been made, or the proper officer of the penitentiary or reformatory, shall immediately proceed in the manner directed by section one thousand and twenty-two to ascertain whether a vacancy exists in the department for the criminal insane at the proper hospital, and until it is ascertained that there is a vacancy, such person shall be kept in the jail of such county or corporation, or in such custody as the court may order, or in the penitentiary, or in the reformatory in which he is confined, until there is room in the department for the criminal insane at the said hospital. Any person whose care and custody are herein provided for shall be taken to and from the hospital to which he was committed by an officer of the penal institution having custody of him, or by the sheriff or sergeant of the county or corporation whose court issued the order of commitment, and the expenses incurred in such removals shall be paid by such penal institutions, county or corporation. (Code 1887, § 4032.)

Revisors' Note.—The first sentence of this section is taken from the Code of 1887, section 4032. The residue of the section is taken from section 1682 of the Code of 1887 as amended by Acts 1914, page 542. No material change in either by the revision.

Sec. 4911. When accused to be taken from hospital and committed to jail.—When the superintendent of the State Hospital for the Insane shall give notice to the clerk of the court, in pursuance of section one thousand and forty-five, such clerk shall issue a precept to the officer of said court, requiring him to bring the said prisoner from the hospital and commit him to jail. (Code 1887, § 4033.)

Sec. 4912. Sentence or trial of prisoner, when restored to sanity. When a prisoner is brought from the hospital and committed to jail, or when it is found by the verdict of another jury that a prisoner, whose trial or sentence was suspended by reason of his being found to be insane, has been restored, if convicted, he shall be sentenced; and if not, the court shall proceed to try him as if no delay had occurred on account of his insanity. (Code 1887, § 4034.)

Sec. 4913. Verdict of acquittal by reason of insanity to state the fact; court may commit the defendant to hospital for insane.—

Digitized by Google

When the defense is insanity of the defendant at the time the offense was committed, the jury shall be instructed, if they acquit him on that ground, to state the fact with their verdict. If the jury so find the court shall thereupon, if it deem his discharge dangerous to the public peace or safety, order him to be committed to one of the State hospitals for the insane until he becomes sane. (Code 1887, § 4035.)

Sec. 4914. When and how venue may be changed.—A circuit court may, on motion of the accused or of the Commonwealth, for good cause, order the venue for the trial of a criminal case in such court to be changed to some other circuit or corporation court, and in like manner the court of a corporation may order the venue to be changed to some other corporation or circuit court. Such motion when made by the accused may be made in his absence upon a petition signed and sworn to by him, which petition may, in the discretion of the judge, be acted on by him in vacation; and, whenever the mayor of any city, or the sheriff of any county, shall call on the Governor for military force to protect the accused from violence, the judge of the corporation court of the city, or the circuit court of the county having jurisdiction of the offense, shall, upon a petition signed and sworn to by the accused, whether he be present or not, at once order the venue to be changed to the corporation court of a city or the circuit court of a county sufficiently remote from the place where the offense was committed to insure the safe and impartial trial of the accused. (Code 1887, § 4036; 1902-3-4, p. 882; 1904, pp. 18, 307.)

Revisors' Note.—As this section stood before the revision, it provided that "A circuit or corporation court may, on the motion either of the accused or of the attorney for the Commonwealth, or without such motion for good cause, order the venue for the trial of a criminal case in such court to be changed," etc. This language would indicate that the venue might be changed on a motion either of the Commonwealth or the accused without showing any cause whatever, or the venue might be changed for good cause without any motion from either party. Section 8 of the Constitution guarantees to every one accused of crime a trial by an impartial jury of his vicinage, and certainly so far as the Commonwealth is allowed to have a change of venue without cause, this language would be clearly unconstitutional. Taking into consideration all the circumstances, the revisors were of opinion that the language should be modified. As modified, the present section allows a change of venue, on motion of the accused or of the Commonwealth, FOR GOOD CAUSE.

What motion must precede motion for change of venue.—A motion for a jury from another county should always precede a motion for a change of venue, and this not having been done, and an impartial jury having in fact been obtained in the county, the conclusive presumption is that the motion for a change of venue was unfounded. Waller's Case, 84 Va. 492, 496, 5 S. E. 364; Joyce's Case, 78 Va. 289; Wright's Case, 33 Grat. 880. See, also, A. & D. R. Co. v. Reiger, 95 Va. 422, 28 S. E. 590.

Where the motion is based upon the ground that an impartial jury cannot be obtained in the county or corporation, the conclusive presump-

Digitized by Google

tion from the fact that an impartial jury has subsequently been secured in the county is that such motion was unfounded. Looney's Case, 115 Va. 921, 78 S. E. 625.

It is the general rule that a motion for a jury from another county or corporation should precede the motion for a change of venue. Looney's Case, 115 Va. 921, 78 S. E. 625.

Where the ground for an application for a change of venue in a criminal case is that there exists such prejudice and excitement against the accused at the proposed place of trial as to endanger fairness of trial, it is not necessary that the application should have been preceded by a motion for a jury from another county or corporation. Uzzle's Case, 107 Va. 919, 60 S. E. 52.

When trial court will not be reversed.—The trial court, under this section, must of necessity be allowed a wide discretion, and it is the established rule that the Supreme Court will not reverse the trial court unless it plainly appears that such discretion has been improperly exercised. Looney's Case, 115 Va. 921, 78 S. E. 625.

A trial court will not be reversed for refusing a change of venue in a criminal case when the affidavits of prisoner and his counsel represent the hostility to the prisoner as existing in one corner of the county, and it appears that little or no difficulty was experienced in getting a jury and the condition at the time of the trial did not warrant the apprehensions expressed in the affidavits. Bowles' Case, 103 Va. 816, 48 S. E. 527.

A trial court will not be reversed for refusing to order a jury from another county when it appears that an impartial jury was in fact obtained in the county fixed for the trial. Bowles' Case, 103 Va. 816, 48 S. E. 527.

Affidavit of prisoner not sufficient—Must be affidavit of disinterested individuals.—The mere affidavit of the prisoner of his fears or belief that he cannot obtain a fair trial in the county is not sufficient to sustain the motion for change of venue; he must show by independent and disinterested testimony such facts as make it appear probable at least that his fears and belief are well founded. Wormeley's Case, 10 Grat. 658, 672; Boswell v. Flockheart, 8 Leigh 364. But when such facts are shown by the prisoner, and not opposed or explained by the Commonwealth, no arguments of inconvenience or delay should be allowed to stand in the way of a fair trial. Wormeley's Case, 10 Grat. 672.

Change of venue—What is not ground for.—The fact that subscription papers had been circulated to employ counsel to aid the prosecution, and that they had been signed by twenty or thirty persons, is not sufficient ground, of itself, for a change of venue. Wormeley's Case, 10 Grat. 674. Nor is excitement, accompanied by wild talk, but not by threats, a good ground. Id.

Plea to jurisdiction—Effect.—A plea to the jurisdiction of the county to which the venue has been changed is bad on demurrer. Vance's Case, 2 Va. Cas. 162.

Nor can the array of the jury be challenged because they were summoned by the sheriff of the said county. Id.

Generally.—Cited but not construed, Jones' Case, 111 Va. 862, 69 S. E. 953.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 159, section 15.

Sec. 4915. Court may admit accused to bail; if not bailed, what to be done with him.—When the venue is so changed, the court making the order may admit the accused to bail, and shall recognize the witnesses and the accused (if admitted to bail, and the bail be given) to appear on some certain day before the court to which the case is removed; if the accused be not admitted to bail, or the

Digitized by Google

bail required be not given, the court shall remand him to its own jail, and order its officer to remove him thence to the jail of the court to which the case is removed, so that he shall be there before the day for the appearance of the witnesses. (Code 1887, § 4037.)

A prisoner having been arraigned and having pleaded in the county in which the offense was committed, need not be arraigned nor required to plead in the county to which venue is changed. Vance's Case, 2 Va. Cas. 162.

For West Virginia decisions on similar statute, see Justis' Annotations, chapter 159, section 16.

Sec. 4916. Duty of clerk of the court ordering change of venue; how court, to which the case is removed, to proceed.—The clerk of the court, which orders a change of venue, shall certify copies of the recognizances aforesaid, and of the record of the case, to the clerk of the court to which the case is removed, who shall thereupon issue a venire facias, directed to the officer of such court; and such court shall proceed with the case as if the prosecution had been originally therein; and for that purpose the certified copies aforesaid shall be sufficient. (Code 1887, § 4038.)

Sec. 4917. When judge cannot sit on trial; how another judge procured to try the case.—When the judge of a circuit or city court, in which a prosecution is pending, is connected with the accused or party injured, or so situated in respect to the case as in his opinion to render it unfit that he should preside at the trial, he shall enter the fact of record, and thereupon the Governor shall, as provided by section fifty-eight hundred and ninety-eight, designate another judge of a circuit court or of a city court of a city of the first class to try the case. (Code 1887, § 4039; 1902-3-4, p. 882.)

Sec. 4918. When accused found guilty of only part of offense charged, how sentenced; if new trial granted, for what trial to be.—If a person indicted of felony be by the jury acquitted of part and convicted of part of the offense charged, he shall be sentenced for such part as he is so convicted of, if the same be substantially charged in the indictment, whether it be felony or misdemeanor. If the verdict be set aside and a new trial granted the accused, he shall not be tried for any higher offense than that of which he was convicted on the last trial. (Code 1887, § 4040.)

Historical.—The latter part of this section makes statutory the decision in Stuart's Case, 28 Grat. 953. Following that decision the General Assembly changed the ruling in the Stuart Case, and the statute declared that if a verdict be set aside on motion of the accused and a new trial awarded him, he should, on such new trial, be tried as if the former verdict had not been found. (Acts 1877-8, p. 344). Under the last mentioned act Briggs v. Com., 82 Va. 554, was decided. The revisors of the Code of 1887, however, changed the statute of 1877-8 and substituted the provision now contained in the section which, as stated, makes statutory the decision in the Stuart Case, supra. See Cate's Case, 111 Va. 837, 69 S. E. 520.

Lesser offense—Rule.—To ascertain whether a party can be con-

Digitized by Google

victed of a lesser offense under this section, the first question must always be whether it is substantially charged. If the principal felony is one that always necessarily includes the lesser offense, then every indictment for the principal felony substantially charges the lesser offense. Hardy's Caase, 17 Grat. 615.

Indictment—Malicious wounding—Conviction of lesser offense.—Though the indictment is for malicious cutting, etc., (a felony), the assault and battery being charged in it, the prisoner may be acquitted of the felony and convicted of the misdemeanor. Canada's Case, 22 Grat. 899; Montgomery's Case, 98 Va. 843, 36 S. E. 371.

A case in which an indictment for robbery justified a conviction of assault and battery. Hardy's Case, 17 Grat. 592, 599.

Conviction of unlawful shooting is a conviction of a felony, though punished by imprisonment in jail and fine, and after reversal of the sentence a second trial may be had for the felony, and not merely for a misdemeanor, notwithstanding this section.. Forbes' Case, 90 Va. 550, 19 S. E. 164.

Higher offense—Rule for determining.—As a general rule, the maximum of punishment must determine whether offenses, when compared with each other, are of higher or lower or equal degree. Benton's Case, 91 Va. 791, 21 S. E. 495.

Houseebreaking in the nighttime, with intent to commit larceny and grand larceny, are of equal degree. Benton's Case, 91 Va. 792, 21 S. E. 495.

One convicted of murder in the second degree cannot be convicted on second trial for same offense of murder in the first degree. Benton's Case, 91 Va. 791, 21 S. E. 495, overruling Briggs' Case, 82 Va. 554.

If a man be indicted for rape and convicted of attempt to commit, and the verdict is set aside, he cannot be re-tried for rape. Cate's Case, 111 Va. 837, 69 S. E. 520.

Conviction on one count of indictment—Acquittal on the other.—It is settled law in this state that where there are several counts in an indictment, and the jury find the accused guilty upon one of the counts, saying nothing as to the others, the verdict operates as an acquittal upon the counts of which the verdict takes no notice, and the court should enter a judgment accordingly. Stuart's Case, 28 Grat. 953; Page's Case, 26 Grat. 943; Richards' Case, 81 Va. 116; Hicks' Case, 86 Va. 231, 9 S. E. 1024, 19 Am. St. Rep. 891; Lithgow's Case, 2 Va. Cas. 297; Kirk's Case, 9 Leigh 627; Livingston's Case, 14 Grat. 606; Briggs' Case, 82 Va. 558. See section 4923 and notes thereto.

See note of Burton and Conquest's Case, 108 Va. 892, 62 S. E. 376, cited under section 4393.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 159, section 18.

Sec. 4919. What verdict to specify, when jury find accused guilty of murder; if guilt confessed, duty of court.—If a person indicted for murder be found by the jury guilty thereof, they shall in their verdict fix the degree thereof and ascertain the extent of the punishment to be inflicted within the bounds prescribed by sections forty-three hundred and ninety-four and forty-three hundred and ninety-five. If the accused confess the indictment to be true, the court shall ascertain the extent of the punishment within the same bounds, and give sentence accordingly. (Code 1887, § 4041.)

Revisors' Note.—This section has been materially changed. Formerly, it provided that the jury should in their verdict find whether the defendant was guilty of murder in the first or second degree. The changes in sections 4894 and 4895 make it necessary specifically to pro-

Digitized by Google

vide that the jury "shall in their verdict fix the degree thereof and ascertain the extent of the punishment to be inflicted within the bounds prescribed by sections 4394 and 4395."

A verdict which finds a person indicted as being accessory to murder, to be guilty thereof, but does not determine whether he is guilty as accessory to murder in the first degree, is erroneous, and ought to be set aside and a venire facias de novo awarded. Williamson's Case, 2 Va. Cas. 211.

As to what constitutes murder in the first degree and what murder in the second degree, see section 4393 and notes.

See note of Burton and Conquest's Case, cited under section 4393.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 159, section 19.

Sec. 4920. On indictment for homicide, or malicious shooting, etc., with intent to kill, of what accused may be found guilty.—On an indictment for felonious homicide, the jury may find the accused not guilty of the felony, but guilty of involuntary manslaughter. And on any indictment for maliciously shooting, stabbing, cutting or wounding a person, or by any means causing him bodily injury, with intent to kill him, the jury may find the accused not guilty of the offense charged, but guilty of maliciously doing such act with intent to maim, disfigure, or disable, or of unlawfully doing it, with intent to maim, disfigure, disable, or kill such person. (Code 1887, § 4042.)

Indictment for "malicious" cutting, etc., jury may find prisoner guilty of "unlawful" cutting, etc. Canada's Case, 22 Grat. 899; Hoback's Case, 28 Grat. 922.

Under a common law indictment for murder, the prisoner may be found guilty of murder in the first or second degree or manslaughter. Livingston's Case, 14 Grat. 592; Bull's Case, Id. 613, 620; Miller's Case, 1 Va. Cas. 310; Vance's Case, 2 Va. Cas. 162; Wicks' Case, Id. 387; Cluverius' Case, 81 Va. 848; Kibler's Case, 94 Va. 804, 26 S. E. 858.

See notes to section 4918.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 159, section 20.

Sec. 4921. When, in prosecution for grand larceny, accused may be found guilty of, and sentenced for, petit larceny.—In a prosecution for grand larceny, if it be found that the thing stolen is of less value than fifty dollars, the jury may find the accused guilty of petit larceny; and in a prosecution for petit larceny, though the thing stolen be of the value of fifty dollars or more, the jury may find the accused guilty; and in either case he shall be sentenced for petit larceny. (Code 1887, § 4043.)

Discrepancies, as to the value of property stolen, between the indictment and evidence are contemplated by this section. Holly's Case, 113 Va. 769, 75 S. E. 88.

The charge of larceny of three notes of the value of twenty dollars, is the equivalent to the charge of larceny of three notes, one for ten dollars, and two for five dollars each. Holly's Case, 113 Va. 769, 75 S. E. 88.

It is not indispensable that the jury should, in terms, find the value of the thing stolen. If they find the accused guilty of petit larceny, it is sufficient. Poindexter's Case, 6 Rand. 667; Walker's Case, 1 Leigh 574.

See footnote to Hardy & Curry's Case, 17 Grat. 592, Va. Rep. Anno. (2028)

Digitized by Google

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 159, section 21.

Sec. 4922. On indictment for felony, accused may be convicted of an attempt; effect of general verdict of not guilty.—On an indictment for felony, the jury may find the accused not guilty of the felony, but guilty of an attempt to commit such felony; and a general verdict of not guilty, upon such indictment, shall be a bar to a subsequent prosecution for an attempt to commit such felony. (Code 1887, § 4044.)

A man indicted for rape may be convicted of attempt to rape and this operates as an acquittal of the charge of rape. Under section 4918 he cannot be re-tried for rape if the verdict is set aside, but may be tried for the attempt. Cates' Case, 111 Va. 837, 69 S. E. 520.

Prisoners under indictment for robbery were found guilty of assault and battery; the finding was held valid. Hardy's Case, 17 Grat. 596.

Refusal to instruct the jury that if they believed from the evidence that the prisoner intended to commit a felony, but before committing it he voluntarily abandoned it, they were to find him not guilty, and instructing them that on an indictment for felony prisoner might be found guilty of an attempt to commit a felony, held not error. Glover's Case, 86 Va. 382, 10 S. E. 420; Givens' Case, 29 Grat. 830; Mings' Case, 85 Va. 638, 8 S. E. 474.

See section 4767 and notes.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 159, section 22.

Sec. 4923. Judgment on general verdict of guilty, if any count good.—When there are several counts in the indictment, one or more of which are faulty, the accused may demur to the faulty count or counts, or move the court to instruct the jury to disregard them. If he does neither, and a general verdict of guilty is found, judgment shall be entered against the accused, if any count be good, though others be faulty, unless the court can plainly see that the verdict could not have been found on the good count. If he demurs to the faulty count, or moves the court to instruct the jury to disregard it, and his demurrer or motion is overruled, and there is a general verdict of guilty, and it cannot be seen on which count the verdict was founded, if the jury has been discharged, it shall be set aside; but if it is manifest that it could not have been found on the bad count, the verdict shall be allowed to stand. (Code 1887, § 4045.)

Revisors' Note.—The changes made in this section are for reasons set forth at length in Burks' Pl. and Pr., section 301, pp. 550-554, too lengthy to be here inserted in full. The corresponding section in civil cases is 6258.

There was formerly some confusion as to how far the common law rule as to bad counts applied (Kirk's Case, 9 Leigh 627; Mowbray's Case, 11 Leigh 643; Clere's Case, 3 Grat. 615); but the effect of this section (enacted first in 1848) is to make the common law rule applicable to all criminal cases, whatever be the mode or measure of punishment. The accused is effectually protected from injury by the right given him of having the faulty counts excluded. Shiflett's Case, 14 Grat. 673; Rand's Case, 9 Grat. 750.

If the court should refuse, to the prejudice of the prisoner, to instruct the jury to disregard the faulty count, it would be error. Rand's

Digitized by Google

Case, 9 Grat. 750; Cooke v. Thornton, 6 Rand. 8; Roe v. Crutchfield, 1 Hen. & M. 361.

As to conviction on one count being an acquittal on all the rest, if no mention be made of them in verdict, see notes to section 4918, and the following cases: Canada's Case, 22 Grat. 899; Page's Case, 26 Grat. 943; Stuart's Case, 28 Grat. 950; Richards' Case, 81 Va. 110; also Mowbray's Case, 11 Leigh 643.

See section 4918 and notes.

See Burks' Pleading and Practice, pp. 550, 553.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 159, section 23.

Sec. 4924. Verdict and judgment, when jury agree as to some, and disagree as to others.—When two or more persons are charged and tried jointly, the jury may render a verdict as to any of them as to whom they agree. Whereupon judgment shall be entered according to the verdict; and as to the others, the case shall be tried by another jury. (Code 1887, § 4046.)

Several prisoners having been tried together for the same felony, and found guilty, the court may grant a new trial to one of them, and render a judgment against the others. Kemp's Case, 18 Grat. 969.

In the case of the indictment of two persons for conspiracy to prosecute another for larceny, the jury cannot find either party guilty, unless they believe from the evidence that there was an agreement of mind between the two to do the matters and things charged in the indictment. Jones' Case, 31 Grat. 836. In such case the judgment may be reversed as to the one who appeals, without reversing the judgment against the other, who did not apply for a new trial. Id.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 159, section 24.

Sec. 4925. Suspension of judgments.—Except where authorized by statute, no court, judge or justice shall suspend the entry or execution of a judgment in any criminal case.

Revisors' Note.—This section is new. It is not believed that this power of suspension existed, but as it had been often exercised, it was deemed best to forbid it expressly. Ex parte United States, 242 U. S. 27, 37 Sup. Ct. 72, 61 L. Ed. 129. A suspension is authorized by section 4486 in certain cases.

Sec. 4926. Within what time an indictment for felony must be tried or accused be forever discharged.—Every person against whom an indictment is found charging a felony and held in any court for trial, whether he be in custody or not, shall be forever discharged from prosecution for the offense if there be three regular terms of the circuit or four of the corporation or hustings courts in which the case is pending after he is so held without a trial unless the failure to try him was caused by his insanity or by the witnesses for the Commonwealth being enticed or kept away or prevented from attending by sickness or inevitable accident, or by continuance granted on the motion of the accused, or by reason of his escaping from jail or failing to appear according to his recognizance, or of the inability of the jury to agree in their verdict, or where there be no court held at the regular term, or where there is court held and for any reason it would be injudicious in the opinion of the court to have jurors and witnesses summoned

Digitized by Google

for that term, which reason shall be specially spread upon the records of the court; but the time during the pendency of any appeal in any appellate court shall not be included as applying to the provisions of this section. (Code 1887, § 4047; 1893-4, p. 464; 1902-3-4, p. 883.)

Revisors' Note.—The words, "whether he be in custody or not," found in line three of the text, are new. It is not believed that these words change the existing law (Davis v. Davis, 112 Va. 904, 73 S. E. 946), but whether they do or not, their insertion was deemed proper, as trials should not be unduly postponed.

Object of statute.—The object of the statute is to insure speedy trials. Wadley's Case, 98 Va. 803, 35 S. E. 452. And if the statutory number of terms elapse without a trial he is entitled to his discharge, unless it is shown that the case was continued for some one of the reasons enumerated in the statute. Nicholas' Case, 91 Va. 744, 21 S. E. 364.

This legislative interpretation of the constitutional provision for a speedy trial has been repeatedly sanctioned by the courts. Benton's Case, 91 Va. 786, 21 S. E. 495; Adcock's Case, 8 Grat. 661; Brown v. Epps, 91 Va. 726, 21 S. E. 119, 27 L. R. A. 676; Nicholas' Case, 91 Va. 741, 21 S. E. 364.

"Term."—The word "term" ought to be construed to mean, not the stated time when a court should be held, but the actual session of the court. Santee's Case, 2 Va. Cas. 363; Cawood's Case, 2 Va. Cas. 547.

What terms to be counted.—The term at which a prisoner is indicted for a felony is not to be counted as one of the terms contemplated by this section. The terms to be counted are those after the prisoner has been indicted and held for trial. Kibler's Case, 94 Va. 804, 811, 26 S. E. 858; Bell's Case, 7 Grat. 646, 8 Grat. 600; Glover's Case, 86 Va. 387, 10 S. E. 420; Davis' Case, 89 Va. 133, 15 S. E. 388; Hall's Case, 78 Va. 678, is overruled in this respect. See Glover's Case, 86 Va. 388, 10 S. E. 420.

And though a prisoner has been arrested and committed to jail, or gives bail to appear and does appear, or is brought into court on the first day of the term, that term is not to be counted. Sands' Case, 20 Grat. 800.

The statutory number of terms must be while the case is pending in the trial court, and not in another court from which, during the pendency, the Legislature takes the jurisdiction. Dulin's Case, 91 Va. 718, 20 S. E. 821. See, also, Jones' Case, 19 Grat. 478.

The second indictment being for the same act of embezzlement as the first, and the prisoner having been indicted, tried, and convicted in time, and the verdict set aside for variance, the second indictment was proper and in time. Adcock's Case, 8 Grat. 663; Vance's Case, 2 Va. Cas. 162.

To the prisoner's plea that he had been held for trial more than the statutory number of terms after indictment, the replication that during that period prisoner had been convicted, and the conviction reversed, and that he had been held till reversal for punishment, not for trial, sufficient. Smith's Case, 85 Va. 924, 9 S. E. 148.

Exceptions—Enumeration of some not exclusion of others.—In enumerating certain exceptions, it was not intended to exclude others of a like nature. Wadley's Case, 98 Va. 803, 35 S. E. 452, 5 Va. Law Reg. 821; Adcock's Case, 8 Grat. 661.

Exceptions not enumerated—Injunction from federal court.—Where the trial was prevented by an injunction from a federal court, obtained at the instance of the prisoner, the prisoner is not entitled to be discharged from prosecution under this statute. Wadley's Case, 98 Va. 802, 35 S. E. 452, 5 Va. Law Reg. 821.

Continuance on the ground of not having time to try case is not within the exceptions. Green's Case, 1 Rob. 731.

Digitized by Google

Generally.—See section 4880 and notes.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 159, section 25.

Sec. 4927. Jurors in case of misdemeanor.—Jurors drawn or summoned under chapter two hundred and forty-nine shall be jurors as well for the trial of cases of misdemeanor as of civil cases, and all the provisions of that chapter except the provisions of section six thousand and two and six thousand and twelve, and that provision of section six thousand and seven, which directs the compensation and mileage of jurors to be paid out of the county or corporation levy (which excepted provisions shall apply exclusively to jurors and juries in civil cases), shall extend as well to jurors and juries in cases of misdemeanor as to jurors and juries in civil cases. And sections fifty-nine hundred and eighty-four, fifty-nine hundred and eighty-five, fifty-nine hundred and ninety-seven, six thousand, six thousand and one, six thousand and eight, six thousand and nine, six thousand and ten, six thousand and thirteen and six thousand and fourteen shall apply to jurors and juries in all cases, criminal as well as civil: provided, however, that in all cases of misdemeanor upon a plea of guilty, tendered in person by the accused, and with the consent of the attorney for the Commonwealth, entered of record, the court shall, and upon a plea of not guilty, with the consent of the accused, given in person, and of the attorney for the Commonwealth, both entered of record, the court, in its discretion, may hear and determine the case without the intervention of a jury. In all such cases the court shall have and exercise all the powers and duties vested in juries by any statute relating to crimes and punishments. Jurors drawn or summoned under this chapter may be used as jurors for the trial of cases of misdemeanor, and of civil cases as well as of cases of felony. Seven jurors shall constitute a panel in the trial of misdemeanors, but the jury therefor shall be composed of five.

No officer shall be allowed more than one fee for executing writs of venire facias on the same persons for the same term of court. (Code 1887, § 4048; 1902-3-4, p. 883; 1904, p. 124.)

Revisors' Note.—As this section stood before the revision, it provided that "Seven jurors shall constitute a jury in each case of misdemeanor tried by a jury." The revised section makes the panel seven, but the jury is to be composed of FIVE. Section 8 of the Constitution allows a minimum of five, and this was deemed sufficient for misdemeanors. Formerly, this section also stated that "The same right of peremptory challenge shall exist in selecting juries in cases of misdemeanor as is allowed in civil cases." In consequence of the change made in section 4898, this sentence has been omitted.

See the sections referred to and notes.

Cited in Litton's Case, 101 Va. 833, 44 S. E. 923.

Sec. 4928. Compensation and mileage of jurors in criminal cases; when and by whom paid.—Every person summoned as a juror in a criminal case shall be entitled to one dollar and fifty cents for

Digitized by Google

each day's attendance upon the court and mileage at the rate of five cents per mile for each mile of travel, by most direct route, in going to and returning from court; the amount allowed for mileage, however, in no case to exceed one dollar per day; provided, however, that each juror summoned from one county or city to try a criminal case in another county or city shall, for his services, receive one dollar and fifty cents for each day's attendance upon the court and mileage at the rate of five cents per mile of travel for each mile traveled, by most direct route, in going to and returning from the place of trial, but should the juror summoned attend, but not be called upon to serve, he shall be entitled to receive the mileage herein provided and one dollar per day for each day's attendance on the court. If the same person attend as a juror in more than one criminal case on the same day, he shall receive compensation and mileage in only one case. Amounts for attendance and mileage provided for in this section shall be paid out of the treasury of the State except as hereinafter provided.

And when during the same day a person has served as a juror, for which he is entitled to be paid out of the public treasury, and has also served as a juror, for which he is entitled to be paid out of the county or corporation levy, the court shall divide equally the pay and mileage for such day between the State and the county or corporation; and it shall be the duty of the sheriff of the circuit or sergeant of the corporation (or hustings) court, at the term of the court during which an allowance is made or has been made under this section, to furnish the clerk of such court with a statement showing the number and names of the jurors in attendance upon the court, and the number of miles, respectively, of travel, as aforesaid. In every case the claim of the juror, for attendance and for mileage, as aforesaid, shall be verified by his affidavit. (Code 1887, § 4049; 1887-8, p. 18; 1914, p. 485.)

Digitized by Google

CHAPTER 196.

Exceptions, Writs of Error, and Execution of Judgment.

Sec.
4929. When bill of exceptions may be taken or certificate in lieu thereof.
4930. When execution of sentence to be suspended.
4931. Writs of error in criminal cases, where lie; when for accused, when for Commonwealth.
4932. Where to lie to judgments for contempt of court.
4933. How petition for writ of error prepared; transcript of record to accompany it; writ of certiorari, when and by whom awarded.
4934. To whom petition presented.
4935. When writ of error allowed, and to operate as a supersedeas; if denied by a judge of Court of Appeals in vacation, court may allow it.
4936. Where writs of error docketed and heard; issue of summons and supersedeas; how process against Commonwealth served.
4937. Decision of appellate court.
4938. Provisions which apply to criminal as well as civil cases.
4939. How judgment of appellate court certified and entered.
4940. Execution of judgment in cases of felony.
4941. Death chamber; who to execute death sentence.
4942. Transfer of convict to penitentiary; how death sentence executed; who to be present.
4943. Certificate of the execution of death sentence.
4944. Reprieve, writ of error, or stay of execution of sentence; how notice served; subsequent process; how served; resentence; new trial.
4945. Publication of details of execution.
4946. Disposition of body of convict electrocuted.
4947. Manner of execution of death sentence for crimes committed before June 26, 1908.
4948. Transportation of convicts to the penitentiary.
4949. How sentence of confinement in jail until fine paid is executed; limitation of confinement.
4950. When and how prisoner hired out to pay fine.
4951. The obligation to be taken from hirer; where returned; how endorsed by clerk; to have effect of judgment; prisoner refusing to keep contract to be remanded to jail; liability of obligors not affected thereby.
4952. How person confined in jail by court or justice until fine is paid, or under capias pro fine, released.
4953. How person confined in jail by court or justice until fine is paid released; limitation of confinement.

Sec. 4929. When bill of exceptions may be taken or certificate in lieu thereof.—A party in a criminal case, or proceeding for contempt, for whom a writ of error lies to the Supreme Court of Appeals, may except to an opinion of the court and tender a bill of exceptions, which (if the truth of the case be fairly stated therein) the judge shall sign; and it shall be a part of the record of the case; or, in lieu of a bill of exception, the procedure may be according to

Digitized by Google

section sixty-two hundred and fifty-three. (Code 1887, § 4050; 1902-3-4, p. 627.)

Revisors' Note.—The latter part of this section is new. Section 6253, in the last sentence thereof, expressly enacts that, "This section shall apply to criminal cases as well as to civil cases," so that in both civil and criminal cases the practitioner has the election. See revisors' note to section 6253.

How criminal cases reviewed.—Criminal cases are reviewed by writ of error only; the right of appeal or of supersedeas does not extend to them. Temple's Case, 1 Va. Cas. 163; Crowe's Case, Id. 126; Vawter's Case, Id. 127. See 4 Min. (3d Ed.) 1058.

Time when bill of exceptions may be taken.—The practice is to give notice that the point is saved, and in jury trials this notice must be given before verdict, although the bill of exceptions may be drawn and signed at any time during the term, but not after the term. 4 Min. (3d Ed.) 915; Page v. Clopton, 30 Grat. 429; Winston v. Giles, 27 Grat. 530, 535. But see section 6252. Nothing appearing in the record to show irregularity in the proceedings, it is to be taken as importing absolute verity, and presumptions of irregularity are not permitted. Anderson's Case, 100 Va. 860. 42 S. E. 865, and cases cited.

And although the record in a criminal case recite permission to defendant to tender his bill of exceptions within thirty days from the rising of the court, it will be assumed, nothing appearing to the contrary, that the bill of exceptions was tendered and signed in term time, and not in vacation, the latter being unauthorized (at that time). Anderson's Case, 100 Va. 860, 42 S. E. 865, 8 Va. Law Reg. 660 (note).

Objection on account of improper remarks made by counsel in his address to the jury should be made at the time, and the court requested to instruct the jury to disregard them. Such objections come too late after verdict. Wickham v. Turpin, 112 Va. 236, 70 S. E. 514.

Bill of exceptions—Duty of judge—Mandamus.—When a bill of exceptions is tendered which does not fairly state the truth of the case, it is the duty of the judge, with the aid of counsel, to settle the bill, and when settled to sign it, and if he refuses to do this mandamus will lie to compel him. Page v. Clopton, 30 Grat. 415; Collins v. Christian, 92 Va. 732, 24 S. E. 472; Taliaferro v. Franklin, 1 Grat. 334.

It is error for the court to refuse to certify either the facts or the evidence. Powell v. Tarry's Adm'r, 77 Va. 250; Dillard v. Dunlop, 83 Va. 761, 3 S. E. 383. See Taliaferro v. Franklin, 1 Grat. 332, and note thereto, Va. Rep. Anno.; Collins v. Christian, 92 Va. 732, 24 S. E. 472, 2 Va. Law Reg. 107.

As to the effect of failure of judge to sign bill of exceptions within prescribed time on account of absence from the state, see Lengelsen v. McGregor, 10 Va. Law Reg. 19, 23, and note.

Counsel need not agree.—It is error to require, as a condition precedent to certifying the evidence that counsel for the plaintiff and defendant must agree in the statement of evidence. Dillard v. Dunlop, 83 Va. 762, 3 S. E. 383.

Lack of time—Lapse of memory no excuse.—Lack of time or lapse of memory is no excuse for a judge's refusal to certify the evidence on the trial of a cause before him. Powell v. Tarry's Adm'r, 77 Va. 250; Dillard v. Dunlop, 83 Va. 762, 3 S. E. 383.

Mandamus—Answer—Replication—Issue of fact.—If, on application for a mandamus to compel a judge to sign a bill of exceptions, he answers that he refused to sign the bill because it did not state the truth of the case, and the relator traverse this answer, an issue of fact is presented, to be determined upon the evidence, whether the bill did correctly set forth the truth of the case. Collins v. Christian, 92 Va. 731, 93 Va. 1, 24 S. E. 472; also 2 Va. Law Reg. 107 (note), where it is said that Collins v. Christian settles the question raised in Page v. Clopton.

How bill of exceptions in criminal cases should be framed.—A bill of exceptions in a criminal case, upon the refusal of the court to grant

Digitized by Google

a new trial, on the ground that the verdict is contrary to the evidence, is to be framed in the same way as the bill of exceptions in civil cases to the like refusal. Vaiden's Case, 12 Grat. 717. See, also, Bennett v. Hardaway, 6 Munf. 125; Rohr v. Davis, 9 Leigh 30. See, also, section 6252 and notes.

To avoid confusion it is better to take separate bills to each ruling of the trial court, yet it is allowable to put all exceptions in one bill if set forth with particularity. Brown v. Hall, 85 Va. 146, 7 S. E. 182. See note to Collins v. George, 10 Va. Law Reg. 34.

What appellate court will regard.—An appellate court cannot regard anything as a part of the record unless it is made so by a bill of exceptions or by order of the court. Lawrence's Case, 14 Va. Law J. 55, 86 Va. 573, 10 S. E. 840; Magarity v. Shipman, 82 Va. 806, 1 S. E. 381.

When the plea of errors in arrest of judgment sets forth matter making no part of the record, it will not avail the prisoner. Cohen's Case, 2 Va. Cas. 158; Angel's Case, Id. 231; Campbell's Case, Id. 314; Morris' Case, 9 Leigh 636.

When appellate court will reverse verdict.—The verdict will not be reversed unless the evidence is plainly insufficient to warrant the verdict. Oneale's Case, 17 Grat. 582; Kates' Case, Id. 561; Vaiden's Case, 12 Grat. 717; Hill's Case, 2 Grat. 594; Pryor's Case, 27 Grat. 1009; Coleman's Case, 84 Va. 1, 3 S. E. 878; Prather's Case, 85 Va. 122, 7 S. E. 178; Roadcap's Case, 88 Va. 896, 14 S. E. 625; Pitsnogle's Case, 91 Va. 808, 22 S. E. 351, 50 Am. St. Rep. 867. For rule of decision of appellate court, see section 4937 and notes.

Generally.—For particular grounds for reversal of judgment by writ of error and cases thereon, see Min. Syn. 306, 307; also Matthews Crim. Dig. (3d Ed.) 317.

As to bills of exception, see 4 Min. (3d Ed.) 897, 912, 918. See, also, section 6252 and notes thereto; Stoneman's Case, 25 Grat. 887, Va. Rep. Anno. (note).

See, also, notes in chapter 267.

Cited but not construed, William's Case, 111 Va. 870, 69 S. E. 1031.

See Gregory's Forms, Nos. 294, 295.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 160, section 1.

Sec. 4930. When execution of sentence to be suspended.—If a person sentenced by a circuit or corporation court to death or confinement in the penitentiary ask for time to apply for a writ of error, the said court shall postpone the execution of its sentence until a reasonable time beyond the first day of the next term of the Supreme Court of Appeals, not exceeding thirty days after that day. In any other criminal case, wherein judgment is given by any court, and in any case of judgment for a contempt, to which a writ of error lies, the court giving such judgment may postpone the execution thereof for such time and on such terms as it deems proper. And for misdemeanor after conviction and sentence, or the execution thereof is suspended in accordance with this section, or for any other cause, the court, or the judge thereof in vacation may, in the discretion of such court or judge, let the prisoner to bail in such penalty and for appearance at such time as the nature of the case may require. A writ of error from the Supreme Court of Appeals shall lie to any such judgment refusing bail or requiring excessive bail. (Code 1887, § 4051; 1887-8, p. 347; 1902-3-4, p. 627; 1916, p. 390.)

Digitized by Google

Revisors' Note.—As this section stood before the revision, it provided that "IN ANY CASE after conviction and sentence," etc., the court or judge might let the prisoner to bail. This language included felonies as well as misdemeanors. The revisors were of opinion that in felony cases the prisoner should not be let to bail after conviction and sentence, and in the revised section the words "for misdemeanors" are used in lieu of "in any case." The last sentence takes the place of the last paragraph of the section as found in Acts 1916, p. 890.

A recognizance taken under this section must comply with the conditions of section 4973. Cannon's Case, 96 Va. 575, 32 S. E. 33.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 160, section 2.

Sec. 4931. Writs of error in criminal cases, where lie; when for accused, when for Commonwealth.—A writ of error shall lie in a criminal case to the judgment of a circuit court or the judge thereof, or of a corporation court, from the Supreme Court of Appeals. It shall lie in any such case for the accused, and if the case be for the violation of law relating to the State revenue, it shall lie also for the Commonwealth. (Code 1887, § 4052; 1897-8, p. 622; 1902-3-4, p. 628.)

Revisors' Note.—The words, "or for the violation of a law therein declared to be unconstitutional," formerly appearing near the end of this section, were declared unconstitutional in Com. v. Willcox, 111 Va. 849, 69 S. E. 1027, and have been stricken out. See section 4773.

Where the defense in a prosecution for unlawful sale of liquor is that the defendant had a right under the revenue laws to sell it at the place where sold, the case involved a violation of the law relating to the State revenue within the provisions of this section. An appeal will therefore lie on the part of the Commonwealth. Goodwin's Case, 109 Va. 828, 64 S. E. 54.

The proceeding for abatement of a nuisance, in whatever form it may be prescribed by statute, is a criminal proceeding. White v. King, 5 Leigh 726, 729. See Com. v. Willcox, 111 Va. 849, 69 S. E. 1027; see, also, 6 Va. L. Reg. 243; 13 Va. 74.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 160, section 3.

Sec. 4932. Where to lie to judgments for contempt of court.—To a judgment for a contempt of court a writ of error shall lie to the Supreme Court of Appeals. This section shall also be construed to authorize a writ of error to a judgment of a circuit court rendered on appeal from a judgment of a justice for contempt. (Code 1887, § 4053; 1902-3-4, p. 628; 1908, p. 294.)

Power to supervise contempt cases given by statute.—Unless the power to supervise is given by statute, a commitment for contempt is not subject to review in any other court, not even by habeas corpus. Wells' Case, 21 Grat. 504. See, also, Cromwell's Case, 95 Va. 254, 28 S. E. 1023.

By Acts 1897-8, p. 548 (amending section 3768 of the Code of 1887, section 4521 of this Code) a writ of error lay to all judgments for contempt, and this provision of the act was constitutional. Trimble's Case, 96 Va. 818, 32 S. E. 780. Thus the rule of the original section 4053 of the Code of 1887 (corresponding to the above section) and of Well's Case, 21 Grat. 504, was changed; but Acts 1904, p. 309, amended section 3768 of the Code of 1887, and repealed Acts 1897-8, p. 548, so that the rule as to appeal in contempt cases is as stated in section 4932, as amended above.

Digitized by Google

Contempt cases reviewed only by writ of error.—The judgment in a contempt proceeding can be reviewed only by writ of error. B. & O. R. R. v. City of Wheeling, 13 Grat. 40. See, also, Stokeley's Case, 1 Va. Cas. 330; Dandridge's Case, 2 Va. Cas. 408; Wells' Case, 21 Grat. 501.

Generally.—Cited but not construed in Forbes v. State Council, 107 Va. 853, 60 S. E. 81, 14 Va. Law Reg. 492.

For W. Va. decisions on similar statute, see Justis Annotations, chapter 160, section 4.

Sec. 4933. How petition for writ of error prepared; transcript of record to accompany it; writ of certiorari, when and by whom awarded.—Any party for whom a writ of error lies may apply therefor on petition, which shall assign errors. With the petition there shall be a transcript of the record of so much of the case wherein the judgment complained of is, as will enable the court or judge to whom the petition is to be presented, properly to decide on such petition, and enable the court, if the petition be granted, properly to decide the questions that may arise before it. Upon a suggestion of a diminution of the record, a writ of certiorari may be awarded by the court, or judge in vacation. (Code 1887, § 4054.)

The record must affirmatively show that all the essential formalities in the procedure have been complied with, and a failure to do so constitutes error on the face of the record, of which advantage may be taken on a writ of error, although objection was not made by the accused in the trial court. Spurgeon's Case, 14 Va. Law J. 144, 86 Va. 652, 10 S. E. 979.

Sec. 4934. To whom petition presented.—The petition, in a case wherein a writ of error lies from the Supreme Court of Appeals, may be presented to the said court, or, in the vacation of the said court, to any judge thereof. (Code 1887, § 4055.)

Revisors' Note.—The latter part of this section as it appears in the Code of 1887 relating to writs of error from the circuit court has been omitted. Since the abolition of county courts, there is no case in which a writ of error lies from a circuit court. APPEALS lie from justices of the peace to the circuit court in some cases, but no writ of error lies from the circuit court to a justice of the peace, the latter not being a court of record. See as bearing on this, Southern Ry. Co. v. Hill, 106 Va. 501, 56 S. E. 278.

A writ of error awarded during term to a judgment in a case of felony may be made returnable to any day of the term. Lazier's Case, 10 Grat. 708.

See 13 Va. Law Reg. 74.

Sec. 4935. When writ of error allowed, and to operate as a supersedeas; if denied by a judge of Court of Appeals in vacation, court may allow it.—Any court or judge to whom a petition is duly presented, if of opinion that the judgment complained of ought to be reviewed, may allow a writ of error, which may operate as a supersedeas thereto, if the court or judge awarding it so direct, on such terms and conditions as the said court or judge may prescribe. But the denial of a writ of error by a judge of the Supreme Court of Appeals, in the vacation of the court on petition presented to him, shall not prevent the allowance of the writ by the said court,

Digitized by Google

if by it deemed proper, on presentation of the petition to the said court at its next term. (Code 1887, § 4056.)

A writ of error in a criminal case does not of itself have the effect of a supersedeas; in each case the court will direct by an indorsement that it shall have that effect, if it is proper. Conner's Case, 2 Va. Cas. 30. See Kemp's Case, 18 Grat. 969, 971.

See 13 Va. Law Reg. 74.

Sec. 4936. Where writs of error docketed and heard; issue of summons and supersedeas; how process against Commonwealth served.—All cases in which a writ of error is awarded by the Supreme Court of Appeals, or a judge thereof, shall be docketed, heard, and determined in the said court. The clerk of the Supreme Court of Appeals wherein a case is docketed shall issue a summons against the parties interested other than the petitioner that they may be heard, and also issue any supersedeas which may be awarded. Where the Commonwealth is defendant in error, if the case be in the Supreme Court of Appeals, process shall be served on the Attorney-General. (Code 1887, § 4057; 1902-3-4, p. 628.)

See 13 Va. Law Reg. 74.

Sec. 4937. Decision of appellate court.—The court, from which a writ of error lies, shall affirm the judgment, if there be no error therein, and reverse the same in whole or in part, if erroneous, and enter such judgment as the court, whose error is sought to be corrected, ought to have entered; or remand the cause and direct a new trial; affirming in those cases where the voices on both sides are equal. (Code 1887, § 4058.)

Verdict varying from judgment—Venire de novo.—In this case the general court reversed the judgment, because it varied from the verdict; and, the verdict being illegal in ascertaining a term of imprisonment shorter than that prescribed by law, the court set aside that verdict and awarded a venire de novo. Nemo's Case, 2 Grat. 558. See, also, Jones' Case, 20 Grat. 855; Gibson's Case, 2 Va. Cas. 111; Smith's Case, Id. 327; Percival's Case, 4 Leigh 686; Mills' Case, 7 Leigh 751; Scott's Case, 5 Grat. 697; Hatton's Case, 3 Grat. 623; Marshall's Case, 5 Grat. 663, 693.

No offense charged—Judgment reversed.—Where the presentment does not charge the offense, the appellate court will reverse the judgment against the accused. Old's Case, 18 Grat. 915.

Defective indictment—Prisoner in penitentiary.—Proceedings on a writ of error, where the judgment is reversed for defect in the indictment, and the prisoner, being in the penitentiary, is brought up before the general court by habeas corpus, and remanded for new trial. Barker's Case. 2 Va. Cas. 122.

A case in which the general court reversed the judgment of the circuit superior court, and entered such judgment as the latter ought to have rendered, changing the judgment only as to solitary confinement, and making it conform to the statute. Brooks' Case, 4 Leigh 669.

Affirmation by voices on both sides being equal.—A point in a cause in which the judges of the court of appeals are equally divided stands affirmed by virtue of this section, as well as where it is a ruling of the court below in the progress of the cause as where it is the final judgment of the court in the case; and this decision is final and irreversible, and cannot be changed upon a second appeal in the cause. Chahoon's Case, 21 Grat. 822, 80 Grat. 733, 738. See notes to section 6365.

Digitized by Google

Generally.—For W. Va. decisions on similar statute, see Justis' Annotations, chapter 160, section 7.

See 13 Va. Law Reg. 74.

Sec. 4938. Provisions which apply to criminal as well as civil cases.—Sections sixty-three hundred and fifty-six, sixty-three hundred and fifty-seven, sixty-three hundred and seventy-two and thirty-four hundred and eighty-six shall apply as well to criminal as to civil cases: provided, that in a felony case in the Supreme Court of Appeals if the plaintiff in error file with the clerk of the said court an affidavit that he is unable to pay or secure to be paid the costs of printing the record in the case the printing shall be done as if the costs had been paid and the clerk shall not be required to account for and pay the same into the treasury; but if the said costs be not paid or secured to be paid and upon the hearing of the case the judgment of the court below be wholly affirmed by the Supreme Court of Appeals the said court in affirming shall also give judgment in behalf of the Commonwealth against the plaintiff in error for the amount of the said costs to be taxed by its clerk. (Code 1887, § 4059; 1895-6, p. 102.)

See Burk's Address, 2 Barton Law Pr. (2 Ed.), 1389.

Sec. 4939. How judgment of appellate court certified and entered.—The judgment of the Supreme Court of Appeals shall be certified to the court to whose judgment the writ of error was allowed, which court, or the clerk thereof in vacation, shall cause the same to be entered on its order book as its own judgment. (Code 1887, § 4060; 1902-3-4, p. 628.)

The provision of this section is substantially complied with by simply transcribing the judgment of the appellate court on the order book of the trial court. Reed's Case, 98 Va. 817, 36 S. E. 399, 6 Va. Law Reg. 323.

Sec. 4940. Execution of judgment in cases of felony.—Sentence of death, except for insurrection or rebellion, shall not be executed sooner than thirty days after the sentence is pronounced. (Code 1887, § 4061.)

Sec. 4941. Death chamber; who to execute death sentence.—The Superintendent of the State Penitentiary, at Richmond, is hereby authorized and directed to provide and maintain a permanent death chamber within the confines of said penitentiary, and which said death chamber shall have all the necessary appliances for the proper execution of felons by electrocution. In said death chamber shall be executed all felons upon whom the death penalty has been imposed, for offenses committed on or after June twenty-sixth, nineteen hundred and eight. Each execution shall be conducted by the said superintendent or some assistant or assistants designated by him. (1908, p. 684.)

Revisors' Note.—This and the six following sections make no change IN THE LAW as it existed before the revision, except it is now provided by section 4946 that the body of the person executed shall not be delivered to relatives where the execution was for rape or attempt to rape. (2040)

Digitized by Google

Sec. 4942. Transfer of convict to penitentiary; how death sentence executed; who to be present.—The clerk of the court in which is pronounced the sentence of death against any felon shall, as soon as may be, after such sentence, deliver a certified copy thereof to the Superintendent of the Penitentiary at Richmond. Not more than thirty nor less than fifteen days before the time fixed, in the judgment of the court, for the execution of said sentence, the Superintendent of the Penitentiary shall cause to be conveyed to the said penitentiary such condemned felon in the manner now prescribed by law for the conveyance of felons sentenced to confinement in the penitentiary, and the superintendent, in his discretion, may appoint more than one guard to convey the condemned felon, and the expenses of such guard or guards shall be paid in the manner and under the requirements now prescribed by law for the conveyance of convicts to the penitentiary. The said superintendent, or the assistants appointed by him, shall, at the time named in said sentence, cause the said felon under sentence of death to be electrocuted until he is dead, unless a suspension of execution be ordered. At the execution there shall be present the superintendent, or an assistant, the surgeon of the penitentiary or his assistant, and a number of respectable citizens numbering not less than six nor more than twelve. The counsel for the convict and a minister of the gospel may be present. (Code 1887, § 4063; 1908, p. 684; 1910, p. 571.)

Sec. 4943. Certificate of the execution of death sentence.—The superintendent shall certify the fact of the execution of the condemned felon to the clerk of the court by which such sentence was pronounced, who shall file such certificate with the papers of the case and enter the same upon the records of the case. (Code 1887, § 4064; 1908, p. 684.)

Sec. 4944. Reprieve, writ of error, or stay of execution of sentence; how notice served; subsequent process; how served; resentence; new trial.—Should the condemned felon, while in the custody of the Superintendent of the Penitentiary, be granted a reprieve by the Governor, or obtain a writ of error from the Supreme Court of Appeals, or should the execution of the sentence be stayed by any competent judicial proceeding, notice of such reprieve or such writ of error or stay of execution shall be served upon the Superintendent of the Penitentiary, as well as upon the condemned felon, and the said superintendent shall yield obedience to the same. In any subsequent proceeding the mandate of the court having regard to the condemned felon, shall be served upon the Superintendent of the Penitentiary as well as the said felon. Should the said felon be resentenced by the court, then the proceedings shall be as hereinabove provided under the original sentence. Should a new trial be granted such condemned felon after he has been conveyed to the penitentiary, then he shall be conveyed back to the

Digitized by Google

place of trial by such guard or guards as the superintendent may direct, their expenses to be paid as is now provided by law for the conveyance of convicts to the penitentiary. (1908, p. 684.)

Sec. 4945. Publication of details of execution.—No newspaper or person shall print or publish the details of the execution of criminals. Only the fact that the criminal was executed shall be printed or published. (1908, p. 684.)

Sec. 4946. Disposition of body of convict electrocuted.—Upon application of the relatives of the person executed, the body after execution shall be returned to their address and at their cost, except where the execution was for rape or attempt to rape. (1908, p. 684.)

Sec. 4947. Manner of execution of death sentence for crimes committed before June twenty-sixth, nineteen hundred and eight.—The manner of execution of the sentence of death when imposed on account of crimes committed before June twenty-sixth, nineteen hundred and eight, shall be in accordance with sections four thousand and sixty-two, four thousand and sixty-three, and four thousand and sixty-four of the Code of eighteen hundred and eighty-seven, which are continued in force for this purpose.

Revisors' Note.—Section 8 of the Act of 1908 (Acts 1908, p. 684) provided that "Nothing in this act shall be so construed as to change or alter the manner of execution of the sentence of death when imposed on account of crimes, committed before this act goes into effect." The act became effective June 26, 1908.

Under section 4062 Code 1887, it was held that judgment in a criminal case would not be set aside because it failed to appoint an executioner of the sentence. Russell's Case, 78 Va. 400.

Sec. 4948. Transportation of convicts to the penitentiary.—Every person sentenced by a court to confinement in the penitentiary shall, as soon as may be, be conveyed to the penitentiary in the manner hereinafter provided. The clerk of the court in which the person is sentenced shall forthwith transmit to the Superintendent of the Penitentiary a copy of the judgment, and if he fail to do so he shall forfeit one hundred dollars. Upon receiving such copy the Superintendent of the Penitentiary shall dispatch a guard to the county or corporation with a warrant directed to the sheriff authorizing him to deliver the convict, whose duty it shall be to take charge of the said person and convey him to the penitentiary. If because of the number of persons to be conveyed to the penitentiary or because there is reason to apprehend an attempt to rescue the superintendent shall deem it necessary he may dispatch more than one guard and make provision for the employment by the guard of persons to assist him in the performance of his duty. The superintendent shall be entitled to receive from the State Corporation Commission such certificates of transportation as he may require in executing the provisions of this section, and other expenses incurred by him in the execution thereof he shall pay, the same to

Digitized by Google

be allowed him in the settlement of his accounts: provided, that the superintendent may in any proper case require the sheriff of any county or the sergeant of any corporation to deliver such convict at a railway station designated by the superintendent, to be there delivered to his authorized agent, and for such services the court of such county or corporation shall allow the said sheriff a reasonable compensation, to be paid out of the public treasury. (1895-6, p. 236.)

Revisors' Note.—The words, "State Corporation Commission," found in the last sentence are used in lieu of "Auditor of Public Accounts." See section 3738, et seq.

Sec. 4949. How sentence of confinement in jail until fine paid is executed; limitation of confinement.—If a person sentenced to be confined in jail a certain time and afterwards until he pay a fine and costs of prosecution, fail to pay such fine and costs before the end of said term, he shall continue in confinement until the same be paid or his discharge be ordered by the court, or the judge thereof in vacation, or he be released by reason of the expiration of the limitation for such confinement prescribed by law. (Code 1887, § 4071; 1895-6, p. 686.)

Under Code of 1849 it was held: "Where a party is imprisoned under a capias pro fine for fine and costs he can only obtain his discharge from imprisonment by paying the fine and costs. But the term of his imprisonment is limited by Code 1849, chapter 209, section 17" (same as section 4949), Webster's Case, 8 Grat. 702.

As to the old law in regard to insolvent debtor's oath discharging the person taking it, see Quinling's Case, 2 Va. Cas. 494; Chapman's Case, 1 Va. Cas. 138.

See Shiflett's Case, 90 Va. 389, 18 S. E. 838.

Sec. 4950. When and how prisoner hired out to pay fine.—If any person be sentenced to confinement in jail until he pay a fine and the costs of prosecution, or be confined in jail under a capias pro fine, the sheriff of the county or the sergeant of the corporation in whose jail he is confined, may, with the assent in writing of the prisoner, hire him for such length of time, not exceeding six months, as may be agreed on, to any person who will agree to pay the whole fine and costs. (Code 1887, § 4072.)

Sec. 4951. The obligation to be taken from hirer; where returned; how endorsed by clerk; to have effect of judgment; prisoner refusing to keep contract to be remanded to jail: liability of obligors not affected thereby.—The officer shall take from the hirer an obligation to the Commonwealth, with surety, for the payment of the fine and costs, and return the same forthwith to the clerk's office of the circuit court of the county or corporation court of the city in whose jail the prisoner is confined. The clerk shall endorse on the obligation the date of its return, and, from the time it is returned it shall have the force and effect of a judgment, but no execution shall issue thereon until after motion upon notice to the obligors therein. If the prisoner refuse to comply with the con-

Digitized by Google

tract of hiring, on the affidavit of the hirer a capias pro fine may issue, and the prisoner be remanded to jail. Such refusal shall not affect the liability of the obligors in such obligation, but any part of the fine or costs that is paid shall be a credit thereon. (Code 1887, § 4073; 1902-3-4, p. 628.)

Sec. 4952. How person confined in jail by court or justice until fine is paid, or under capias pro fine, released.—When a person is confined in jail by order of any court or justice until he pay a fine and the costs of prosecution, or the costs where there is no fine, or under a capias pro fine, on application to the circuit court of the county or corporation court of the city where confined, or to the judge thereof in vacation, such court, or judge in vacation, as the case may be, if to such court or judge it shall appear proper, may order the person to be released from imprisonment without the payment of the fine and costs, or costs where there is no fine, and he shall not thereafter be imprisoned for failure to pay the fine and costs or costs in that case: but the attorney for the Commonwealth of said county or city shall have five days' notice of such application. (Code 1887, § 4074; 1895-6, p. 686; 1902-3-4, p. 628.)

If the physical condition of the defendant is such that further imprisonment would be of serious detriment to his health, that is a matter to be addressed to the court which convicted him, or the judge in vacation. If it shall appear proper, he may be released from prison "without the payment of the sum mentioned in the execution." Until this is done in the mode prescribed by law, he is liable to all the penalties which the Commonwealth may lawfully enforce. Wilkerson v. Allan, 23 Grat. 10, 20.

Sec. 4953. How person confined in jail by court or justice until fine is paid released; limitation of confinement.—If a person is confined in jail by order of any court or justice until his fine and costs, or costs where there is no fine, are paid, or under a capias pro fine, such confinement shall not exceed ten days when the fine and costs, or costs where there is no fine, are less than five dollars, when less than ten dollars it shall not exceed twenty days, when less than twenty-five dollars it shall not exceed one month, when less than fifty dollars it shall not exceed two months, and in no case shall the confinement exceed three months. The jailer upon commitment shall note the amount of fine and costs, or costs where there is no fine, and the date of commitment, and shall, without further order or direction, release the defendant from jail promptly upon the expiration of the limitation above prescribed, and said defendant shall not thereafter be imprisoned for failure to pay the fine and costs, or costs, in that case; but nothing herein or in the preceding section shall prevent the issue of a writ of fieri facias after such release from jail. (Code 1887, § 4075; 1895-6, p. 686.)

From this section it appears that the fines and costs are not satisfied by the imprisonment, which is but a means of enforcing payment, and the punishment is not complete until the judgment of the court has been fully discharged. Quillin's Case, 105 Va. 874, 54 S. E. 333.

Digitized by Google

CHAPTER 197.

Taxation and Allowance of Costs in Criminal Cases.

Sec.
4954. When jailor to summon guard for jail; allowance therefor by court.
4955. When paid by county or corporation; when by the State.
4956. Medical attendance, medicines, and clothing for prisoners in jail, and allowance to analytical chemist.
4957. Allowance to witnesses.
4958. When prosecutor to pay witnesses.
4959. When Commonwealth pays witnesses in case of misdemeanor.
4960. Compensation to officer for services in certain cases, where no other compensation is provided.
4961. By whom certificate of allowance to be made; vouchers to accompany it.
4962. What entry of certificate of allowance to state.
4963. Justice, etc., to certify to clerk costs of proceedings in criminal cases before them.
4964. Clerk to make up statement of the whole cost, and issue execution therefor.
4965. Claims not presented in time, to be disallowed.
4966. Of fees of attorneys for the Commonwealth.

Sec. 4954. When jailor to summon guard for jail; allowance therefor by court.—When ordered by the court to do so, or it is in his own opinion necessary for the safe-keeping of a prisoner under charge of, or sentence for, crime, the jailor shall summon a sufficient guard, and the circuit court of the county, or the corporation court of the city in which the jail is, may allow therefor so much as it deems proper, not exceeding one dollar per day for each man. (Code 1887, § 4077.)

Revisors' Note.—For an act affecting this section, see Acts 1918, chapter 164, p. 302.

Sec. 4955. When paid by county or corporation; when by the State.—The said circuit or corporation court, before certifying any allowance, shall inquire into the condition of the jail; if it appear that a guard was necessary, because of the insecurity of the jail, it shall order the allowance to be certified to the board of supervisors of the county or council of the corporation, and it shall be chargeable to such county or corporation; but if otherwise, and the guard was necessary, the allowance shall be certified for payment out of the treasury. (Code 1887, § 4078.)

Sec. 4956. Medical attendance, medicines, and clothing for prisoners in jail, and allowance to analytical chemist.—A court may appoint a physician to attend prisoners in its jail, and make him a reasonable allowance, not exceeding seventy-five cents per day for each day he attends a patient. When he attends more than one patient a day, there may be allowed fifty cents per day for each additional patient. A court may, when a person in its jail charged with or convicted of an offense is unable to provide himself with

Digitized by Google

necessary medicines, or with sufficient clothing, allow for such medicines; and may direct the jailor to provide him clothing, and allow therefor not exceeding ten dollars in one year. It may also make an allowance, not to exceed twenty-five dollars, as compensation to any physician or analytical chemist for making an analysis to discover poison in any criminal case. Allowances under this section shall be paid out of the treasury, except that no allowance shall be made or paid for medicines furnished such prisoner unless the account therefor is certified by the physician for the jail to be correct, and where clothing is obtained for prisoners worked in the chain gang of any city or town, such clothing shall be paid for out of the treasury of such county, city, or town. (Code 1887, § 4079; 1901-2, p. 758; 1902-3-4, p. 21.)

Revisors' Note.—Formerly, the word "county" appeared before "city," found in line two from the bottom of the text. Chain gangs for counties having been abolished (see revisors' note to section 2088) this word has been omitted. The second paragraph of the act of 1902-3-4 has been eliminated as having served its purpose.

Cited, but not construed, Price v. Smith, 93 Va. 14, 18, 24 S. E. 474.

As to duty of jailer in regard to heating jail, see Price v. Smith, 93 Va. 18, 24 S. E. 474.

Sec. 4957. Allowance to witnesses.—Sections thirty-five hundred and twenty-nine to thirty-five hundred and thirty-two, inclusive, shall apply to a person attending as a witness, under a recognizance or summons in a criminal case, as well as to a person attending under a summons in a civil case, except that, in a criminal case, a witness who travels over fifty miles to the place of attendance, shall have for each day's attendance one dollar, instead of fifty cents; and a person residing out of this State, who attends a court therein as a witness, shall be allowed by said court a proper compensation for attendance and travel to and from the place of his abode, the amount of the same to be fixed by the said court. (Code 1887, § 4080.)

Sec. 4958. When prosecutor to pay witnesses.—The sum to which a witness is entitled, who attends for the Commonwealth, and any other legal charges incurred in a case wherein there is a prosecutor, shall be paid by such prosecutor as if he were plaintiff in the case, unless there be a judgment against the defendant. (Code 1887, § 4081.)

Where an indictment was quashed because one of the grand jurors was not competent to serve as a grand juror, the voluntary prosecutor was required to pay the costs. St. Clair's Case, 1 Grat. 556.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 161, section 5.

Sec. 4959. When Commonwealth pays witnesses in case of misdemeanor.—Payment shall not be made out of the treasury to a witness attending for the Commonwealth in any prosecution for a misdemeanor unless it appears that the sum to which the witness is entitled cannot be obtained (if it be a case wherein there is a prose-

Digitized by Google

cutor and the defendant is convicted) by reason of the insolvency of the defendant, or if it be a case in which there is no prosecutor by reason of the acquittal or insolvency of the defendant or other cause: provided, that not more than three witnesses shall be paid out of the State treasury in any case of misdemeanor tried before a justice. (Code 1887, § 4082; 1897-8, p. 829.)

Sec. 4960. Compensation to officer for services in certain cases, where no other compensation is provided.—A sheriff or other officer, for traveling out of his county or corporation to execute process in a criminal case, and doing any act in the service thereof, for which no other compensation is provided, shall receive therefor, out of the treasury, such compensation as the court from which the process issued may certify to be reasonable. When in a criminal case an officer or any person renders any other service, for which no specific compensation is provided, the court in which such case is, may allow therefor what it deems reasonable, and such allowance shall be paid out of the treasury from the appropriation for criminal charges on the certificate of the court stating the nature of the service. This section shall not prevent any payment under section twenty-one hundred and seventy-six, which could have been made if this section had not been enacted. (Code 1887, § 4083.)

Revisors' Note.—In line seven of the text the words "or any person" have been inserted, so as not to restrict the allowance to an OFFICER.

Sec. 4961. By whom certificate of allowance to be made; vouchers to accompany it.—The certificate required by section thirty-five hundred and four, shall, when the payment is to be to a clerk, be from the court whereof he is clerk, and when it is to be to a sheriff or other officer, from the court in which the prosecution is, or to which a justice shall certify, as hereinafter mentioned. Any other expense incident to a proceeding in a criminal case which is payable out of the treasury otherwise than under the preceding section, or under section twenty-one hundred and seventy-six, shall be certified by the court. If it be a justice exercising jurisdiction, it shall be certified by such justice to the circuit or corporation court before which he qualified, which court shall certify the same, if it appears to be correct, to the Auditor. With the certificate of allowance there shall be transmitted to the Auditor of Public Accounts the vouchers on which it is made. The court, in passing upon any account for fees or expenses required to be certified by it under this section, before certifying the said account, may, in its discretion, require proof of the correctness of any item thereof, notwithstanding the affidavit of the party in whose favor such account is. In all cases the justice of the peace shall file with his account a copy of the warrant on which his proceedings were had. (Code 1887, § 4084; 1897-8, p. 709.)

Revisors' Note.—The third sentence of this section is new, and

Digitized by Google

there are some consequential changes. See discussion of former section in 18 Va. Law J. 405.

Sec. 4962. What entry of certificate of allowance to state.—The entry of such certificate of allowance shall state how much thereof is on account of each person prosecuted. (Code 1887, § 4085.)

Sec. 4963. Justice, etc., to certify to clerk costs of proceedings in criminal cases before them.—A justice, before whom there is any proceeding in a criminal case, shall certify to the clerk of the court of his county or corporation, and a judge or court before whom there is, in a criminal case, any proceeding preliminary to conviction in another court, upon receiving information of the conviction from the clerk of the court wherein it is, shall certify to such clerk all the expenses incident to such proceedings, which are payable out of the treasury. (Code 1887, § 4086.)

Sec. 4964. Clerk to make up statement of whole cost, and issue execution therefor.—In every criminal case, the clerk of the court in which the accused is convicted, or, if the conviction be before a justice, the clerk to which the justice certifies as aforesaid, shall, as soon as may be, make up a statement of all the expenses incident to the prosecution, including such as are certified under the preceding section, and execution for the amount of such expenses shall be issued and proceeded with; and chapter one hundred and two shall apply thereto in like manner as if, on the day of completing said statement, there was a judgment in such court in favor of the Commonwealth against the accused for the said amount as a fine. (Code 1887, § 4087.)

Where there is a judgment in favor of the Commonwealth for a fine and costs, the writ of capias pro fine may issue for the fine and the costs; but where the judgment is for the costs without a fine, the writ is not a proper process to enforce the judgment. Webster's Case, 8 Grat. 702.

The costs and expenses for which the convict's estate was made liable by the enactment of this statute were those with which the Commonwealth was chargeable, such as jail fees, charges for dieting, guards and transportation accruing before conviction, compensation to witnesses to jurors, fees to constables for arresting accused and summoning witnesses. Anglea's Case, 10 Grat. 705.

Sections 3504, 3505. 3506, 3508 provide for the payment out of the treasury of fees in criminal cases to attorney for the Commonwealth, clerk, justice, sheriff, etc., thereby changing the statute upon which was founded. Anglea's Case, 10 Grat. 705.

Under this section the accused, in every criminal case, is liable for the costs of his conviction, without any formal entry of the judgment therefor. The clerk of the court is required to make up a statement of all expenses incident to the prosecution and to issue execution therefor as though judgment had been rendered therefor in favor of the Commonwealth against the accused as a fine. The costs are no part of the punishment of the accused, but are given simply to reimburse the State for necessary expenditures in the enforcement of its violated laws. Com. v. McCue's Executors, 109 Va. 302, 63 S. E. 1066.

A prisoner convicted of felony, and obtaining a writ of error from the Court of Appeals, where the judgment is affirmed, is not responsible for the fees of the clerk or the Attorney-General. Finch's Case, 14 Grat. 643.

Laws of costs are not to be interpreted as penal laws, and payment

Digitized by Google

of costs is no part of the sentence of the court; therefore a pardon by the Governor of one convicted of felony does not release him from costs for which an execution had previously issued. Anglea's Case, 10 Grat. 696, 701, 702.

For modes of recovering fines and enforcing payment into treasury, see chapter 102.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 161, section 11.

Sec. 4965. Claims not presented in time, to be disallowed.—If by reason of the failure of a person to present his claim in due time, a sum be not included in such execution, which would have been included if so presented, such claim, unless there be good cause for the failure, shall be disallowed. (Code 1887, § 4088.)

Sec. 4966. Of fees of attorneys for the Commonwealth.—No fee to an attorney for the Commonwealth shall be payable out of the treasury, unless it be expressly so provided. (Code 1887, § 4089.)

CHAPTER 198.

General Provisions as to Proceedings in Criminal Cases.

Sec.

4967. Judges to set criminal cases for trial.
4968. Proceedings against Indians.
4969. Attorney for Commonwealth may issue summons for witnesses in criminal cases; provisions which apply to criminal as well as civil cases; exception.
4970. Appointment of special prosecuting attorneys.
4971. Prosecution of criminal cases removed from the State to the Federal courts under section six hundred and forty-three of the Revised Statutes of the United States; costs.
4972. Recognizance to be required in case of bail.
4973. How recognizances payable; penalty and condition; when surety required; when dispensed with; what order of court to state.
4974. Every recognizance to contain waiver.
4975. How recognizances taken for insane person or one under disability.
4976. Person failing to give recognizance to be committed to jail; when discharged.
4977. Where recognizance taken out of court to be sent.
4978. Where default recorded; how process issued on recognizance; when copy may be used in place of original.
4979. Surety discharged on payment of amount, etc., into court.
4980. How penalty remitted.
4981. Defects in form of recognizance not to defeat action or judgment.
4982. How surety in recognizance may surrender principal, and be discharged from liability.
4983. The proceeding, when surety surrenders accused.
4984. Fine on juror summoned on inquest and failing to attend.
4985. No fine to be imposed on juror, witness, or other person, unless present, or failing to appear after service of a rule.
4986. Enforcement of forfeitures.

Digitized by Google

Sec. 4967. Judges to set criminal cases for trial.—It shall be the duty of the judge of each circuit and corporation court to fix a day of his court when the trial of criminal cases will commence, and to make such general or special order in reference thereto, and to the summoning of witnesses, as may seem proper; but this section shall not be so construed as to deprive the court of the right to proceed with the trial of any case at the same term at which an indictment is found, provided the defendant is in actual custody or out on bail. (1889-90, p. 79; 1902-3-4, p. 862.)

This statute is merely directory, and an omission to comply with it is no ground to set aside a verdict. Hall's Case, 89 Va. 171, 15 S. E. 517.

The object of this requirement is to insure a speedy trial, for the benefit of the accused no less than for the Commonwealth. Hall's Case, 89 Va. 171, 15 S. E. 517; Benton's Case, 90 Va. 328, 332, 18 S. E. 282.

Sec. 4968. Proceedings against Indians.—In a criminal case against an Indian, or a person of Indian descent, the proceeding shall be as against a white person. (Code 1887, § 4090.)

See Scott's Case, 10 Grat. 749.

Sec. 4969. Attorney for Commonwealth may issue summons for witnesses in criminal cases; provisions which apply to criminal as well as civil cases; exception.—In a criminal case, a summons for a witness may be issued by the attorney for the Commonwealth. Section sixty-two hundred and seventeen and the sections following to sixty-two hundred and twenty-two, inclusive, shall apply to a criminal as well as a civil case in all respects, except that a witness in a criminal case shall be obliged to attend, and may be proceeded against for failing so to do, although there may not previously have been any payment, or tender to him of anything, for attendance, mileage, or tolls. (Code 1887, § 4091.)

Sec. 4970. Appointment of special prosecuting attorneys.—In any case of felony or misdemeanor pending in any circuit or corporation court of this State in which the Commonwealth's attorney is so situated that it is improper or impossible for him to act, the court, of its own motion, or the judge thereof in vacation, shall have authority to appoint a special prosecuting officer for that case, who shall have all the powers and privileges of the regular Commonwealth's attorney and receive the same compensation. (1897-8, p. 929; 1899-00, p. 85; 1902-3-4, p. 567.)

Revisors' Note.—The words "or impossible" found in line four of the text are new.

Sec. 4971. Prosecution of criminal cases removed from the State to the Federal courts under section six hundred and forty-three of the Revised Statutes of the United States; costs.—Where any person indicted in the courts of this State for a violation of its laws, has his case removed to the district court of the United States under section six hundred and forty-three of the Revised Statutes of the United States, it shall be the duty of the attorney for the Commonwealth for the county or city in which any such indictment is

Digitized by Google

found to prosecute any such case in the United States District Court to which the same shall be so removed, and for his services in this behalf he shall be paid a fee of fifty dollars for each case tried by him in such United States District Court, and mileage at the rate now allowed by law to the members of the General Assembly for all necessary travel in going to and returning from such court, to be paid on his account when approved by the Attorney-General.

A per diem of one dollar and fifty cents for each day of actual attendance upon such United States District Court and mileage of five cents a mile for every mile of necessary travel in going to and returning from such court shall be paid out of the treasury to each witness for the Commonwealth in every such case upon accounts therefor against the Commonwealth, certified by the attorney for the Commonwealth prosecuting such case and approved by the Attorney-General.

It shall not be the duty of the Attorney-General to appear for the Commonwealth in such cases unless he can do so without interfering with the efficient discharge of the duties imposed upon him by law; but he may appear with the attorney for the Commonwealth prosecuting such case in any case when the interests of the Commonwealth may in his judgment require his presence.

The Auditor of Public Accounts shall from time to time draw his warrants upon the treasury in favor of the parties entitled to be paid the above compensation and expenses, or their assigns, upon bills certified and approved as above prescribed. (1902-3-4, p. 64.)

Sec. 4972. Recognizance to be required in case of bail.—A court, judge, or justice, letting any person to bail, shall require recognizance to be given. (Code 1887, § 4092.)

Revisors' Note.—The word "justice" is new.

Cited, but not construed, Cannon's Case, 96 Va. 575, 32 S. E. 33.

Sec. 4973. How recognizances payable; penalty and condition; when surety required; when dispensed with; what order of court to state.—Recognizances in criminal cases shall be payable to the Commonwealth of Virginia. Every recognizance under this chapter or under chapter one hundred and eighty-nine and the chapters following to one hundred and ninety-seven, inclusive, shall be in such sum as the court or officer requiring it may direct. If it be to answer for a misdemeanor or if required of a witness it shall be with or without security as the court or officer may direct; but in all other cases shall be with security deemed sufficient by the court or officer taking it. The condition when it is taken of a person charged with a criminal offense shall be that he appear before the court, judge, or justice before whom the proceedings on such charge will be at such time as may be prescribed by the court or officer taking it to answer for the offense with which such person is charged, and when it is taken of a witness in a case against any such person shall be that he so appear to give evidence on such charge, and in either

Digitized by Google

case shall be that the person or witness shall not depart thence without the leave of said court, judge, or justice; when taken for any other purpose than to appear so to answer or give evidence it shall be with condition that the person of whom it is taken shall keep the peace and be of good behavior for such time not exceeding one year as the court or officer requiring it may direct; and if such court or officer direct, it may, when taken of a person so charged, be with condition for so keeping the peace and being of good behavior in addition to the other conditions of his recognizance. And when such recognizance is taken by a court of a person to answer a charge or of a witness to give evidence it shall be sufficient for the order of the court taking said recognizance to state that the party or parties recognized were duly recognized in such sum as the court may have directed with such surety as the court may have accepted for his or their appearance before such court at such time as may have been prescribed by the court to answer for the offense with which such person is charged or to give evidence, as the case may be. (Code 1887, § 4093; 1895-6, p. 254; 1897-8, p. 846.)

What recognizance must show.—The recognizance should show on its face that the condition it contains is to do some act for the performance of which such an obligation may be properly taken, and that the court or officer before whom it is taken has authority to act in cases of that general character. Cannon's Case, 96 Va. 573, 576, 32 S. E. 33; Archer's Case, 10 Grat. 638; Bias v. Floyd, 7 Leigh 640.

Condition of recognizance in criminal case—Noncompliance with statute.—A recognizance, with condition that the principal shall "personally appear in this court on the first day of the next term, and surrender himself into custody, and not depart thence without the leave of this court," is void, because not a substantial compliance with this section requiring him "to answer for the offense" with which he is charged. Com. v. Fulks, 94 Va. 585, 587, 27 S. E. 498.

And so a recognizance "to answer the judgment of this court" is not in compliance with this section. Cannon's Case, 96 Va. 573, 32 S. E. 33.

The condition of a recognizance that the accused shall "do and receive what should be enjoined him by the court" is without authority and void. Bias v. Floyd, 7 Leigh 640, 648.

Same—Substantial compliance.—The condition of a recognizance of one accused of felony was for his personal appearance "to answer the charge against him." This substantially complies with this section. Allen's Case, 90 Va. 356, 18 S. E. 437. See, also, Archer's Case, 10 Grat. 627; Bolanz's Case, 24 Grat. 31. Also see section 4981 and notes.

Generally.—For objections to the form of a recognizance not invalidating the same, see Gedney's Case, 14 Grat. 318.

For scire facias on a recognizance, see Archer's Case, 10 Grat. 627.

For alteration of recognizance by interlineation, and rule in regard thereto, see Bias v. Floyd, 7 Leigh 640, footnote Va. Rep. Anno.

For authority of the county court to require a party to enter a recognizance to keep the peace, see Welling's Case, 6 Grat. 670. See sections 4789, 4796.

For circumstances, such as sickness of principal, on account of which the court may spare the recognizance and decline to award the scire facias, see Craig's Case, 6 Rand. 731.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 162, section 3.

Digitized by Google

Sec. 4974. Every recognizance to contain waiver.—Every recognizance hereafter made or taken shall include such a waiver as is required by section two hundred and seventy-nine in relation to the bonds therein mentioned, and though such waiver be not expressed in the recognizance it shall be deemed to be included therein in like manner and with the same effect as if it was so expressed. (1889-90, p. 6.)

Sec. 4975. How recognizance taken for insane person or one under disability.—A recognizance which would be taken of a person but for his or her being insane, or a minor, may be taken of another person, and, without further surety, if such other person be deemed sufficient. (Code 1887, § 4094.)

Revisors' Note.—The words, "or a married woman," formerly appearing in this section, have been omitted in view of chapter 207.

Sec. 4976. Person failing to give recognizance to be committed to jail; when discharged.—A person not giving, and for whom no other person gives, a recognizance required shall be committed to jail. He shall be discharged therefrom when such recognizance is given before the court or a conservator of the peace; or, if it be to appear and give evidence, when such evidence is given; or, if it be to keep the peace and be of good behavior, when the period for which it was required has elapsed; or, in any case, when the discharge of such person is directed by the court in whose jail he is. (Code 1887, § 4095.)

See 16 Va. L. Reg. 549.

Sec. 4977. Where recognizance taken out of court to be sent.—A person taking a recognizance out of court shall forthwith transmit it to the clerk of the court for appearance before which it is taken; or, if it be not for appearance before a court, to the clerk of the circuit court of the county, or corporation court of the city in which it is taken, and it shall remain filed in the clerk's office. (Code 1887, § 4096; 1902-3-4, p. 623.)

Sec. 4978. Where default recorded; how process issued on recognizance; when copy may be used in place of original.—When a person, under recognizance in a criminal case, either as party or witness, fails to perform the condition thereof, if it be to appear before a court, his default shall be recorded therein, if to appear before a justice, his default shall be entered by the justice in the book required to be kept by him under section six thousand and twenty-four of this Code, and the justice shall notify the attorney for the Commonwealth of the same. The process on every recognizance shall be issued from the court before which the appearance was to be; or, if it be not for such appearance, from the court in which it is taken, or (when taken out of court), in whose office the recognizance remains filed; and in a proceeding in one court on a recognizance entered in another, a copy thereof shall be evidence in like

Digitized by Google

manner as the original would have been if entered in the court wherein the proceeding is. (Code 1887, § 4097.)

Revisors' Note.—The latter part of the first sentence pertaining to justices is new.

For an act relating to bail bonds and recognizances of soldiers and sailors, see Acts 1918, chapter 228, p. 408.

Process on recognizance—Sci. fa.—Demurrer.—A demurrer to sci. fa. upon a recognizance of special bail is regular practice. Garland v. Ellis, 2 Leigh 555; Wood's Case, 4 Rand. 329.

Sci. fa. defective.—A scire facias, which was issued on a recognizance, and which merely set forth that the defendant had failed to perform the condition of the said recognizance, without stating how or in what manner he had broken his recognizance, is defective, and ought to be quashed. Randolph v. Brown, 2 Va. Cas. 351.

Purpose of sci. fa.—When returnable.—The purpose of a writ of scire facias is to give notice of an application for award of execution. The writ may be returnable at rules in the office, or in court. It is not necessary to send the case to rules, because it does not require a declaration or a rule to plead. Bolanz's Case, 24 Grat. 31, 38. See sections 4888, 6055.

Sci. fa. founded upon recognizance, not on judgment against principal.—A scire facias against special bail is founded upon the recognizance, as the gist of the action, not upon the original judgment against the principal. Garland v. Ellis, 2 Leigh 555, 557.

When one sci. fa. may be sued out against several bail.—Where, in a joint action against three obligors, three several persons undertake, by several recognizances, as special bail for each, one sci. fa. cannot be sued out against the three several bail. Garland v. Ellis, 2 Leigh 555. But when the the principal and bail have bound themselves, though severally, by one and the same instrument, they may be proceeded against in one and the same writ. Gedney's Case, 14 Grat. 318, 330; Garland v. Ellis, supra, distinguished, Id. See, also, Bias v. Floyd, 7 Leigh 640; Randolph v. Brown, 2 Va. Cas. 351.

Of course, the sci. fa. must treat the recognizance as several, and not joint, and the judgment must be several. Caldwell's Case, 14 Grat. 701.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 162, section 7.

Sec. 4979. Surety discharged on payment of amount, etc., into court.—A surety in a recognizance may, after default, pay into the court from which the process has issued, or may issue thereon, the amount for which he is bound, with such costs as the court may direct, and be thereupon discharged. (Code 1887, § 4098.)

Sec. 4980. How penalty remitted.—When in an action or scire facias on a recognizance the penalty is adjudged to be forfeited the court may on an application of a defendant remit the penalty or any part of it and render judgment on such terms and conditions as it deems reasonable. (Code 1887, § 4099; 1891-2, p. 562.)

Our courts at common law possessed and exercised a power of discharging recognizance before the same was adjudged to be forfeited. This statute has extended this power. Caldwell's Case, 14 Grat. 698, 707; Craig's Case, 6 Rand. 731.

For circumstances, such as sickness of principal, on account of which the court may spare the recognizance and decline to award the scire facias, see Craig's Case, 6 Rand. 731.

It is a good defense to the scire facias that the performance of the recognizance was legally impossible; e. g., where the principal cognizor had been confined in the penitentiary. Caldwell's Case, 14 Grat. 698,

Digitized by Google

702. Likewise an act of God preventing the performance is a good defense. Id. 703.

As to defenses insufficient to relieve sureties in recognizances, see Archer's Case, 10 Grat. 627; Bolanz's Case, 24 Grat. 31.

Defenses to sci. fa. on recognizance may be made by plea, by petition, or by motion. Caldwell's Case, 14 Grat. 698.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 162, section 9.

Sec. 4981. Defects in form of recognizance not to defeat action or judgment.—No action or judgment on a recognizance shall be defeated or arrested by reason of any defect in the form of the recognizance, if it appear to have been taken by a court or officer authorized to take it, and be substantially sufficient. (Code 1887, § 4100.)

It is not necessary to aver the existence of the particular facts which show that the court or officer had authority to take it. Archer's Case, 10 Grat. 627.

The recognizance should not bind the party to do more than answer the particular charge. Bias v. Floyd, 7 Leigh 640.

Abbreviation of name of county in caption of recognizance, if there be no difficulty in ascertaining the county intended, is not error. Gedney's Case, 14 Grat. 318.

If it does not appear by record that the court or officer had any authority to take the recognizance, the recognizance is defective. Hamlett's Case, 3 Grat. 82; Wood's Case, 4 Rand. 329.

See notes to section 4973, and the following cases: Fulks' Case, 94 Va. 585, 27 S. E. 498; Allen's Case, 90 Va. 536, 18 S. E. 437; Cannon's Case, 96 Va. 573, 32 S. E. 33.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 162, section 10.

Sec. 4982. How surety in recognizance may surrender principal, and be discharged from liability.—A surety in a recognizance may at any time take his principal and surrender him to the court or judge before whom the recognizance was taken; or, if it was taken by a court which is not in session, or by a justice, to the judge of such court, or a justice of the county or corporation in which it was taken; whereupon said surety shall be discharged from liability for any act of the principal subsequent thereto. (Code 1887, § 4101.)

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 162, section 11.

Sec. 4983. The proceeding, when surety surrenders accused.—If the surrender be before a judge or justice, he shall give the surety a certificate thereof, and the accused may be let to bail anew for the residue of the term, or to appear as before required, and on failure so to recognize, shall be committed to jail as in other cases of failure to give bail. If the surrender be to the court, it shall take such order as it deems proper. (Code 1887, § 4102.)

Sec. 4984. Fine on juror summoned on inquest and failing to attend.—The name of any person summoned by an officer, and failing to attend, as a juror upon an inquest out of court, shall be returned by such officer to the next term of the court from which the process issued requiring such jury; or, if there be no such process, to the next term of the court of such officer's county or corporation.

Digitized by Google

Such court shall fine such person, unless he have a reasonable excuse for his failure, not less than two nor more than twenty dollars. (Code 1887, § 4103.)

Sec. 4985. No fine to be imposed on juror, witness, or other person, unless present, or failing to appear after service of a rule.—No court or justice shall impose a fine upon a juror, witness, or other person, for disobedience of its process or any contempt, unless he either be present in court or before a justice at the time, or shall have been served with a rule, returnable to a certain time, requiring him to show cause why the fine should not be imposed, and shall have failed to appear and show cause. (Code 1887, § 4104.)

Morris v. Creel, 1 Va. Cas. 333, conforms to the rule of the statute.

Persons who intentionally conceal themselves from the sheriff, who is endeavoring to serve upon them a subpoena to attend the grand jury as witnesses, are not guilty of contempt. Deskins' Case, 4 Leigh 685. See Gregory's Forms No. 266.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 162, section 14.

Sec. 4986. Enforcement of forfeitures.—Any forfeiture incurred by a violation of sections forty-six hundred and seventy-six, forty-six hundred and ninety-three and forty-six hundred and ninety-four, may be enforced under chapter one hundred and thirty-one in like manner as a forfeiture may be enforced thereunder for a violation of any of the provisions of chapters one hundred and twenty-seven, one hundred and twenty-eight and one hundred and thirty, except as follows: First, Section thirty-three hundred and sixty-eight, and so much of section thirty-three hundred and seventy-two as relates to section thirty-three hundred and sixty-eight, shall not apply to the case; Second, There shall be no publication of the notice in a newspaper as required by section thirty-three hundred and sixty-seven; Third, If the forfeiture was incurred within the jurisdictional limits of a corporation having a corporaton or hustings court, the information shall be filed in such court and the notice posted at the front door of the court house of said corporation; Fourth, Any money, condemned as forfeited, shall not be sold, but shall be disposed of by the court in like manner as the proceeds of forfeited property condemned and sold. (Code 1887, § 4105.)

Digitized by Google

TITLE 42.

Concurrent Jurisdiction of Justices.

CHAPTER 199.

Concurrent Jurisdiction of Justices for the Trial of Offenders in Certain Cases.

Sec.
4987. What criminal offenses police justices and justices of the peace may try.
4988. Providing trial justice in all counties having a population in excess of three hundred persons per square mile as shown by United States census; prescribing his jurisdiction in both civil and criminal matters, and fixing his compensation.
4989. Right of appeal to court in ten days; accused to be committed to jail unless let to bail; justice to return papers to clerk; circuit, corporation and hustings court to have the right to amend the warrant or issue a new warrant.
4990. How appeal tried.
4991. When judgment for costs given against prosecutor.
4992. To dispense with formal warrants in certain cases before the police justices and justices of the peace.

Sec. 4987. What criminal offenses police justices and justices of the peace may try.—The several police justices and justices of the peace, in addition to the jurisdiction exercised by them as conservators of the peace, shall, except for offenses arising under chapter one hundred and eighty-four, have concurrent jurisdiction with the circuit courts of the counties and the corporation courts of the cities of the State, in all misdemeanor cases occurring within their jurisdiction; in all which cases the punishment shall be the same as the said courts are authorized to impose: Provided, that in any city in which there is a police justice, or in any county in which there is a trial justice appointed under section forty-nine hundred and eighty-eight, the powers and jurisdiction conferred by this section shall not be exercised by any other justice of such city or county, except when acting for and in the stead of the police justice or trial justice according to law. Each justice of the peace, in counties in which there is no trial justice, and each police justice or trial justice, may try, or procure some other justice to try, every case of the kind mentioned in this section which is brought before him, and the same may be tried upon a warrant; or he, in his discretion, may make an examination into the offense and proceed according to

Digitized by Google

the provisions of chapter one hundred and ninety-two. (Code 1887, § 4106; 1893-4, p. 431; 1895-6, p. 624; 1897-8, p. 289; 1899-00, p, 838; 1902-3-4, p. 615.)

Revisors' Note.—As will be observed from the citations at the end of this section, section 4106 of the Code of 1887 has been amended by the General Assembly at numerous sessions. Under the Code of 1887 justices had concurrent jurisdiction with the county and corporation courts of many enumerated misdemeanors. The amendment of 1895-6, p. 924, gave justices EXCLUSIVE ORIGINAL JURISDICTION of all misdemeanor cases occurring within their jurisdiction. Lacey v. Palmer, 93 Va. 160, 24 S. E. 930, 31 L. R. A. 822, 57 Am. St. Rep. 795, 2 Va. L. Reg. 94. The amendment of 1897-8, p. 289, conferred on justices concurrent jurisdiction in some enumerated misdemeanors, and exclusive original jurisdiction in all other misdemeanors. The subsequent amendments retained the same principle. The last amendment was by Acts 1910, p. 424. Under this act also justices had concurrent jurisdiction with the circuit and corporation courts in some enumerated misdemeanors, and exclusive original jurisdiction of most misdemeanors. The revised section re-enacts the principle of the Code of 1887, but contains broader language, giving the several police justices and justices of the peace concurrent jurisdiction with the circuit courts of the counties and corporation courts of the cities in all misdemeanor cases occurring within their jurisdiction, except offenses arising under chapter 184 (Intoxicating Liquors); and the section conforms to section 4988 as to the trial justices mentioned in that section. The revisors were of opinion that the reinstatement and extension of the principle of the Code of 1887 would be of great benefit to the Commonwealth in the enforcement of law and order, apart from a probably decreased expense, since appeals from justices are in a measure reduced. Section 4927 of this Code provides that "Seven jurors shall constitute a panel in the trial of misdemeanors, but the jury therefor shall be composed of five."

Constitutional Provision.—In Miller's Case, 88 Va. 618, 14 S. E. 161, 342, 979, 15 L. R. A. 441, the original section 4106 of the Code of 1887, giving to the several public justices and justices of peace concurrent jurisdiction with the county and corporation courts over certain offenses, was declared unconstitutional. See Const. 1869, article 1, section 10. This case was expressly overruled in Brown v. Epps, 91 Va. 726, 21 S. E. 119, 27 L. R. A. 676, and then a constitutional amendment was passed, investing the General Assembly with the power to dispense with jury trials in all criminal offenses, "not punishable with death or confinement in the penitentiary" (1 Va. Law Reg. 24); and this provision is found in the Constitution of 1902, section 8.

Amendment of section.—For statement of amendments of this section, see revisors' note above.

Generally.—For what is sufficient record of the finding of an indictment of a person presented by the grand jury for misdemeanor, which indictment was certified to the police justice of the city, see Watt's Case, 99 Va. 872, 39 S. E. 706.

Upon an indictment for a felony in a county (now circuit) or corporation court the accused may be acquitted of the felony, but found guilty of a misdemeanor Reynold's Case, 94 Va. 816, 27 S. E. 427. See 2 Va. Law Reg. 95, 858; 3 Va. Law Reg. 17.

In quite a number of cases our statutes submit it to the discretion of the jury whether an offense shall be punished with confinement in the penitentiary or in the jail or by fine only. The doctrine seems clearly established that in such cases, whatever may be the verdict of the jury, the offense is always to be deemed a felony. Min. Syn. 17; Canada's Case, 22 Grat. 899; Benton's Case, 89 Va. 572, 16 S. E. 725. The act of 1895-6, p. 924, giving justices of the peace exclusive jurisdiction of misdemeanors,

Digitized by Google

did not apply to this class of cases, but the county (now circuit) and corporation courts retained jurisdiction thereof. Forbes' Case, 90 Va. 550, 19 S. E. 164; Reynolds' Case, 94 Va. 816, 27 S. E. 427.

This section applied as to misdemeanors such as occurred "within their jurisdiction." Agner's Case, 103 Va. 813, 48 S. E. 493.

In Jernigan v. Com., 104 Va. 850, 52 S. E. 361, it was held that sections 2071 and 2073 of the Code of 1887, imposing penalties for unlawful hunting, fishing, etc., constituted a criminal offense of the misdemeanor class, and an appeal from a justice would lie to the Circuit Court irrespective of the amount of the penalty imposed.

Under this section as it stood in 1915 police justices in cities had exclusive original jurisdiction of prosecutions for conducting houses of ill-fame, and it was held that no consent or waiver on the part of the accused could confer jurisdiction on the corporation courts. Eddy v. Com., 119 Va. 873, 89 S. E. 899.

A justice can exercise only such jurisdiction as it expressly conferred upon him and although jurisdiction may be conferred to impose penalties for violation of statutes or ordinances, yet such jurisdiction is ousted as soon as it is made to appear that the right to impose the penalty involves a bona fide claim to real estate. Martin v. Richmond, 108 Va. 765, 62 S. E. 800. (Decided under the law as it existed in May, 1907).

This section, as amended in 1910 conferred jurisdiction upon police justices for the trial of offenses against city ordinances, although there was involved a bona fide claim of title to real estate. Richmond v. Sutherland, 114 Va. 688, 77 S. E. 470. This amendment (Acts 1910, p. 424) does not appear in the present section.

Prohibition is the appropriate remedy to prevent a justice from exceeding his jurisdiction. Martin v. Richmond, 108 Va. 765, 62 S. E. 800.

Cited but not construed in Wells' Case, 107 Va. 834, 57 S. E. 588; Ragsdale v. Danville, 116 Va. 484, 82 S. E. 77.

This section and sections 4989 and 4990 cited in a review of the case of Brown v. Epps, 1 Va. L. R. N. S. 645.

See note, 12 Va. Law Reg. 1034. See, also, 9 Va. L. Reg. 653.

See section 6015 and following relating to jurisdiction of justices in civil cases. Justices of the peace for cities and police justices, chapter 123; civil and police justices and civil justices, chapter 124.

See notes to the next section.

Sec. 4988. Providing trial justice in all counties having a population in excess of three hundred persons per square mile as shown by United States census, prescribing his jurisdiction in both civil and criminal matters, and fixing his compensation.—In all counties in this State having a population greater than three hundred inhabitants per square mile, as shown by United States census, there may be appointed by the judge of the circuit court for such counties, and each two years after the first appointment, a trial justice for such counties, if in his discretion he deem it necessary, who shall be a practicing attorney resident in said county.

The said trial justices shall have concurrent jurisdiction with justices of the peace in all civil cases, and from the decision of said trial justices the same right of appeal shall lie to the circuit court of such counties as now lies from said justices of the peace.

The said trial justices shall have in criminal cases the same jurisdiction for their respective counties as is now, or may hereafter be vested by general laws in the police justices of cities, but nothing in this section shall be construed to interfere with or abridge the rights of justices of the peace to issue, and to receive their fees

Digitized by Google

therefor warrants and subpoenas in criminal cases, which said warrants and subpoenas shall be returnable before said trial justices for action thereon.

The justices of the peace in all counties affected by this section shall, upon the appointment and qualification of said trial justices, make returnable before said trial justices all processes issued by them in criminal cases, and said trial justices are required to sit at the county seats of their respective counties for the hearing of all cases which may be brought before them.

The compensation of each of the said trial justices is hereby fixed at the sum of one thousand dollars per annum, to be paid by the counties for which they are appointed.

The clerk of the circuit court of each county affected by this section shall serve as clerk to the said trial justice appointed for his county, and shall receive for his services the same fees as are now or may hereafter be provided by law for similar services rendered to the circuit court for such county. All controversies involving twenty dollars or over may be removed to the circuit court as in other cases before justices of the peace. (1912, p. 685.)

Revisors' Note.—In addition to various changes in phraseology, this section changes the law in one respect. The act provided that the compensation of the trial justices should be paid "as are the salaries and allowances of judges of the circuit courts of this State." The revised section provides that the compensation shall be paid "by the counties for which they are appointed." As a SALARY is provided for and the benefits are largely local, it seemed to the revisors that the change was proper and desirable. As the counties affected will have to pay the expense they will be more directly interested in determining the necessity for the appointment of a trial justice.

The act from which this section is taken was held constitutional and valid. Ex parte Settle, 114 Va. 715, 77 S. E. 496.

Sec. 4989. Right of appeal to court in ten days; accused to be committed to jail unless let to bail; justice to return papers to clerk; circuit, corporation and hustings court to have the right to amend the warrant or issue a new warrant.—Any person convicted by a justice under the provisions of sections forty-nine hundred and eighty-seven and forty-nine hundred and eighty-eight shall have the right, at any time within ten days from such conviction, to appeal to the circuit court of the county or corporation or hustings court of the corporation, as the case may be. When an appeal is taken at the time the judgment is rendered, the accused shall, unless let to bail, be committed to jail by the justice until the next term of such court, and the witnesses recognized to appear at the same time. When an appeal is taken subsequent to the entry of the judgment of conviction, the justice shall enter the allowance of the appeal on the warrant, and he, or the circuit court of the county or corporation or hustings court of the corporation, or the judge thereof, as the case may be, may admit the accused to bail.

Digitized by Google

The justice shall forthwith return and file papers with the clerk of the court, whether the appeal be applied for or not. Upon the trial of the warrant in the circuit court of the county or corporation or hustings court of the corporation, the court shall have authority upon its own motion, or upon the request either of the attorney for the Commonwealth, or for the accused, to amend the form of the warrant in any respect in which it appears to be defective. But when the warrant is so defective in form that it does not substantially appear from the same what is the offense with which the accused is charged, or even when it is not so seriously defective, the judge of the court having examined on oath the original complainant, if there be one, or if he sees good reason to believe that an offense has been committed, then without examination of witnesses may issue under his own hand his warrant, reciting the offense and requiring the defendant in the original warrant to be arrested and brought before him. Upon the arrest of the defendant on the new warrant and his production or appearance in court the trial shall proceed upon the new warrant. Where there is an amendment of the original warrant the trial shall proceed on the amended warrant. But whether the warrant is amended or new warrant is issued, the court before proceeding to trial on the same may grant a continuance to the Commonwealth, or to the prisoner upon such terms as to costs as may be proper under the circumstances of the case.

Where a warrant is amended or a new warrant is issued the costs already accrued shall be taxed against the defendant, if he is ultimately convicted, as a part of the costs arising under the new or amended warrant. But the Commonwealth shall not be liable for the costs of the defendant. (Code 1887, § 4107; 1897-8, p. 292; 1902-3-4, p. 616.)

When a person is tried by a justice of the peace for petit larceny and convicted, he has an absolute right of appeal to the county (now circuit) court, and in that court the cause is to be heard de novo upon the evidence, and the accused is entitled to be tried by a jury as in cases originating in that court. In such a case it is error for the county (now circuit) court to reverse the judgment of the justice, and render the case to the justice to be tried by him, and any subsequent trial of the case by the justice is null and void. Read's Case, 24 Grat. 618.

In Combs' Case, 95 Va. 88, 27 S. E. 817, it was held that appeals from the decision of justices of the peace in misdemeanor cases must be taken at the time of the rendition of the judgment appealed from, and not afterwards; but Acts 1897-8, p. 292, changed this rule, and allowed ten days, as does the present statute.

Under this section an unrestricted right of appeal to county (now circuit) or corporation courts is secured where the accused can demand a jury, but the trial and judgment must, in the first instance, in misdemeanors, be before the justice. Lacey v. Palmer, 93 Va. 174, 24 S. E. 930. This case was decided under an act giving justices exclusive original jurisdiction in all misdemeanor cases. This is no longer true.

A trial court of its own motion, after the evidence is all in, may direct the Commonwealth's attorney to change the warrant on an appeal from a justice from larceny to an attempt to obtain money under false pre-

Digitized by Google

tenses. While it would have been more regular to have made the change before the trial began, yet if no motion for continuance is made and it does not appear that the prisoner was prejudiced, the irregularity is harmless. Robinson's Case, 111 Va. 844, 69 S. E. 514.

A justice's court is not a court of record, and the indorsement by a justice on a warrant tried by him, "Fine and costs paid," is not conclusive on that point, and will not deprive a defendant of his right of appeal when no such payment has in fact been made. Com. v. Bass, 113 Va. 760, 74 S. E. 397.

Under this section, a corporation court, on an appeal from a justice of the peace, has ample power to correct any formal objections there may be to the warrant, and the accused cannot be permitted to go to trial upon such a warrant, and, after verdict and judgment, for the first time object to informalities in the warrant. Flint's Case, 114 Va. 820, 76 S. E. 308.

Under the broad powers given the judge of the trial court by this section, the court in this case could have issued a warrant in the exact words of the warrant on which the defendant was being tried and no objection could have been made. Robinson v. Com., 118 Va. 785, 87 S. E. 553.

A defendant was convicted by a police justice of a violation of a city ordinance prohibiting the keeping of houses of ill-fame. After an appeal to the corporation court of the city had been matured, the police justice wrote a warrant charging her with a violation of section 4548 of the Code, and that warrant was substituted for the original warrant. This change in the record was made without the knowledge or consent of the defendant, and was not discovered until after the trial. Defendant was tried in the corporation court on the substituted warrant and convicted. On writ of error it was held, under the law as it then stood, that there was no authority in law for such practice, with or without the consent of the accused. As there had been no conviction before the police justice of an offense under section 4548, but simply of a violation of the city ordinance, the provisions of section 4989, as to amendments and changes in the warrant had no application, and the corporation court was without jurisdiction. Eddy v. Com., 119 Va. 873, 89 S. E. 899.

Cited but not construed in Well's Case, 107 Va. 834, 57 S. E. 588; Ragsdale v. Danville, 116 Va. 484, 82 S. E. 77.

See notes to section 4987.

Sec. 4990. How appeal tried.—The appeal shall be tried without formal pleadings in writing, and the accused shall be entitled to trial by a jury in the same manner as if he had been indicted for the offense in said court. (Code 1887, § 4108.)

It is too late, after conviction in the county (now circuit) court, for the accused to except to the absence of any indorsement of an appeal on the warrant by the police. Harrison's Case, 81 Va. 491, 494.

While formal pleadings are by the statute dispensed with on a trial where an appeal has been taken from a justice, the charge of the offense must be sufficiently clear and specific to inform the accused of the precise offense with which he is charged, but where the warrant clearly and distinctly charged unlawful selling of liquor, etc., to a certain person, on a certain day, and within a certain magisterial district, and in a certain county, the same is sufficiently definite. Harding v. Com. 105 Va. 858, 52 S. E. 832.

See notes to section 4988.

Sec. 4991. When judgment for costs given against prosecutor.—In every case of acquittal by a justice, if he believe the charge was made maliciously, and without probable cause, he may render judgment for the costs against the prosecutor. (Code 1887, § 4109.)

Digitized by Google

Sec. 4992. To dispense with formal warrants in certain cases before the police justices and justices of the peace.—In any case where a person has been arrested for a misdemeanor by a police officer of any city or town while in the discharge of his duty as such police officer, it shall not be necessary for any justice of the peace or police justice to issue any warrant for such person, but he shall proceed to try the same without a warrant, unless the person so arrested, in person or by counsel, shall demand that the charges against him be reduced to writing in the form of a warrant. (1895-6, p. 412.)

Digitized by Google

TITLE 43.

Penitentiary.

Ch. 200. Organization, government, and discipline of the penitentiary.
201. Crimes by convicts.
202. Proceedings in criminal cases against convicts.

CHAPTER 200.

Organization, Government, and Discipline of the Penitentiary.

Sec.
4993. Property attached to the penitentiary; in whose custody and control; authority of superintendent to employ prisoners out of enclosure.
4994. Penitentiary to be for confinement of State convicts; United States prisoners may be also confined therein; upon what terms.
4995. Biennial report of its condition.
4996. Board to prescribe rules, etc.; how posted.
4997. Record of conviction of convicts and register to be kept.
4998. Appointment of committee of convict's estate.
4999. His powers and liabilities.
5000. Maintenance of convict's family; wife's portion.
5001. Committee to render accounts of his trust; his compensation.
5002. Delivery of estate to convict, when discharged.
5003. When estate committed to sheriff or sergeant.
5004. When and how real estate of convict sold.
5005. Superintendent to keep account of all expenses incurred in delivering convicts to penitentiary.
5006. How convicts to be treated, when brought to penitentiary.
5007. Male prisoners to subscribe to rules, etc.; how refractory, etc., convicts provided for; disposition of insane.
5008. Males and females to be kept separate; how clothed; infants.
5009. Labor of convicts.
5010. Social intercourse, etc., to be regulated by directors.
5011. Diet of convicts.
5012. Change of diet by superintendent; police of hospital and cells; rules for employment of convicts, and as to visitors.
5013. Privileges for the sick; hospital steward; surgeon to have control of hospital department.
5014. Superintendent may employ convicts in working on public buildings, etc., at Richmond, etc.
5015. May employ them at Hollywood and Oakwood cemeteries.
5016. Directors of penitentiary to make rules and regulations for the safekeeping and conduct of prisoners.
5017. Record to be kept of conduct of convicts; to have credit for good conduct; record of punishment, etc., of convicts; inspection of same.

Digitized by Google

Sec.
5018. Record, etc., to be submitted to Governor.
5019. When term of confinement to commence.
5020. What to be posted in each cell.
5021. Allowance to convict on his discharge.
5022. Duty of surgeon; to notify superintendent, when absent from Richmond.
5023. Hospital room; hospital record.
5024. Weekly examination of hospital; annual report of directors.
5025. Who may enter interior of penitentiary; visitors not to converse with convicts.
5026. How board of directors may apply means of penitentiary.
5027. Meeting of board; quorum; their duties and powers; when board may remove superintendents, etc., and appoint successors.
5028. Power of board in investigating; duty of clerk; how witness paid.
5029. Annual inventory.
5030. Annual report of board to be laid before General Assembly.
5031. Clerk of penitentiary; his duties.
5032. Directors of the penitentiary to employ assistant clerks when needed, or to apportion the clerical work of the penitentiary among those now employed; compensation.
5033. Where superintendent may reside, his fuel, etc.; his duties.
5034. How clerk, assistant clerk, assistant superintendent, and keepers appointed; their oath; matron.
5035. The superintendent may purchase material and supplies for the penitentiary and prison farm; monthly report of the superintendent.
5036. Superintendent to give information relating to bids and bidders for supplies.
5037. Moneys received to be paid into treasury; how paid out.
5038. Annual general account of superintendent; how made up; what to show.
5039. To be examined, etc., by directors.
5040. Employment of guard; their number and duties; how dismissed; right of guard and officers to carry weapons; absentees, etc.
5041. Compensation of guard; how paid.
5042. Convicts employed outside of penitentiary to be guarded.
5043. Reward for convict escaping; how paid.
5044. Who not entitled to it.
5045. Tasking convicts; how compensation for work done beyond task fixed and paid.
5046. Convict in the penitentiary whose term expires on Sunday or legal holiday discharged on the preceding day.
5047. Penitentiary farm.
5048. Raising and training of bloodhounds for police purposes.

Sec. 4993. Property attached to the penitentiary; in whose custody and control; authority of superintendent to employ prisoners out of enclosure.—The lot of twelve acres and fourteen square rods of land on which the penitentiary is situated, and the lot numbered seven hundred and twenty-nine, being one-fourth of a square in the city of Richmond, between the southwest end of First street and the eastern boundary of the land aforesaid, and so much of the square of land between Cary and Main and Jefferson and Madison

Digitized by Google

streets as is reserved in the deed dated the eleventh day of March, eighteen hundred and eighty-five, from the Board of Public Works to Samuel W. Venable and Edward C. Venable, recorded in the Chancery Court of the city of Richmond, in deed book one hundred and twenty-seven C, page four hundred and seventy-one, together with all the rights reserved in said deed, and the pipes and fixtures for conveying water to that institution, and a certain one-half acre lot at the corner of Byrd and First streets (number seven hundred and thirty), fronting on the west line of First street one hundred and sixty-three feet and four inches, running back on the south side of Byrd street one hundred and thirty feet, it being the lot deeded by Karr's heirs to the Commonwealth, shall remain the property of the Commonwealth for the use of the said penitentiary. The superintendent shall have custody of the property of the penitentiary, real and personal, and he shall, in the name of the Commonwealth, have authority to institute and prosecute any suit or proceeding for the recovery of any such property, or its value, or for any injury thereto, which may be proper to protect the rights of the State. He shall have authority to employ the prisoners in improving and cultivating any part of the lands aforesaid, or in repairing the water-pipes and fixtures, or the roads from the penitentiary to proper points of intersection with the streets, or in taking out or bringing into the enclosure any necessary thing to or from the said city. (Code 1887, § 4110; 1902-3-4, p. 294.)

Revisors' Note.—For "An act to regulate the treatment, handling and work of prisoners sentenced to the State penitentiary and to appropriate funds therefor," see Acts 1918, p. 474.

How infants of convict mothers disposed of, Acts 1918, chapter 276, p. 457.

For monographic note on the Penitentiary, see Va. Rep. Anno., 2 Rob. 850, bottom paging 840.

Sec. 4994. Penitentiary to be for confinement of State convicts; United States prisoners may be also confined therein; upon what terms.—The penitentiary house shall continue, under the name of "The Penitentiary," to be appropriated to the confinement of convicts sentenced to confinement therein by the courts of this Commonwealth. Persons sentenced to imprisonment by a court of the United States, held in Virginia, for a term of three years or more, may also be confined therein, with the approbation of the superintendent and Governor (which approbation shall be recorded in the entry made upon such convict's admission), and be safely kept and employed, pursuant to the rules of the prison, so far as is not inconsistent with such sentence, until discharged by due course of the laws of the United States: Provided, that the United States shall pay half-yearly, at the rate of thirty cents per day, for the imprisonment and support of every such convict, and proper medical charges. (Code 1887, § 4111.)

Sec. 4995. Biennial report of its condition.—The condition of the

Digitized by Google

penitentiary shall be examined and reported on biennially by a joint committee of the General Assembly. (Code 1887, § 4112.)

Sec. 4996. Board to prescribe rules, etc.; how posted.—The board, with the approval of the Governor, may, from time to time, prescribe rules, not contrary to law, for the preservation of the property at, and the health of the convicts in, the penitentiary, and the government of the interior thereof. Printed copies of such of the said rules as relate to the government and punishment of the convicts, and of any provisions of law which the said board, with the approval of the Governor, may direct, shall be posted up in at least six conspicuous places of the interior of the penitentiary. (Code 1887, § 4113; 1902-3-4, p. 294.)

Sec. 4997. Record of conviction of convicts and register to be kept.—The clerk of the penitentiary shall file and preserve a copy of the judgment furnished by the clerk of the court of conviction of each convict, and keep a register describing him, the term of his confinement, for what offense, and when received into the institution. (Code 1887, § 4114; 1902-3-4, p. 294.)

Sec. 4998. Appointment of committee of convict's estate.—When a person is convicted of a felony and sentenced to confinement in the penitentiary or to the State convict road force for one year or more his estate, both real and personal, if any he has, shall, on motion of any party interested, be committed by the circuit or corporation court of the county or city in which his estate, or some part thereof is, to a person selected by the court, who after giving bond before the said court, in such penalty as it may prescribe, shall have charge of said estate until the convict is discharged from confinement. (Code 1887, § 4115; 1902-3-4, p. 294.)

Revisors' Note.—Formerly, this section began as follows: "When a person, other than a married woman having no separate estate, is sentenced to confinement in the penitentiary for more than one year, his estate," etc. This language has been changed somewhat. There is no longer need for exceptions in cases of married women. (See chapter 207). The section is applicable where the sentence is for ONE YEAR OR MORE in lieu of MORE THAN ONE YEAR.

Quære, as to whether this section applies to a citizen of this state confined in the penitentiary of another state. Guarantee Co. v. National Bank, 95 Va. 484, 28 S. E. 909.

At common law a person convicted of felony was disabled from suing, but not from being sued. Id.

See notes to section 4999.

Sec. 4999. His powers and liabilities.—Such committee may sue and be sued in respect to all claims or demands of every nature in favor of or against such convict, and any other of the convict's estate, and he shall have the same right of retaining for his own debt as an administrator would have. No action or suit on any such claim or demand shall be instituted by or against such convict after judgment of conviction, and while he is incarcerated.

Digitized by Google

All actions or suits to which he is a party at the time of his conviction shall be prosecuted or defended, as the case may be, by such committee after ten days' notice of the pendency thereof, which notice shall be given by the clerk of the court in which the same are pending. (Code 1887, § 4116.)

Revisors' Note.—The language of this section has been changed so as to be IN TERMS very much more comprehensive than formerly, and to make statutory the construction put upon the language of the former statute by the case of Merchant v. Shry, 116 Va. 437, 82 S. E. 106. The section goes further and prohibits any such action or suit as therein mentioned from being brought by or against the convict after judgment of conviction and WHILE HE IS INCARCERATED. If at the time of conviction he is a party to any action or suit, it is the duty of the clerk to notify his committee and of his committee to prosecute or defend the suit or action. For service of process on convicts in divorce cases, see section 6042. As to powers and duties of committees of insane, epileptic, feeble-minded persons and idiots, see section 1054.

The common law rule permitting suit against a person in confinement under conviction of felony was repealed by implication by chapter 202 of the Code of 1887 (corresponding to this chapter), and all suits must now be in the name of his committee. Merchant v. Shry, 116 Va. 437, 82 S. E. 106.

Under this section the committee may bring any suit that is necessary for the protection or recovery of the convict's estate, and be sued with respect to any cause of action which may exist with respect to the convict. Merchant v. Shry, 116 Va. 437, 82 S. E. 106.

Quære: Effect of a suit against a felon sentenced to death? See article, 10 Va. Law Reg. 851.

See notes to section 4998.

Sec. 5000. Maintenance of convict's family; wife's portion.—The committee shall allow (subject to the claims of creditors) a sufficient maintenance out of the convict's estate, for his wife and family, if any; the wife to be entitled, so long as he is confined, to the profits of such portion of his estate as she would have if he had died intestate. (Code 1887, § 4117.)

Discussed in Merchant v. Shry, 116 Va. 437, 82 S. E. 106.

Sec. 5001. Committee to render accounts of his trust; his compensation.—The committee shall render accounts of his trust, and may be made to account therefor; shall be entitled to compensation for his services, and may forfeit his right thereto, in the same manner as if he were administrator or guardian. (Code 1887, § 4118.)

Sec. 5002. Delivery of estate to convict, when discharged.—Every such committee shall deliver such estate, as he is liable for at that time, to the convict on his discharge, or to his real and personal representatives on his death, before being discharged, (Code 1887, § 4119.)

Discussed in Merchant v. Shry, 116 Va. 437, 82 S. E. 106.

Sec. 5003. When estate committed to sheriff or sergeant.—If any person, so appointed, refuse the trust, or fail to give bond as aforesaid, the court, on like motion, shall commit the estate to the sheriff of the county, or sergeant of the corporation, who shall be

Digitized by Google

the committee, and he and the sureties on his official bond, shall be bound for the faithful performance of the trust. (Code 1887, § 4120.)

Discussed in Merchant v. Shry, 116 Va. 437, 82 S. E. 106.

Sec. 5004. When and how real estate of convict sold.—The real estate of such convict may be leased or sold, when necessary for the payment of his debts, in the same manner as the real estate of an insane person in the hands of a committee. And any such real estate or the real estate in which such convict is interested with others, infants or adults, may be sold, exchanged for other real estate, or may be encumbered for the purpose of borrowing money to be used to erect buildings or other improvements on the same, in the same manner as the real estate of an insane person in the hands of a committee. (Code 1887, § 4121; 1908, p. 538.)

Discussed in Merchant v. Shry, 116 Va. 437, 82 S. E. 106.

Sec. 5005. Superintendent to keep account of all expenses incurred in delivering convicts to penitentiary.—The superintendent of the penitentiary shall keep a strict account of all expenditures incurred by extra guard hire and all other expenses such as may be necessary for the safe delivery of said convicts to the prison, and he shall make an annual itemized report of same. (1895-6, p. 859.)

Sec. 5006. How convicts to be treated, when brought to penitentiary.—Every convict, when first brought to the penitentiary, shall be washed, cleaned, and kept in a separate lodging, until the surgeon certifies that he is fit to be put among the other prisoners; and the clothes he wore shall either be destroyed, or purified, and preserved until he is dischargd and then returned to him. (Code 1887, § 4122.)

Sec. 5007. Male prisoners to subscribe to rules, etc.; how refractory, etc., convicts provided for; disposition of insane.—Before any male prisoner shall be permitted to labor in the shops, or elsewhere out of his room, he shall make and subscribe such promise of obedience and fidelity to the rules and orders of the institution, as shall be prescribed by the board and approved by the Governor, and it shall be the duty of the superintendent, as far as practicable, to provide suitable employment in separate rooms for the refractory and obstinate and for those of disordered mind, or who, for any cause, are unfit to be congregated in the shops. If at any time there is reasonable ground to doubt the sanity of a convict, the superintendent shall report it to the Governor, who shall order such convict to be brought before the Circuit Court of the city of Richmond, which is hereby charged with the trial of the fact as to his sanity, by a jury impaneled for that purpose, and if the jury find him insane, he shall be transferred to one of the State hospitals for the insane, as pro-

Digitized by Google

vided in sections one thousand and twenty-two to one thousand and twenty-five, inclusive; and section one thousand and twenty-seven, and when restored to sanity he shall be returned to the penitentiary in the manner prescribed in section four thousand nine hundred and eleven. (Code 1887, § 4123; 1891-2, p. 508; 1902-3-4, p. 294.)

Sec. 5008. Males and females to be kept separate; how clothed; infants.—The male and female convicts shall be kept separate from each other, and the males shall have their heads and beards close shaven, or shorn once a fortnight and oftener, if need be. Every convict shall be clothed at the public expense in a distinctive uniform for each sex, made of coarse material. An infant accompanying a convict mother to the penitentiary, or born after her imprisonment therein, shall be returned, on attaining the age of four years, to the county or city from which the mother came, to be disposed of as the circuit court of said county, or the hustings or corporation court of said city, having jurisdiction, may order. (Code 1887, § 4124; 1891-2, p. 509; 1902-3-4, p. 294.)

Revisors' Note.—For "An act to provide for the disposition of infants of convict mothers," see Acts 1918, chapter 276, p. 457.

Sec. 5009. Labor of convicts.—The convicts shall be kept to the hardest labor suitable to their sex and fitness, and such of them, as need it, instructed in some mechanical art. (Code 1887, § 4125.)

Sec. 5010. Social intercourse, etc., to be regulated by directors.—Social intercourse, conversation, and acquaintance between the convicts, shall be regulated by the board of directors of the penitentiary. (Code 1887, § 4126.)

Revisors' Note.—Formerly, this section provided that "Social intercourse," etc., "shall be prevented as far as may be, and silence constantly observed by them, as far as possible." The revised section enacts that these matters shall be regulated by the board.

Sec. 5011. Diet of convicts.—The convicts shall be fed on bread of Indian meal, or other coarse bread, and have one meal a day of coarse meat. The board of directors may change or regulate the diet for good cause. (Code 1887, § 4127.)

Sec. 5012. Change of diet by superintendent; police of hospital and cells; rules for employment of convicts, and as to visitors.—The superintendent may, when he deems it necessary, and shall, when the surgeon so advises, change the diet, and adapt it to the health or condition of the convicts or any of them, or he may allow extra diet to those who need it. He shall cause the hospital and all the cells and rooms of the prison to be whitewashed (by convicts qualified for the business) twice a year, or oftener, and the floors to be washed as often only as may be necessary for health and comfort. The board of directors shall prescribe, by rules and regulations, the hours within which the convicts shall be employed at the respective branches of business carried on in the institution, and the time they shall labor in each day, and also

Digitized by Google

the times and conditions upon which persons may visit the interior of the penitentiary. (Code 1887, § 4128.)

Sec. 5013. Privileges for the sick; hospital steward; surgeon to have control of hospital department.—The superintendent may, or, when the surgeon so recommends, shall, allow the convicts at stated times to walk for the benefit of their health, in the yard, but in the presence or view of the superintendent or an assistant. The superintendent shall, on the application of the surgeon, detail from among the convicts one man to act as hospital steward. The surgeon shall have control of the hospital department, and shall have the right to adopt and enforce such sanitary regulations as he may deem necessary, and the board of directors shall approve. (Code 1887, § 4129.)

Sec. 5014. Superintendent may employ convicts in working on public buildings, etc., at Richmond, etc.—The superintendent shall, at the discretion and under the direction of the Governor, employ them at Richmond or elsewhere in the State, in improving, repairing, or working on the public buildings, grounds and property, or cultivating grounds for the use of the penitentiary. (Code 1887, § 4130; 1916, p. 700.)

Sec. 5015. May employ them at Hollywood and Oakwood cemeteries.—He shall have authority to furnish to the Hollywood and Oakwood memorial associations, from time to time, as may be necessary, a sufficient force of convict labor to keep in order the graves and sections wherein are buried the Confederate soldiers of the army of Northern Virginia in said cemeteries. (Code 1887, § 4131.)

Sec. 5016. Directors of penitentiary to make rules and regulations for the safekeeping and conduct of prisoners.—The board of directors of the penitentiary shall make and enforce such rules and regulations as may be necessary and proper for the safekeeping of the convicts, their food, sleeping apartment, and for the regulation of their general conduct and behavior, and prescribe such punishments for violation of said rules as may seem reasonable and proper, but the punishment when inflicted shall not be cruel or inhuman. (Code 1887, § 4142, 4143; 1902-3-4, p. 294.)

Revisors' Note.—This section is based on section 4142 and 4143 of the Code of 1887. The latter section was amended by Acts 1902-3-4, p. 294. The revised section contains the principle enacted by section 5010 above, the revisors being of opinion that larger discretion should be given the board in such matters. It is provided, however, that the punishment when inflicted shall not be cruel or inhuman.

See Acts 1918, p. 474.

Sec. 5017. Record to be kept of conduct of convicts; to have credit for good conduct; record of punishment, etc., of convicts; inspection of same.—The superintendent shall keep a record of the conduct of each convict. and for every month that a convict ap-

Digitized by Google

pears by such record to have faithfully observed the rules and requirements of the prison and not to have been subjected to punishment there shall, with the consent of the Governor, be deducted from the term of service of such convict ten days; but, for any violation of prison rules punishable by stripes, or for escape or attempted escape from custody, the convict found guilty of such violation, or of such escape or attempted escape, shall forfeit all good conduct allowance earned by him up to that time. Every time any convict is punished, the name of the offender, the offense, a full and detailed description of the punishment, the time when the offense was committed, and when punishment inflicted, shall be recorded in a register provided for the purpose. Said register shall be monthly inspected by the board of directors of the penitentiary and examined and reported upon biennially by a joint committee of the General Assembly. (Code 1887, § 4144; 1916, p. 551.)

Revisors' Note.—See Acts 1918, p. 474.

Sec. 5018. Record, etc., to be submitted to Governor.—The superintendent shall submit said record and deduction to the Governor, when required by him, that the same may be considered in the exercise of such executive clemency on behalf of any convict as he may deem conducive to the interest of the prison, and promotive of the reformation and welfare of the convicts. (Code 1887, § 4145.)

Sec. 5019. When term of confinement to commence.—The term of confinement in jail or in the penitentiary for the commission of a crime shall commence and be computed from the date of the judgment, unless such judgment is suspended at the instance of the defendant. (1916, pp. 499, 721.)

Revisors' Note.—The first act cited at the end of this section provided that persons sentenced to confinement in jail or in the penitentiary should have deducted from their terms all time actually spent by them in jail awaiting trial, or pending removal to the penitentiary after trial and sentence, or pending appeal, etc. The second act cited provided for deduction from the term of confinement of persons sentenced to the penitentiary of the number of days such persons may have been held in jail because of quarantinne regulations, etc. The revised section materially changes the first act cited, in that it does not allow credit for time spent in jail awaiting trial, nor for time spent in confinement pending an appeal. The jury, or court trying the case, usually takes into consideration, where it is proper to do so, the length of time the accused has been in jail and there should be no further credit therefor given. The prisoner should not have credit for time spent in jail at his instance. By applying for a writ of error he takes his chances of an affirmance of the judgment, and to allow credit for the time pending an appeal would offer a premium to apply for appeals and in some cases might result in keeping him in jail in idleness during the whole, or a very large part, of the time for which he is sentenced.

Sec. 5020. What to be posted in each cell.—The superintendent shall cause a copy of sections five thousand and sixteen, five thou-

Digitized by Google

sand and seventeen and five thousand and eighteen to be posted in the cell of each convict. (Code 1887, § 4146.)

Sec. 5021. Allowance to convict on his discharge.—The board, in its discretion, may allow a convict, on his discharge, not exceeding ten dollars. The superintendent shall furnish to convicts, when discharged, proper certificates of transportation to the county or city from which such convict was sent, over any road or transportation line embraced in the schedule furnished by the State Corporation Commission; and, if he need it, a suit of coarse clothing. (Code 1887, § 4147; 1902-3-4, p. 620.)

Sec. 5022. Duty of surgeon to notify superintendent, when absent from Richmond.—The surgeon to the penitentiary shall visit the penitentiary once at least every day, and oftener when there are cases of sickness requiring it, or when he is called on to attend by the superintendent. Before leaving the city of Richmond at any time, he shall notify the superintendent of his intention and the time he expects to be absent, and what physician may be called on to officiate for him in his absence. The surgeon shall render to the convicts all surgical and medical aid which may be requisite. (Code 1887, §§ 4148, 4149.)

Sec. 5023. Hospital room; hospital record.—A room suitable for the purpose shall be set apart, in which sick convicts shall be kept, when the surgeon so prescribes. There shall be a book in which shall be entered the name of each convict put in the hospital, and the time that he goes in and comes out of it. (Code 1887, § 4150.)

Sec. 5024. Weekly examination of hospital; annual report of directors.—One of the directors, in such order as the board may direct, shall once a week visit the hospital with the superintendent, and the two shall make a report of the treatment and condition of the sick. The annual report of the board shall show the condition of the health of the convicts. It shall state the number in the hospital every month from each ward, the disease of each person put in the hospital, and the number of deaths in each ward. (Code 1887, § 4151.)

Sec. 5025. Who may enter interior of penitentiary; visitors not to converse with convicts.—The Governor, members of the General Assembly, ministers of any religious denomination for performing religious service, and the officers and others having duties or business therein may go into the interior of the penitentiary. Any person who shall obtain a permit to do so from the Governor may also visit the same. The board of directors shall prescribe the time and conditions on which all other persons may enter the interior of the penitentiary. There shall be no conversation between a visitor and a convict unless special license therefor be given by the Governor or superintendent. (Code 1887, § 4152; 1891-2, p. 509.)

Digitized by Google

Sec. 5026. How board of directors may apply means of penitentiary.—The board of directors may apply the means of the institution to repair and enlarge the shops, and increase the number of cells when required. They shall cause to be done in the penitentiary any work which can be done therein, towards effecting the improvements or repairs mentioned in section five thousand and fourteen. (Code 1887, § 4153.)

Sec. 5027. Meeting of board; quorum; their duties and powers; when board may remove superintendents, etc., and appoint successors.—A majority of the directors shall constitute a quorum. They shall meet regularly once a week at the penitentiary and quarterly at the prison farm, and at the first meeting in each month at the penitentiary the respective superintendents shall submit their reports, and they may meet at such other times as the respective superintendents may request or any three of the directors may think necessary. It shall be their duty once in three months to inspect the penitentiary and prison farm and make a report of their condition to the Governor, which report shall embrace a synopsis of the monthly reports of the superintendents for the three months preceding said inspection. It shall also embrace a statement of the institutions as to health and general management, and such other matters as may seem to them of sufficient interest to be contained therein; and especially shall they report at any time any malfeasance in office, or manifest incompetency in the discharge of their duties, on the part of the superintendent or any other officer.

The board shall investigate any misbehavior, incapacity, neglect of official duty, or acts performed without authority of law, on the part of the superintendents or surgeons, and if in their judgment there be sufficient cause therefor, they shall forthwith remove the said officer, and at once appoint a successor to fill the unexpired term.

Said board shall have a general supervision over the penitentiary, prison farm, and the officers thereof, and see that the laws for their government are observed.

The respective superintendents, for good cause, shall remove all other officers and employees of the penitentiary and prison farm, and fill their unexpired terms, subject to the approval of the board of directors. (Code 1887, § 4154; 1902-3-4, p. 294.)

Sec. 5028. Power of board in investigating; duty of clerk; how witness paid.—When an investigation is ordered by the board as to a matter concerning the penitentiary, or the conduct of persons connected therewith, the clerk of the penitentiary, by order of the board, may issue a summons, directed to the sheriff of the county of Henrico, or to the sheriff or sergeant of the city of Richmond, commanding him to summon any person to attend at the

Digitized by Google

penitentiary on a certain day, to give evidence before the board, and may administer an oath to such person. The board shall have like powers, under sections sixty-two hundred and twenty and sixty-two hundred and twenty-one, as if it was a court whose clerk had issued the summons. And the clerk of the penitentiary shall make such entry as would, under section thirty-five hundred and twenty-nine, if the attendance was before a court, be made by the clerk thereof. The sum to which the witness is entitled shall be paid out of the funds of the institution. (Code 1887, § 4155; 1902-3-4, p. 294.)

Sec. 5029. Annual inventory.—Three or more of the directors shall, at the end of each fiscal year, attend the taking of the inventories of the goods and stock on hand at the penitentiary and prison farm. (Code 1887, § 4156; 1902-3-4, p. 294.)

Sec. 5030. Annual report of board to be laid before General Assembly.—The board shall annually, before the first of October, make a report to the Governor, to be laid before the General Assembly, showing the expense to the State of the penitentiary and prison farm for the previous fiscal year, and their condition at the end of such year, the manner in which the rules have been executed, and their effect, and making any proper suggestions as to the discipline and organization of the penitentiary and prison farm. (Code 1887, § 4157; 1902-3-4, p. 294.)

Sec. 5031. Clerk of penitentiary; his duties.—The clerk of the penitentiary shall keep the journal of the board of directors, record their proceedings as they may direct, and copy such papers as they or the superintendent may order. He shall attend at the penitentiary daily, and compare the ward and delivery books, and see that the entries therein are correctly made. He shall keep regular books of account, exhibiting the proper receipts and disbursements of the institution, make the tables and documents accompanying the reports of the superintendent, and perform all duties required by the rules of the institution, or the orders of the board or superintendent. (Code 1887, § 4158.)

Sec. 5032. Directors of the penitentiary to employ assistant clerks when needed, or to apportion the clerical work of the penitentiary among those now employed; compensation.—The superintendent is hereby authorized, with the approval of the board of directors of the penitentiary, to employ such assistant clerks as the needs of the service may require, or he may apportion the clerical work of the penitentiary among those now employed, regulating their compensation therefor, but the same shall in no case exceed the amount appropriated for that purpose. (1899-00, p. 1238; 1902-3-4, p. 248.)

Revisors' Note.—In addition to slight changes in phraseology, the second proviso of the act last cited at the end of this section has been

Digitized by Google

omitted. This subject is governed by the provisions of the general appropriation bill.

Sec. 5033. Where superintendent may reside, his fuel, etc.; his duties.—The superintendent may reside in one of the dwelling houses on the penitentiary grounds fronting on Belvidere street, and shall be allowed his fuel, water, and gas. He shall be the chief executive officer of the penitentiary, and shall direct its internal police and management, subject to the control of the board of directors. The assistant superintendent may reside in the other of the two houses on said ground, and shall be allowed his fuel, water, and gas. (Code 1887, § 4159; 1891-2, p. 509; 1902-3-4, p. 299.)

Sec. 5034. How clerk, assistant clerk, assistant superintendent, and keepers appointed; their oath; matron.—The superintendent shall appoint and may remove, subject to the approval of the board of directors, a clerk of the penitentiary and an assistant clerk, one assistant superintendent, who shall act in the place of the superintendent in his absence, also four keepers and a matron, all of whom shall take the oath of office prescribed by law for public officers. (Code 1887, § 4160; 1891-2, p. 510; 1893-4, p. 928; 1902-3-4, p. 299.)

Sec. 5035. The superintendent may purchase material and supplies for the penitentiary and prison farm; monthly report of the superintendent.—The respective superintendents shall, with the approval of the board, and under such regulations as it may prescribe, purchase such material and provisions as may be necessary for the penitentiary and prison farm, of which they shall keep an account showing separately the kind and quantity of material and provisions purchased, and the price thereof. The respective superintendents shall make a report to the board of directors at its first meeting in each month of his receipts for the hire of convicts, and from any other source, and also of his disbursements during the past month, vouchers for which shall be examined by the board and preserved by the clerk. (Code 1887, §§ 4162, 4163; 1891-92, p. 510; 1902-3-4, pp. 299, 685.)

Sec. 5036. Superintendent to give information relating to bids and bidders for supplies.—The Superintendent of the Penitentiary shall, upon the request of any citizen, give any information as to the name of bidder or bidders, amount of bid or bids, and quantity contracted for, of such supplies as are furnished under advertisements for bids at said penitentiary within thirty days after such contract has been consummated. (1901, p. 311.)

Sec. 5037. Moneys received to be paid into treasury; how paid out.—He shall, at the end of each month, or oftener if the board direct, pay all money received by him into the treasury to the credit of the penitentiary fund, and the same shall be paid out on

Digitized by Google

the order of the superintendent, approved by the board. (Code 1887, § 4164.)

Revisors' Note.—This section was section 4164 of the Code of 1887, but it appears in Acts 1891-2, p. 510, as section 4163. It was repealed by Acts 1902-3-4, p. 685. It is not believed that this repeal was intentional. As found in this Code it is identical with section 4163 of Acts 1891-2, p. 510. The only change made by the act last cited was to insert the words, "or oftener if the board direct."

Sec. 5038. Annual general account of superintendent; how made up; what to show.—The Superintendent of the Penitentiary shall, at the end of each fiscal year, state a general account between the State and the penitentiary for such year, charging the latter with the value of the tools, machinery, fixtures, and materials on hand at the commencement of the year; the rations furnished for the convicts; the salaries of all the officers, and all the contingent expenses of the penitentiary; and crediting it with the work and repairs done by the convicts on the prison and other public property; other work of the convicts; the clothing furnished the convicts; and the value of the tools, machinery, fixtures, and materials on hand at the end of the year; with all other debits and credits necessary to show a true account of the institution with the State. (Code 1887, § 4165.)

Sec. 5039. To be examined etc., by directors.—The said account shall be laid before the board of directors, and, when approved by them and balanced, be made a part of their annual report. (Code 1887, § 4166.)

Sec. 5040. Employment of guard; their number and duties; how dismissed; right of guard and officers to carry weapons; absentees, etc.—The Superintendent of the Penitentiary may employ a guard not exceeding forty-nine persons as the exterior and interior guard of the penitentiary, who shall each take an oath faithfully to discharge the duties of his office, and shall perform such duties as the superintendent, subject to the control of the board, may direct. Any person so employed may be dismissed from service by the superintendent, with the approval of the board. It shall be lawful for any officer or guard to carry sufficient weapons to prevent escapes, suppress rebellion, and for self-defense, and to use the same against any convict for such purpose. The superintendent may adopt regulations, approved by the board, under which leave of absence may be granted to an officer, keeper, or member of the guard. If any absentee furnishes satisfactory evidence to the superintendent that his absence was unavoidable from sickness, his full pay may continue during such absence, not exceeding twenty days in any one year, and beyond that time at the rate of fifteen dollars per month, not exceeding three months. (Code 1887, § 4167; 1891-2, p. 510; 1893-4, p. 929; 1902-3-4, p. 299.)

Sec. 5041. Compensation of guard; how paid.—The compensation

Digitized by Google

of the said guard and the officers and employees of the penitentiary shall be such as may be provided by law and such compensation shall be paid monthly, upon the certificate of the superintendent, on the warrant of the Auditor of Public Accounts.

The said guards shall have during the year as much as ten days' vacation, without deduction of pay, which vacations shall be on consecutive days, or at stated periods, in the discretion of the Superintendent of the Penitentiary, and the substitute guards shall receive the same pay when employed as the regularly-employed guards. And each guard employed at the prison farm shall have during the year fifteen days' vacation, without deduction of pay, to be on consecutive days, or at stated periods, in the discretion of the superintendent of the prison farm. (Code 1887, § 4168; 1899-00, p. 930; 1901-2, p. 362; 1902-3-4, p. 294.)

Sec. 5042. Convicts employed outside of penitentiary to be guarded.—While the convicts are employed in any work on the public grounds, or property outside of the penitentiary, they shall be attended by a sufficient guard, detailed therefor by the superintendent, and be subject to his orders. (Code 1887, § 4169.)

Sec. 5043. Reward for convict escaping; how paid.—If any convict escape from the penitentiary, or from the custody of the superintendent, he may offer a reward for the apprehension and redelivery of such convict, not exceeding five hundred dollars; one-half thereof to be paid by the institution, and the other by the superintendent, his assistants, and the interior guard, in proportion to the amount of their salaries. (Code 1887, § 4170.)

Sec. 5044. Who not entitled to it.—None of said officers shall be entitled to any such reward or any part of it, unless expressly authorized by the superintendent. (Code 1887, § 4171.)

Sec. 5045. Tasking convicts; how compensation for work done beyond task fixed and paid.—The superintendent, with the consent and advice of the board, may establish a system of tasking the convicts in the different wards of the penitentiary, when it can be done, and allow to any convict a reasonable compensation for work done beyond his task, which shall be placed to his credit, and paid to him when he is discharged from prison; or, if he request that a portion, or all of it, be paid to his family or near relatives, the superintendent may do so at any time during his imprisonment; or, if he so desire, it may be paid to him, from time to time, in provisions or other articles selected from a standing list, to be prepared by the superintendent, and approved by the board, said articles to be purchased by the superintendent, as provided in section five thousand and thirty-five and charged to the convicts at cost. The amount to be allowed for work done shall be fixed by the superintendent, with the approval of the board. (Code 1887, § 4173; 1891-2, p. 511; 1902-3-4, p. 294.)

Revisors' Note.—See Acts 1918, p. 474.

Digitized by Google

Sec. 5046. Convict in the penitentiary whose term expires on Sunday or legal holiday discharged on the preceding day.—Whenever the term of any convict in the penitentiary of Virginia shall expire on Sunday or any legal holiday, the Superintendent of the Penitentiary shall have authority to discharge this convict on the day immediately preceding said Sunday or legal holiday. (1899-00, p. 293; 1901-2, p. 567.)

Sec. 5047. Penitentiary farm.—There shall be a surgeon for the penitentiary farm appointed by the board, whose compensation shall be at the rate of fifty dollars per month and board for himself and horse. A superintendent appointed by the board, whose compensation shall be one thousand dollars per annum and board for himself and family, and who shall have charge of the cultivation of the farm, and shall perform such other duties as may be assigned him, all under the direction of the board. The said superintendent, subject to the approval of the board, shall appoint and may remove such guards as may be necessary, whose compensation shall be thirty dollars per month and their board. The pay of the said superintendent, surgeon and guards shall be monthly upon the certificate of the superintendent, on warrant of the Auditor of Public Accounts. All laws for the government of the penitentiary shall be in force on said farm, so far as applicable, and the same discipline enforced there as in the penitentiary. The said superintendent shall, at the end of each fiscal year, take an inventory and make out a general account between the State and farm for such year, charging the latter with the value of the stock, tools, implements, materials and supplies, including provisions and clothing on hand at the commencement of the year, and the cost of the same bought during the year, the salaries of officers and guards and all other expenses of the farm; and crediting it with work done by the convicts on the buildings and permanent fixtures on the farm, the value of the stock, tools, implements, etc., on hand at the end of the year, the value of all products furnished the penitentiary, all moneys received for the sale of such products and all other debits and credits necessary to show a true account of the farm with the State. All costs of lease, erection of buildings and other expenses of said farm, not otherwise provided for, shall be paid out of the net earnings of the penitentiary, by warrants drawn on the treasurer, upon the order of the Superintendent of the Penitentiary, approved by the board. (1893-4, p. 556; 1902-3-4, p. 247; 1908, p. 659.)

Sec. 5048. Raising and training of bloodhounds for police purposes.—It shall be the duty of the Superintendent of the Penitentiary to procure, upon the most advantageous terms possible, one male and two female bloodhounds of suitable breed, which he shall keep on the penitentiary farm for breeding purposes. He shall have them and their progeny properly cared for and trained to track

Digitized by Google

criminals. He shall, upon the order of the circuit court or board of supervisors of any county, or upon the like order of the corporation court, or the council of any city, furnish to the sheriff of such county, or to the sergeant of such city, free of charge, such bloodhounds as may be necessary and can be safely spared from said farm. The expense of transporting such bloodhounds shall be borne by the county or city ordering them. Whenever the supply of such bloodhounds shall exceed the demand for the same under the foregoing provisions of this section, the superintendent is authorized to sell the surplus ones to other parties, and he shall account for the revenue derived therefrom as part of the annual revenues of the penitentiary fund. (1902-3-4, p. 235; 1910, p. 331.)

Revisors' Note.—This section is taken from the two acts cited. The revised section is intended to make clear who has the right to demand the hounds, and to show that they are intended for permanent use.

For note of case upon admissibility of evidence of the fact that bloodhounds went from the scene of the crime to the defendant's home, see 11 Va. Law Reg. 430.

It has been decided in a number of cases that bloodhound evidence is admissible under proper conditions. See Richardson v. State, 145 Ala. 46, 41 So. 82; Pedigo v. Com., 103 Ky. 41, 19 Ky. L. Rep. 1723, 44 S. W. 143, 82 Am. St. Rep. 566, 42 L. R. A. 432; Denham v. Com., 119 Ky. 508, 27 Ky. L. Rep. 171, 84 S. W. 538; Baum v. State, 27 Ohio Cir. Ct. Rep. 569; Parker v. State, 46 Tex. Crim. 461; 3 Ann. Cas. 893, 80 S. W. 1008, 108 Am. St. Rep. 1021.

But in order that such testimony be admissible there must be preliminary proof of such character as to show that reliance may reasonably be placed upon the accuracy of the trailing attempted to be proved. Davis v. State, 46 Fla. 137, 35 So. 76.

But see Brott v. State, 70 Neb. 395, 97 N. W. 593, 63 L. R. A. 789, and article entitled, "Bloodhound Evidence." Law notes, April 1914, p. 3.

For rules as to the admissibility of bloodhound evidence, see Spears v. State, 92 Miss. 613; State v. Adams, 85 Kan. 435, 116 Pac. 608, 35 L. R. A. (N. S.) 870; State v. Freeman, 146 N. C. 615, 60 S. E. 986.

CHAPTER 201.

Crimes by Convicts.

Sec.		Sec.	
5049.	What acts committed by a convict confined in the penitentiary or being in custody of an officer thereof, amount to felony.	5050.	What conspiracy by convicts a felony.
		5051.	Punishment for said offenses.
		5052.	If convict commit any other felony, how punished.

Sec. 5049. What acts committed by a convict confined in the penitentiary or being in custody of an officer thereof, amount to felony.—A convict confined in the penitentiary, or in custody of an officer thereof, shall be deemed guilty of felony if he kill, wound, or inflict other bodily injury upon an officer or guard of the pen-

Digitized by Google

itentiary; or escape from the penitentiary or such custody; or break, cut, or injure any building, fixture, or fastening of the penitentiary, or any part thereof, for the purpose of escaping or aiding any other convict to escape therefrom, or rendering the penitentiary less secure as a place of confinement; or make, procure, secrete, or have in his possession, any instrument, tool, or thing for the said purpose, or with intent to kill, wound, or inflict bodily injury as aforesaid; or resist the lawful authority of an officer or guard of the penitentiary for the said purpose, or with such intent. (Code 1887, § 4174.)

A convict is, until the time of his imprisonment has expired or he has been pardoned, in contemplation of law, in the penitentiary, though he may have been hired out to work on a railroad or the like in a distant county, and the laws relating to convicts in the pentitentiary apply to him. Ruffin's Case, 21 Grat. 790. See section 5053.

The principles of the Bill of Rights have reference to freemen, and not to convicted felons. Ruffin's Case, 21 Grat. 790.

A convicted felon has only such rights as statutes may give him. Id.

See Ryan's Case, 2 Va. Cas. 467.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 164, section 1.

Sec. 5050. What conspiracy by convicts, a felony.—Any three or more convicts so confined, or in such custody, who conspire together to commit any offense mentioned in the preceding section, shall be deemed guilty each of felony. (Code 1887, § 4175.)

Sec. 5051. Punishment for said offenses.—A convict guilty of such killing as is mentioned in section five thousand and forty-nine, or of any act therein mentioned, from which death ensues to such officer or guard, shall be punished with death. For any other offense mentioned in either of the two preceding sections, a convict, unless he be under a sentence of confinement for life, shall be confined in the penitentiary not less than one nor more than five years after the end of the term for which he shall then be subject to confinement. If he be under sentence for life, he shall be kept in solitary confinement not exceeding ten days each month for such length of time as the board of directors of the penitentiary shall determine. (Code 1887, § 4176.)

Revisors' Note.—The last sentence changes the latter part of the section as it stood before the revision. That part read as follows: "and, whether he be under such sentence for life or not, he shall be kept in solitary confinement for such portion of the term of his confinement in the penitentiary as may be fixed by the jury, not being more than one-half nor less than one-twelfth part of the time that he may be confined therein, after being sentenced under this chapter, which solitary confinement may commence immediately on his being so sentenced, but shall not exceed a month at any one time." This change was made necessary because if the prisoner is serving a life sentence, the proportion of his confinement as required by the words quoted could not be arrived at.

The provisions of this statute apply to convicts, wherever the crime may be committed. Ruffin's Case, 21 Grat. 790.

Digitized by Google

Sec. 5052. If convict commit any other felony, how punished.—If a convict in the penitentiary commit any felony, (other than is provided for in the three preceding sections), which is punishable by confinement therein or with death, he shall suffer the same punishment as if he had been discharged before committing it. (Code 1887, § 4178.)

CHAPTER 202.

Proceedings in Criminal Cases Against Convicts.

Sec.
5053. Jurisdiction for trial of convicts.
5054. When a convict who has been before sentenced to the penitentiary, has not been sentenced to additional term of confinement, what superintendent to do.
5055. Proceedings for trial of offenses committed in penitentiary may be at regular or special term.
5056. Issue of process; how grand jury selected and summoned.
5057. Duty of judge, when indictment found.
5058. Proceedings same as in trial of other felonies.

Sec. 5053. Jurisdiction for trial of convicts.—All criminal proceedings against convicts in the penitentiary shall be in the Circuit Court of the city of Richmond; but when convicts are employed upon any work of public or private improvement in any county in the State the criminal proceedings against them may be in the circuit court of the county in which the convict is so employed or in the Circuit Court of the city of Richmond. (Code 1887, § 4179; 1887-8, p. 521; 1893-4, p. 734; 1902-3-4, p. 686.)

This section held constitutional and valid in King v. Lynn. 90 Va. 345, 18 S. E. 439.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 165, section 1.

Sec. 5054. When a convict who has been before sentenced to the penitentiary has not been sentenced to additional term of confinement; what superintendent to do.—When a person convicted of an offense, and sentenced to confinement therefor in the penitentiary, is received therein, if it shall come to the knowledge of the Superintendent of the Penitentiary that he has been sentenced to a like punishment in the United States prior to the sentence he is then serving, the superintendent shall give information thereof without delay to the Circuit Court of the city of Richmond. The said court shall cause the convict to be brought before it, to be tried upon an information filed, setting forth the several records of convictions and alleging the identity of the prisoner with the person named in each. The prisoner may deny the existence of

Digitized by Google

any such records, or that he is the same person named therein, or both. Either party may, for good cause shown, have a continuance of the case for such reasonable time as may be fixed by the court. The existence of such records, if denied by the prisoner, shall be first determined by the court, and if it be found by the court that such records exist, and the prisoner say that he is not the same person mentioned in such records, or remains silent, his plea, or the fact of his silence, shall be entered of record, and a jury of bystanders shall be impaneled to inquire whether the convict is the same person mentioned in the several records. If they find that he is not the same person, he shall be remanded to the penitentiary; but if they find that he is the same person, or if he acknowledge in open court, after being duly cautioned, that he is the same person, the court may sentence him to further confinement in the penitentiary for a period of not exceeding five years, if he has been once before sentenced in the United States to confinement in the penitentiary; but if he has been twice sentenced in the United States to such confinement, he may be sentenced to be confined in the penitentiary for such additional time as the court trying the case may deem proper. This section, however, shall not apply to successive convictions of petit larceny. (Code 1887, § 3905, 3906, 4177, 4180, 4181, 4182, 4183; 1916, pp. 34, 35.)

Revisors' Note.—This section takes the place of section 3905 and 3906 of the Code of 1887, as amended by Acts 1916, pp. 34, 35, and sections 4177, 4180, 4181, 4182 and 4183 of the former Code. The revised section makes one material change in the law. Under it the subject of prior conviction cannot be made a matter of inquiry on the trial of the principal offense. ALL proceedings are to be had in the Circuit Court of the city of Richmond. It seemed to the revisors unfair to the prisoner, when on trial for a felony, to prejudice his case by alleging and proving on that trial a former conviction at another time and place. The revised section gives the convict an opportunity to deny the existence of the records upon which he is charged. As to successive convictions of petit larceny, see section 4785.

In proceedings under this section the continuance of the case at several successive terms, in the absence and without the consent of the convict, furnishes no ground of objection to the judgment. Brooks' Case, 2 Rob. 845.

The cumulative punishment provided by sections 3905 and 3906 of the Code of 1887 for habitual offenders was held to apply solely to cases where the accused was indicted and prosecuted for offenses punishable by confinement in the penitentiary and not to indictments and prosecutions for capital felonies. Wright's Case, 109 Va. 847, 65 S. E. 19; criticized 15 Va. Law Reg. 328.

As to identity of persons in criminal cases, see note Va. Rep. Anno., 2 Rob. 842 (bottom paging); also Nicholas' Case, 91 Va. 751, 21 S. E. 364; McBride's Case, 95 Va. 818, 30 S. E. 454; Smith's Case, 21 Grat. 809; Hopper's Case, 6 Grat. 684; Waller's Case, 84 Va. 492, 5 S. E. 364.

For cases under the former law, see Rand's Case, 9 Grat. 738; Edwards' Case, 78 Va. 39, 49 Am. Rep. 377; White's Case, 79 Va. 611; Wright's Case, supra.

This section does not apply to successive convictions of petit larceny. See last sentence thereof. See section 4785; Stover's Case, 92 Va. 780, 22 S. E. 874, 1 Va. L. Reg. 601, 607, and note.

Digitized by Google

For article upon cumulative sentences, see 13 Va. Law Reg. 827. See, also, 15 Va. L. Reg. 466, 469.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 165, sections 2 and 3.

Sec. 5055. Proceedings for trial of offenses committed in penitentiary may be at regular or special term.—Upon a complaint in writing, and under oath, presented to the said circuit court, or the judge thereof in vacation, that any convict in the penitentiary has committed an offense punishable under chapter two hundred and one, proceedings may be had for the said offense, either at a regular term of the court, or at a special term, to be appointed by its order, or by a warrant of the judge, directed to the clerk of the court, who shall give notice of such special term to the attorney for the Commonwealth and other officers of the court. (Code 1887, § 4184.)

Sec. 5056. Issue of process; how grand jury selected and summoned.—The clerk shall issue all necessary process; and a special grand jury shall be summoned by the officer of the court, from a list of names furnished by the judge thereof, to attend at the time appointed in such warrant, or at such other time as the court may direct. (Code 1887, § 4185.)

In trial of a convict, hired by railroad from the Governor under act of Assembly, April 23, 1870, for a crime committed in Bath county, where he was working for said railroad, the circuit court of Richmond refused to remand him to Bath county for trial, or to send to said county for jury to try him. Not error. Ruffin's Case, 21 Grat. 790, 798. See notes to sections 5049, 5051.

Sec. 5057. Duty of judge, when indictment found.—The judge of said court, when an indictment is found aganist the convict, shall issue a warrant to the superintendent, to bring him before the court, as well as any other persons confined in the penitentiary, who are required as witnesses on either side, and cause a venire facias to issue for his trial. (Code 1887, § 4186.)

Sec. 5058. Proceedings same as in trial of other felonies.—The proceedings, trial, and judgment shall be had, pronounced, and executed as in other cases of prosecutions for offenses punishable with death, or confinement in the penitentiary. (Code 1887, § 4187.)

Revisors' Note.—Formerly, this section began as follows: "In any such prosecution, any convict in the penitentiary shall be a competent witness for or against the accused." As conviction of crime no longer affects the competency of witnesses, this sentence has been omitted. See section 4779. The exception at the end of the section as it appears in the Code of 1887 has been omitted in view of sections 4941 to 4946 of this Code.

Digitized by Google

TITLE 44.

Fugitives from Justice, and the Governor's Authority in Criminal Cases.

CHAPTER 203.

Extradition of Fugitives from Justice from Foreign Nations and Other States; and the Governor's Authority to Offer Rewards for Arrests, Grant Pardons, Commute Capital Punishment, and Remit Fines.

Sec.
5059. Governor to surrender fugitive from foreign nation on requisition of President of United States.
5060. Discretion in Governor to deliver fugitive without such requisition; when delivery made; what evidence required; how expense defrayed.
5061. Surrender of fugitives from other States.
5062. When a justice may issue warrant of arrest; where officer may execute it; before whom accused to be brought.
5063. Proceeding before the justice after arrest.
5064. The justice to inform Governor; his duty.
5065. If accused appear before the court as ordered, he shall be discharged, unless, etc.; when and by whom he may be retaken into custody.
5066. Complainant liable for costs, etc.; jailor, if not paid, may discharge accused.
5067. When fugitive to be detained here.
5068. Rewards for arrest of persons convicted of or charged with offenses.
5069. Power of Governor to pardon; commutation of capital punishment.
5070. To whom return on warrant of Governor to be made.

Sec. 5059. Governor to surrender fugitive from foreign nation on requisition of President of United States.—The Governor shall whenever required by the executive authority of the United States, pursuant to the Constitution and laws thereof, deliver over to justice any person found within the State, who is charged with having committed any crime without the jurisdiction of the United States. (Code 1887, § 4188.)

Sec. 5060. Discretion in Governor to deliver fugitive without such requisition; when delivery made; what evidence required; how expense defrayed.—The Governor, though not so required, may, in his discretion, deliver over to justice any person found within the State, who is charged with having committed, without the juris-

Digitized by Google

diction of the United States, any crime, except treason, which by the laws of this State, if committed therein, is punishable with death or confinement in the penitentiary; such delivery shall only be made on the requisition of the duly authorized officers or agents of the government, within the jurisdiction of which the crime is charged to have been committed; and the Governor shall require such evidence of the guilt of the person so charged, as would be necessary to justify his apprehension and commitment for trial had the crime charged been committed within this State. The expense of apprehension and delivery shall be defrayed by those to whom the delivery is made. (Code 1887, § 4189.)

Sec. 5061. Surrender of fugitives from other States.—Any person charged in another State of this Union with treason, felony, or other crime, who shall flee from justice and be found within this State, shall on demand of the executive authority of the State from which he fled, made in the manner prescribed by the Constitution and laws of the United States, be delivered up, according to the said Constitution and laws, to be removed to the State having jurisdiction of the crime. (Code 1887, § 4190.)

As to the defense in extradition proceedings that the person charged with the crime was insane and therefore incapable of committing the crime, see Editorial 1 Va. L. R. N. S. 229.

Sec. 5062. When a justice may issue warrant of arrest; where officer may execute it; before whom accused to be brought.—Whenever any person is found within this State, charged with treason, felony, or misdemeanor, committed in any other State, any justice may, upon complaint on oath, or other satisfactory evidence, that such person committed the offense, issue a warrant to bring the person so charged before the same or some other justice within the State: and the officer, to whom such warrant is directed, may execute the same in any county or corporation in the State, and bring the party, when arrested, before any justice of the same or any other county or corporation. (Code 1887, § 4191.)

Revisors' Note.—The words, "or misdemeanor" found in line three of the text, are used in lieu of "or other crime." This eliminates any question as to the character of the "other crime."

Sec. 5063. Proceeding before the justice after arrest.—When any person shall have been arrested and brought before a justice, under the provisions of the preceding section, and it shall appear to the justice before whom the person charged is brought that there is reasonable cause to believe that the complaint is true, he shall, if he would have been bailable by a justice, in case the offense had been committed in this State, be required to enter into a recognizance, with sufficient surety, in a reasonable sum, to appear before the circuit court of the county, or the corporation court of the city, of the justice before whom he is brought, on the first day of the next term thereof, or at a future day of said term, or at a

Digitized by Google

future day before the judge of said circuit or corporation court in vacation, allowing a reasonable time to obtain the warrant of the executive and to abide the order of the court, and if such person do not enter into such recognizance, he shall be committed to jail, and be there detained until the day named by the said justice in his warrant of commitment, when he shall be brought before the court or judge, which date shall be put in the mittimus when said party is committed to jail. The recognizance, if any, together with the warrant and proceedings thereon, shall be returned to the clerk of said court without delay, and if the prisoner has been *held* to appear before the judge of the court in vacation, the clerk *shall* immediately notify said judge, but if he is held to the first day of the next term of the court, or to any future day of said term, the clerk shall docket said case at the head of the criminal docket, and if the person entering into the recognizance fail to appear according to the conditions thereof, his default shall be entered of record, and like proceedings be had as in cases of other recognizance entered into before a justice; but if such person would not have been bailable by a justice in case the offense had been committed in this State, he shall be committed to jail, and there detained until the day so appointed for his appearance before the said court, or judge thereof in vacation, and like proceedings thereon shall be had as is hereinbefore provided, where he is committed for failing to give bail. (Code 1887, § 4192.)

Revisors' Note.—The revised section enters more into detail in dealing with the duties of justices than was formerly the case. This is done because before the revision many justices simply sent the alleged fugitive to jail after arrest for an unlimited period. The revised section does not limit the justice in the time for which the person shall be committed, but provides that a REASONABLE TIME shall be allowed to obtain the warrant of the executive of the foreign state. This reasonable time would vary according to the distance of the foreign state from Virginia. The section also confers powers upon the judge of the circuit or corporation court in vacation, and imposes certain duties on the clerk. The object of the revised section is to accelerate the handling of this class of cases as much as possible.

Sec. 5064. The justice to inform Governor; his duty.—The justice, by whom such person is so recognized or committed, shall immediately, by letter, apprise the Governor of the fact, who shall thereupon communicate the same to the executive of the State, where the crime is charged to have been committed. (Code 1887, § 4193.)

Sec. 5065. If accused appear before the court as ordered, he shall be discharged, unless, etc.; when and by whom he may be retaken into custody.—If the person so recognized or committed, shall appear before the court on the day ordered, he shall be discharged, unless he shall be demanded by some person authorized by the warrant of the Governor to receive him, or unless the court see cause to commit him, or to require him to enter into a new recog-

Digitized by Google

nizance for his appearance on some other day; and if, when ordered, he do not enter into such recognizance, he shall be committed and detained as before. But whether the person so charged shall be recognized, committed, or discharged, any person authorized by the warrant of the Governor may, at all times, take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape. (Code 1887, § 4194.)

Sec. 5066. Complainant liable for costs, etc.; jailor, if not paid, may discharge accused.—The complainant in such case shall be answerable for all the actual costs and charges, and for the support in jail of any person so committed, and if the charge for his support in jail shall not be paid, the jailor may discharge him. (Code 1887, § 4195.)

Sec. 5067. When fugitive to be detained here.—No person under prosecution for any offense, alleged to be committed within this State, shall be delivered up to the executive authority of another State, or of the United States, until such prosecution shall have been determined, and the person prosecuted shall have been punished, if condemned; nor shall any person, under recognizance to appear as a witness in any such prosecution, be so delivered up, until said prosecution be determined. Nor shall any person, who was in custody upon any execution, or upon process in any suit, at the time of his arrest for a crime charged to have been committed without the jurisdiction of this State, be so delivered up, without the consent of the plaintiff in such execution or suit, until the amount of such execution shall have been paid, or until such person shall be otherwise discharged from such execution or process. (Code 1887, § 4196.)

Sec. 5068. Rewards for arrest of persons convicted of or charged with offenses.—The Governor may offer a reward for apprehending and securing any person convicted of an offense or charged therewith, who shall have escaped from prison, or for apprehending and securing any person charged with an offense, who, there is reason to fear, cannot be arrested in the common course of proceeding. But no such reward shall be paid to any sheriff, sergeant, or other officer who arrests such person by virtue of any process in his hands to be executed. The Governor may also offer a reward for the detection and conviction of the person guilty of an offense, when such offense has been committed, but the person guilty thereof is unknown. (Code 1887, § 4197.)

The Legislature has not by general laws conferred the power to offer rewards for arrest of persons convicted of or charged with an offense upon municipalities (Winchester v. Redmond, 93 Va. 711, 717, 25 S. E. 1001, 58 Am. St. Rep. 822); nor upon the city of Winchester by charter (Id.).

Cited but not construed Buek v. Nance, 112 Va. 28, 70 S. E. 515.

Sec. 5069. Power of Governor to pardon; commutation of capital punishment.—The Governor shall not grant a pardon in any case

Digitized by Google

before conviction. In any case in which he shall exercise the power conferred on him by the Constitution to commute capital punishment, he may issue his order to the Superintendent of the Penitentiary, requiring him to receive and confine (and the superintendent shall receive and confine) in the penitentiary, according to such order, the person whose punishment is commuted. To carry into effect any commutation of punishment, the Governor may issue his warrant directed to any proper officer; and the same shall be obeyed and executed. (Code 1887, § 4198.)

Conditional pardon—Authority of the Governor.—The Governor of Virginia has authority under the Constitution to grant a conditional pardon to a prisoner convicted of a felony. Const., section 73.

Kind of condition.—The condition annexed to a pardon must not be impossible, immoral, or illegal; but it may, with the consent of the prisoner, be any punishment recognized by statute, or by common law as enforced in this state. Lee v. Murphy, 22 Grat. 789, 12 Am. Rep. 563.

Conditional pardon—Substituting less for greater punishment—Consent of prisoner.—Though the warrant of the Governor speaks of commuting the punishment, yet if it substitutes a less for a greater punishment, and is intended to be done and is done with the consent of the prisoner, it will be considered a pardon, and not a commutation of the punishment. Lee v. Murphy, 22 Grat. 789, 12 Am. Rep. 563.

Commutation—Conditional pardon.—In this state the executive is only authorized to commute capital punishment, whereas he may grant conditional pardons in all cases legally involving an exercise of the pardoning power. Lee v. Murphy, 22 Grat. 789, 798, 12 Am. Rep. 563.

Governor may pardon after verdict and before judgment.—Under a constitutional provision exactly the same as in Const. 1902, section 73, it was held that the Governor had authority to pardon a person convicted of a felony by the verdict of the jury, before sentence was passed upon him by the court. Blair's Case, 25 Grat. 850.

Pardon remitting imprisonment, but not fine.—Under Code of 1860, it was held that the Governor had no authority to remit a fine of prisoner convicted of a misdemeanor, who was fined and sentenced to four months' imprisonment in jail. The effect of a pardon was to remit the four months' imprisonment, but it did not affect the remaining part of the judgment, and he may be taken in execution by a capias pro fine. Wilkerson v. Allan, 23 Grat. 10, 20.

Sec. 5070. To whom return on warrant of Governor to be made.—Any officer, to whom any order or warrant of the Governor is directed, shall make return thereof to the Secretary of the Commonwealth, who shall preserve the same in his office. (Code 1887, § 4201.)

Digitized by Google

TITLE 45.

Marriage, Divorce, Dower, and the Property Rights of Married Women.

Ch. 204. Marriages, births, and deaths.
205. Divorces.
206. Dower and jointure; annuity table.
207. Property rights of married women.

CHAPTER 204.

Marriages,* Births, and Deaths.

Sec.
5071. A license required for every marriage; how marriage solemnized.
5072. By whom license to be issued.
5073. Validation of former marriages.
5074. The certificate to be issued by the clerk with license; the return to be made by persons celebrating the marriage; the clerk to furnish to the attorney for the Commonwealth list of those failing to make return; the record of certificate of marriage to be prima facie evidence.
5075. Registration of license and certificate.
5076. Clerk to file license and certificate, and index names of parties.
5077. Marriages out of State; how certified and recorded.
5078. When consent of parent or guardian necessary; how given.
5079. How a minister is authorized to celebrate the rites of marriage.
5080. Courts may appoint other persons for the purpose.
5081. Solemnization of marriage between persons of religious society having no ordained minister.
5082. When marriage not void for want of authority in person solemnizing it or for defective license.
5083. Fee for celebrating marriage.
5084. Marriage within certain degrees prohibited.
5085. The same.
5086. Prohibition continued notwithstanding dissolution of marriage.
5087. What marriages are void without decree.
5088. What marriages are void from time declared or time of conviction.
5089. Marriage of persons leaving the State to evade the law.
5090. When marriage of party under age of consent void without decree of divorce; age of consent.
5091. When colored persons not married to be deemed husband and wife; their children legitimated.
5092. Register of marriages.
5093. How bond of minister forfeited.

---

*For "An act regulating marriages and the issuance of marriage licenses; prohibiting marriages in certain cases, providing penalties for the violation of the provisions of this act." see Acts 1918, p. 473.

Digitized by Google

5094. Penalty on clerks for neglect of duty.
5095. Bureau of Vital Statistics to supply forms and instructions.
5096. Copy of register of marriages to be sent by clerks to Bureau of Vital Statistics.
5097. Bureau to make abstracts of marriages for General Assembly.
5098. Registers to be evidence.
5099. Fees of clerks.

Sec. 5071. A license required for every marriage; how marriage solemnized.—Every marriage in this State shall be under a license and solemnized in the manner herein provided. (Code 1887, § 2222.)

Revisors' Note.—This section is taken from the first few words of section 2222 of the Code of 1887, without change. For residue of that section, as enlarged, see section 5082.

Statute mandatory.—No marriage or attempted marriage, if it took place in this state, can be held valid here unless shown to have been under a license and solemnized according to our statute. The language of the statute is mandatory, and not merely directory. Offield v. Davis, 100 Va. 250, 40 S. E. 910. For criticism of this opinion, see 8 Va. Law Reg. 40; also for adverse view, see 6 Va. Law Reg. 437, 511, 598, 609; also, Conston v. Quander, 1 Va. Dec. 283. See revisors' note to section 5082.

Sec. 5072. By whom license to be issued.—Every license for a marriage shall be issued by the clerk of the circuit court of the county, or of the corporation court of the city in which the female to be married usually resides, or his deputy; and in case she is not a resident of the State, then by the clerk of the circuit court of the county or of the corporation court of the city in which the marriage is to be solemnized, or his deputy; or, if the office of the clerk be vacant, or if from any cause neither the clerk nor his deputy is able to issue the license, it may be issued by the judge of the circuit court of such county, or of the corporation court of such city, who shall make return thereof to the clerk as soon as there may be one. (Code 1887, § 2216; 1895-6, p. 104; 1902-3-4, p. 662.)

Revisors' Note.—This section is taken from the first part of section 2216 as found in Acts 1902-3-4, p. 662, with the changes hereinafter mentioned. While there is a general statute (section 2701) allowing deputy clerks to discharge any of the official duties of their principals unless it be some duty the performance of which by a deputy is expressly forbidden by law, it was deemed expedient in this instance to provide specially that the license may be issued by a deputy clerk.

Before the revision it was provided that "if the office of the clerk be vacant, or if from any cause the clerk is unable to issue the license," it may be issued "by the judge of the circuit court of such county, OR THE MAYOR OF SUCH CORPORATION," etc. The capitalized words have been omitted, and now if neither the clerk nor his deputy is able to issue the license, "it may be issued by the judge of the circuit court of such county, or of the corporation court of such city."

Sec. 5073. Validation of former marriages.—All marriages of females residing within jurisdiction of a corporation court, which

Digitized by Google

were solemnized prior to February first, nineteen hundred and four, by virtue of a license issued by the clerk of the court of the county wherein a city was or is situated, shall be as valid as if such license had been issued by the clerk of such corporation court. (Code 1887, § 2216; 1895-6, p. 104; 1902-3-4, p. 662.)

Revisors' Note.—This section is taken from the second proviso of section 2216 of the former Code as last amended by Acts 1902-3-4, p. 662. That act was approved December 12, 1903, and went into effect immediately. There was an act approved January 11, 1904, which also went into effect immediately, and which made as valid all licenses issued by a clerk of a county court on or after December 12, 1903, and prior to February 1, 1904, as if they had been issued by the clerk of the circuit court of the county under the act approved December 12, 1903. It will be observed from reading the acts that they validated different classes of licenses. The revised section uses the language of the second proviso of Acts 1902-3-4, p. 662, but inserts the date February 1, 1904. Acts 1902-3-4, p. 921, is not put in the Code, but its repeal does not invalidate those licenses. This would probably be true independently of statute, but section 8 of the Code puts it beyond doubt. County courts did not go out of existence until February 1, 1904 (See section 7 of Schedule of Constitution) hence it is proper that the date in the revised section should be February 1, 1904.

Sec. 5074. The certificate to be issued by the clerk with license; the return to be made by persons celebrating the marriage; the clerk to furnish to the attorney for the Commonwealth list of those failing to make return; the record of certificate of marriage to be prima facie evidence.—The clerk issuing any marriage license shall at the time ascertain from the party obtaining such license, as near as may be, the date and place of the proposed marriage, the full names of both parties, their ages and condition before marriage (whether single, widowed or divorced), their race, whether white or colored, the places of their birth and residence, the names of their parents and the occupation of the husband, and make a certificate thereof and deliver it, together with the license, to the person entitled thereto.

It shall be the duty of every minister or other person celebrating such marriage, within thirty days after the same has been celebrated, to return such license and certificate of the clerk, together with his own certificate of the time and place at which the said marriage was celebrated, to the clerk who issued the said license. Any minister or other person celebrating such marriage violating the provision of this section shall be liable to a fine of not less than ten dollars nor more than twenty dollars for each offense.

It shall be the duty of every clerk issuing marriage licenses on the first day of February of each year to furnish to the Commonwealth's attorney of his county or city a list of all marriage licenses issued for the year just preceding the first day of January last past that have not been returned by the minister or other person celebrating the marriage, and for failure to perform the duty

Digitized by Google

required by this section the clerk shall be liable on conviction to a fine of twenty dollars.

It shall be the duty of the Commonwealth's attorney for each county and city, upon the receipt of such list from the clerk, to have such person or persons as he may think proper summoned before the next regular grand jury of his county or city to ascertain the name of the minister or other person celebrating such marriage and failing to return such license and certificate to the clerk, together with the certificate of such minister or other person celebrating such marriage.

When the said certificate of such minister or other person celebrating such marriage is returned to the clerk, and recorded as provided in section five thousand and seventy-six, the record thereof shall be prima facie evidence in all courts of this Commonwealth of the facts stated therein. (Code 1887, § 2229; 1899-00, p. 283; 1902-3-4, p. 501; 1910, p. 36.)

Sec. 5075. Registration of license and certificate.—An abstract of every license and of the certificate required by the preceding section, setting out in convenient tabular form all the circumstances stated in said license and certificate, shall be entered on the "Marriage Register" required by section five thousand and ninety-two, at the time the license is issued, if that be practicable; if not, as soon thereafter as practicable. (Code 1887, § 2217.)

Revisors' Note.—Instead of requiring the license to be registered as formerly, the present section requires an abstract of the license and certificate to be entered in the marriage register. This was taken substantially from section 2230 of the Code of 1887, and is consequently omitted from the next succeeding section of this Code.

Sec. 5076. Clerk to file license and certificate, and index names of parties.—The clerk to whom such license and certificate are returned, shall file and preserve the same in his office, and, within twenty days after receiving the same, enter upon the marriage register the minister's certificate, and the name of the person signing the certificate, and make an index of the names of both of the parties married; which may be done by additions, in appropriate columns, to the record made at the time of issuing the license. (Code 1887, § 2230.)

Revisors' Note.—See revisors' note to section 5075.

Sec. 5077. Marriages out of State; how certified and recorded.—If at the time of celebrating any marriage out of this State, either or both of the parties thereto be a resident or residents of this State, a certificate or statement thereof, verified by the affidavit of any person present at such celebration, may be returned to the clerk of the court of the county or city in which the husband resides, if he be such resident, and if he be not such resident, to the clerk of the county or city in which the wife resides, and an abstract thereof

Digitized by Google

shall be recorded by him in the manner prescribed in the preceding section. (Code 1887, § 2231.)

Marriage is a civil contract. Its existence is provable like any other fact. Registry certificate, or persons present at its celebration need not be produced. In a criminal prosecution deliberate admissions and acts of a prisoner coupled with cohabitation is sufficient evidence to convict him. Womack v. Tankersley, 78 Va. 242.

Where the existence of the marriage is the issue, the rule of evidence is the same in civil as in criminal cases, and the decision must be upon the weight of the evidence, and where the lower court has so decided, the Supreme Court of Appeals will not reverse it. Id.

Sec. 5078. When consent of parent or guardian necessary; how given.—If any person intending to marry be under twenty-one years of age, and has not been previously married, the consent of the father or guardian, or if there be none, of the mother of such person, shall be given either personally to the clerk or judge, or in writing suscribed by a witness, who shall make oath before the clerk or judge that said writing was signed or acknowledged in his presence by such father, guardian, or mother, as the case may be, or the writing shall be acknowledged before a notary public or some person authorized to take acknowledgments to deeds under the laws of this State, which acknowledgment shall be properly certified by such officer. If there be no father, guardian, or mother, or if such person be abandoned by his or her parents, the judge of the circuit court of the county or of the corporation court of the city wherein the female resides, may, either in term or vacation, on the application of the person intending to marry, properly certified, authorize a marriage license to be issued as required. (Code 1887, § 2218; 1889-90, p. 115; 1893-4, p. 976.)

Revisors' Note.—As this section stood before the revision the words "or mayor" appeared after "judge" in lines four and six of the text. These words have been stricken out. Formerly, also, acknowledgments were allowed to be taken before postmasters in the counties. The other officers before whom acknowledgments may be taken are so numerous and so convenient, that this provision with reference to postmasters has been omitted. The revised section also conforms to the present court system.

As the law was previous to the Code of 1849, the clerk had no authority, when applied to for a marriage license, to examine a witness on oath as to the age of the parties (Williamson's Case, 4 Grat. 554), but that authority is given by the statute as it now stands (Maybush's Case, 29 Grat. 857).

Sec. 5079. How a minister is authorized to celebrate the rites of marriage.—When a minister of any religious denomination shall produce before the circuit court of any county or city or before the corporation court of any city in this State, or before the judge of either of said courts in vacation, proof of his ordination and of his being in regular communion with the religious society of which he is a reputed member, such court, or the judge thereof in vacation, may make an order authorizing such minister to celebrate the rites of matrimony in this State, upon the execution by such minister of

Digitized by Google

a bond in the penalty of five hundred dollars, with surety, conditioned according to law, before either of such courts, or before the judge of either of such courts in vacation, or before the clerk of either of such courts. (Code 1887, § 2219; 1908, p. 41; 1910, p. 573; 1916, p. 42.)

See Gregory's Forms No. 261.

Sec. 5080. Courts may appoint other persons for the purpose.—The circuit and corporation courts of this State which deem it expedient may appoint one or more persons, resident in the county or city for which such court is held, to celebrate the rites of marriage within the same, and upon any person, so appointed, giving such bond as is required of an ordained minister, may make a like order authorizing him to celebrate the rites of marriage in such county or city, as the case may be. Any order made under this or the preceding section may be rescinded at any future term. (Code 1887, § 2220; 1906, p. 445.)

Sec. 5081. Solemnization of marriage between persons of religious society having no ordained minister.—Marriages between persons belonging to any religious society which has no ordained minister, may be solemnized by the persons and in the manner prescribed by and practiced in any such society. (Code 1887, § 2221.)

Sec. 5082. When marriages not void for want of authority in person solemnizing it or for defective license.—No marriage solemnized under a license issued in this State by any person professing to be authorized to solemnize the same shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected on account of any want of authority in such person, or any defect, omission or imperfection in such license, if the marriage be in all other respects lawful, and be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage. (Code 1887, § 2222.)

Revisors' Note.—The first few words of this section as it formerly stood are made section 5071. Whatever may be the weight of authority elsewhere, it was held in Offield v. Davis, 100 Va. 250, 40 S. E. 910, that common law marriages are void in Virginia. The revisors saw no reason for changing that interpretation of the statute, but it was suggested that if the provision requiring a license is mandatory, other provisions in connection with the license may possibly also be regarded as mandatory, and that many marriages entered into bona fide and in the honest belief that everything proper had been performed, might be declared void, and innocent persons made to suffer. In order to meet this contingency, it is provided that there shall always be a license (see section 5071), but that if the marriage is celebrated under a license, no "defect, omission or imperfection in such license" shall render the marriage void, where the parties, or either of them, bona fide believed that they were entering into a valid marriage.

Sec. 5083. Fee for celebrating marriage.—Any person authorized to celebrate the rites of marriage shall be paid by the husband a fee of one dollar in each case. Any person exacting a greater fee

Digitized by Google

shall forfeit to the party aggrieved fifty dollars. (Code 1887, § 2223.)

Sec. 5084. Marriage within certain degrees prohibited.—No man shall marry his mother, grandmother, stepmother, sister, daughter, granddaughter, half-sister, aunt, son's widow, wife's daughter or her granddaughter, or step-daughter, brother's daughter, or sister's daughter. If any man has prior to June fifteenth, nineteen hundred and ten, married his brother's widow or the widow of his brother's or sister's son or his uncle's widow, or his son's widow or step-daughter, such marriage is hereby declared to be legal and valid and exempt from the penalties prescribed by existing laws. (Code 1887, § 2224; 1895-6, p. 22; 1902-3-4, p. 662; 1910, p. 437.)

Formerly it was forbidden to marry a brother's widow. Com. v. Perryman, 2 Leigh 717. Also deceased wife's sister. Kelly v. Scott, 5 Grat. 479.

As to punishment for marrying within the prohibited degrees, see section 4540. As to what marriages void, see sections 5087, 5088.

Sec. 5085. The same.—No woman shall marry her father, grandfather, step-father, brother, son, grandson, half-brother, uncle, daughter's husband, husband's son, or his grandson or step-son, brother's son, sister's son, or husband of her brother's or sister's daughters. (Code 1887, § 2225; 1895-6, p. 197; 1902-3-4, p. 662.)

Sec. 5086. Prohibition continued notwithstanding dissolution of marriage.—In the cases mentioned in the two preceding sections, in which the relationship is founded on a marriage, the prohibition shall continue in force, notwithstanding the dissolution of such marriage by death or by divorce, unless the divorce be for a cause which made the marriage originally unlawful or void. (Code 1887, § 2226.)

Sec. 5087. What marriages are void without decree.—All marriages between a white person and a colored person, and all marriages which are prohibited by law on account of either of the parties having a former wife or husband then living, shall be absolutely void, without any decree of divorce, or other legal process. (Code 1887, § 2252.)

As to marriages between a white person and a negro, McPherson's Case, 28 Grat. 939; Kinney's Case, 30 Grat. 858, 32 Am. Rep. 690; Jones' Case, 80 Va. 538; Scott v. Raub, 88 Va. 721, 14 S. E. 178.

As to punishment for the crime, see sections 4540, 4546, and notes.

A marriage between a white man and a woman who is of less than one-fourth negro blood, however small the lesser quantity may be, is legal. A woman whose father was white, whose mother's father was white, and whose great great-grandmother was of brown complexion is not a negro in the sense of the statute. McPherson's Case, 28 Grat. 939; Jones' Case, 80 Va. 538. As to who are colored persons under present law, see section 67.

It seems that the marriage of a white woman to a negro would furnish good cause for committing her children by a former marriage to the Children's Home Society. Moon v. Children's Home Society, 112 Va. 737, 72 S. E. 707; note 17 Va. Law Reg. 692.

Sec. 5088. What marriages are void from time declared or time of

Digitized by Google

conviction.—All marriages which are prohibited by law on account of consanguinity or affinity between the parties, and all marriages solemnized when either of the parties was insane, or incapable from physical causes of entering into the marriage state, shall, if solemnized within this State, be void from the time they shall be so declared by a decree of divorce or nullity, or from the time of the conviction of the parties, under section forty-five hundred and forty. (Code 1887. § 2252.)

Sec. 5089. Marriage of persons leaving the State to evade the law.—If any persons, resident in this State, one of whom is a white person and the other a colored person, or one of whom has a former husband or wife living, or who are within the degree of relationship of consanguinity or affinity within which marriages are prohibited by the law of this State, shall, with the intention of returning to reside in this State, go into another State or country and there intermarry, and return to and reside in this State, cohabiting as man and wife, such marriage shall be governed by the same law, in all respects, as if it had been solemnized in this State. (Code 1887, § 2253.)

Negro and white person going out of state to marry.—While the forms and ceremonies of marriage are governed by the laws of the place where the marriage is celebrated, the essentials of the contract depend upon and are governed by the laws of the country where the parties are domiciled at the time of the marriage, and in which the matrimonial residence is contemplated. Therefore the rule that a marriage valid where celebrated is valid everywhere has no application to a marriage entered into in a foreign country in contravention of the public policy and statutes of the country of the parties which pronounce marriage between them not only absolutely void, but criminal. Kinney's Case, 30 Grat. 858, 32 Am. Rep. 690; Greenhow v. James, 80 Va. 636, 56 Am. Rep. 603, citing Brook v. Brook, 9 H. L. Cas. 223. See, also, section 4540, 4546, and notes.

Discussed in ex parte Kinney (U. S. Cir. Ct.) 3 Va. Law J. 370, Fed. Cas. No. 7,825.

Cited but not construed, Moon v. Children's Home Society, 112 Va. 737, 72 S. E. 707; note 17 Va. Law Reg. 692.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 64, section 3.

Sec. 5090. When marriage of party under age of consent void without decree of divorce; age of consent.—In case of a marriage solemnized when either of the parties was under the age of consent, if they shall separate during such non-age, and not cohabit afterwards, the marriage shall be deemed void, without any decree of divorce, or other legal process. The age of consent of the male shall be fourteen years, and of the female twelve years. (Code 1887, § 2254.)

Sec. 5091. When colored persons not married to be deemed husband and wife; their children legitimated.—Where colored persons prior to the twenty-seventh day of February, eighteen hundred and sixty-six, agreed to occupy the relation to each other of husband and wife, and were cohabiting together as such at that date, whether

Digitized by Google

the rites of marriage had been celebrated between them or not, they shall be deemed husband and wife, and be entitled to the rights and privileges, and subject to the duties and obligations of that relation in like manner, as if they had lawfully married; and all their children shall be deemed legitimate, whether born before or after said date. And where the parties had ceased to cohabit before the twenty-seventh day of February, eighteen hundred and sixty-six, in consequence of the death of the woman, or from any other cause, all the children of the woman, recognized by the man to be his, shall be deemed legitimate. (Code 1887, § 2227.)

Statute applies to all colored persons.—This statute applies to all classes of colored persons, irrespective of the degree of color (notwithstanding section 67); also to those who were born free. Francis v. Francis, 31 Grat. 283; Scott v. Raub, 88 Va. 724, 729, 14 S. E. 178.

To what cases statute does not apply.—The statute does not apply to cases where the cohabitation was a purely meretricious connection. There must have been a bona fide agreement, express or implied, between the parties to live together as man and wife. Patterson v. Bingham, 101 Va. 372, 43 S. E. 609; Francis v. Tazewell, 120 Va. 319, 91 S. E. 202.

How relation may be established—conduct.—It is not necessary that there shall be evidence of an actual agreement to take each other as man and wife, but the relation may be established by the acts, conduct, and conversation of the parties. Francis v. Francis, 31 Grat. 283; Womack v. Tankersley, 78 Va. 242. Compare Offield v. Davis, 100 Va. 263, 40 S. E. 910.

When the existence of the marriage is the issue, the rule of evidence is the same in civil as in criminal proceedings, and the decision must be on the weight of evidence. It may be established not only by the marriage register or certificate, or persons present at its celebration, but also by deliberate admissions and acts of parties, coupled with cohabitation and recognition. Womack v. Tankersley, 78 Va. 242.

Under this section it is not necessary to prove an agreement in terms, that the parties will take one another as husband and wife, but the fact of the relation existing may be established by the acts, conduct and conversation of the parties. Lemons v. Harris, 115 Va. 809, 80 S. E. 740.

The recognition required to legitimate colored children of parents who had ceased to cohabit prior to the enactment of this section (February 27, 1866) might occur prior to such enactment. Fitchett v. Smith's Adm'r, 78 Va. 524, 527.

Abandonment.—The voluntary abandonment before February 27, 1866, of the purpose to marry, is not within the meaning of the words "any other cause." Patterson v. Bingham, 101 Va. 372, 43 S. E. 609.

Two slaves agreed to occupy the relation to each other of husband and wife, and in pursuance of that agreement cohabited together prior to February 27, 1866. Children were born of the union and were always acknowledged by the man as his children. Subsequently the man left home. On returning he discovered that his wife was enciente by another man, and he abandoned her, afterwards marrying another woman. It was insisted that the conduct of the man and woman amounted to a mutual abandonment of their former relations, and that their children were not within the protection of this section, and were illegitimate. Held, that neither husband nor wife, nor indeed both acting in concert, could by abandonment or other act dissolve the bond of the pre-existing marriage; but if that were possible, or even if the marriage had been dissolved by a decree of a court of competent jurisdiction, it could in no wise have affected the legitimacy of the children. (Section 5270.) Francis v. Tazewell, 120 Va. 319, 91 S. E. 202.

Children born before enactment of section included.—The children

Digitized by Google

of colored persons living together as husband and wife at the time of the enactment of this section are deemed legitimate, whether born before or after such enactment, and whether any sort of marriage ceremony had taken place between the parents or not. Smith v. Perry, 80 Va. 563. In such cases the question of bastardy must be considered as in any case where bastardy is alleged as to a child born during coverture, or born before and recognized afterwards. Smith v. Perry, 80 Va. 563.

Generally.—For note of case under a statute similar to this, holding statute not to be binding upon a man who has become domiciled in another state, see 10 Va. Law Reg. 831.

For further provisions concerning legitimated children, see sections 5269, 5270.

Discussed, 1 Va. Law J. 641.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 63, section 8.

Sec. 5092. Register of marriages.—The county clerk of every county and the clerk of every corporation court shall keep a book, to be called the marriage register. (Code 1887, § 2228; 1902-3-4, p. 662.)

Revisors' Note.—The words "marriage register" are used in lieu of "register of marriages."

Sec. 5093. How bond of minister forfeited.—If any minister, authorized to celebrate rites of marriage under section five thousand and seventy-nine, shall fail to comply with section five thousand and seventy-four, the condition of his bond shall be deemed to be thereby broken, and he shall also be subject to the penalty hereinbefore prescribed for such failure. (Code 1887, § 2232.)

Sec. 5094. Penalty on clerks for neglect of duty.—If any clerk of a court or county clerk fail to perform any duty required of him under this chapter, he shall forfeit ten dollars for every such offense. (Code 1887, § 2220; 1902-3-4, p. 663.)

The reference to the Code of 1887 should be to section 2250, not 2220.

Sec. 5095. Bureau of Vital Statistics to supply forms and instructions.—The Bureau of Vital Statistics shall furnish the clerk of every circuit court of a county and of every corporation court of a city with all forms and instructions which it may deem necessary or proper for carrying the provisions of this chapter into effect. (Code 1887, § 2251.)

Revisors' Note.—This duty was formerly placed upon the Auditor of Public Accounts, but since the establishment of the Bureau of Vital Statistics, it more properly belongs to that bureau. See chapter 66. The words, "and every commissioner of the revenue," formerly appearing in this section, have been stricken out.

Auditor required to turn over to the State Bureau of Vital Statistics certain marriage, birth and death records. Acts 1918, chapter 118, p. 226.

Sec. 5096. Copy of register of marriages to be sent by clerks to Bureau of Vital Statistics.—On or before the first day of March in each year, the clerk of every circuit court of a county and of every corporation court of a city shall transmit to the Bureau of Vital Statistics a copy of his marriage register, and so much of his record, made at the time of issuing such licenses, as is not contained in his

Digitized by Google

said marriage register, which was taken by him within the year next preceding the first day of January, distinguishing by appropriate columns or notes the licenses issued in which the minister's certificate of marriage has not been returned, and the licenses containing such certificate. (Code 1887, § 2239.)

Revisors' Note.—The words "Bureau of Vital Statistics" are used in lieu of "Auditor of Public Accounts." See revisors' note to preceding section.

Sec. 5097. Bureau to make abstracts of marriages for General Assembly.—Such copies shall be filed and preserved in the office of the said bureau, and from them the said bureau shall prepare annually an abstract of marriages in each county and city, and make a report upon said registration to the General Assembly at each regular session. (Code 1887, § 2240; 1902-3-4, p. 662.)

Revisors' Note.—See revisors' note to section 5095.

Sec. 5098. Registers to be evidence.—The said books to be kept by the clerks, and copies of the same (or of any part thereof) certified by the clerk lawfully having the custody thereof, shall be prima facie evidence of the facts therein set forth in all cases. (Code 1887, § 2241.)

As to other evidence of marriage, see 1 Min. (4 Ed.) 274; Brown v. Brown, 2 Va. Dec. 308, 24 S. E. 238; and Eldred v. Eldred, 97 Va. 606, 34 S. E. 477.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 63, section 27.

Sec. 5099. Fees of clerks.—There shall be allowed to the clerks three cents for every marriage reported to them by those required by law to do so, to be paid out of the treasury on the warrant of the Auditor of Public Accounts, to be issued to the clerks severally entitled thereto, upon the certificate of the Bureau of Vital Statistics of the return of the copies required by section five thousand and ninety-six. (Code 1887, § 2242.)

Revisors' Note.—The latter part of this section has been made to conform to the changes made in section 5096.

Digitized by Google

CHAPTER 205.

Divorces.*

Sec.
5100. Suit to annul a marriage.
5101. Exception to the preceding section.
5102. Suit to affirm a marriage.
5103. Divorces from bond of matrimony.
5104. Divorces from bed and board.
5105. Jurisdiction of suits to affirm or annul marriages, or to obtain divorces; when such suits are maintainable.
5106. How instituted and conducted.
5107. What orders the court may make pending the suit; allowances for maintenance of the woman, etc.
5108. Order of publication against non-resident defendant.
5109. Testimony may be required to be given orally; how certified; same footing as deposition.
5110. When divorce for adultery not to be granted.
5111. Court, on dissolving marriage, may decree as to estate and maintenance of parties, and custody, etc., of children; provision for revision of decree.
5112. Divorce from bed and board, what the court may decree; effect thereof.
5113. Dissolution of bond of matrimony; neither party to marry for six months.
5114. When court may restrain guilty party from marrying again.
5115. When and how a decree for divorce from bed and board may be revoked, or may be merged into a decree of divorce from the bonds of matrimony.
5116. To prohibit advertising of any offer to obtain divorces.

Sec. 5100. **Suit to annul a marriage.**—When a marriage is supposed to be void for any of the causes mentioned either in section five thousand and eighty-seven, five thousand and eighty-eight, five thousand and eighty-nine or five thousand and ninety, either party may, except as is provided in the next section, institute a suit for annulling the same; and, upon due proof of the nullity of the marriage, it shall be decreed to be void by a decree of divorce or nullity. (Code 1887, § 2255.)

Sec. 5101. **Exception to the preceding section.**—A party who, at the time of such marriage as is mentioned in section five thousand and ninety, was capable of consenting, with a party not so capable, shall not be permitted to institute a suit for the purpose of annulling such marriage. (Code 1887, § 2255.)

Sec. 5102. **Suit to affirm a marriage.**—When the validity of any marriage shall be denied or doubted by either of the parties, the other party may institute a suit for affirming the marriage, and upon due proof of the validity thereof, it shall be decreed to be valid,

*Clerks of courts required to make annual reports to the State Registrar of Vital Statistics of all divorces, granted and pending. Acts 1918, p. 897.

Digitized by Google

and such decree shall be conclusive upon all persons concerned. (Code 1887, § 2256.)

Sec. 5103. Divorces from bond of matrimony.—A divorce from the bond of matrimony may be decreed:

For adultery;

For natural or incurable impotency of body existing at the time of entering into the matrimonial contract;

Where either of the parties subsequent to the marriage has been sentenced to confinement in the penitentiary of this State or of any other State of the United States or to confinement in a penitentiary of the United States, and cohabitation has not been resumed after such confinement (in which case no pardon granted to the party so sentenced shall restore such party to his or her conjugal rights);

Where, prior to the marriage, either party, without the knowledge of the other, had been convicted of an infamous offense;

Where either party charged with an offense punishable with death or confinement in the penitentiary has been indicted, is a fugitive from justice, and has been absent for two years;

Where either party wilfully deserts or abandons the other for three years such divorce may be decreed to the party abandoned; and

Where, at the time of the marriage, the wife without the knowledge of the husband, was with child by some person other than the husband;

Or prior to such marriage had been, without the knowledge of her husband, a prostitute, such divorce may be decreed to the husband.

But no such divorce shall be decreed if it appears that the party applying for the same has cohabited with the other after knowledge of such conviction of an infamous offense, or a husband has cohabited with the wife after the knowledge of the fact that she was with child or had been a prostitute as aforesaid. (Code 1887, § 2257; 1893-4, p. 425; 1916, p. 69.)

Adultery.—A married man's going into a brothel, especially if when there he shuts himself up in a room with a strumpet, is, if unexplained, sufficient proof of adultery. Throckmorton v. Throckmorton, 86 Va. 768, 11 S. E. 289; Latham v. Latham, 30 Grat. 307.

Adultery may be proved by circumstantial evidence, such as visiting house of ill-fame, being shut up with an unchaste woman, etc., even in face of the denial of defendant and particeps criminis. Musick v. Musick, 88 Va. 12, 13 S. E. 302.

Evidence of going into house of ill-fame considered. Musick v. Musick, 88 Va. 12, 13 S. E. 302.

A bill for divorce a vinculo, on grounds of adultery, charging simply that the defendant "has been guilty of adultery on many occasions," is bad on demurrer. While the name of the person with whom the adultery was committed need not be stated, the bill should state time, place, and circumstances, so as to enable the defendant to disprove the charge. Miller v. Miller, 92 Va. 196, 23 S. E. 232, and 2 Va. Law Reg. 70; Lile's Notes to 1 Min. 64; Barton, C. Pr. (2 Ed.) 333.

The testimony of one procured to find evidence of adultery will be

Digitized by Google

received with caution. Throckmorton v. Throckmorton, 86 Va. 768, 11 S. E. 289.

See, also, section 5110.

Desertion.—The abandonment or desertion which is cause for divorce a vinculo differs from that which is cause for divorce a mensa in nothing only save duration. Harris v. Harris, 31 Grat. 13, 28; 1 Min. (4 Ed.) 291.

Desertion is a breach of matrimonial duty and consists of the actual breaking off of the matrimonial cohabitation. Hairston v. Hairston, 117 Va. 207, 84 S. E. 15.

Desertion can only be justified by showing such conduct on the part of the deserted party as would entitle the other to a divorce a mensa. Hairston v. Hairston, 117 Va. 207, 84 S. E. 15.

The desertion to justify a decree for an absolute divorce must be a wilful desertion, without justification or excuse, and the court to which the evidence is submitted can only determine whether or not such desertion is wilful by having all the facts and circumstances fully and frankly presented. The policy of the law is against divorce by consent, and full and satisfactory evidence should be required to guard against such divorces. Walker v. Walker, 120 Va. 410, 91 S. E. 180.

A wife left her husband without cause, stayed away more than three years, declared she would never return to him, though he endeavored to induce her to do so. Held, the husband is entitled to a divorce for desertion. Lee v. Lee, 112 Va. 719, 72 S. E. 689.

Where a bill alleges that the defendant "wilfully abandoned and deserted the complainant without just cause or excuse therefor, and still continues in such desertion and abandonment," and from the evidence submitted a separation by mutual consent or because of the fault of either of the parties may just as well be inferred as a desertion by the defendant, such evidence falls far short of proving the allegations of the bill. Walker v. Walker, 120 Va. 410, 91 S. E. 180. See 2 Va. L. Reg. N. S. 871.

For a case in which a suit for desertion was brought within three years of the dismissal of a prior suit for desertion between the same parties, see Hairston v. Hairston, 117 Va. 207, 84 S. E. 15.

For a case in which the facts were held sufficient to decree a divorce, see Johnson v. Johnson, 117 Va. 504, 85 S. E. 475.

As to the right of the wife to recover from deserting husband moneys expended by her for necessities, see De Brauwre v. Same (N. Y.), 96 N. E. 722.

See notes to section 5104.

Generally.—On divorce generally, see 1 Min. (4 Ed.) 259-309; also note to Bailey v. Bailey, 21 Grat. 59, Va. Rep. Ann., on Alimony, Carr v. Carr, 22 Grat. 168. Va. Rep. Ann.

For causes for divorce a vinculo, supervening after marriage, 1 Min. (4 Ed.) 289; also, Barton, C. Pr. (2 Ed.) 332 et seq.

Cited but not construed, Washington v. Washington, 111 Va. 524, 69 S. E. 322; Thompson v. Thompson, 226 U. S. 551.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 64, section 5.

See Gregory's Forms Nos. 146, 147, 148, 149, 150, 151, 152, 153, 341.

Sec. 5104. Divorces from bed and board.—A divorce from bed and board may be decreed for cruelty, reasonable apprehension of bodily hurt, abandonment or desertion. (Code 1887, § 2258.)

Cruelty—What constitutes.—The cruelty which authorizes a divorce a mensa et thoro is anything that tends to bodily harm, and thus renders cohabitation unsafe, or that involves danger of life, limb, or health. Latham v. Latham, 30 Grat. 320; Trimble v. Trimble, 97 Va. 217, 33 S. E. 531. There may be cases in which the husband, without violence, actual or threatened, may render the marriage state impossible to be endured. Id.; Myers v. Myers, 83 Va. 806, 6 S. E. 630; also 5 Va. Law

Digitized by Google

Reg. 124; Carr v. Carr, 22 Grat. 168; Kinsey v. Kinsey, 90 Va. 16, 17 S. E. 819. If the husband permits inmates of his house to treat his wife with cruelty, the cruelty is his, and she may leave his home without furnishing him with cause for divorce. Hutchins v. Hutchins, 93 Va. 68, 24 S. E. 903.

That a husband is rude and dictatorial in his speech to his wife, exacting in his demands upon and sometimes unkind and negligent in his treatment of her even when she was sick and worn and weary in watching and nursing their sick child, is no legal grounds for her leaving him. Carr v. Carr, 22 Grat. 168.

A malicious charge of adultery, standing alone, is not sufficient to justify a divorce, but, enhanced by other things, is an act of gross cruelty. Owens v. Owens, 96 Va. 191, 31 S. E. 72.

On the subject of cruelty, see 1 Min. (4 Ed.) 281, 282; 5 Va. Law Reg. 124; Barton, C. Pr. (2 ed.) 329-332.

Condonation of former cruelty—Effect of.—Condonation of former acts of cruelty is no bar to bringing them forward when the continuance of the cruelty has rendered it no longer condonable. Owens v. Owens, 96 Va. 195, 31 S. E. 72. But see 1 Min. (4 Ed.) 282.

Abandonment and desertion.—To entitle a husband or wife to a divorce a mensa et thoro, the abandonment must consist in (1) the actual breaking off of matrimonial cohabitation with, (2) the intent to abandon and desert in the mind of the party so acting. The intent is the gist of the matter. Bailey v. Bailey, 21 Grat. 43; Carr v. Carr, 22 Grat. 168; Latham v. Latham, 30 Grat. 307. The intent to desert, being once shown, will be presumed to continue till the contrary appears. Bailey v. Bailey, 21 Grat. 43.

No particular period is prescribed in which the desertion shall continue to entitle a party to a divorce a mensa et thoro. Bailey v. Bailey, 21 Grat. 47; Carr v. Carr, 22 Grat. 172. See, also, 1 Min. (4 Ed.) 285.

Desertion consists of the actual breaking off of matrimonial cohabitation, coupled with an intent to desert in the mind of the offender. Crounse v. Crounse, 108 Va. 108, 60 S. E. 627.

Desertion can only be justified by showing such conduct on the part of the deserted party as would entitle the other to a divorce a mensa. Nothing short of this will justify wilful desertion or a continuance of it. Idem.

When a wife asked permission to return and the permission was not granted by the husband, he thereupon, in contemplation of law, deserted her. Tutwiler v. Tutwiler, 118 Va. 724, 88 S. E. 86.

It is the duty of the husband, when his wife leaves him although she may not have been forced to leave on account of his cruelty and violence, then and afterwards to seek a reconciliation and to invite her to return. Tutwiler v. Tutwiler, 118 Va. 724, 88 S. E. 86.

For circumstances of a separation of husband and wife, held not to amount to desertion on the part of the wife, see Devers v. Devers, 115 Va. 517, 79 S. E. 1048.

Pleading and proof.—In a suit for divorce, facts constituting cruelty and not merely the pleader's conclusion from unrelated facts, should be charged with reasonable certainty. Haynor v. Haynor, 112 Va. 123, 70 S. E. 531.

If answer under oath be not waived, the answer under oath furnishes evidence for the defendant in divorce cases as in other cases. Haynor v. Haynor, 112 Va. 123, 70 S. E. 531.

While a husband cannot be said to desert his wife because of separation from her pending a suit by him for divorce, if there was a consummated act of desertion by him before he instituted his suit, she may prove it in a suit by her for divorce for desertion. Craig v. Craig, 118 Va. 284, 87 S. E. 727.

Decree for maintenance.—A wife who voluntarily abandons her husband should not have a decree for separate maintenance unless her abandonment of him was necessary and without fault on her part. Haynor v. Haynor, 112 Va. 123, 70 S. E. 531. See section 5107 and notes.

Digitized by Google

Generally.—As to the effect of a decree for divorce a mensa, granted to the wife in Massachusetts, upon the husband's suit for divorce a vinculo, in this state, see Kelly v. Kelly, 118 Va. 376, 87 S. E. 567.

Cited but not construed in Thompson v. Thompson, 226 U. S. 551.

As to effect of adultery of wife subsequent to decree a mensa et thoro, see 8 Va. Law Reg. 286.

Discussed, 8 Va. Law J. 191.

See Gregory's Forms No. 341; notes to preceding section.

Sec. 5105. Jurisdiction of suits to affirm or annul marriages, or to obtain divorces; when such suits are maintainable.—The circuit and corporation courts, on the chancery side thereof, and every court of this State exercising chancery jurisdiction, shall have jurisdiction of suits for annulling or affirming marriages, and for divorces. No suit for annulling a marriage or for divorce shall be maintainable, unless one of the parties has been domiciled in this State for at least one year preceding the commencement of the suit; nor shall any suit for affirming a marriage be maintainable, unless one of the parties be domiciled in this State at the time of bringing such suit. The suit, in either case, shall be brought in the county or corporation in which the parties last cohabited, or (at the option of the plaintiff), in the county or corporation in which the defendant resides, if a resident of this State, and if not a resident, in the county or corporation in which the plaintiff resides. (Code 1887, § 2259.)

Revisors' Note.—The words, "and every court of this state exercising chancery jurisdiction," found in lines two and three of the text, are new.

Where a husband abandons his wife in the state of their domicile, and the wife in good faith changes her domicile to this state, and retains it for more than one year, she may sue for a divorce in the county or city of her domicile, although the husband has never changed his domicile. Steckel v. Steckel, 118 Va. 198, 86 S. E. 833.

For a case in which the circuit court declined to take jurisdiction, see Yates v. Yates, 115 Va. 678, 79 S. E. 1040.

Cited but not construed in Thompson v. Thompson, 226 U. S. 551; Johnston v. Johnston, 116 Va. 678, 82 S. E. 694.

As to constructive service of process in suits for divorce, see 2 Va. Law Reg. 47.

As to effect of foreign divorces, see 8 Va. Law Reg. 826; Atherton v. Atherton, 181 U. S. 155, 21 Sup. Ct. 544, 45 L. Ed. 794, 7 Va. Law Reg. 118, 137; Barton, C. Pr. 152.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 64, section 7.

See Gregory's Forms Nos. 146, 147, 148, 149, 150, 151, 152, 153, 341.

Sec. 5106. How instituted and conducted.—Such suit shall be instituted and conducted as other suits in equity, except that the bill shall not be taken for confessed, nor shall a divorce be granted on the uncorroborated testimony of the parties or either of them; and, whether the defendant answer or not, the cause shall be heard independently of the admissions of either party in the pleadings or otherwise; and no process or notice in such proceedings shall be served in this State, except by officers authorized to serve the same.

Digitized by Google

Costs may be awarded to either party as equity and justice may require. (Code 1887, § 2260; 1902-3-4, p. 98.)

Revisors' Note.—The words, "nor shall a divorce be granted on the uncorroborated testimony of the parties, or either of them," found in lines three and four of the text, are new. See revisors' note to section 6210.

An important change has been made in the omission of the words, "and all depositions, when taken in this state, shall be before a commissioner in chancery," formerly appearing at the end of the first sentence. These words were put into the section by the amendment of 1902-3-4, p. 98, as was also the provision limiting to officers the right to serve process or notice. The revisors were of opinion that the latter provision should be retained (see also section 6042) but that the former furnished no material protection and could be safely dispensed with. Furthermore, no necessity was seen for requiring such depositions WHEN TAKEN IN THIS STATE to be taken before a commissioner in chancery with no such restriction out of the state.

It is an established maxim that a divorce is never to be decreed upon confession of the parties merely, without auxiliary proof. 1 Min. (4 Ed.) 281; Bailey v. Bailey, 21 Grat. 50.

A divorce will never be granted upon consent, or on the default of the party charged, but only on proof of the charge alleged. Bailey v. Bailey, 21 Grat. 43, 50. But where the answer is responsive to the allegation of the bill, the defendant is entitled to the benefit of it as in other cases in equity. Latham v. Latham, 30 Grat. 307; Throckmorton v. Throckmorton, 86 Va. 769, 11 S. E. 289.

Pending a suit for divorce, husband and wife drew up an agreement to live separately and to divide their property. The agreement was confirmed by the court, and the divorce decreed after argument by counsel. The fact that the decree confirmed the agreement did not make it a decree on the admission of the parties. Marshall v. Baynes, 88 Va. 1040, 14 S. E. 978.

Admissions of plaintiff competent evidence to support averments of answer. Cralle v. Cralle, 79 Va. 182.

The object of this statute is to prevent a divorce from being obtained by the collusion of the parties. Neither the common law nor the statutory enactment excludes proof of the admission and statement of the parties. When collusion is proved not to exist, admission, whether verbal or contained in letters, is peculiarly satisfactory evidence, especially so when the letters were written or the verbal statements made without reference to the controversy touching the divorce. 1 Min. (4 Ed.) 294; Bailey v. Bailey, 21 Grat. 50; Cralle v. Cralle, 79 Va. 186; 7 Va. Law Reg. 134. But see Hampton v. Hampton, 87 Va. 148, 12 S. E. 340. See, also, article 18 Va. L. Reg. 1. Under this Code husband and wife are competent witnesses in all divorce suits. For changes made by the present revision, see revisors' note above and also revisors' note to section 6210.

Where depositions were suppressed because taken before a justice instead of a commissioner, it was not error to refuse to permit them to be re-taken where it clearly appears that they could not have effected the result of the litigation. Johnston v. Johnston, 116 Va. 678, 82 S. E. 694. It is no longer necessary for depositions in divorce cases to be taken before a commissioner in chancery.

Cited but not construed in Thompson v. Thompson, 226 U. S. 551; Lurty v. Lurty, 107 Va. 466, 59 S. E. 405.

For an article on the extra territorial effect of divorces on an order of publication, see 17 Va. Law Reg. 577.

As to allowing continuance in divorce suits, see Willard v. Willard, 98 Va. 465, 36 S. E. 518.

See Gregory's Forms No. 341.

Digitized by Google

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 64, section 8.

Sec. 5107. What orders the court may make pending the suit; allowances for maintenance of the woman, etc.—The court in term or the judge in vacation may, at any time pending the suit, in the discretion of such court or judge, make any order that may be proper to compel the man to pay any sums necessary for the maintenance of the woman and to enable her to carry on the suit, or to prevent him from imposing any restraint on her personal liberty, or to provide for the custody and maintenance of the minor children of the parties during the pendency of the suit, or to preserve the estate of the man, so that it be forthcoming to meet any decree which may be made in the suit, or to compel him to give security to abide such decree. (Code 1887, § 2261.)

The trial court cannot make an "order to compel the man to pay any sums necessary for the maintenance of the woman," etc., pending appeal from decree rendered in same suit for alimony. Cralle v. Cralle, 81 Va. 773.

A wife having left her husband without good legal grounds is not entitled to alimony, and in a suit by him for a divorce for abandonment, he is entitled to the child of the marriage, although a female and only three years of age. Carr v. Carr, 22 Grat. 168.

The allowance, in the case in judgment, to the wife, of the sum of $225.00 payable in three monthly instalments for suit money, and of $150.00 for counsel fees, is a reasonable allowance. Craig v. Craig, 118 Va. 294, 87 S. E. 731.

A decree for suit money has the force of a judgment. Isaacs v. Isaacs, 117 Va. 730, 86 S. E. 105.

Decree making wife allowance pendente lite, etc., not appealable. Beatty v. Beatty, 105 Va. 213, 53 S. E. 2.

Cited but not construed in Davenport v. Davenport, 106 Va. 736, 56 S. E. 562.

For note of case where alimony pendente lite was asked when it was alleged that husband was insane at the time of marriage, see 11 Va. Law Reg. 772.

As to payment of attorney's fee, see 8 Va. Law Reg. 204; Engleman v. Engleman, 97 Va. 487, 34 S. E. 50.

For monographic note on Alimony, see Carr v. Carr, 22 Grat. 168, Va. Rep. Ann.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 64, section 9.

See Gregory's Forms Nos. 146, 149, 341.

Sec. 5108. Order of publication against non-resident defendant.—When in a suit for divorce, either a vinculo matrimonii or a mensa et thoro, affidavit shall be filed that the defendant is not a resident of the State of Virginia, an order of publication shall be entered against said defendant, by the clerk of the court wherein such suit is pending, either in term time or vacation, which order shall state the object of the suit and the grounds thereof, as shown by said application, and said order of publication shall be published as required by law. No depositions in said suit shall be commenced until at least fifteen days shall have elapsed after said order of publication shall have been duly published as required by law. (1912, p. 170; 1914, p. 29.)

Digitized by Google

Revisors' Note.—This section is taken from Acts 1914, p. 29, with material changes. The act provided that the "order of publication shall be entered against said defendant, either by the court wherein such suit is pending or by the clerk of said court in vacation," etc. The revised section provides for an order of publication against the defendant to be entered by the clerk of the court wherein such suit is pending, either in term time or vacation. The provision contained in the act concerning the mailing of a copy of the order of publication is omitted, as that is now required in all cases by sections 6069 and 6070, q. v.

For discussion of the act upon which this section is based, see 18 Va. L. Reg. 468, 546, 780; 20 Va. Law Reg. 70.

Sec. 5109. Testimony may be required to be given orally; how certified; same footing as deposition.—In any suit for divorce the trial court may require the whole or any part of the testimony to be given orally in open court, and if either party desires it, such testimony and the rulings of the court on the exceptions thereto, if any, shall be reduced to writing, and the judge shall certify that such evidence was given before him and such rulings made. When so certified the same shall stand on the same footing as a deposition regularly taken in the cause. (1914, p. 154.)

Sec. 5110. When divorce for adultery not to be granted.—When the suit is for divorce for adultery, the divorce shall not be granted, if it appear that the parties voluntarily cohabited after the knowledge of the fact of adultery, or that it occurred more than five years before the institution of the suit, or that it was committed by the procurement or connivance of the plaintiff. (Code 1887, § 2262.)

Evidence that defendant admitted charge of adultery and letter from her purporting to admit it, are inadmissible. Hampton v. Hampton, 87 Va. 148, 12 S. E. 340. But see notes to section 5106.

See Gregory's Forms Nos. 146, 341.

Sec. 5111. Court, on dissolving marriage, may decree as to estate and maintenance of parties, and custody, etc., of children; provision for revision of decree.—Upon decreeing the dissolution of a marriage, and also upon decreeing a divorce, whether from the bond of matrimony or from bed and board, the court may make such further decree as it shall deem expedient concerning the estate and maintenance of the parties, or either of them, and the care, custody, and maintenance of their minor children, and may determine with which of the parents the children, or any of them, shall remain; and the court may, from time to time afterwards, on petition of either of the parents, revise and alter such decree concerning the care, custody, and maintenance of the children, and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children may require. (Code 1887, § 2263.)

Alimony granted independently of divorce.—Alimony may be granted under some circumstances independently of a divorce or application for one. Purcell v. Purcell, 4 Hen. & M. 507; Almond v. Almond 4 Rand. 662, 15 Am. Dec. 781; Spencer v. Ford, 1 Rob. 648; 1 Min. (4 Ed.) 308; Barton, C. Pr. (2 Ed.) 335.

May be forfeited by misconduct.—Wife may forfeit her right to

Digitized by Google

alimony by her misconduct, and where she is the offender cannot have alimony on a decree in favor of her husband. Harris v. Harris, 31 Grat. 17. Nor where she leaves her husband without sufficient cause. Carr v. Carr, 22 Grat. 175; Latham v. Latham, 30 Grat. 338; 1 Min. (4 Ed.) 308.

Amount of alimony—General rule.—The general rule in respect to alimony is that the wife is entitled to a support corresponding to her condition in life and the fortune of her husband. Bailey v. Bailey, 21 Grat. 43, 57; 1 Min. (4 Ed.) 309; Barton, C. Pr. (2 Ed.) 336.

The amount of alimony to be decreed is within the sound discretion of the trial court, to be fixed according to established principles and upon an equitable view of all the circumstances of the particular case. Miller v. Miller, 92 Va. 196, 23 S. E. 232; Bailey v. Bailey, 21 Grat. 43; Harris v. Harris, 31 Grat. 13, 16.

Before fixing the amount of alimony, the court should ascertain the value of his property and the extent of his income. If necessary to increase or diminish the amount fixed, it may be done under the provisions of this section. Trimble v. Trimble, 97 Va. 217, 33 S. E. 531.

Fund from which it should be decreed.—The income of the husband, whether derived or to be derived from his personal exertion, or from permanent property, or from both, is the fund from which alimony is decreed, and the amount will depend upon the circumstances in each case. Cralle v. Cralle, 84 Va. 203, 6 S. E. 12; Harris v. Harris, 31 Grat. 13; Carr v. Carr, 22 Grat. 168; Myers v. Myers, 83 Va. 806, 6 S. E. 630.

In respect to alimony, the general rule is that the income of the husband, however derived or derivable, is the fund from which the allowance is made. Heninger v. Heninger, 90 Va. 274, 18 S. E. 193.

In estimating the allowance for alimony, no account should be taken of acquisitions of the plaintiff after the date of the decree of divorce, but the alimony must be in the property of the husband at the time of the divorce. Cralle v. Cralle, 79 Va. 182; Harris v. Harris, 31 Grat. 13.

It is error to enjoin and restrain perpetually the husband from disposing of or encumbering his real estate, unless facts of the particular case show it to be necessary. The sums to be paid the wife should be made a charge upon the land. Trimble v. Trimble, 97 Va. 221, 33 S. E. 531.

A decree for alimony and suit money constitutes under section 6470 a lien upon all the real estate of the debtor. Isaacs v. Isaacs, 117 Va. 730, 86 S. E. 105.

The court cannot in a decree in regard to the property interfere with the vested rights of creditors, or bona fide alienees or incumbrancees which attached upon the property prior to the institution of the suit. Caldwell v. Craig, 2 Grat. 350.

Circumstances under which the wife, though entitled to divorce, was not granted alimony, because she possessed ample estate and greater than her husband. Myers v. Myers, 83 Va. 815, 6 S. E. 630.

Death of either party puts end to alimony.—The death of the wife (or of the husband) puts an end to alimony. Francis v. Francis, 31 Grat. 283; 1 Min. (4 Ed.) 308.

Alimony cannot be granted to the husband. 2 Va. Law Reg. 308, 857; 3 Va. Law Reg. 60.

Bankruptcy.—In Audubon v. Shufeldt, 7 Va. Law Reg. 215, the Supreme Court of the United States decided that a discharge in bankruptcy affected neither alimony in arrear nor alimony to accrue in the future. 5 Va. Law Reg. 365; 6 Va. Law Reg. 859.

Adultery of wife subsequent to decree a mensa discharges husband.—Adultery subsequent to decree a mensa held to discharge the husband from the payment of alimony awarded to the wife under a decree of divorce a mensa. 8 Va. Law Reg. 286.

As to effect of remarriage of wife on alimony, 6 Va. Law Reg. 490.

On subject of alimony, see note to Carr v. Carr, 22 Grat. 168, Va. Rep. Ann.

Digitized by Google

Divorce a vinculo defeats dower or curtesy.—A divorce a vinculo, even for supervenient cause, defeats claim to dower or curtesy. Porter v. Porter, 27 Grat. 599; Harris v. Harris, 31 Grat. 33; Cralle v. Cralle, 79 Va. 188; Cleek v. McGuffin, 89 Va. 324, 328, 15 S. E. 896; 1 Min. (4 Ed.) 302; 2 Min. (4 Ed.) 116, 121.

Custody of infant—Innocent parent has right to.—The innocent parent on whose prayer a divorce is granted is usually entitled to the custody of the children. Owens v. Owens, 96 Va. 192, 31 S. E. 72; Myers v. Myers, 83 Va. 816, 6 S. E. 630; Barton, C. Pr. 339; Barton, L. Pr. (2 Ed.) 1241; Stringfellow v. Somerville, 95 Va. 701, 29 S. E. 685, 40 L. R. A. 623, 4 Va. Law Reg. 89.

Welfare of child controlling consideration.—Ordinarily, the father is entitled to the care and custody of his infant child, but when the father is claiming the custody of the child the court will exercise its discretion according to the facts and what appears to be the child's best interest. Meyer v. Meyer, 100 Va. 228, 40 S. E. 1038; Stringfellow v. Somerville, 95 Va. 701, 29 S. E. 685, 40 L. R. A. 623; Merritt v. Swimley, 82 Va. 433, 3 Am. St. Rep. 115; Coffee v. Black, 82 Va. 567; Myers v. Myers, 83 Va. 816, 6 S. E. 630. The education of the child will also be considered. Heninger v. Heninger, 90 Va. 271, 18 S. E. 193.

And where a parent has transferred to another the custody of his child by fair agreement which has been acted upon by such other person to the manifest interest and welfare of the child, the parent will not be allowed to reclaim the custody of the child unless he can show that a change of custody will materially promote his child's welfare. Stringfellow v. Somerville, 95 Va. 707, 29 S. E. 685, 40 L. R. A. 623.

Mother proper custodian of very young infant.—The mother is the proper custodian of an infant of seven months old. Trimble v. Trimble, 97 Va. 217, 83 S. E. 531. But where the wife deserts the husband without good legal grounds, upon divorce a mensa, upon suit of the husband, the child, though but three years old, and a female, will be restored to the husband. Carr v. Carr, 22 Grat. 168.

Generally.—Cited but not construed in Davenport v. Davenport, 106 Va. 736, 56 S. E. 562.

Upon the question as to the amount involved in an appeal from an order fixing monthly allowances to the wife, see Thompson v. Thompson, 226 U. S. 551.

As to custody of children when husband and wife are living apart, but not divorced, see sections 5327-8.

Discussed, 8 Va. Law J. 124.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 64, section 11.

See Gregory's Forms Nos. 146, 149, 341.

Sec. 5112. Divorce from bed and board, what the court may decree; effect thereof.—In granting a divorce from bed and board, the court may decree that the parties be perpetually separated and protected in their persons and property. Such decree shall operate upon property thereafter acquired, and upon the personal rights and legal capacities of the parties, as a decree for a divorce from the bond of matrimony, except that neither party shall marry again during the life of the other. (Code 1887, § 2264.)

It was decided that the former statute on this subject (Sup. Rev. Code, p. 222) did not authorize the court to interfere with or defeat the vested rights of creditors or bona fide alienees or encumbrancees, which attached upon the property prior to the institution of such proceedings for divorce, and when the property was the absolute property of the husband. Jennings v. Montague, 2 Grat. 350.

As to decree confirming an agreement to live separate, and for each to acquire and hold property free from claims of the other, being in

Digitized by Google

substance a divorce from bed and board within this section, see Marshall v. Baynes, 88 Va. 1040, 14 S. E. 978.

Cited but not construed in Thompson v. Thompson, 226 U. S. 551.

Sec. 5113. Dissolution of bond of matrimony; neither party to marry for six months.—On the dissolution of the bond of matrimony for any cause arising subsequent to the date of the marriage, neither party shall be permitted to marry again for six months from the date of such decree, and such bond of matrimony shall not be deemed to be dissolved as to any marriage, subsequent to such decree, or in any prosecution on account thereof, until the expiration of such six months.

Revisors' Note.—This section is new.

Punishment for bigamy is prescribed by section 4538. See, also, last paragraph of revisors' note to section 4539.

Sec. 5114. When court may restrain guilty party from marrying again.—In granting a divorce for adultery, the court may decree that the guilty party shall not marry again at any time; in which case, the bond of matrimony shall be deemed not to be dissolved as to any future marriage of such party, or in any prosecution on account thereof. But, for good cause shown, so much of any decree as prohibits the guilty party from marrying again, may be revoked and annulled, at any time after the expiration of six months from the date of such decree, by the same court by which it was pronounced. (Code 1887, § 2265.)

Revisors' Note.—This section now conforms to the preceding new section. Adultery is, of course, a "cause arising subsequent to the date of the marriage."

This section in its former state was held constitutional, and under it the court might in a divorce suit decree that the guilty party should not marry again unless such decree be annulled. Musick v. Musick, 88 Va. 12, 13 S. E. 302. See, also, Lile's Notes on 1 Min., p. 65.

Court may decree that guilty party shall not marry until future order of court. Musick v. Musick, 88 Va. 12, 15 Va. L. J. (1891) 472, 13 S. E. 302.

Sec. 5115. When and how a decree for divorce from bed and board may be revoked, or may be merged into a decree of divorce from the bond of matrimony.—When a decree for a separation forever, or a limited period, has been made in a suit for a divorce from bed and board, it may at any time thereafter, upon the joint application of the parties, and the production by them of satisfactory evidence of their reconciliation, be revoked by the same court which made it, and under such regulations and restrictions as the court may impose. And when three years shall have elapsed after the entering of a decree for divorce from bed and board, upon any other ground than that of desertion, and in any case where desertion is the ground for divorce when three years shall have elapsed from the time of such desertion, upon application of the party injured, and upon the production of satisfactory evidence, whether taken theretofore or in support of such application, the court may merge such decree for divorce from bed and board into a decree

Digitized by Google

for a divorce from the bonds of matrimony; if the court shall be of opinion, from the evidence so taken, that no reconciliation has taken place, or is probable, and that a separation has continued without interruption since the granting of such divorce. (Code 1887, § 2266; 1895-6, p. 103; 1902-3-4, pp. 87, 511.)

Revisors' Note.—This section is taken from Acts 1902-3-4, p. 511 amending section 2266 of the Code of 1887, as theretofore amended. That act contained a proviso, as follows: "Provided, the court shall be of opinion, from the evidence taken in the suit and in support of the said application, that no reconciliation has taken place," etc. Under this language it was contended in some instances that the absolute divorce should not be granted in any such case unless evidence had been taken IN SUPPORT OF THE APPLICATION. To remove this supposed difficulty, the revised section uses the words "so taken." The evidence must be satisfactory, but it may be taken "theretofore or in support of such application."

After divorce suit is brought and depositions taken, the parties agree to separate and divide property between them, and court confirms agreement and suit is dismissed from docket. This is substantially a decree a mensa et thoro, and land sold by wife becomes absolutely her property by the said agreement, and cannot be recovered by husband's heirs. Marshall v. Baynes, 88 Va. 1040, 14 S. E. 978.

Overtures of reconciliation made after the rendition of a decree for a divorce from bed and board come too late to have any effect upon the correctness of the decree, but where the cause is still pending, the provisions of this section will enable the trial court to afford the parties any relief to which they may hereafter show themselves entitled. Tutwiler v. Tutwiler, 118 Va. 724, 88 S. E. 86.

Cited but not construed in Thompson v. Thompson, 226 U. S. 551.

Sec. 5116. To prohibit advertising of any offer to obtain divorces. —Whosoever prints, publishes, distributes, or circulates, or causes to be printed, published, distributed, or circulated, any circular, pamphlet, card, handbill, advertisement, printed paper, book, newspaper, or notice of any kind, offering to procure, or aid in procuring, any divorce, or the severance, dissolution, or annulment of any marriage, and by such publication as above mentioned offering to engage, appear, or act as attorney or counsel in any suit for alimony, divorce, or the severance, dissolution, or annulment of marriage, either in this State or elsewhere, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred dollars nor more than three hundred dollars, and the person so convicted shall, in addition to the above penalty, be disbarred from practicing as such attorney at law in the courts of this Commonwealth. This section shall not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this State or orders of any court. (1902-3-4, p. 590.)

Digitized by Google

CHAPTER 206.

Dower and Jointure; Annuity Table.

Sec.
5117. Of what a widow shall be endowed.
5118. Right of dower, where husband had right of entry or action.
5119. Widow entitled to dower in surplus after lien is satisfied.
5120. Jointure in bar of dower; effect of conveyance or devise.
5121. Election of widow to waive jointure and demand dower.
5122. Dower, when widow deprived of jointure.
5123. Dower barred by adultery of wife.
5124. What a widow entitled to until her dower is assigned.
5125. How dower may be assigned.
5126. How recovered with damages.
5127. Recovery of dower and damages against heirs and alienees.
5128. Relief of alienees.
5129. When right of widow, or infant heirs, not affected by judgment against husband or guardian.
5130. Right of dowress in crops growing at her death.
5131. Annuity table.
5132. Rule of calculation.
5133. Examples.

Sec. 5117. Of what a widow shall be endowed.—A widow shall be endowed of one-third of all the real estate whereof her husband, or any other to his use, was, at any time during the coverture, seized of an estate of inheritance, unless her right to such dower shall have been lawfully barred or relinquished. (Code 1887, § 2267.)

Beneficial ownership requisite for dower.—The legal title in the husband is nothing as regards the wife's dower, unless accompanied by the beneficial ownership; and the beneficial ownership is everything, though separated from the title. Wilson v. Davison, 2 Rob. 384; Waller v. Waller, 33 Grat. 83, 86. Therefore a widow has no right to dower in lands sold or contracted to be sold by husband prior to his marriage, although he died without conveying title, because the husband is regarded in equity as trustee for the purchaser, and against him is not beneficially seised. Chapman v. Chapman, 92 Va. 537, 24 S. E. 225, 53 Am. St. Rep. 823; Burdine v. Burdine, 98 Va. 515, 524, 36 S. E. 992, 81 Am. St. Rep. 741; Waller v. Waller, 33 Grat. 83; Braxton v. Lee, 4 Hen. & M. 376; 2 Min. (4 Ed.) 147. But the widow is entitled to dower in lands conveyed by him during coverture in a deed in which she did not unite. Gardner v. Gardner, 98 Va. 525, 36 S. E. 985; Higginbotham v. Cornwell, 8 Grat. 83, 56 Am. Dec. 130.

As to relief of alienees, see section 5128 and notes.

A husband who enters into an agreement for the purchase of land, takes possession of it, and pays part of the purchase price, is beneficially seised of the land to the extent that he has paid the purchase price, although he has not acquired the legal title; and his widow is entitled to dower in the land subject to the lien upon it for the unpaid purchase price, whether he die possessed of the land or has aliened it during coverture, without her concurrence in the mode prescribed by law. James v. Upton, 96 Va. 296, 304, 31 S. E. 255. See section 5158.

When vendee gives deed of trust at time of purchase.—When the vendor passes the title to the vendee, and at the same time takes a

Digitized by Google

mortgage or deed of trust for the security of the purchase money, in which the wife of the vendee does not join, she will nevertheless take her dower in the estate, subject to the trust or mortgage. Gilliam v. Moore, 4 Leigh 30, 24 Am. Dec. 704. Quoad vendor's lien, the vendee was never beneficially seised, and his widow is not entitled to dower therein, the seisin of the husband being only for an instant. And the principle applies equally where the trust deed is for the benefit of an assignee. Hurst v. Dulaney, 87 Va. 444, 12 S. E. 800; Cowardin v. Anderson, 78 Va. 88; Gilliam v. Moore, 4 Leigh 30; Wheatley v. Calhoun, 12 Leigh 264, 37 Am. Dec. 654; Wilson v. Davisson, 2 Rob. 384; Robinson v. Shacklett, 29 Grat. 99; Summers v. Darne, 31 Grat. 791; Coffman v. Coffman, 79 Va. 504.

The same proposition is true as regards the vendor's lien (formerly implied, but now it must be expressly reserved). See section 5183. Wilson v. Davisson, 2 Rob. 384. But if the lien is created in pursuance of an after arrangement, the widow is entitled to dower. Blair v. Thompson, 11 Grat. 441; 2 Min. (4 Ed.) 146. As to dower in surplus and inchoate right of dower in equity of redemption, see section 5119 and notes. 2 Min. (4 Ed.) 142.

No dower in partnership lands, bought with partnership funds for partnership purposes.—Land bought with partnership funds, for partnership purposes, is so far considered as personalty that widow is not entitled to dower therein, but only to her distributive share thereof. Deering v. Kerfoot, 89 Va. 491, 16 S. E. 671; Parrish v. Parrish, 88 Va. 529, 14 S. E. 325; Pierce v. Trigg, 10 Leigh 422; Wheatley v. Calhoun, 12 Leigh 272, 37 Am. Dec. 654; 2 Min. (4 Ed.) 140, 141; also Hancock v. Talley, 1 Va. Dec. 442; Brooke v. Washington, 8 Grat. 248, 56 Am. Dec. 142; Edgar v. Donnally, 2 Munf. 387; Davis v. Christian, 15 Grat. 11; Hardy v. Norfolk, 80 Va. 404. See also article in 4 Va. Law Reg. 310, calling attention to a distinction made by Judge Moncure in Davis v. Christian, 15 Grat. 11; Barton, C. Pr. (2 Ed.) 956.

Land held in name of wife to defraud creditor—No dower therein.—Where real estate is purchased by and deeded to a wife, and is successfully attacked by her husband's creditors as being in fraud of their rights, he having paid the purchase money, the husband has no seisin, actual or constructive, therein, out of which the wife can be endowed. Grant v. Sutton, 2 Va. Dec. 149, 22 S. E. 490.

Dower in executory limitation.—If the husband's estate is determined by an executory limitation, the wife is, notwithstanding, to be endowed. Taliaferro v. Burwell, 4 Call 321 (dower or curtesy in a determinable fee); Jones v. Hughes, 27 Grat. 560 (dower in an executory devise); Medley v. Medley, Id. 568. See, also, Snyder v. Grandstaff, 96 Va. 482, 31 S. E. 647, 70 Am. St. Rep. 863.

Husband dies entitled to a remainder in fee of real estate, expectant on an estate of freehold therein; his widow is not entitled to dower of the land when the remainder falls in. Cocke v. Philips, 12 Leigh 248; Blow v. Maynard, 2 Leigh 30.

A husband dies entitled to reversion of lands; his widow is not entitled to dower thereof. Blow v. Maynard, 2 Leigh 30.

As to dower in general trusts, see section 5158; 2 Min. (4 Ed.) 141.

As to dower in lands held by husband as joint tenant, see 2 Min. (4 Ed.) 139; sections 5159, 5160.

As to disposal of contingent right of dower of a married woman in real estate in which her husband has no interest, see section 5135.

Conveyance of contingent right of dower to purchaser from husband.—In the absence of contract a married woman cannot be compelled to convey her contingent right of dower in land to a party who has purchased the land from her husband. Clinchfield Coal Corp. v. Sutherland, 114 Va. 20, 75 S. E. 765.

Relinquishment of dower—Consideration for postnuptial settlement.—Where a wife relinquishes an interest in husband's estate, and he makes a settlement upon her, both deeds being executed at or about the

Digitized by Google

same time, the court will presume the two deeds a part of the same transaction; and the relinquishment of her right of dower is a good consideration, to the extent of its value, as against the husband's existing creditors, for a postnuptial settlement on a wife (which is valid in equity, though void at common law). Flicklin v. Rixey, 89 Va. 834, 17 S. E. 325, 37 Am. St. Rep. 891; Harvey v. Alexander, 1 Rand. 219, 10 Am. Dec. 519; Quarles v. Lacy, 4 Munf. 251; William & Mary v. Powell, 12 Grat. 372; Davis v. Davis, 25 Grat. 587; Burwell v. Lumsden, 24 Grat. 443, 18 Am. Rep. 648; Yates v. Law, 86 Va. 117, 9 S. E. 508; Strayer v. Long, 86 Va. 557, 10 S. E. 574; De Farges v. Ryland, 87 Va. 404, 12 S. E. 805, 24 Am. St. Rep. 659; Harrison v. Carroll, 11 Leigh 484; Lee v. Bank of U. S., 9 Leigh 200; Gatewood v. Gatewood, 75 Va. 412; 2 Min. (4 Ed.) 182, 686-688; Barton, C. Pr. (2 Ed.) 553.

A mere agreement to relinquish is not binding on wife, and therefore constitutes no consideration for a settlement. Harrison v. Carroll, 11 Leigh 476, 483; 2 Min. (4 Ed.) 182.

If the value of the dower relinquished exceeds that of the land settled on the wife, she and her heirs at law are entitled to the land free from all liability for her husband's debts. Flicklin v. Rixey, 89 Va. 832, 17 S. E. 325, 37 Am. St. Rep. 891; Simmons v. Simmons, 33 Grat. 451; Robinson v. Allen, 85 Va. 721, 8 S. E. 835; Topliff v. Topliff, 145 U. S. 156, 173, 12 Sup. Ct. 825, 36 L. Ed. 658.

If the value of the lands settled on the wife exceeds the value of the dower interest, courts of equity will generally not set aside the deed of settlement as null and void, but will reduce the amount settled upon the wife to a fair and just compensation for the interest she may have parted with. Harvey v. Alexander, 1 Rand. 219, 10 Am. Dec. 519; Quarles v. Lacy, 4 Munf. 251; Davis v. Davis, 25 Grat. 590.

But if the value of the settlement on wife grossly exceed the value of the dower interest, the settlement will be set aside, and the wife is entitled to be placed in the same position and restored to the same rights with which she was invested by law before she united in the deed, provided this can be done without prejudice to the creditors or purchasers; the value of the dower either to be commuted in money or laid off in kind in lands not sold by the trustees. Davis v. Davis, 25 Grat. 587.

But the relinquishment must be duly recorded, else it is void as to husband's creditors, without notice, whose claims accrued after its execution and before its admission to record. Strayer v. Long, 86 Va. 557, 10 S. E. 574.

As to mode of estimating the value of the contingent dower interest, see section 5131 and notes.

Dower is existing lien—Priority thereof.—The right of dower, whether inchoate or consummate, is an existing lien, and a covenant against encumbrances is broken by its existence. Flicklin v. Rixey, 89 Va. 832, 834, 17 S. E. 325, 37 Am. St. Rep. 891. The lien is inferior to all liens on the land which attached prior to the marriage, but superior to those which are acquired after the marriage without the wife's consent, including judgments. Flicklin v. Rixey, 89 Va. 834, 17 S. E. 325, 37 Am. St. Rep. 891; Simmons v. Lyles, 27 Grat. 922; Strayer v. Long, 86 Va. 560, 10 S. E. 575; 2 Min. (4 Ed.) 180; Barton, C. Pr. (2 Ed.) 972.

Generally.—As to mode of barring dower, see 2 Min. (4 Ed.) 164, 180. Jointure in bar of dower. Section 5120. Dower barred by adultery. Section 5123. As to sale of lands by order of court barring contingent right of dower, see section 5281; 2 Min. (4 Ed.) 139.

See note to Hancock v. Talley, 7 Va. Law Reg. 35.

See Gregory's Forms No. 289.

For monographic note on Dower, see Davis v. Davis, 25 Grat. 587. Va. Rep. Ann.

Discussed, 8 Va. Law J. 757.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 65, section 1.

Digitized by Google

Sec. 5118. Right of dower, where husband had right of entry or action.—When a husband, or any other to his use, shall have been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same, if the husband or such other had recovered possession thereof, she shall be entitled to such dower, although there shall have been no such recovery of possession. (Code 1887, § 2268.)

There seems to be no other difference between the common law and statutory dower than that the latter does not require seisin even in law, but is content with a right of entry or of action, where the widow would have been enitled to dower, if the husband, or any other to his use, had recovered possession. 2 Min. (4 Ed.) 134.

This section held not to apply in Chapman v. Chapman, 92 Va. 537, 24 S. E. 225, 53 Am. St. Rep. 823.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 65, section 3.

See Gregory's Forms No. 289.

Sec. 5119. Widow entitled to dower in surplus after lien is satisfied.—Where land is bona fide sold in the lifetime of the husband, to satisfy a lien or encumbrance thereon, created by deed in which the wife has united, or created before the marriage, or otherwise paramount to the wife, she shall have no right to be endowed in the said land. But if a surplus of the proceeds of sale remain after satisfying the said lien or encumbrance, she shall be entitled to dower in said surplus, and a court of equity having jurisdiction of the case may make such order as may seem to it proper to secure her right. (Code 1887, § 2269.)

The last clause of this section conforms the law to the opinion of Judge Allen, dissenting in Wilson v. Davisson, 2 Rob. 398. Note to Code 1849, p. 474; Land v. Shipp, 100 Va. 346, 41 S. E. 742.

Object of statute.—The sole object of this statute was to give the wife in the husband's lifetime an interest in the equity of redemption, contingent, however, upon her surviving her husband. It was to give the inchoate and contingent dower of the wife the power to attach to the equity of redemption, so that after a sale in the husband's lifetime it would survive and be enforceable against his equity of redemption in the lands after his death. Land v. Shipp, 100 Va. 337, 41 S. E. 742; Hoy v. Varner, 100 Va. 611, 42 S. E. 690; Robinson v. Shacklett, 29 Grat. 107; Iaege v. Bossieux, 15 Grat. 84, 76 Am. Dec. 189; 2 Min. (4 Ed.) 142.

The equity of redemption of a mortgage in fee descends to the heirs of the mortgagor; and though the widow is not entitled to dower as against the mortgagee, where the mortgage was executed before coverture, or during coverture with her concurrence, in the mode prescribed by law, yet, in either case, she is entitled to dower in the equity of redemption; for of that, or, what is the same thing, of the estate subject to the mortgage, the husband is to be considered as dying seised. Wilson v. Davisson, 2 Rob. 384; Land v. Shipp, 98 Va. 285, 36 S. E. 391, 50 L. R. A. 560, and 100 Va. 345, 41 S. E. 742.

Deed of trust executed by both—Foreclosure after husband's death—Wife entitled to only one-third surplus for life.—Where a deed of trust executed by the husband and wife on his lands is foreclosed after the husband's death, the wife is not entitled to have one-third the value of the whole land assigned to her out of the surplus after the satisfaction of the lien created by the deed of trust, but is entitled, as her dower, to one-third of the surplus for life. Hoy v. Varner, 100 Va. 600, 42 S. E.

Digitized by Google

690; 8 Va. Law Reg. 675 (note). The same measure of dower was held proper when the lien was foreclosed in the husband's lifetime. Land v. Shipp, 100 Va. 337, 41 S. E. 742; 8 Va. Law Reg. 181, 675. See, also, Id. 165. Hoy v. Varner, supra, overrules Wilson v. Branch, 77 Va. 65, 46 Am. Rep. 709, on this point.

Same—What wife must do to be endowed of whole land.—She must pay an equitable proportion of the liens and encumbrances thereon, which are paramount to her dower, before she can be endowed of the whole land. Hoy v. Varner, 100 Va. 600, 42 S. E. 690.

Two deeds of trust—Wife uniting in first—Subrogation.—If a wife unite with her husband in a deed of trust on his land to secure the payment of a debt due by him, and subsequently the husband gives a second deed of trust on the same land, in which the wife does not unite, and the land is sold under the second deed, but the purchase money is applied so far as need be to the extinguishment of the debt secured by the first deed, a court of equity will subrogate the purchaser to the rights of the creditor in the first deed, and, upon the death of the husband, will allow his widow dower in the surplus only remaining after the payment of the debt secured in the first deed of trust. Land v. Shipp, 100 Va. 337, 41 S. E. 742.

A conveyance of land absolute on its face may be shown by parol evidence to have been made on the condition that the grantee should pay the grantor's debts, and where the grantee conveys the land in trust to secure the payment of parties who loaned him the money with which he paid the grantor's debts, e. g., where both deeds were made on same day, the widow not joining in the deed of trust; held, in such case she is not entitled to dower in the land or its proceeds until the debt has been satisfied. Coffman v. Coffman, 79 Va. 504.

Wife uniting in lien not a surety—When dower is separate estate.—When a wife unites in the execution of a lien on the husband's lands, she does not, on foreclosure of lien, occupy the position of a surety, either in person or estate. A contingent dower interest is not an estate distinct from the husband's estate; and hence when she so unites with him she conveys nothing, but merely releases a contingent claim. Hoy v. Varner, 100 Va. 600, 42 S. E. 690; 8 Va. Law Reg. 676.

Purchaser not bound to see to application of purchase money.—The land is not liable in the hands of the purchaser, nor is he bound to see to application of the purchase money, or that an order is entered for the protection of the rights of the wife in the event of her surviving the husband. Daniel v. Leitch, 13 Grat. 195, 211; Jones v. Tatum, 19 Grat. 720; Robinson v. Shacklett, 29 Grat. 108; Hurst v. Dulaney, 87 Va. 444, 12 S. E. 800.

Although ten months elapse after sale before the mortgage is executed in fulfillment of the original contract of sale and purchase, the rights of the mortgagee are paramount to dower rights of purchaser's wife. Wheatley v. Calhoun, 12 Leigh 264, 37 Am. Dec. 654.

See James v. Upton, 96 Va. 304, 31 S. E. 255.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 65, section 3.

Sec. 5120. Jointure in bar of dower; effect of conveyance or devise.—If any estate, real or personal, intended to be in lieu of dower, shall be conveyed or devised for the jointure of the wife, such conveyance or devise shall bar her dower of the real estate, or the residue thereof, and every such provision, by deed or will, shall be taken to be intended in lieu of dower, unless the contrary intention plainly appear in such deed or will, or in some other writing signed by the party making the provision. (Code 1887, § 2270.)

Jointure defined—When a bar.—Jointure at common law consists

Digitized by Google

of an estate or interest in land to take effect in possession or profit immediately on the death of the husband, in satisfaction of dower, and it must so appear in the deed. It is an absolute bar only when made before marriage. If made after marriage, it only puts the wife to her election whether to accept the provision or claim dower. The only difference made by the statute of Virginia is that jointure may be of personal as well as real estate. Land v. Shipp, 98 Va. 284, 36 S. E. 391, 50 L. R. A. 560. See 2 Min. (4 Ed.) 177.

Jointure does not include present estates.—Under this section, jointure, operating to bar dower, does not include property in which a present estate is settled upon the wife, but is confined to settlements to take effect at the death of the husband. Land v. Shipp, 98 Va. 284, 36 S. E. 391, 50 L. R. A. 560; 6 Va. Law Reg. 165.

Provision enjoyed during husband's lifetime no bar to dower.—If, after the husband's death, the widow accepts a provision made for her in lieu of dower, she bars herself of dower; but if she has received the provision during her husband's lifetime, and has spent or wasted it, she may take her dower as if no provision had been made. It is necessary, in order to estop her, that she should have enjoyed the provision, or a part of it at least; after her husband's death. Land v. Shipp, 98 Va. 284, 36 S. E. 391, 50 L. R. A. 560.

Rule changed.—The provision, "every such provision, by deed or will, shall be intended to be in lieu of dower, unless the contrary intention plainly appear," etc., changes the rule in Higginbotham v. Cornwell, 8 Grat. 83, 56 Am. Dec. 130. See Bolling v. Bolling, 88 Va. 524, 14 S. E. 67; also, Dixon v. McCue. 14 Grat. 540, 551, 552; and Nelson v. Kownslar, 79 Va. 468.

Rule as to construction of wills of personalty not changed.—This statute does not change the rule at common law that wills of personalty are to be construed according to the lex domicilii. Bolling v. Bolling, 88 Va. 524, 14 S. E. 67. Therefore where a testator, domiciled, in New York, bequeathed personal property to his wife, but made no disposition of his realty in Virginia, the testator's intention in regard to dower must be construed according to the law of New York. Bolling v. Bolling, 88 Va. 524, 14 S. E. 67.

Decree setting up unrecorded deed formerly not necessarily a bar to dower.—A decree of a court of chancery setting up an unrecorded deed of husband and wife, which has been lost, does not operate to debar the wife, on death of her husband, from claiming dower in the land, if she was otherwise entitled to it. The execution and delivery by her of the lost deed did not convey her interest. Admission to record was necessary to accomplish that. Building v. Fray, 96 Va. 560, 32 S. E. 58. But see section 5211 which in its present state changes this rule.

Generally.—A case in which a deed of separation did not operate as jointure to bar dower, Land v. Shipp, 98 Va. 292, 36 S. E. 391, 50 L. R. A. 560.

A mechanics' lien does not override the wife's dower interest. Iaege v. Bossieux, 15 Grat. 105, 76 Am. Dec. 189; Shaeffer v. Weed, 3 Gilman, 511.

See Snyder v. Grandstaff, 96 Va. 482, 31 S. E. 647, 70 Am. St. Rep. 863.

See 14 Va. L. Reg. 276.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 65, section 4.

Sec. 5121. Election of widow to waive jointure and demand dower.—But if such conveyance or devise were before the marriage, without the assent in writing or during the infancy of the feme, or if it were after marriage, in either case, the widow may, at her election, waive such jointure and demand her dower. Such election shall be made within one year after the death of the husband,

Digitized by Google

or within one year after the admission of his will to probate where the provision is by will, and shall be made in any court of record in the county or corporation in which the husband resided at the time of his death, or in the clerk's office of which the instrument creating the jointure is recorded, or by a writing recorded in such court, or in the clerk's office thereof, upon such acknowledgment or proof as would authorize a writing to be admitted to record under chapter two hundred and eleven; and when she shall elect and receive her dower, the estate so conveyed or devised to her shall cease and determine. (Code 1887, § 2271.)

The general doctrine of election applies.—The doctrine of election is founded on the same reasons and governed by the same rules when applied to a widow claiming dower as to any other case. Rutherford v. Mayo, 76 Va. 117; Dixon v. McCue, 14 Grat. 540.

When election is necessary.—If the widow's taking dower would interfere with any of the provisions of the will, she must elect. Dixon v. McCue, 14 Grat. 540; Rutherford v. Mayo, 76 Va. 117.

When section not applicable.—The provisions of this section have no application to a case where a testator disposes of property belonging to his wife in her own right and also makes provision for her by his will. She has the same right of election as to such property as any other person and whether or not she has elected to take under or against the will is to be determined as in other cases. Pence v. Lile, 104 Va. 518, 52 S. E. 257; Showalter v. Showalter, 107 Va. 713, 60 S. E. 48.

This section is not applicable to a case where a husband devises to his wife a lot belonging jointly to him and her during her life or widowhood, and where he also made provision for her out of other property. In such case she must elect, but this statute does not apply, for it was meant to cover the case where the property left to her was not her own, but her husband's. Waggoner v. Waggoner, 111 Va. 325, 68 S. E. 990.

A case in which question of election does not arise.—Land is devised to a husband, but if he die without issue to his sisters. Husband dies without issue, leaving a widow, to whom, by will, he devises all his property. She is entitled to dower in the land, and the provision for her by will is not jointure, nor does the question of election arise. Jones v. Hughes, 27 Grat. 560.

Generally.—It would seem that election is personal to widow and cannot be exercised by her administrator, 11 Va. Law Reg. 770.

See Snyder v. Grandstaff, 96 Va. 482, 31 S. E. 647, 70 Am. St. Rep. 863; also notes to section 5120.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 65, section 5.

Sec. 5122. Dower, when widow deprived of jointure.—If a widow be lawfully deprived of her jointure, or any part thereof, she shall be endowed of so much of the real estate whereof, but for said jointure, she would have been dowable, as is equal in value to that of which she was deprived. (Code 1887, § 2272.)

The widow's election to take under the provisions of the will and failure to renounce for four years is not a lawful deprivation of her dower, within the meaning of this section. Cooper v. Cooper, 77 Va. 198, 205.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 65, section 6.

Sec. 5123. Dower barred by adultery of wife.—If a wife, of her own free will, leave her husband and live in adultery, she shall be

Digitized by Google

barred of her dower, unless her husband be afterwards reconciled to her, and suffer her to live with him. (Code 1887, § 2273.)

As to barring of interest in personalty, see section 5277.
As to barring of husband's curtesy, see section 5140.
See, also, 2 Min. (4 Ed.) 164.
For W. Va. decisions on similar statute, see Justis' Annotations, chapter 65, section 7.

Sec. 5124. What a widow entitled to until her dower is assigned.—Until her dower is assigned, the widow may hold, occupy, and enjoy the mansion house and curtilage without charge for rent, repairs, taxes, or insurance; and, in the meantime, she shall be entitled to demand of the heirs, devisees, or alienees, or any of them, one-third part of the issues and profits of the other real estate which descended or was devised or passed to them, of which she is dowable, after deducting the costs of necessary repairs, taxes, and insurance. If she be deprived of such mansion house and curtilage, she may, on complaint of unlawful entry or detainer, recover the possession thereof, with damages for the time she was so deprived; but nothing in this section shall be construed to impair the lien, or delay the enforcement thereof, of the State, city, or county for the taxes assessed upon said property. (Code 1887, § 2274; 1902-3-4, p. 660.)

The interest of the widow under this statute is analogous to a tenancy at will. The effect of the statute is merely to extend the quarantine at common law. The object of the statute was to coerce the heir to assign dower, and until this was done to protect her in the enjoyment of the homestead and the rents and profits therefrom. Therefore the widow, without assignment of dower, is entitled, as against the claims of creditors, to a credit for taxes she has paid for the protection of her interest. Simmons v. Lyle's Adm'r, 32 Grat. 752; Dillard v. Dillard, 77 Va. 820, 823. She is also entitled to be reimbursed for so much of the purchase money as was properly payable by the heirs. Simmons v. Lyle's Adm'r, 32 Grat. 752.

As to when possession under this statute may become adverse (which usually it is not), see Hannon v. Hounihan, 85 Va. 429, 12 S. E. 157. See, also, Hulvey v. Hulvey, 92 Va. 182, 23 S. E. 233.

Cited but not construed, Coleman v. Va. Stave Co., 112 Va. 61, 70 S. E. 545.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 65, section 8.

Sec. 5125. How dower may be assigned.—Dower may be assigned as at common law; or upon the motion of the heirs, devisees, or alienees, or any of them, the court in which or in the clerk's office of which the will of the husband is admitted to record or administration of his estate is granted or the conveyance of the alienee is recorded, may appoint commissioners, by whom the dower may be assigned, and the assignment, when confirmed by the court, shall have the same effect as if made by the heir at common law; but nothing herein contained shall be construed to take away or affect the jurisdiction which courts of chancery now exercise on the subject of dower. (Code 1887, § 2275; 1895-6, p. 309.)

Revisors' Note.—The words "or in the clerk's office of which"

Digitized by Google

found in lines three and four of the text are new. See sections 5247 and 5249.

Widow cannot move to appoint commissioners.—Motion to the county (now circuit) or corporation court to appoint commissioners to assign dower by the heir is proper, but such motion by the widow is irregular and inadmissible. 2 Min. (4 Ed.) 162; Helm v. Helm, 30 Grat. 404, 414; Moore v. Waller, 2 Rand. 418; Raper v. Sanders, 21 Grat. 60, 74.

General rule—Assignment by metes and bounds—Exceptions.—The general rule at common law is that the assignment of dower must be by metes and bounds, but to this rule there are exceptions, arising from the nature and quality of the object itself or from the nature of the husband's interest. (1) When the thing is entire, as a house, the assignment may be of so many rooms, and not a third part of it, in which case the passages are usually assigned to be used conjointly. (2) In case of lands held by tenants in common, and, in Virginia (see sections 5159, 5160), lands held by joint tenants, an assignment by metes and bounds will be dispensed with. Parrish v. Parrish, 88 Va. 531, 14 S. E. 325; Simmons v. Lyles, 27 Grat. 922; Blair v. Thompson, 11 Grat. 451; White v. White, 16 Grat. 264; 80 Am. Dec. 706; Wilson v. Branch, 77 Va. 69, 70, 46 Am. Rep. 709.

Out of what lands dower is assigned, see 2 Min. (4 Ed.) 160; Wilson v. Branch, 77 Va. 69, 46 Am. Rep. 709; Blair v. Thompson, 11 Grat. 451; White v. White, 16 Grat. 267.

Exoneration of land sold by husband by assignment of dower in other lands owned by him. 2 Min. (4 Ed.) 160; Stimson v. Thorn, 25 Grat. 284.

Widow entitled to one-third of income.—In assigning dower, the probable rents and profits, and not the mere fee-simple value, are the chief subjects of consideration. Dower should be so assigned that the widow may enjoy one-third of the income arising from the estate. This rule is adopted equally to protect widows from having an unproductive part of the estate assigned to them, and to guard heirs from being left, during the life of the widow, without the means of support. Fuller v. Conrad, 94 Va. 233, 26 S. E. 575.

As to sale of infant's lands for commutation of dower, see 4 Va. Law Reg. 197.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 65, section 9.

See Gregory's Forms No. 289.

Sec. 5126. How recovered with damages.—A widow having a right of dower in any real estate may recover the said dower and damages for its being withheld by such remedy at law as would lie on behalf of a tenant for life having a right of entry, or by a bill in equity, where the case is such that a bill would now lie for such dower. (Code 1887, § 2276.)

Land sold several times—Necessary party defendant.—In a bill by a widow for dower in land sold in the lifetime of her husband, and coming to the present owner through several intermediate conveyances, the present owner is the only necessary party defendant. Blair v. Thompson, 11 Grat. 441, 445.

Remedies for recovery of dower.—The remedies for the recovery of dower are (1) bill in chancery; (2) ejectment (see section 5480); (3) motion to circuit or corporation court to appoint commissioners to assign dower (see section 5125). See 2 Min. (4 Ed.) 161, 162.

A widow entitled to dower may, under this section, file her bill in equity to recover the same, and jurisdiction having attached for that purpose, is not affected by the fact that her bill prays for relief to which she is not entitled; and while, generally, partition of lands cannot be had in such a suit, yet one of the defendants, by cross bill, may ask to have the land sold for partition as well as assignment of dower. Kavanaugh v. Shacklett, 111 Va. 423, 69 S. E. 335.

Digitized by Google

When decree for specific sum in lieu of dower may be made.—There cannot be a decree for a specific sum in lieu of dower without the assent of all the parties interested. Blair v. Thompson, 11 Grat. 441; Wilson v. Branch, 77 Va. 69, 46 Am. Rep. 709; Wilson v. Davisson, 2 Rob. 384; Harrison v. Payne, 32 Grat. 387, 390; White v. White, 16 Grat. 264, 80 Am. Dec. 706; Simmons v. Lyles, 27 Grat. 930.

See notes to section 5125.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 65, section 10.

Sec. 5127. Recovery of dower and damages against heirs and alienees.—Whether the proceedings of the widow be against one claiming under an alienation made under a decree of court, or by the husband, in his lifetime, or against his heirs or devisees, or their assigns, a recovery of dower in such real estate in kind shall be of a third of the estate, as it is when the recovery is had. Against such heirs or devisees, or their assigns, the damages shall be for such time after the husband's death as they have withheld the dower, not exceeding five years before the suit is commenced. Against one claiming under such alienation made under decree, or by the husband, in his lifetime, the damages shall be from the commencement of the suit against such claimant. In either case, they shall be to the time of the recovery. And if, after suit is brought, the widow or the tenant die before such recovery of damages, the same may be recovered by her personal representative or against his. (Code 1887, § 2277.)

As to the time of valuation of the estate for assignment of dower, the rule in the statute changes the rule in Tod v. Baylor, 4 Leigh 498; 2 Min. (4 Ed.) 157.

Though at law the damages for the mesne profits are lost by the death of either plaintiff or defendant in dower before judgment therefor, it is well settled to be otherwise in equity, from the consideration that the profits of a third part of her husband's real estate are her only subsistence from his death.

But this rule does not apply to encumbrances by mortgage or deed of trust, which are only securities for the payment of money, and still leave the grantor owner of the estate. (Tod v. Baylor, 4 Leigh 498; Thomas v. Gammel, 6 Leigh 9; Macaulay v. Dismal, 2 Rob. 530.

See 2 Min. (4 Ed.) 163.

See James v. Upton, 96 Va. 305, 31 S. E. 255; also Land v. Shipp, 98 Va. 285, 36 S. E. 391, 50 L. R. A. 560.

The contingent right of dower is barred on lands sold in partition suit, see section 5281.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 65, section 11.

Sec. 5128. Relief of alienees.—The two preceding sections are subject to this qualification, that on the application of one claiming under an alienation made under decree of court, or by the husband, in his lifetime, a court of equity may grant him relief from such recovery on the terms of his paying to the widow, during her life, lawful interest from the commencement of her suit on one-third of the value, at the husband's death, of the real estate so aliened, deducting the value of such permanent improvements then existing as may have been made (after the alienation) by the alienee or his assigns. (Code 1887, § 2278.)

Digitized by Google

The right of dower in kind is not absolutely merged in a mere personal decree for the interest provided by this section, and an ineffectual effort, by execution or by suit, in chancery, to enforce such a personal decree, made in a prior suit to recover dower, is no bar to an independent suit against the heirs of the alienee to recover dower in kind and damages for its detention. Dickerson v. Gray, 100 Va. 526, 42 S. E. 298, and 8 Va. Law Reg. 492, note.

If, in the lifetime of the husband, land be sold, the purchaser may relieve himself from a recovery of dower in kind upon paying to the widow interest on one-third the value of the land. Land v. Shipp, 100 Va. 337, 41 S. E. 742.

If the land contracted to be exchanged was in fact encumbered by the dower of a widow, and that was the only defect in the title, such defect is not sufficient to prevent the specific execution of the contract, but it may be executed with an allowance of compensation for such defect on the terms prescribed in this section. Stimson v. Thorn, 25 Grat. 278.

Cited but not construed in Bragg v. Tinkling Land Co., 115 Va. 1, 78 S. E. 541.

See notes to section 5127; also 2 Min. (4 Ed.) 157.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 65, section 12.

Sec. 5129. When right of widow, or infant heirs, not affected by judgment against husband or guardian.—No widow shall be precluded from her dower by reason of the real estate whereof she claims dower having been recovered from her husband by a judgment rendered by default or collusion, if she would have been entitled to dower therein had there been no such judgment; nor shall any heir who was under the age of twenty-one years at the time dower was assigned to the widow out of the lands of his ancestor by his guardian, or by judgment by default or collusion against such guardian, be precluded from recovering the seisin of his ancestor from such widow, unless she show herself entitled to such dower. (Code 1887, § 2279.)

Sec. 5130. Right of dowress in crops growing at her death.—Crops growing on the dower land of a widow at the time of her death may be bequeathed by her, and shall go to her personal representative, in like manner as crops growing on any other land held for life. (Code 1887, § 2280.)

Sec. 5131. Annuity table.—When a party as tenant for life, or by the curtesy, or in dower, is entitled to the annual interest on a sum of money, or is entitled to the use of any estate, or a part thereof, and is willing to accept a gross sum in lieu thereof, or the party liable for such interest, or affected by such claim, has the right to pay a gross sum in lieu thereof, or if the court in any legal proceeding decree a gross sum to be paid in lieu thereof, the sum shall be estimated according to the then value of an annuity of six per cent. on the principal sum during the probable life of such person, according to the following table, showing the present value, on the basis of six per cent. interest, of an annuity of one dollar, payable at the end of every year that a person of a given age may be living, for the ages therein stated:

Digitized by Google

AGE	PRESENT VALUE	AGE	PRESENT VALUE	AGE	PRESENT VALUE	AGE	PRESENT VALUE
0	$10.439	26	$13.368	52	$10.208	78	$4.238
1	12.078	27	13.275	53	9.988	79	4.040
2	12.925	28	13.182	54	9.761	80	3.858
3	13.652	29	13.096	55	9.524	81	3.656
4	14.042	30	13.020	56	9.280	82	3.474
5	14.325	31	12.942	57	9.027	83	3.286
6	14.460	32	12.860	58	8.772	84	3.102
7	14.518	33	12.771	59	8.529	85	2.909
8	14.526	34	12.675	60	8.304	86	2.739
9	14.500	35	12.573	61	8.108	87	2.599
10	14.448	36	12.465	62	7.913	88	2.515
11	14.384	37	12.354	63	7.714	89	2.417
12	14.321	38	12.239	64	7.502	90	2.266
13	14.257	39	12.120	65	7.281	91	2.248
14	14.191	40	12.002	66	7.049	92	2.337
15	14.126	41	11.890	67	6.803	93	2.440
16	14.067	42	11.779	68	6.546	94	2.492
17	14.012	43	11.668	69	6.277	95	2.522
18	13.956	44	11.551	70	5.998	96	2.486
19	13.897	45	11.428	71	5.704	97	2.368
20	13.835	46	11.296	72	5.424	98	2.227
21	13.769	47	11.154	73	5.170	99	2.004
22	13.697	48	10.998	74	4.944	100	1.596
23	13.621	49	10.823	75	4.760	101	1.175
24	13.541	50	10.631	76	4.579	102	0.744
25	13.456	51	10.422	77	4.410	103	0.314

(Code 1887, § 2281.)

The rule as stated in this section is given, with reason therefor, in Wilson v. Davisson, 2 Rob. 384. See, also, Davis v. Davis, 25 Grat. 587; Fisher v. Clement's Ex'r., 82 Va. 813, 1 S. E. 182. See 3 Va. Law Reg. 69, for tables of mortality, explanation thereof, etc.

Where the widow must contribute to pay a charge upon the land paramount to her claim of dower, the amount payable by the widow is the present worth of the annual interest on one-third of the debt for the probable period of her life, ascertained from the tables of mortality. Harper v. Vaughan, 87 Va. 426, 12 S. E. 785; Wilson v. Davisson, 2 Rob. 384; 2 Min. (4 Ed.) 142, 143.

The rule for computing the present value of the wife's contingent right of dower is to ascertain the wife's expectation of life and that of the joint lives of the husband and wife, and from the present value of an annuity payable during wife's life deduct the present value of an annuity payable during their joint lives. Strayer v. Long, 86 Va. 557, 10 S. E. 574; 2 Min. (4 Ed.) 183.

Commutation of a life interest in a fund is not an absolute right but is dependent upon the consent of the parties, but the court, in its discretion, may, when circumstances make it impossible to invest a sufficient sum to yield the proper annuity, pay to the life tenant his commuted interest as this is as equitable as any other mode and attended with as little convenience. Amer. Natl. Bank v. Taylor, 112 Va. 1, 70 S. E. 534.

Cited but not construed in Bragg v. Tinkling Land Co., 115 Va. 1, 78 S. E. 541.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 65, section 17.

Sec. 5132. Rule of calculation.—Calculate the interest at six per cent. upon the sum to the income of which, or upon the value of the property to the use of which, the person is entitled. Multiply this interest by the present value of an annuity of one dollar, as set opposite the person's age in the table, and the product is the gross value of the life estate of such person therein. (Code 1887, § 2282.)

Digitized by Google

Sec. 5133. Examples.—Suppose a person whose age is forty-two is tenant for life in the whole of an estate worth ten thousand and five hundred dollars, the annual interest on that sum, at six per cent., is six hundred and thirty dollars. The present value of an annuity of one dollar at the age of forty-two, as appears by the table, is eleven dollars seventy-seven cents and nine mills, which, multiplied by six hundred and thirty dollars, gives seven thousand four hundred and twenty dollars and seventy-seven cents as the gross value of such life estate in the premises, or the proceeds thereof; then, suppose a widow whose age is thirty-six is entitled to dower in real estate worth twelve thousand dollars, interest on four thousand dollars, the third part thereof, for one year, is two hundred and forty dollars, which, multiplied by twelve dollars forty-six cents and five mills, the present value of an annuity of one dollar at the age of thirty-six, as appears by the table, gives two thousand nine hundred and ninety-one dollars and sixty cents, as the gross value of such dower. (Code 1887, § 2283.)

CHAPTER 207.

Property Rights of Married Women.

Sec.
5134. Property rights of married women; how they may acquire and dispose of property, make contracts, sue and be sued.
5135. How a married woman may dispose of her contingent right of dower.
5136. Control of estate of a married woman, who is a minor; appointment of a receiver; his duties; husband's curtesy.
5137. Sale of the real estate of a married woman who is a minor.
5138. How estate of a married woman to pass at death.
5139. Equitable separate estates not affected.
5140. Curtesy, etc., of husband barred by desertion.

Sec. 5134. Property rights of married women; how they may acquire and dispose of property; make contracts, sue and be sued.—A married woman shall have the right to acquire, hold, use, control, and dispose of property, as if she were unmarried, and such power of use, control, and disposition shall apply to all property of a married woman which has been acquired by her since April fourth, eighteen hundred and seventy-seven, or shall be hereafter acquired: provided, however, that her husband shall be entitled to curtesy in her real estate other than her equitable separate estate when the common law requisites therefor exist, and he shall not be deprived thereof by her sole act; but neither his right to curtesy nor his marital rights shall entitle him to the possession or use, or to the

Digitized by Google

rents, issues, and profits of said real estate during the coverture; nor shall the property of the wife be subject to the debts or liabilities of the husband. A married woman may contract and be contracted with, sue and be sued, in the same manner and with the same consequences as if she were unmarried, whether the right or liability asserted by or against her shall have accrued heretofore or hereafter. In an action by a married woman to recover for a personal injury inflicted on her, she may recover the entire damage sustained, notwithstanding the husband may be entitled to the benefit of her services about domestic affairs; and no action for such services shall be maintained by the husband. A husband shall not be responsible for any contract, liability, or tort of his wife, whether the contract or liability was incurred or the tort was committed before or after marriage. (1899-00, p. 1240.)

Revisors' Note.—This section is taken from the act cited, with several changes in phraseology and some change in meaning. The words, "which has been acquired by her since April fourth, eighteen hundred and seventy-seven, or shall be," found in lines four and five of the text, are used in lieu of "heretofore or." The first married woman's act was approved April 4, 1877 (Acts 1876-7, p. 333) and went into effect immediately.

The words "other than her equitable separate estate" found in line seven of the text makes statutory the decision of the court in Chapman v. Price, 88 Va. 392, 11 S. E. 879.

Before the revision the section, in speaking of the husband's rights, provided that "the right to curtesy shall not entitle him to the possession or use, or to the rents, issues and profits of said real estate during the coverture," etc. Now it is provided, "but neither his right to curtesy NOR HIS MARITAL RIGHTS shall entitle him to the possession or use," etc.

The next to the last sentence of the section is new. The object of this sentence is to give to the wife all the damage resulting from the injury and to change the law as announced in Richmond Ry., etc., Co. v. Bowles, 92 Va., p. 738; 24 S. E. 388; Atlantic & D. R. Co. v. Ironmonger, 95 Va. 625, 29 S. E. 319; and Norfolk Ry. & Light Co. v. Williar, 104 Va. 679, 52 S. E. 380. It is very difficult to sever the damage in a case of this kind, and tell what part should be recovered by the wife and what part by the husband, and as it is the wife who suffers both the physical and mental injury, it is deemtd best to give to her the entire damage.

Historical.—The first married women's act in Virginia was passed April 4, 1877, and went into effect immediately. (Acts 1876-7, p. 333.) The Code of 1887 made material changes in the law, and by Acts 1899-00, p. 1240 (upon which the above section is based), married women were practically put on the same footing as femes sole.

Generally.—Since the enactment of this section it is not necessary for an adult married woman to sue by a next friend. Lynchburg Cotton Mills v. Rives, 112 Va. 137, 70 S. E. 542.

This section was not intended to apply to a warranty in a deed in which a wife united for the purpose only of relinquishing her inchoate right of dower in her husband's property; nor does it repeal by implication section 5211, declaring the effect of such warranty. Augusta v. Beard, 100 Va. 687, 42 S. E. 694.

Under section 2284 of the Code of 1887 (now repealed) it was held error to join husband in suit of wife for personal injury. Norfolk v.

Digitized by Google

Dougherty, 92 Va. 372, 23 S. E. 777; Richmond v. Bowles, 92 Va. 738, 24 S. E. 388.

It is unnecessary, under this section, to allege that the contract sued upon was made with reference to her separate estate. Young v. Hart, 101 Va. 480, 44 S. E. 703.

Under this section, married women may contract and be contracted with, sue and be sued as if unmarried, and personal judgments may be rendered against them, whether the right or liability accrued before or after the passage of the act. Young v. Hart, 101 Va. 480, 9 Va. Law Reg. 540, 545, and note, 44 S. E. 703.

This section, at least so far as it affects debts and liabilities of husband created after its passage, is a valid exercise of legislative power. Chilton v. Hannah, 107 Va. 661, 60 S. E. 87.

The statute of no State has gone farther in respect to the rights, etc., of married women. Where a husband and wife who have already separated, enter into a contract adjusting property rights and providing maintenance for the wife, it is not now essential to the validity of the contract that the provision for the wife be made through the intervention of a trustee. Moreland v. Moreland, 108 Va. 93, 60 S. E. 730.

A husband is not entitled to curtesy in the equitable separate estate of his wife, which he has created for her benefit; he is excluded by the nature of the transaction. Ratliff v. Ratliff, 102 Va. 887, 47 S. E. 1007; Cox & Casper v. Wallace (Cir. Ct. Appeals, 4th Cir.), 20 Va. L. Reg. 665, and note.

One of the common law requisites for curtesy is that there shall be issue born alive during coverture; issue born out of wedlock and afterwards legitimated by marriage (section 5269) does not fulfill this requirement. Bond v. Bond (Circuit Court of Pulaski), 16 Va. Law Reg. 411. This case is criticised by Harvard Law Review, see 16 Va. Law Reg. 709; defended 16 Va. Law Reg. 801.

A contract by a married woman, in which her husband unites, for the sale of her statutory separate estate under the act of April 4, 1877, may be enforced in equity either for or against her. Dunn v. Stowers, 104 Va. 290, 51 S. E. 366. For ruling under former statute see Tarrant v. Core, 106 Va. 161, 56 S. E. 228.

A married woman whose will was dated 1899 and who died that year had no right to dispose of property acquired under section 1 of "Smith act" (1876, 7, p. 333). The report, however, does not disclose whether this section was then in effect. Coleman v. Wood, 108 Va. 457, 62 S. E. 388.

In a contest between the existing creditors of an insolvent husband, on the one side, and his wife, on the other, when the property in controversy is claimed by her under a purchase, not from her husband, but from a third party (the question being presented simply upon the bill and answer), the legal presumption is that the consideration was furnished by the husband, and the burden is upon the wife to show by clear and satisfactory evidence that the consideration was in good faith paid by her out of her own estate and not by her husband. Johnson v. Ables, 119 Va. 593, 89 S. E. 908.

The act upon which this section is based was passed long after the decision in Yates v. Law, 86 Va. 117, 9 S. E. 508, and manifests no purpose to modify the rule of evidence therein established. Johnson vs. Ables, 119 Va. 593, 89 S. E. 908.

See article, 2 Va. L. Reg. N. S. 690.

A review of the authorities on the right of wife to sue her husband for a personal tort is found in a note 6 L. R. A. (N. S.) 191, and the right of the husband to sue the wife for such a tort is denied in Peters vs. Peters, 103 Pac. 219.

Under a similar statute in the District of Columbia a wife cannot maintain an action against her husband to recover damages for an assault and battery upon her person. Thompson v. Thompson, 218 U. S. 611; discussed in 16 Va. Law Reg. 856.

Effect of larceny by husband from wife, and effect of married woman's law thereupon, see note 10 Va. Law Reg. 937.

Digitized by Google

As to testamentary capacity of married women see section 5227 and notes.

As to effect of this section on antenuptial conveyances in fraud of husband's rights, see 7 Va. Law Reg. 822.

See Burks' Pl. and Pr., p. 68; note 6 Va. L. Reg. 52; article 6 Va. L. Reg. 485; see also 8 Va. L. Reg. 51.

Previous to the Smith act (Acts 1876-77, p. 333, amended by Acts 1877-78, p. 247), a married woman could own a common-law estate and an equitable separate estate; by that act she could own a statutory separate estate; and then, when the Code of 1887 went into effect, she could own a legal separate estate. For discussion of these estates, see Burks' Separate Estate.

Cases bearing on the Smith act (act April 4, 1877, amended by act March 14, 1878): Williams v. Lord, 75 Va. 398; Hayes v. M. P. A., 76 Va. 225; Breeding v. Davis, 77 Va. 639, 46 Am. Rep. 740; Salamone v. Keiley, 80 Va. 86; Farley v. Tillar, 81 Va. 275; N. & W. R. R. v. Prindle, 82 Va. 122; McDearman v. Hodnett, 83 Va. 281, 2 S. E. 643; Burson v. Andes, 83 Va. 445, 8 S. E. 249; Browne v. Bockover, 84 Va. 424, 4 S. E. 745; Jones v. Degge, 84 Va. 685, 5 S. E. 799; Crockett v. Doriot, 85 Va. 240, 3 S. E. 128; Alexander v. Alexander, 85 Va. 353, 7 S. E. 335, 1 L. R. A. 125; Keagy v. Trout, 85 Va. 390, 7 S. E. 329; Yates v. Law, 86 Va. 117, 120, 9 S. E. 508; Va. C. & I. Co. v. Roberson, 88 Va. 116, 13 S. E. 350; Hutchings v. Com. Bank, 91 Va. 68, 20 S. E. 950; Jones v. Jones, 96 Va. 752, 32 S. E. 463.

For analysis of the Smith act, and construction thereon by the above cases, see Burks' Separate Estate, 59, 77.

Curtesy of the husband under the Smith act, Campbell v. McBee, 22 S. E. 807, 1 Va. Law Reg. 450.

For analysis of chapter 103, Code 1887, see 4 Va. Law Reg. 413; also Burks' Separate Estate, pp. 78-87.

For general contractual powers of married women under Code 1887, see article 3 Va. Law Reg. 635; also 1 Va. Law Reg. 357; 3 Va. Law Reg. 797; 4 Va. Law Reg. 460, 630, 418, 465, 629, 711, 789; 5 Va. Law Reg. 339, 485, 774. But see 6 Va. Law Reg. 487.

For form of declaration against married women under Code 1887, see 3 Va. Law Reg. 614.

Cases under Code of 1887.—Sections now repealed—*Section* 2284.—N. & W. R. R. v. Dougherty, 92 Va. 372, 23 S. E. 777; Richmond v. Bowles, 92 Va. 738, 24 S. E. 388, 2 Va. Law Reg. 20, note; 3 Va. Law Reg. 797, note; Dezendorf v. Humphreys, 95 Va. 473, 28 S. E. 880; Hirth v. Hirth, 98 Va. 121, 34 S. E. 964, 5 Va. Law Reg. 774; Stern v. Frenkel, 4 Va. Law Reg. 460, 465; 6 Va. Law Reg. 487; Land v. Shipp, 98 Va. 287, 36 S. E. 391, 50 L. R. A. 560.

Discussed, 1 Va. Law J. 63; 3 Va. Law J. 1, 73, 193, 714; 4 Va. Law J. 65, 709; 8 Va. Law. J. 705; 9 Va. Law J. 65; 11 Va. Law J. 1; 12 Va. Law J. 145; 14 Va. Law J. 537.

Section 2285.—Geiger v. Blackley, 86 Va. 328, 10 S. E. 43; McDonald v. Hurst, 86 Va. 885, 11 S. E. 536; Crabtree v. Dunn, 86 Va. 953, 11 S. E. 1053; Catlett v. Alsop, 99 Va. 684, 40 S. E. 34.

Discussed, 1 Va. Law J. 63.

Section 2286.—Chapman v. Price, 83 Va. 392, 11 S. E. 879; Yates v. Law, 86 Va. 117, 9 S. E. 508; Gentry v. Gentry, 87 Va. 478, 12 S. E. 966; Dugger v. Dugger, 84 Va. 130, 4 S. E. 171; Browne v. Bockover, 84 Va. 424, 4 S. E. 745; Alexander v. Alexander, 85 Va. 353, 7 S. E. 335, 1 L. R. A. 125. Welsh v. Solenberger, 85 Va. 441, 8 S. E. 91; 8 Va. Law Reg. 51.

Section 2287.—Artrip v. Rasnake, 96 Va. 283, 31 S. E. 4; Catlett v. Alsop, 99 Va. 684, 40 S. E. 34, 7 Va. Law Reg. 631; 2 Va. Law Reg. 20.

Discussed, 3 Va. Law J. 193.

Section 2288.—Tate v. Perkins, 85 Va. 169, 7 S. E. 328; Gentry v. Gentry, 87 Va. 478, 12 S. E. 966; Va. C. & I. Co. v. Roberson, 88 Va. 116, 13 S. E. 350; Burson v. Andes, 83 Va. 445, 2 S. E. 249; Crockett v. Doriot, 85 Va. 240, 3 S. E. 128; Alexander v. Alexander, 85 Va. 353, 7 S. E. 335, 1 L. R. A. 125; N. & W. R. R. v Dougherty, 92 Va. 372, 23 S. E.

Digitized by Google

777; Duval v. Chelf, 92 Va. 489, 23 S. E. 893; Richmond R. R. Co. v. Bowles, 92 Va. 738, 24 S. E. 388; Hirth v. Hirth, 98 Va. 122, 34 S. E. 964; Stern v. Frenkel, 4 Va. Law Reg. 460; 5 Va. Law Reg. 339; 6 Va. Law Reg. 487.

Section 2289.—Gentry v. Gentry, 87 Va. 478, 12 S. E. 966; Duval v. Chelf, 92 Va. 489, 23 S. E. 893; 1 Va. Law Reg. 898.

Discussed, 1 Va. Law J. 63; 3 Va. Law J. 193.

Section 2295.—McDonald v. Hurst, 86 Va. 885, 11 S. E. 536; Price v. Planters, 92 Va. 468, 23 S. E. 887, 32 L. R. A. 214; Duval v. Chelf, 92 Va. 489, 23 S. E. 893; Miller v. Miller, 92 Va. 510, 23 S. E. 891; Augusta v. Beard, 100 Va. 691, 42 S. E. 694.

Section 2297.—Previous to the Code of 1887, in suit to recover wife's separate property under the Smith act, it was necessary for husband and wife to be joined as complainants. Burson v. Andes, 83 Va. 445, 8 S. E. 249; Farley v. Tillar, 81 Va. 275; Tate v. Perkins, 85 Va. 169, 7 S. E. 328; Hayes v. M. P. A., 76 Va. 225. It was otherwise under this section.

Section 2298.—Duval v. Chelf, 92 Va. 489, 23 S. E. 893; 1 Va. Law Reg. 898.

Sec. 5135. How a married woman may dispose of her contingent right of dower.—A married woman may, by uniting with her husband in a deed or contract, dispose of her contingent right of dower in his real estate; or, if the husband has previously disposed of his interest in real estate in which she is entitled to a contingent right of dower, she may thereafter, but not before, dispose of her contingent right of dower in the same by her sole act as if she were unmarried. (1899-00, p. 291.)

Revisors' Note.—While the act of 1899-00 is cited at the end of this section, the language of the section is altogether new. The act referred to read as follows: "The contingent right of dower of a married woman in real estate, in which her husband has no interest, shall be her separate estate, and she may dispose of the same by her sole act as if she were unmarried." This language was not considered as explicit and free from doubt as the importance of the subject requires, and to obviate questions which had arisen under it, the present section enacts in positive terms that the wife cannot convey her contingent right of dower to ANY PERSON WHOMSOEVER while the husband owns the real estate in question.

Sec. 5136. Control of estate of a married woman, who is a minor; appointment of a receiver; his duties; husband's curtesy.—When a woman is a minor at the time of her marriage, and is then entitled to any estate, or during her coverture, and while a minor, becomes entitled to any estate, she shall not during coverture, and while a minor, have the control and management of such estate; but the circuit court of the county, or the circuit or corporation court of the corporation wherein she resides, or the said real estate, or any part thereof is, or the judge of the said court in vacation, shall, on the petition of her next friend, commit her said estate to a receiver, who shall give bond before the court or judge, and shall hold and manage the said estate, and pay out the rents, issues, profits, and income thereof to her use under the direction of the court, or apply the estate, or any part thereof, if the court so order, to her use during coverture, and while she is a minor; and upon her attaining

Digitized by Google

the age of twenty-one years, all such estates and the rents, issues, income, and profits thereof, not before paid out or applied as aforesaid, shall be delivered into her possession; or, if she die before attaining that age, the same shall be delivered at her death to those entitled thereto.

The seisin requisite for the husband's curtesy in the wife's real estate, committed to a receiver shall, for the purpose of curtesy, be presumed, if there could have been such seisin, had not the real estate been so committed. (Code 1887, § 2291; 1899-00, p. 1240.)

See 6 Va. Law Reg. 80.

As to sale of estate of a married woman who is a minor, see section 5137.

Sec. 5137. Sale of the real estate of a married woman who is a minor.—If any married woman who is a minor thinks that her interests will be promoted by the sale of her estate or any part thereof, or estate in which she is interested with others, infants or adults, whether the estate of the said married woman who is a minor or of any of the persons interested be absolute or limited, and whether there be or be not limited thereon any other estate vested or contingent, and whether such married woman or any of the persons interested reside in this State or not, may for the purpose of obtaining such sale, file a bill in equity by her next friend in the circuit court of the county or the circuit or corporation court of the city in which the estate proposed to be sold or some part thereof may be, stating plainly the estate which she desires to be sold and all the facts calculated to show the propriety of the sale. The bill shall be verified by the oath of the next friend. The husband of such married woman and all others interested, and all those who would be her heirs if she were dead, shall be made defendants. If it be clearly shown that the interest of such married woman will be promoted, and the court, or the judge thereof in vacation, is of opinion that the rights of no person will be violated thereby, the said court, or the judge thereof in vacation, after reasonable notice to all parties interested, may order the sale of said estate, or any part thereof, taking ample security for the purchase money when the sale is on credit; and the said court, or the judge thereof in vacation, upon like notice may confirm the sale of said estate and appoint a commissioner to convey the same to the purchaser. The share of the said married woman of the proceeds of such sale shall be delivered to the receiver appointed under section fifty-one hundred and thirty-six of this Code, and shall be held and disposed of as provided by the said section. (1891-2, p. 391.)

Sec. 5138. How estate of a married woman to pass at death.—When a married woman, having title to any estate, dies intestate, as to the said estate, or any part thereof, it, or such part, shall pass according to the provisions of chapter two hundred and thirteen,

Digitized by Google

subject to her debts, and to the curtesy of her husband, should he survive her. (Code 1887, § 2293.)

See 6 Va. Law Reg. 80.

Sec. 5139. Equitable separate estates not affected.—Nothing contained in the preceding sections of this chapter shall be construed to prevent the creation of equitable separate estates. They may be created as heretofore, and shall be held in all respects according to the provisions of the instrument by which they are created, and with all the powers conferred by such instrument. (Code 1887, § 2294; 1899-00, p. 1240.)

Revisors' Note.—The change in the phraseology of this section is intended to make it plain that all rights of the husband may be excluded by an equitable settlement if the person making the settlement desires to do so.

Historical.—All equitable separate estates were preserved under the Smith act (Acts 1876-77, p. 333; Acts 1877-78, p. 427; Hutchings v. Commercial, 91 Va. 68, 28 S. E. 950; Jones v. Jones, 96 Va. 749, 32 S. E. 463; Burks' Separate Estate, 74); and under the Code of 1887, section 2294 (Claiborne v. Radford, 91 Va. 527, 532, 22 S. E. 348; Andes v. Roller, 98 Va. 622, 37 S. E. 297; 6 Va. Law Reg. 569). As to present statute, see 6 Va. Law Reg. 486.

Rule to determine whether estate be statutory or equitable.—Whether the separate estate of a married woman is equitable or statutory is to be determined from the terms of the instrument creating the settlement. If the instrument grants powers or imposes restrictions not granted or imposed by statute, but which are yet consistent with the principles and rules of equity, the estate will be construed to be an equitable and not a statutory separate estate. Jones v. Jones, 96 Va. 749, 32 S. E. 463.

See section 5135; Gregory's Forms No. 142.

Sec. 5140. Curtesy, etc., of husband barred by desertion.—If a husband wilfully deserts or abandons his wife, and such desertion or abandonment continues until her death, he shall be barred of all interest in her estate as tenant by the curtesy, distributee, or otherwise. (Code 1887, § 2296; 1899-00, p. 1240.)

Digitized by Google

TITLE 46.

Estates, How Conveyed; Wills; Descents and Distributions.

Ch. 208. General rules as to the creation and limitation of estates; and their qualities.
209. Forms of deeds and covenants.
210. Acts valid between the parties, but void as to creditors and purchasers.
211. Authentication and record of deeds and other writings; factors and agents.
212. Wills.
213. Descents and distributions.

CHAPTER 208.

General Rules as to the Creation and Limitation of Estates; and Their Qualities.

Sec.
5141. When deed or will necessary to convey estate; partition of lands to be by deed; gift of lands to be in writing.
5142. When gift of goods and chattels invalid.
5143. When person not named a party, or named jointly with others, may take or sue under instrument.
5144. When legal title to claim or chose is in one person and beneficial title in another, latter may maintain suit in name of former or in his own name.
5145. Deeds made by attorneys in fact.
5146. Estates to lie in grant as well as in livery.
5147. Disposal of interest in real estate; estates by deed may commence in futuro; executory limitations by deed; remainder over coupled with power of disposal in life tenant not defeated except to the extent that power of disposal shall have been exercised.
5148. Deed good for grantor's right; operation of warranty.
5149. Words of limitation dispensed with.
5150. Fee tail converted into fee simple.
5151. What limitations are valid.
5152. Effect of estate of freehold to one with limitation over by way of remainder to heirs, etc.; rule in Shelley's case abolished.
5153. When contingent remainder not to fail.
5154. When remainders not defeated.
5155. In what conveyances, possession transferred to the use.
5156. Deed of release effectual.
5157. Estates in trust to be subject to debts of beneficiaries; exception.
5158. Curtesy and dower of trust estate.
5159. Survivorship between joint tenants abolished.
5160. Exception.
5161. Sale of contingent and other estates; procedure.

Digitized by Google

Sec. 5141. When deed or will necessary to convey estate; partition of lands to be by deed; gift of lands to be in writing.—No estate of inheritance or freehold, or for a term of more than five years, in lands, shall be conveyed unless by deed or will, nor shall any voluntary partition of lands by co-parceners, having such an estate therein, be made, except by deed; nor shall any right to a conveyance of any such estate or term in land accrue to the donee of the land or those claiming under him, under a gift or promise of gift of the same hereafter made and not in writing, although such gift or promise be followed by possession thereunder and improvement of the land by the donee or those claiming under him. (Code 1887, § 2413.)

Length of term.—A lease for a period of five years, with an option to the lessee to continue for another period of five years, is not a present lease for ten years. James v. Kibler, 94 Va. 165, 26 S. E. 417.

Reconveyance from grantee to grantor.—When land has been conveyed by deed, it cannot be reconveyed from grantee to grantor by return of the deed or cancellation thereof, but only by another deed. Grayson v. Richards, 10 Leigh 57; Jones v. Neale, 2 Pat. & H. 339; Seibel v. Rapp, 85 Va. 32, 6 S. E. 478; Vaughan v. Moore, 89 Va. 925, 929, 17 S. E. 326. The rule is otherwise as to executory contracts. See 2 Min. (4th Ed.) 741.

Disclaimer of a freehold.—As against the devisee asserting title under the will, his disclaimer must be by deed, and a parol disclaimer is not sufficient. Bryan v. Hyre, 1 Rob. 94, 39 Am. Dec. 246. And in general, disclaimer of a freehold must be by deed or in a court of record. Suttle v. R. F. & P., 76 Va. 285. Quaere, does this rule hold where defendant relies on disclaimer?

Partition of lands.—A deed of partition amongst coparceners is not a conveyance, because the partition makes no degree, but leaves each parcener seized as by descent from the common ancestor; but therefore previous to May 1, 1888 (date of adoption of above section as amended), partition amongst coparceners could be made as well by parol as by deed. Bolling v. Teel, 76 Va. 487; Yancey v. Radford, 86 Va. 642, 10 S. E. 972; Dooley v. Baynes, 86 Va. 649, 10 S. E. 974; Nicholas v. Nicholas, 100 Va. 660, 42 S. E. 669, 866. See, also, 2 Min. (4th Ed.) 782; Brooks v. Hubble, 2 Va. Dec. 529, 27 S. E. 585.

A deed of partition to one of the heirs (a feme covert) and her husband of her share of land, "and the heirs of the female party of the second part," conveyed no estate to the husband as against the heirs of his wife, who were not estopped by the deed from claiming title to the deceased wife's land. Yancey v. Radford, 86 Va. 638, 10 S. E. 972. As to when partition by husband was binding under old law previous to Code 1887, see Brooks v. Hubble, 2 Va. Dec. 529, 27 S. E. 585.

Agreements to make partition can only be enforced in equity when a similar agreement to convey land could be enforced. Martin v. Martin, 112 Va. 731, 72 S. E. 680.

In partition suits, decree has same effect as deed. Section 5282.

Gift of land.—Before May 1, 1888, when this section as amended went into effect, a parol gift of land, if possession was taken by the donee, and a large expenditure was made by him in improving the land, was treated in equity as a valid sale, and was allowed to be set up on oral testimony alone. The law was changed so as to require writing. Burkholder vs. Ludlam, 30 Grat. 255, 32 Am. Rep. 668; Halsey v. Peters, 79 Va. 60; Stokes v. Oliver, 76 Va. 72; Griggsby v. Osborne, 82 Va. 371; Nicholas v. Nicholas, 100 Va. 660, 664, 42 S. E. 669, 866, note 8 Va. Law Reg. 666; Trout v. Trout, 2 Va. Dec. 399, 401, 25 S. E. 98; 2 Min. (4th Ed.) 852; 11 Va. L. Reg. 750. Gifts made prior to May 1, 1888, are controlled by former rule. Nicholas v. Nicholas, supra.

Digitized by Google

Gifts by a parent to a child (advancements) are within the terms of this section. Nicholas v. Nicholas, 100 Va. 660, 42 S. E. 669, 866.

Generally.—For notes upon express, resulting, implied and constructive trusts created by parol, see section 5561, and notes.

For contracts void as to purchasers for value without notice and creditors, see section 5192.

See notes to section 5146.

See Burks' Pleading and Practice, p. 24; 7 Va. Law. J. 193; 13 Va. Law J. 139.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 71, section 1.

Sec. 5142. When gift of goods and chattels invalid.—No gift of any goods or chattels shall be valid, unless by deed or will, or unless actual possession shall have come to and remained with the donee, or some person claiming under him. If the donor and donee reside together at the time of the gift, possession at the place of their residence shall not be a sufficient possession within the meaning of this section. This section shall not apply to the wife's paraphernalia. (Code 1887, § 2414.)

Revisors' Note.—**The last sentence is new. See 7 Va. Law Reg. 214.**

History of statute.—For history of the evolution of this section from act of 1757 (referring only to slaves) till the present, see Thomas v. Lewis, 89 Va. 66, 15 S. E. 389, 18 L. R. A. 170, 37 Am. St. Rep. 848; Bank v. Holland, 99 Va. 506, 39 S. E. 126, 55 L. R. A. 155, 86 Am. St. Rep. 898; 3 Min. (2d Ed.) 90.

Gifts causa mortis.—The words "no gift" do not refer to gifts causa mortis, nor does the section embrace them. Thomas v. Lewis, 89 Va. 1, 65, 15 S. E. 389, 18 L. R. A. 170, 37 Am. St. Rep. 848. As to gifts causa mortis, see Miller v. Jeffress, 4 Grat. 472; Lee v. Boak, 11 Grat. 182; Morrison v. Grubb, 23 Grat. 342; Basket v. Hassell, 107 U. S. 602, 2 Sup. Ct. 415, 27 L. Ed. 500. For discussion of gifts inter vivos and causa mortis, see article 1 Va. Law Reg. 871-894.

"Goods and chattels" do not include choses in action.—The terms "goods and chattels" in this section, as well as in sections 5188, 5189, 5194 and 5196, mean visible, tangible, personal property only, and do not include choses in action, e. g., bank stock. Bank v. Holland, 99 Va. 495, 39 S. E. 126, 55 L. R. A. 155, 86 Am. St. Rep. 898, note 7 Va. Law Reg. 214. See, also, Kirkland v. Brune, 31 Grat. 126.

"Actual Possession."—Actual possession is an essential element of title under this section, and cannot be inferred from the proof of an absolute gift originally and nothing more. Anglin v. Bottom, 3 Grat 1, overruling Hansbrough v. Thom, 3 Leigh 147. Possession meant is actual, abiding, permanent possession. Durham v. Dunkly, 6 Rand. 135, 149, 3 Min. (2d Ed.) 90, 91.

A verbal gift without delivery cannot be sustained, even where the subject of the gift is in the possession of the donee. Yancy v. Field, 85 Va. 762, 8 S. E. 721; Miller v. Jeffress, 4 Grat. 472. And so a parol gift of a slave to a son, but retaining to the donor a life interest, passes nothing to the son. Anderson v. Thompson, 11 Leigh 439.

Delivery.—Delivery is essential as to gifts inter vivos; and, in general, this delivery must be either actual (i. e., delivery by the donor to the donee, or to some one for him, of the thing given), or constructive (i. e., delivery, in same manner, of the means of obtaining the subject of the gift). Spooner v. Hilbish, 92 Va. 333, 341, 23 S. E. 751; Yancy v. Field, 85 Va. 760, 8 S. E. 721; Ewing v. Ewing, 2 Leigh 337; Elam v. Keen, 4 Leigh 333, 26 Am. Dec. 322; Lee v. Boak, 11 Grat, 182, 185; Thomas v. Lewis, 89 Va. 79, 15 S. E. 389, 18 L. R. A. 170, 37 Am. St. Rep. 848; Morrison v. Grubb, 23 Grat. 342; 1 Va. Law Reg. 873, 874. But under this section it is a question whether actual delivery of goods and chattels is required, or whether actual possession may result from constructive

Digitized by Google

delivery. Thomas v. Lewis, 89 Va. 32, 73, 15 S. E. 389, 18 L. R. A. 170, 37 Am St. Rep. 848; 1 Va. Law Reg. 876.

It may be taken as settled that a verbal gift of chattels does not, without delivery, pass the property. See note, 11 Va. Law Reg. 770.

"Residing together."—The provision that "if the donor and donee reside together at the time of the gift, possession at the place of their residence shall not be a sufficient possession within the meaning of this section," was the rule in the case of a parol gift of a slave to a son by father when they resided together. Shirley v. Long, 6 Rand. 764; Hunter v. Jones, Id. 541; Slaughter v. Tutt, 12 Leigh 147; Tutt v. Slaughter, 5 Grat. 364; Thomas v. Lewis, 89 Va. 82, 15 S. E. 389, 18 L. R. A. 170, 37 Am. St. Rep. 848. And since this statute does not apply to choses in action, a gift by husband to wife of bank stock is good though they were living together. Bank v. Holland, 99 Va. 495, 39 S. E. 126, 55 L. R. A. 155, 86 Am. St. Rep. 898.

Parol trusts in personalty.—This section does not forbid the creating of a valid trust by parol in personalty or in the proceeds of real estate. Riggan v. Riggan, 93 Va. 78, 90, 24 S. E. 920.

Recordation of Deed.—Under this section, a deed would be valid between the parties without being recorded, Henry v. Graves, 16 Grat. 246; but it must be recorded to hold against creditors, etc., section 5194.

Generally.—Gift by parol, once consummated, cannot be retracted. Brown v. Handley, 7 Leigh 119.

For discussion of the question whether this section, as it formerly read, applied to the wife's paraphernalia, see 7 Va. L. R. 214.

As to gifts generally, see article 1 Va. Law Reg. 871-894; 3 Min. (2d Ed.) 90 et seq.; note to Barker v. Barker, 2 Grat. 344, Va. Rep. Ann.; also Henry v. Graves, 16 Grat. 244; Barton L. Pr. (2d Ed.) 864; 15 Va. Law J. 757.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 71, section 1.

Cited but not construed, Monarch Laundry v. Westbrook, 109 Va. 382, 63 S. E. 1070.

Sec. 5143. When person not named a party, or named jointly with others, may take or sue under instrument.—An immediate estate or interest in or the benefit of a condition respecting any estate may be taken by a person under an instrument, although he be not a party thereto; and if a covenant or promise be made for the benefit, in whole or in part, of a person with whom it is not made, or with whom it is made jointly with others, such person, whether named in the instrument or not, may maintain in his own name any action thereon which he might maintain in case it had been made with him only, and the consideration had moved from him to the party making such covenant or promise. In such action the covenantor or promisor shall be permitted to make all defenses he may have, not only against the covenantee or promisee, but against such beneficiary as well. (Code 1887, § 2415.)

Revisors' Note.—As this section stood before the revision it applied only to a covenant or promise made for the SOLE BENEFIT OF A PERSON. It will be observed that the section has been so changed as to be applicable where the covenant or promise is for the benefit, IN WHOLE OR IN PART, of a person, thereby changing the law in this respect. No good reason was perceived for limiting the relief to a promise for the sole benefit of a person.

Section 2415 of the Code of 1887 was under review in the case of Newberry v. Newberry, 95 Va. 119, 27 S. E. 899, and it was there held that if the covenant was inter partes the beneficiary could not sue unless expressly named or pointed out by the instrument. In 4 Va. Law Reg.

Digitized by Google

616, it is suggested that the plaintiff in that case might have sued under section 2860 of the former Code (5768 of this Code), which gives a right of action in his own name to the assignee or beneficial owner of a chose in action. As the latter section gives a right of action to the beneficial owner, of course it is not necessary that he should be named in the instrument, but it is simply necessary to show that he is the beneficial owner. It seemed that this section should be made as comprehensive as section 5768, above referred to, and no good reason was seen why the beneficial owner should be named in or pointed out by the instrument. Hence, the words "whether named in the instrument or not," found in line seven of the text, are new. Of course, if the beneficial owner is allowed to sue, the promisor or covenantor should be allowed all defenses against him. This is provided for in the last sentence of the section.

Pleading and Practice.—It is usual when an action is brought in the name of one person for the benefit of another to state the fact in the body of the declaration, or by endorsement thereon, or on the writ. But this is not necessary. Pates v. St. Clair, 11 Grat. 22, Hays, &c., v. Va. Mut. Protection Asso., 76 Va. 228. The endorsement may be made any time during the progress of the suit, and even upon the execution.

Like the case of an assigned bond or note, the original right to sue in the name of the contracting party is not destroyed by the new remedy allowed by this statute, but on the contrary remains in full force. Mutual B. Life Ins. Co. v. Atwood's Admx., 24 Grat. 497.

At common law, upon an indenture, action can be brought only by the parties or their privies, and not by the beneficiary, though mentioned expressly in the indenture. Ross v. Milne, 12 Leigh 204, 37 Am. Dec. 646. This section, however, allows the beneficiary to sue in his own name. Jones v. Thomas, 21 Grat. 96; 4 Min. (3d Ed.) 450, 942; 2 Min. (4th Ed.) 832. See, also, Stuart v. James Co., 24 Grat. 294, and note Va. Rep. Ann.

When objection for want of proper parties may be taken, Almond v. Rothgeb, 1 Va. Dec. 138.

As to suit by assignees or beneficial owners of bonds, etc., in their own names, see section 5768.

Interest in insured property.—Any person having an interest in property insured, though no party to the policy, may institute and maintain an action in his own name to the extent of the loss occasioned him by its destruction. Tilley v. Conn. Fire Ins. Co., 86 Va. 811, 11 S. E. 120; Clemmitt v. N. Y. Life Ins. Co., 76 Va. 360.

Assumption of Lien on Land.—The assumption of the payment of a lien on land as a part of the purchase price thereof, for which the grantee's immediate grantor is not personally bound, is a promise for the sole benefit of the holder of the lien within the meaning of this section, and may be enforced by such holder against the party so promising. Casselman v. Gordon, 118 Va. 553, 88 S. E. 58. As to the words "in whole or in part," now appearing in the section, see revisors' note above.

Generally.—This section expressly overturns the rule of Newberry v. Newberry, 95 Va. 119, 27 S. E. 899, to the effect that in order for one not a party nor a privy to such party to sue upon an indenture or deed inter partes, he must be named or definitely pointed out in it as beneficiary.

Under this section, where a contract with city for the construction of sewer required city to deduct from amount due contractor a specified sum for each day's delay in completion of work beyond time specified, and to pay such sum to engineer employed by city to superintend the work, the engineer may maintain an action on such covenant in his own name. City v. Potter, 122 Fed. 321, 58 C. C. A. 483.

Cited but not construed, Amer. Natl. Bank v. Taylor, 112 Va. 1, 70 S. E. 534.

See Burks' Pleading and Practice, pp. 50, 109; note to section 5561, taken from McIlvane v. Big Stone Lumber Co., 105 Va. 613, 54 S. E. 473; 12 Va. Law Reg. 397.

Digitized by Google

For full discussion, see Howsmon v. Water Co., 119 Mo. 304, 24 S. W. 784, 23 L. R. A. 146, 41 Am. St. Rep. 654.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 71, section 2.

Sec. 5144. When legal title to claim or chose is in one person and beneficial title in another, latter may maintain suit in name of former or in his own name.—When the legal title to any claim or chose in action, for the enforcement of the collection of which a court of equity has jurisdiction, is in one person and the beneficial equitable title thereto is in another, the latter may either maintain a suit in the name of the holder of the legal title for his use and benefit or in his own name to enforce collection of the same. In either case the beneficial equitable owner shall be deemed the real plaintiff and shall be alone liable for costs. (1897-8, p. 437.)

The assignee of a judgment cannot recover from sheriff on official bond for breach of duty concerning same which occurred prior to assignment. Com. v. Wampler, 104 Va. 337, 51 S. E. 737. See also discussion, 11 Va. Law Reg. 667, 867.

Cited but not construed, Sweeney v. Foster, 112 Va. 499, 71 S. E. 548; National Exch. Bank v. Preston, 2 Va. Dec. 652, 33 S. E. 546.

Sec. 5145. Deeds made by attorneys-in-fact.—If, in a deed made by one as attorney-in-fact for another, the words of conveyance or the signature be in the name of the attorney, it shall be as much the principal's deed as if the words of conveyance or the signature were in the name of the principal by the attorney, if it be manifest on the face of the deed that it should be construed to be that of the principal to give effect to its intent. (Code 1887, § 2416.)

Before the Code of 1849, when this statute first became a law, deeds purporting to be made by the parties as attorneys for their principals, but which were executed by the attorneys in their own names, and not in those of their principals, were held inoperative. Martin v. Flowers, 8 Leigh 158; Shanks v. Lancaster, 5 Grat. 110, 50 Am. Dec. 108; Stinchcomb v. Marsh, 15 Grat. 202, 210; Bryan v. Stump, 8 Grat. 241, 56 Am. Dec. 139.

For the proper manner for attorneys in fact to execute deeds in pursuance of a power of appointment, as the law was before this section was enacted, see Shanks v. Lancaster, 5 Grat. 110; Bryan v. Stump, 8 Grat. 241, 56 Am. Dec. 139.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 71, section 3.

Sec. 5146. Estates to lie in grant as well as in livery.—All real estate shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery. (Code 1887, § 2417.)

This statute, called "Statute of Grants," was enacted first in Code of 1849, and was taken from 8 & 9 Vict. c. 106. Carrington v. Goddin, 13 Grat. 600. Before the Code of 1849 both a deed and livery of seisin were necessary for conveyance of freeholds, except in case of conveyances operating under the statute of uses, which required a consideration. Taking this section in connection with section 5141, it is seen that now livery of seisin is unnecessary in any case. The conveyance of the immediate freehold may be by simple words of grant. Lauck v. Logan, 45 W. Va. 251, 31 S. E. 986; 4 Va. Law Reg. 777; 2 Min. (4th Ed.) 264, 659, 661, 779, 826, 903; 4 Min. (3d Ed.) 38, 41, 62.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 71, section 4.

Sec. 5147. Disposal of interest in real estate; estates by deed may

Digitized by Google

commence in future; executory limitations by deed; remainder over coupled with power of disposal in life tenant not defeated except to the extent that power of disposal shall have been exercised.—Any interest in or claim to real estate may be disposed of by deed or will. Any estate may be made to commence in futuro, by deed, in like manner as by will; and any estate which would be good as an executory devise or bequest, shall be good if created by deed.

If any interest in or claim to real estate or personal property be disposed of by deed or will for life, with a limitation in remainder over, and in the same instrument there be conferred expressly or by implication a power upon the life tenant in his life time or by will to dispose absolutely of said property, the limitation in remainder over, shall not fail, or be defeated, except to the extent that the life tenant shall have lawfully exercised such power of disposal; provided, however, that a deed of trust or mortgage executed by the life tenant shall not be construed to be an absolute disposition of the estate thereby conveyed, unless there be a sale thereunder. (Code 1887, § 2418; 1908, p. 187.)

Revisors' Note.—The first paragraph of this section is section 2418 of the Code of 1887, without change. The second paragraph is a modification of the amendment of 1908 (Acts 1908, p. 187), the primary object of which was to abolish the doctrine of May v. Joynes, 20 Gratt. 692. This paragraph is expressly restricted to devises and bequests FOR LIFE, with absolute power of disposition. The act of 1908 did not contain the words "for life," as to which see 1 Minor on Real Prop., section 858. For a valuable discussion of the law relating to the doctrine of May v. Joynes, see Graves' Notes on Real Prop., (New), sections 242 to 248.

Interests which may be conveyed.—Under this section every conceivable interest in or claim to real estate, present or future, vested or contingent, and however acquired, may be disposed of by deed or will. Faulkner v. Davis, 18 Grat. 674, 98 Am. Dec. 698; Young v. Young, 89 Va. 675, 17 S. E. 470, 23 L. R. A. 642; 4 Va. Law Reg. 646.

Contingent Remainders.—A contingent remainder may be conveyed. Young v. Young, 89 Va. 675, 17 S. E. 470, 23 L. R. A. 642.

Where under a will three brothers took jointly a fee simple estate in certain real estate with a limitation on the share of each over to his brother if he died before them and without issue, the brothers joined in a deed to the property to a third party. Held, That under this section and sections 5163 and 5164, the third person took an absolute fee simple title. Smith v. Smith, 112 Va. 617, 70 S. E. 491.

The deed of a debtor, conveying all of his property, real and personal, to a trustee, for the benefit of creditors, passes the debtor's interest in a contingent remainder. Wilson v. Langhorne, 102 Va. 631, 10 Va. Law Reg. 209, 47 S. E. 871.

Rights of Entry or Action.—An interest in or claim to land, held adversely by another (a right of entry or of action), may be conveyed. Carrington v. Goddin, 13 Grat. 587; Mustard v. Wohlford, 15 Grat. 329, 76 Am. Dec. 209.

Before the first paragraph of this section as it now stands went into effect (July 1, 1850), the bargainee of a party not in possession, actual or constructive, at the time of the execution of the deed, could not maintain ejectment in his own name, at least against the party in adverse possession of the land. Tabb v. Baird, 3 Call. 475; Hopkins v. Ward, 6 Munf. 38; See v. Greenlee, Id. 303; Kincheloe v. Tracewells, 11 Grat. 587; Early v. Garland, 13 Grat. 1. But this section has changed the common-law rule,

Digitized by Google

and the grantee may maintain an action of ejectment therefor in his own name, and this is supposed to be held to apply to transactions anterior as well as subsequent to the statute. Carrington v. Goddin, 13 Grat. 599; Mustard v. Wohlford, 15 Grat. 339; 2 Min. (4th Ed.) 642, 903.

Executory interests.—"The provision that any estate which would be good as an executory devise or bequest shall be good if created by deed destroys the distinction between devises and deeds as to the validity of executory interests, and sanctions the doctrine of executory devises and bequests as equally applicable to deeds; thus permitting a fee on a fee by way of deed, and validating by deed without uses the other limitations which were formerly void except when found in a will or in a deed by way of use." 4 Va. Law Reg. 646.

Former and present rule as to limitation over after absolute power of disposition.—Formerly whenever it was the intention of the testator that the devisee should have an unrestrained power of disposition over the property devised, whether such intention was expressed or necessarily implied, a limitation over to another was void, because it was inconsistent with and repugnant to, the estate given to the first devisee, although the will showed that it was the testator's intention that what remained of the property given to the first taker should go to another, the limitation over failing for uncertainty. May v. Joynes, 20 Grat. 692, note Va. Rep. Ann.; Farish v. Wayman, 91 Va. 436, 21 S. E. 810, note 1 Va. Law Reg. 220; Shermer v. Shermer, 1 Wash. 266, 1 Am. Dec. 460; Riddick v. Cohoon, 4 Rand. 547; Madden v. Madden, 2 Leigh 377; Burwell v. Anderson, 3 Leigh 348; Melson v. Cooper, 4 Leigh 409; Brown v. George, 6 Grat. 424; Sprinkle v. Hayworth, 26 Grat. 384, 400; Missionary v. Calvert, 32 Grat. 357; Carr v. Effinger, 78 Va. 197; Cole v. Cole. 79 Va. 251; Hall v. Palmer, 87 Va. 354, 12 S. E. 618, 11 L. R. A. 610, 24 Am. St. Rep. 653; Bowen v. Bowen, 87 Va. 438, 12 S. E. 885, 24 Am. St. Rep. 664. See, also, 2 Min. (4th Ed.) 251 et seq., 444, 1073; Brown v. Strother, 102 Va. 145; 14 Va. L. R. 161; Avant v. Cook, 118 Va. 1, 86 S. E. 903. The object of the amendment of 1908 to section 2418 of the Code of 1887 (corresponding to this section) was to change the doctrine of May v. Joynes. This amendment, while the subject of much discussion by the legal profession, has never been construed by the Supreme Court of Appeals. The present section retains the amendment of 1908 in a modified form, as to which see revisors' note above.

Generally.—Where a deed conveys property in fee simple, and restrains the power of alienation, the latter provision is void. Blair v. Muse, 83 Va. 238, 2 S. E. 31.

This section is sufficient to enable a life tenant and contingent remaindermen to enter into a valid and binding contract affixing the price at which the land held by them shall be sold. Heuser v. Belvin, 118 Va. 346, 87 S. E. 594.

On this section generally. see 2 Min. (4th Ed.) 421, 432, 451, 765, 778, 903.

As to the statute of pretensed titles, repealed by the Code of 1849, see 2 Min. (4th Ed.) 640, 641, and cases there cited.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 71, section 5.

For comment on this section see 14 Va. Law Reg. 161, 492; 2 Minor (4th Ed.) 421, 432. 451, 765, 778, 903.

Sec. 5148. Deed good for grantor's right; operation of warranty.—A writing which purports to pass or assure a greater right or interest in real estate than the person making it may lawfully pass or assure, shall operate as an alienation of such right or interest in the said real estate as such person might lawfully convey or assure; and when the deed of the alienor mentions that he and his heirs will warrant what it purports to pass or assure, if any thing descends from him, his heirs shall be barred for the value of what is so descended or liable for such value. (Code 1887, § 2419.)

Digitized by Google

Warranty.—Where a husband conveys the property of his wife with warranty against the claims of himself and his heirs, his children, deriving title from their mother, will not be affected by the warranty. Urquhart v. Clarke, 2 Rand. 549.

The provisfon that "when the deed of the alienor mentions that he and his heirs will warrant what it purports to pass or assure, if anything descends from him, his heirs shall be barred from the value of what is so descended or liable for such value," changes the common law touching collateral warranty. And this provision is understood to apply only to cases of real assets descending from the warranting ancestor, and not to personal assets, or assets, whether personal or real, accruing from him by devise or bequest. Norman v. Cunningham, 5 Grat. 64, 77, 83; 2 Min. (4th Ed.) 712.

Generally.—The rule stated in Pendleton v. Vandevier, 1 Wash. 388, as well as the one in Wiseley v. Findlay, 3 Rand. 361, 15 Am. Dec. 712, is in accord with this section.

As a result of this statute, it is believed that no forfeiture can in any case arise from a particular tenant undertaking to alien a greater estate than he possesses. 2 Min. (4th Ed.) 111, 263, 423, 474.

Cited but not construed in Va. Coal and Iron Co. v. Hylton, 115 Va. 418, 79 S. E. 337.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 71, section 7.

Sec. 5149. Words of limitation dispensed with.—Where any real estate is conveyed, devised, or granted to any person without any words of limitation, such devise, conveyance, or grant shall be construed to pass the fee simple or other the whole estate or interest which the testator or grantor had power to dispose of in such real estate, unless a contrary intention shall appear by the will, conveyance, or grant. (Code 1887, § 2420.)

Common law changed.—Prior to 1787, when the original of this section went into effect, such devise, conveyance, or grant as is contemplated by this section was, at common law, construed to pass no greater estate than one for the life of the grantor or testator, and the reversion descended to the heir of the grantor or testator. Markells v. Markells, 32 Grat. 544, 557; Kennon v. McRoberts, 1 Wash. 100, 101, 1 Am. Dec. 428; Mooberry v. Marye, 2 Munf. 453; 2 Min. (4th Ed.) 915, 916.

"Estate" construed to mean fee simple.—The word "estate" in a will was sufficient, prior to 1787, to pass the fee. Davies v. Miller, 1 Call. 127, and note Va. Rep. Ann. Likewise the words "temporal estate." Watson v. Powell, 3 Call 306. See, also, Wyatt v. Sadler, 1 Munf. 537; Goodrich v. Harding, 3 Rand. 280, where "temporal goods" construed a fee simple.

Effect of statute construing deed.—At common law, in case of repugnancy between the premises and the habendum in deeds to natural persons, the latter gave way to the former; but in consequence of this section the whole deed must be looked to to ascertain and give effect to the intention of the parties. Humphrey v. Foster, 13 Grat. 653; Mauzy v. Mauzy, 79 Va. 538; 2 Min. (4th Ed.) 705.

Application of statute.—The statute applies to a deed made in the execution of a power. Walke v. Moore, 95 Va. 729, 736, 30 S. E. 374.

A remainder to "such person or persons as shall at the death of R. answer the description of heir or heirs at law of said R., and such person or persons shall take said land as purchasers, and not by inheritance," is a gift in fee simple by implication, under the act of 1785 (in effect 1787), and a fortiori under this section. Taylor v. Cleary, 29 Grat. 448, 454, 461.

"I will and bequeath to my son George the Aud Farm," gives to George an estate in fee simple under this statute. Wine v. Markwood, 31 Grat. 45.

Use of word "Heirs."—Since 1787, under this section, the word

Digitized by Google

"heirs" has not been necessary to create an estate of inheritance. Daniel v. Lipscomb, 110 Va. 563, 66 S. E. 850. Annotated 16 Va. Law Reg. 44.

Words of Reservation.—It has been seriously questioned whether this section changes the common law rule as to words of limitation in the case of reservations. 1 Minor Real Property, section 160. In this connection see Amer. Natl. Bank v. Taylor, 112 Va. 1, 70 S. E. 534, where the question is considered but not decided whether a reservation does not come under the words of section 5159 which treats of real estate "conveyed or devised" to husband and wife.

Generally.—Statute followed in Little v. Bowen, 76 Va. 724, 728. See, also, Humphrey v. Foster, 13 Grat. 653.

For history of statute, see 2 Min. (4th Ed.) 916; also Id. pp. 454, 705, 915.

Compare with section 5162.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 71, section 8.

Sec. 5150. Fee tail converted into fee simple.—Every estate in lands so limited, that, as the law was on the seventh day of October in the year seventeen hundred and seventy-six, such estate would have been an estate tail, shall be deemed an estate in fee simple; and every limitation upon such an estate shall be held valid, if the same would be valid when limited, upon an estate in fee simple, created by technical language. (Code 1887, § 2421.)

History of section.—The first act, the aim of which was to abolish estates tail, was the act of October 7, 1776. This was defective, in that it applied only to estates tail in possession, and those in reversion or remainder, after the determination of an estate for life or lives, or any lesser estate, but not to those in reversion or remainder after a fee tail. Roy v. Garnett, 2 Wash. 9, 35. Therefore, in 1785, another act was passed substantially the same as this section, abolishing all estates tail. 2 Min. (4th Ed.) 96, 454.

Rule of construction of wills not changed by this section.—In construing a will made since the act of 1776, courts are to be governed by the rules of construction which prevailed before that act, notwithstanding the reason on which some of the rules were founded was done away with by the abolition of estates tail. Tate v. Tally, 3 Call 354; Jiggetts v. Davis, 1 Leigh 423; Ball v. Payne, 6 Rand. 73; Bramble v. Billups, 4 Leigh 90; 2 Min. (4th Ed.) 464.

Presumption is against the intention to create estate tail.—Since the act of 1776 it is not to be supposed that a man intended to convey an estate tail unless plain and unequivocal words are used, such as would of themselves create a fee tail, without resorting to implication. Smith v. Chapman, 1 Hen. & M. 240, 302; Taylor v. Cleary, 29 Grat. 448; Walker v. Lewis, 90 Va. 581, 19 S. E. 258; 2 Min. (4th Ed.) 465.

Remainder after estates tail—Old doctrine—Before 1820 words referring to the death of a person without issue, unexplained by the context, and whether applied to real or personal estate, were construed to import a general, indefinite failure of issue. Tinsley v. Jones, 13 Grat. 289; Moore v. Brooks, 12 Grat. 135. But see section 5151 and 4 Va. Law Reg. 652.

Therefore before 1820 a devise to A., and if he die without issue then to B., was a devise of an estate tail to A., raised by Statutes of 1776 and 1785 converting estates tail into a fee simple. It was held that all remainders, both contingent and vested, after estates tail, were utterly barred by said acts, whether created before or after the enactment of the law. This is the doctrine of Carter v. Tyler, 1 Call 165. See, also, Hill v. Burrow, 3 Call 342; Tate v. Tally, Id. 354; Eldridge v. Fisher, 1 Hen. & M. 559; Smith v. Chapman, Id. 300; Bramble v. Billups, 4 Leigh 90; See v. Craigen, 8 Leigh 449; Callis v. Kemp, 11 Grat. 78; Hood v. Haden, 82 Va. 597; Tinsley v. Jones, 13 Grat. 289; Thomason v. Anderson, 4 Leigh 118; Bells v. Gillespie, 5 Rand. 273; Broaddus v. Turner, Id. 308; Griffith v. Thomson, 1 Leigh 321; Callava v. Pope, 3 Leigh 103; Deane v.

Digitized by Google

Hansford, 9 Leigh 253; Nowlin v. Winfree, 8 Grat. 346; Jiggetts v. Davis, 1 Leigh 368. See, also, 4 Va. Law Reg. 654.

Same—Present doctrine.—But this doctrine of Carter v. Tyler is obviated by the provision in effect January 1, 1820, that "every limitation upon such estate shall be held valid if the same would be valid when limited upon an estate in fee simple created by technical language," 2 Min. (4th Ed.) 460, 461; and section 5151 removes from the limitation to B. the objection of remoteness. As to effect of the legislation of 1820 upon such a devise as the one above, see 2 Min. (4th Ed.) 458 et seq.; 4 Va. Law Reg. 654 et seq.; Id. 805; 5 Va. Law Reg. 67-91—where all the Virginia cases are collected and discussed.

Application of statute.—Devise to daughter during her life, and after her death to the lawful issue of her body, created in daughter an estate tail, raised by this section to fee simple, and the addition "to them and their heirs and assigns forever" does not defeat the rule. Hall v. Smith, 25 Grat. 72; Moore v. Brooks, 12 Grat. 135; Tidball v. Lupton, 1 Rand. 194.

A devise of lands to one for life, and after his death to his sons and their heirs forever, to be equally divided among them, but, in case of his dying without leaving a son or son's son who can take, then to other designated persons, did not, under rule in Shelley's case, create a fee tail in the first devisee. Walker v. Lewis, 90 Va. 578, 19 S. E. 258; Taylor v. Cleary, 29 Grat. 448.

The devise to trustees of a separate estate in slaves, in trust for the use and benefit of a married woman or her heirs, is a devise of the absolute interest, and the bequest over was void. Nixon v. Rose, 12 Grat. 425.

See notes to sections 5151, 5152.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 71, section 9.

Sec. 5151. What limitations are valid.—Every limitation in any deed or will contingent upon the dying of any person without heirs, or heirs of the body, or issue, or issue of the body, or children, or offspring or descendant, or other relative, shall be construed a limitation, to take effect when such person shall die not having such heir or issue, or child or offspring, or descendant, or other relative, as the case may be, living at the time of his death, or born to him within ten months thereafter, unless the intention of such limitation be otherwise plainly declared on the face of the deed or will creating it. (Code 1887, § 2422.)

Definite and indefinite failure of issue.—Before 1820 words referring to the death of a person without issue, unexplained by the context, and whether applied to real or personal estate, were construed to import a general indefinite failure of issue. Tinsley v. Jones, 13 Grat. 289; Moore v. Brooks, 12 Grat. 135.

As to distinction between definite and indefinite failure of issue, see footnote, 4 Va. Law Reg. 647; 2 Min. (4th Ed.) 440-443.

Common law rule changed.—The purpose of this section is to effectuate the intention of the testator by rendering valid limitations which would have been otherwise invalid as violative of the rule against perpetuities. Since January 1, 1820, words which had previously been construed to mean an indefinite failure of issue are now construed to mean a definite failure of issue and the limitations founded thereon are no longer void for remoteness. Daniel v. Lipscomb, 110 Va. 563, 66 S. E. 850; see anno. to this case 16 Va. Law Reg. 44.

By this section the common-law presumption of an indefinite failure of issue was altered, and the presumption of a definite failure was made to take its place. 4 Va. Law Reg. 652.

Generally.—A provision that "it is my will that if any of my children die without heirs, for their part to be equally divided amongst all

Digitized by Google

my children then living," is a valid executory bequest, as it was to take effect in the lifetime of a person or persons in being at the time of the testator's death, the word "heirs" meaning issue. Norris v. Johnston, 17 Grat. 8.

See, also, notes to sections 5150, 5152.

Discussed, 13 Va. Law J. 89, 406, 253; 4 Va. Law J. 195.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 71, section 10.

Sec. 5152. Effect of estate of freehold to one with limitation over by way of remainder to heirs, etc.; rule in Shelley's case abolished. —Wherever any person, by deed, will, or other writing, takes an estate of freehold in land, or takes such an estate in personal property, as would be an estate of freehold, if it were an estate in land, and in the same deed, will, or writing, an estate is afterwards limited by way of remainder, either mediately or immediately, to his heirs, or the heirs of his body, or his issue, the words "heirs," "heirs of his body," and "issue," or other words of like import used in the deed, will, or writing in the limitation therein by way of remainder, shall not be construed as words of limitation carrying to such person the inheritance as to the land, or the absolute estate as to the personal property, but they shall be construed as words of purchase, creating a remainder in the heirs, heirs of the body, or issue. (Code 1887, § 2423.)

History of statute—Change by Code of 1887.—The first statute essaying to abolish the rule in Shelley's case was contained in the Code of 1849, and continued unchanged until the Code of 1887.

Previous to Code of 1887, the statute applied only where a remainder was vested in the heirs of the first taker, i. e., where the grantor was competent to, and actually did, vest in the heirs a remainder in fee simple after an estate for the ancestor's life. Hood v. Haden, 82 Va. 588. The statute was not applicable where the limitation was to the ancestor for the life of another, nor for any other freehold estate save for his own life. But the present statute obviates the incongruity, being co-ordinated with the rule itself. 2 Min. (4th Ed.) 412; Burks' Address in Barton, L. Pr. (2d Ed.) 1371.

"Heirs," etc.—When words of purchase and when of limitation.—Before the abolition of the rule in Shelley's case, in case of a devise to B. for life and to the heirs of B. lawfully begotten (or similar words) the words "heirs of B. lawfully begotten" (and similar words) were held to be words of limitation, and B. took the whole interest. Moore v. Brooks, 12 Grat. 135; Self v. Tune, 6 Munf. 470; Bells v. Gillespie, 5 Rand. 273; Broaddus v. Turner, Id. 308; Griffith v. Thomson, 1 Leigh 321; Callava v. Pope, 3 Leigh 103; Deane v. Hansford, 9 Leigh 253; Nowlin v. Winfree, 8 Grat. 346; which cases overruled Timberlake v. Graves, 6 Munf. 174; Gresham v. Gresham, Id. 187; James v. McWilliams, Id. 301; Cordle v. Cordle, Id. 455; Didlake v. Hooper, Gilmer 194. But it was also held that the word "heirs" as well as "issue" may be construed a word of purchase, as descriptive of the person to take, if that shall appear to be the intention of the testator, and is not necessarily a word of limitation. Tidball v. Lupton, 1 Rand. 197; Warner v. Mason, 5 Munf. 242; Roy v. Garnett, 2 Wash. 9.

For example, before the abolition of the rule in Shelley's case, a deed to "R. for life, and after his death to such person or persons as shall at that time answer the description of the heir or heirs at law of the said R., and such person or persons shall take as purchasers under this deed, and not as heirs of said R.," was not under the rule in Shelley's case, because the term used to describe heirs was a designation of particular

Digitized by Google

persons, and not used in the technical sense as a word of inheritance; therefore R. took but a life estate, while the persons answering to the description of heirs at law of R. took as purchasers a remainder at common law for life; but by act of 1785, dispensing with words of limitation (section 5149), remainder in fee. Taylor v. Cleary, 29 Grat. 448. And so while in a will the word "son" may be used as a word of limitation, it is, in its technical sense, a word of purchase, and is presumably so used unless there is something in the context to show the contrary. Walker v. Lewis, 90 Va. 581, 19 S. E. 258; Moon v. Stone, 19 Grat. 130, 242.

As to words of purchase generally, see footnote to Smith v. Chapman, 1 Hen. & M. 240, Va. Rep. Ann.

Rule in Shelley's case did not apply to executory limitations. Hawthorne v. Beckwith, 89 Va. 786, 17 S. E. 241; 2 Min. (4th Ed.) 437.

Previous to the abolition of the rule in Shelley's case a devise to a daughter of an estate for life, with a remainder to her issue in fee, and in default of issue with limitation over to his own heirs, gave under Code of 1819 an estate tail, converted by statutes of 1776 and 1785 (section 5150) into a fee simple; but the fee was determinable by her death without issue then living, with a limitation to the person who was testator's heir at the time of his death. Stokes v. Van Wyck, 83 Va. 724, 3 S. E. 387.

A loan of slaves to a daughter during her natural life, and to her heirs lawfully begotten of her body, "and should my daughter dispose or attempt to alienate the slaves, etc., her title shall cease, and I direct my executors to take them into possession; and in such case, after her decease, they and their increase to be divided among her children, if any living; otherwise to be divided among my children." Held, the daughter took but a life estate in the slaves, and her children took remainder as purchasers under the will. Pryor v. Duncan, 6 Grat. 27. But the above decision was rendered upon the ground that although the words "heirs lawfully begotten" were used in one clause, the whole context showed that the words were not used in their legal and primary sense, but descriptive of another class of persons pointed out in the following clause as the children of the first taker. Moore v. Brooks, 12 Grat. 149.

New estate created in heirs, etc., living at testator's death.—After a bequest or devise of an estate for the life of the first taker, words of survivorship in a will are always to be referred to the period of the testator's death, **when no special intent appears to the contrary.** Cheatham v. Gower, 94 Va. 386, 26 S. E. 853; Hansford v. Elliott, 9 Leigh, 79; Martin v. Kirby, 11 Grat. 67; Stone v. Lewis, 84 Va. 474, 5 S. E. 282; Sellers v. Reed. 88 Va. 377, 13 S. E. 754; Gish v. Moomaw, 89 Va. 347, 15 S. E. 868; Chapman v. Chapman, 90 Va. 409, 18 S. E. 913; Crews v. Hatcher, 91 Va. 382, 21 S. E. 811; Stanley v. Stanley, 92 Va. 534, 24 S. E. 229. But see sections 5242, 5243, for pretermitted children.

Generally.—Under section 5147 as it now stands a limitation over after a life estate with power of disposition in the life tenant is valid. See that section and notes appended.

Cited in King v. Johnson, 117 Va. 49, 83 S. E. 1070; Halsey v. Fulton, 119 Va. 571, 89 S. E. 912.

Discussed, 2 Va. Law J. 257; 7 Va. Law J. 577; 14 Va. Law J. 81.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 71, section 11.

Sec. 5153. When contingent remainder not to fail.—A contingent remainder shall in no case fail for want of a particular estate to support it. (Code 1887, § 2424.)

See 2 Min. (4th Ed.) 394.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 71, section 12.

Sec. 5154. When remainders not defeated.—The alienation of a particular estate on which a remainder depends, or the union of such estate with the inheritance by purchase or descent, shall not

Digitized by Google

operate, by merger or otherwise, to defeat, impair, or otherwise affect such remainder. (Code 1887, § 2425.)

See 2 Min. (4th Ed.) 394.

Sec. 5155. In what conveyances, possession transferred to the use.—By deed of bargain and sale, or by deeds of lease and release, or by covenant to stand seized to the use, or deed operating by way of covenant to stand seized to the use, the possession of the bargainor, releasor, or covenantor, shall be deemed transferred to the bargainee, release, or person entitled to the use, for the estate or interest which such person has in the use, as perfectly as if the bargainee, releasee, or person entitled to the use, had been enfeoffed with livery of seisin of the land intended to be conveyed by such deed or covenant. (Code 1887, § 2426.)

History of uses.—As to the origin, nature, and history of uses prior to St. 27 Hen. VIII, c. 10, usually called the "Statute of Uses," see 2 Min. (4th Ed.) 204 et seq.

Scope of the law.—This section embraces only those conveyances which operate without transmutation of possession, and therefore does not apply to uses created by devise. Bass v. Scott, 2 Leigh 356. And so a feoffment to A., to the use of B., vests only an equitable estate in B., which this section does not execute. Jones v. Tatum, 19 Grat. 732; 2 Min. (4th Ed.) 823, 824; Id. 215-217.

Coparceners may convey to one another by bargain and sale. 2 Min. (4th Ed.) 506.

Under this section, can a use be raised in favor of one not within the consideration? 2 Min. (4th Ed.) 170.

Defective deed of feoffment may operate under this section.—A deed being defective as a feoffment, for want of proof of livery of seisin, may operate as a covenant to stand seised to use, and as such to pass title to the grantee, for the use is executed into possession by the force of this section. Rowlett v. Daniel, 4 Munf. 473.

Consideration to support a conveyance—Husband and wife.—In case of a deed operating as a covenant to stand seised to the use, the connection between husband and wife, or wife and husband, is a sufficient consideration to support the conveyance, and if this connection appears in the deed that is sufficient. Ware v. Cary, 2 Call 263.

Generally.—After executing a deed operating by way of covenant to stand seised to use, the grantor cannot, by a decree to a third person, convert his own possession into a possession adverse to that of the grantee. Rowlett v. Daniel, 4 Munf. 473.

Many conveyances intended to operate under the statute of uses, which for want of some requisites cannot take effect, are effective under the statute of grants. Section 5146; Rowlett v. Daniel, 4 Munf. 473; Watts v. Cole, 2 Leigh 663; 2 Min. (4th Ed.) 827.

For uses created by other conveyances than the three mentioned in the statute, constituting examples of direct trusts, and cognizable only in a court of equity, see 2 Min. (4th Ed.) 217.

On the section generally, see 2 Min. (4th Ed.) 213, 823; as to conditional limitations, see 2 Min. (4th Ed.) 270; as to executory limitations, see 2 Min. (4th Ed.) 430.

Compare with section 5146.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 71, section 14.

Sec. 5156. Deed of release effectual.—Every deed of release of any estate or interest, capable of passing by deeds of lease or release, shall be as effectual for the purposes therein expressed, without the execution of a lease, as if the same had been executed. (Code 1887, § 2427.)

See 2 Min. (4th Ed.) 782-789, 826; see Gregory's Forms, No. 526.

Digitized by Google

Sec. 5157. Estates in trust to be subject to debts of beneficiaries; exception.—Estates of every kind, holden or possessed in trust, shall be subject to debts and charges of the persons to whose use or to whose benefit they are holden or possessed, as they would be if those persons owned the like interest in the things holden or possessed, as in the uses or trusts thereof; but any such estate, not exceeding one hundred thousand dollars in actual value, may be holden or possessed in trust upon condition that the corpus thereof and income therefrom, or either of them, shall be applied by the trustee to the support and maintenance of the beneficiaries without being subject to their liabilities or to alienation by them; but no such trust shall operate to the prejudice of any existing creditor of the creator of such trust. (Code 1887, § 2428.)

Revisors' Note.—The latter part of this section is new, and the effect of it is to permit spendthrift trusts to the extent stated. See, in this connection, Garland v. Garland, 87 Va. 758, 13 S. E. 478, and Hutchinson v. Maxwell, 100 Va. 169, 40 S. E. 655. The latter case criticizes the former. There is must to be said both for and against spendthrift trusts. The revisors were of opinion that these trusts should be permitted to a limited extent. Existing creditors of the creator of the trust are of course protected.

Judgment creditor has lien upon equitable estate of debtor.—A judgment creditor has a lien in equity on the equitable estate of the debtor in the same manner that at law he has a lien upon his legal estate. Coutts v. Walker, 2 Leigh 268; Haleys v. Williams, 1 Leigh 140, 19 Am. Dec. 743; Withers v. Carter, 4 Grat. 407, 417, 50 Am. Dec. 78; Findlay v. Toncray, 2 Rob. 377. Therefore, if a condition is annexed to an equitable life estate that it shall not be liable for the owner's debts, it is a void condition. Hutchinson v. Maxwell, 100 Va. 169, 173, 179, 40 S. E. 655, 57 L. R. A. 384, 93 Am. St. Rep. 944, criticising Garland v. Garland, 87 Va. 758, 13 S. E. 478, 13 L. R. A. 212, 24 Am. St. Rep. 682. See, also 7 Va. Law Reg. 796. But as to spendthrift trusts, see present section and revisors' note. Tangible personal property in which execution debtor has only an equitable interest may nevertheless be levied on for the satisfaction of a fieri facias. Section 6486.

Generally.—See Burks' Pleading and Practice, p. 642.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 71, section 16.

Sec. 5158. Curtesy and dower of trust estate.—Where a person, to whose use, or in trust for whose benefit another is seized of real estate, has such inheritance in the use or trust as, if it were a legal right, would entitle such person's husband or wife to curtesy or dower thereof, such husband or wife shall have curtesy or dower of the said estate. (Code 1887, § 2429.)

Object of section.—The manifest object of this section (in force since January 1, 1787) was to abolish the common-law rule that a widow could not be endowed in her husband's trust or equitable estate, and to confer upon her the same right of dower in such estate as if it were his legal estate. James v. Upton, 96 Va. 301, 31 S. E. 255; Wilson v. Davisson, 2 Rob. 384, 405; 2 Min. (4th Ed.) 141; Claiborne v. Henderson, 3 Hen. & M. 322.

Dower in incomplete equitable estate as well as in perfect trusts.—Not only is the widow entitled to dower where the husband has a perfect equity, i. e., where he has paid the entire purchase price, so that a court of equity would compel a conveyance of the legal title (Rowton v. Row-

Digitized by Google

ton, 1 Hen. & M. 92); but she is also entitled to dower where the husband has aliened the land before acquiring the legal title or paying the entire purchase price (James v. Upton, 96 Va. 303, 31 S. E. 255).

Therefore where a husband enters into an agreement for the purchase of land, takes possession and pays part of the purchase price, he is beneficially seised to the extent that he has paid the purchase price, although he has not acquired the legal title; and his widow is entitled, under this section, to dower in the land, subject to the lien upon it for the unpaid purchase price, whether he died possessed of the land or had aliened it during the coverture without her concurrence, in the mode prescribed by law. In latter case provisions of section 5128 apply. James v. Upton, 96 Va. 296, 31 S. E. 255.

Equitable estates may be contracted for by verbal agreement.—Under this section the widow is entitled to dower in an equitable estate in fee simple contracted by verbal agreement to be conveyed to her late husband. Rowton v. Rowton, 1 Hen. & M. 92.

No dower in land bought with partnership funds for partnership purposes.—Lands bought with partnership funds for partnership purposes is so far considered as personalty that the widow is not entitled to dower therein, but only to her distributive share thereof. Deering v. Kerfoot, 89 Va. 491, 16 S. E. 671; Parrish v. Parrish, 88 Va. 529, 14 S. E. 325; Pierce v. Trigg, 10 Leigh 422; Wheatley v. Calhoun, 12 Leigh 272, 37 Am. Dec. 654; 2 Min. (4th Ed.) 140, 141, and note to section 5117.

Dower in equity of redemption of lands mortgaged before marriage.—A widow is not entitled to dower of real estate which had been mortgaged by her husband before the marriage. The only claim of the widow in such case is to dower in the equity of redemption. The same principle applies as well to mortgages after marriage, where the wife unites in the mortgage, as to mortgages before marriage. Heth v. Cocke, 1 Rand. 344; Wilson v. Davisson, 2 Rob. 384, 405.

Generally.—The claim of a trustee holding the legal title to land for money advanced by him to pay the purchase price thereof is superior to the dower of the widow of the beneficial owner. White v. Hall, 113 Va. 427, 74 S. E. 212.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 71, section 17.

See section 5117 et seq. and notes.

Sec. 5159. Survivorship between joint tenants abolished.—When any joint tenant shall die, before or after the vesting of the estate, whether the estate be real or personal, or whether partition could have been compelled or not, his part shall descend to his heirs, or pass by devise, or go to his personal representative, subject to debts, curtesy, dower, or distribution, as if he had been a tenant in common. And if hereafter any estate, real or personal, be conveyed or devised to a husband and his wife, they shall take and hold the same by moieties in like manner as if a distinct moiety had been given to each by a separate conveyance. (Code 1887, § 2430.)

Revisors' Note.—**The words, "before or after the vesting of the estate," found in line two of the text, are new. The insertion of these words changes the law as announced in Lockhart v. Vandyke, 97 Va. 336, 33 S. E. 613. See note 5 Va. Law Reg. 309. See, also, section 5238.**

History of the statute.—Survivorship as between joint tenants was abolished July 1, 1787; but this act was held to have no application to tenants by entireties. Thornton v. Thornton, 3 Rand. 179; Norman v. Cunningham, 5 Grat. 63. Survivorship between tenants by entireties was partially abolished July 1, 1850. See Code 1849, chapter 116, section 18, applying only to estates of inheritance. The Code of 1887 (this section) abolishes survivorship between tenants by entireties in all cases except those mentioned in section 5160. 1 Va. Law Reg. 625. See, also, Zollman v. Moore, 21 Grat. 313.

Digitized by Google

This section, as it read in the Code of 1857, had no application where the estate in joint tenancy had not vested, and hence, upon the death of one of two joint devisees in the life-time of the testator, the whole estate passed to the survivor. Lockhart v. Vandyke, 97 Va. 356, 33 S. E. 613; Pendleton v. Hoomes, Wythe 94, and note thereto in Appendix by William Green. As to this, see revisors' note above.

Land purchased by partners for purposes of trade is, in consequence of this section, considered, both at law and in equity, as an estate in common; and therefore a surviving partner has no other claim against such real estate than any other creditor has. Deloney v. Hutcheson, 2 Rand. 183. See, also, Pierce v. Trigg, 10 Leigh, 406; Wheatley v. Calhoun, 12 Leigh 264, 37 Am. Dec. 654.

Dower and curtesy.—Except where the land is expressly limited to the survivor, etc. (section 5160), the title to dower and to curtesy takes place by the express terms of the statute as well to joint tenants as to tenants in common and coparceners, thus changing the common-law rule. 2 Min. (4th Ed.) 125, 139.

As to dower in land bought with partnership funds, see note to section 5117.

Generally.—This section changed the common law doctrine of tenants by entireties and since its enactment, if a husband conveys land reserving an estate "for and during the period of the natural lives" of himself and wife, each takes only a life estate in a moiety and there is no survivorship between them. Amer. Natl. Bank v. Taylor, 112 Va. 1, 70 S. E. 534.

The act of 1850 was not retrospective. Zollman v. Moore, 21 Grat. 313.

Discussed, 3 Va. Law J. 517; 13 Va. Law J. 130; 16 Va. L. Reg. 227. See Burks' Address, Barton Law Prac. (2d Ed.), p. 1386.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 71, section 18.

Sec. 5160. Exception.—The preceding section shall not apply to any estate which joint tenants have as executors or trustees, nor to an estate conveyed or devised to persons in their own right, when it manifestly appears from the tenor of the instrument that it was intended the part of the one dying should then belong to the others. Neither shall it affect the mode of proceeding on any joint judgment or decree in favor of or on any contract with two or more, one of whom dies. (Code 1887, § 2431.)

Survivorship is not abolished where it appears from the tenor of the will that the part of the one dying should then belong to the other. Drake v. Blythe, 108 Va. 38, 60 S. E. 632.

See notes to section 5159.

Sec. 5161. Sale of contingent and other estates; procedure.—Whenever property, real or personal, is held by an adult person for his life, or for the life of another, and there is limited thereon any other estate, vested or contingent, the life tenant or his committee, or, if the estate be for the life of another, his heir or personal representative, as the case may be, may, for the purpose of obtaining a sale of the fee simple interest, or absolute estate in such property, if a sale thereof is not prohibited by the instrument creating the estate, and the remaindermen, or any of them, are, from any cause, incapable of giving their assent, or the remainder is contingent, file a bill in equity in the circuit court of the county, or the circuit, corporation or any city court having equity jurisdiction, of the city, in which the estate proposed to be sold or some part thereof may be,

Digitized by Google

stating plainly the property to be sold, and all facts calculated to show the propriety of such sale. A like bill may be filed in the like court for the sale of the remainder in such estate, by a remainderman, his guardian or committee. The bill shall be verified by the oath of the plaintiff, and all persons interested in the property, presently or contingently, other than the plaintiff, shall be made defendants; and if it be clearly shown, independently of any admissions in the pleadings, that the interests of the plaintiff will be promoted and the rights of no other person will be violated thereby, it may decree a sale of the said property, or any part thereof, taking for the purchase money, when the sale is on credit, ample security, and if the sale be of real estate, retaining a lien thereon. The decree rendered in such suit shall be binding upon all persons who may be born thereafter and become interested in the said estate, in like manner and to the like extent, as it is upon the parties to the said suit. The procedure in such suit and the investment of the proceeds of sale shall be in accordance with sections fifty-three hundred and thirty-seven, fifty-three hundred and thirty-nine, fifty-three hundred and forty-one and fifty-three hundred and forty-two, so far as the same can be made applicable. (Code 1887, § 2432, 2433, 2434, 2435, 2436; 1897-8, p. 404; 1902-3-4, p. 706; 1904, p. 117; 1908, p. 548; 1912, p. 191.)

Revisors' Note.—This section is a combination of the sections and acts referred to at the end of the section. It is intended to apply to adult life tenants whether their estates are created by the acts of parties or by operation of law. It will be observed that the revised section applies to both real and personal property held by an adult person for his life, or for the life of another, where there is limited thereon any other estate, vested or contingent; but that, while the remainder may be either vested or contingent, if vested a sale cannot be had unless at least some of the remaindermen are from some cause incapable of giving their consent. (See Curtis v. Hiden, 117 Va. 289, 84 S. E. 664). If the remainder is contingent, however, this is not necessary, because the legislature may deal with contingent remainders in a manner not permissible with vested remainders. It will also be observed that no remainderman is permitted to file a bill for the sale of the estate under the first sentence of the section, but that the second sentence provides that "A LIKE BILL may be filed in the like court FOR THE SALE OF THE REMAINDER in such estate, by a remainderman, his guardian or committee." A remainderman, whether his remainder be vested or contingent, should not be allowed to seek to compel the life tenant to sell his life estate. It is not necessary in any case for the court to be satisfied that the interests of ALL PARTIES WILL BE PROMOTED by the sale, but only necessary that it be shown that the interests of the PLAINTIFF WILL BE PROMOTED, and the rights of NO OTHER PERSON WILL BE VIOLATED thereby.

Decisions under former statutes.—In Troth v. Robertson, 78 Va. 46, and Faulkner v. Davis, 18 Grat. 651, 98 Am. Dec. 698, it was held that section 2432 of the Code of 1887 was a remedial statute, and that it should, therefore, be construed liberally. The policy of the Legislature was to remove those fetters upon alienation which contingent remainders more or less tend to fasten.

Under section 2432 of Code of 1887 the circuit court had jurisdiction

Digitized by Google

to sell and make good title to real estate devised to one for life, remainder to his children or descendants, if any, at his death, and, if none, then remainder to the children or descendants of another, if any such be living at former's death. Troth v. Robertson, 78 Va. 46.

Under sections 2432 and 2562 of Code of 1887 it was held that a tenant for life in one undivided moiety of property may maintain a suit against those who own the estate in remainder of that moiety, whether they are in esse or not, and the fee simple owners of the other moiety, and compel partition of the property, and, if not susceptible of partition in kind, may have a sale and division of the proceeds. Carneal v. Lynch, 91 Va. 114, 20 S. E. 959, 50 Am. St. Rep. 819. Section 2562 of the Code of 1887 is now section 5279.

In Coleman v. Va. Stave Co., 112 Va. 61, 70 S. E. 545, it was held that until her dower had been assigned her, a widow did not hold any of her husband's estate as tenant in dower, and, therefore, could not have her dower interest or any part thereof in her late husband's real estate sold under section 2436a of Pollard's Code (1904). This was the act of 1902-3-4, p. 706. cited at the end of the above section (5161).

Section 2436a of Pollard's Code (1904) was held unconstitutional in so far as it authorized the sale of vested remainders when all the parties were sui juris. Curtis v. Hiden, 117 Va. 289, 84 S. E. 664; Comment, 1 Va. L. Reg. N. S. 68.

Section 2436b of Pollard's Code (1904) was held to apply where testator devised realty to his wife, "to have and to hold during her natural life, and then to be divided among my children by will or otherwise, as she may deem best." Lantz v. Massie, 99 Va. 709, 40 S. E. 50, and note to same, 7 Va. Law Reg. 543. This was the act of 1897-8, p. 404, cited in the parentheses at the end of the above section.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 71, section 20.

CHAPTER 209.

Forms of Deeds and Covenants.

Sec.
5162. Form of a deed.
5163. How construed.
5164. Effect of certain words of release in a deed.
5165. Form of a lease.
5166. Form of deed of trust to secure debts, etc.
5167. Duties and compensation of trustees.
5168. Appurtenances, etc., included in deed of land.
5169. Deeds good between parties.
5170. Effect of certain words in a deed.
5171. Effect of covenant of general warranty.
5172. Of special warranty.
5173. Words, "with general warranty" and "with special warranty," construed.
5174. Covenant of "right to convey."
5175. For "quiet possession," and "free from encumbrances."
5176. For "further assurances."
5177. Of "no act to encumber."
5178. Of lessee "to pay the rent," and "to pay the taxes."
5179. "That he will not assign, etc," and "that he will leave the premises in good repair."
5180. Reduction of rent, if buildings destroyed, or lessee deprived of possession.
5181. Covenant "for lessee's quiet enjoyment."
5182. Effect of provision for reentry by lessor.
5183. Vendor's equitable lien abolished.

Digitized by Google

Sec. 5162. Form of a deed.—A deed may be made in the following form, or to the same effect: "This deed, made the ..... day of ....., in the year ....., between (here insert names of parties), witnesseth: that in consideration of (here state the consideration), the said ..... doth (or do) grant unto the said ....., all, etc. (Here describe the property, and insert covenants or any other provisions.) Witness the following signature and seal (or signatures and seals)." (Code 1887, § 2437.)

For requisites of a deed, 2 Min. (4th Ed.) 663 et seq.

A woman in anticipation of marriage conveyed to a trustee certain bonds and stock, with power to the trustee to collect interest and dividends and pay same over to the grantors, after allowing reasonable compensation to the trustee, the trust property not to be sold without the written consent of the grantor. The writing was in the usual form of deed of this nature, and provided that the trustee should hold for the benefit of the grantor during her life, and at her death same should pass to her children, if any, and if no children then to her heirs at law. Held, this was not a will or power of attorney, and therefore revocable, but a deed. Claiborne v. Radford, 91 Va. 527, 22 S. E. 348.

Discussed, 3 Va. Law J. 319; 6 Va. Law J. 193.

For monographic note on Deeds, see Fiott v. Com., 12 Grat. 564, Va. Rep. Ann.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 72, section 1.

See Gregory's Forms Nos. 515, 516, 518, 521.

Sec. 5163. How construed.—Every such deed conveying lands shall, unless an exception be made therein, be construed to include all the estate, right, title, and interest whatever, both at law and in equity, of the grantor in or to such lands. (Code 1887, § 2438)

Rights of survivorship; Conditional limitations.—Where land was devised to A., B., and C., with the rights of survivorship if either died without issue, and upon death of all without issue then to collateral kin, they united in conveyances to each other, setting forth the provisions of the will, and reciting that the parties had agreed upon a partition of the estate, and desired to vest in each other the exclusive title to the portion assigned to each party. Each deed also recited that in consideration of one dollar, etc., the parties of the first part conveyed unto the said party of the second part, his heirs and assigns, all rights, title, and interest of the said parties of the first part in the described property. Held, that all rights of survivorship which the parties had passed by the deed. Snyder v. Grandstaff, 96 Va. 473, 31 S. E. 647, 70 Am. St. Rep. 863.

Where three brothers owned jointly certain real estate, with a conditional limitation on the share of each over to his brothers, a deed executed by the three of them conveys an absolute fee simple title under sections 5147, 5164, and this section. Smith v. Smith, 112 Va. 617, 70 S. E. 491.

"All right, title and interest."—When a deed by husband and wife conveyed all their right, title, and interest to and in the real estate, together with all the fixtures and appurtenances thereunto belonging, being the same devised by the late S. to A., his wife, as her dower or life estate: Held to pass all the estate or interest of the parties in the property so conveyed. Riggan v. Riggan, 93 Va. 78, 24 S. E. 920. Followed in Walke v. Moore, 95 Va. 729, 30 S. E. 374. See 2 Min. (4th Ed.) 917, 918.

Upon a sale of real estate, whether at public or private sale, where nothing is said about the title, the purchaser is entitled to have a clear title, with covenants of general warranty. Goddin v. Vaughn, 14 Grat. 102, and note thereto, Va. Rep. Ann.; Christian v. Cabell, 22 Grat. 82, and note thereto, Va. Rep. Ann.

Digitized by Google

Generally.—For W. Va. decisions on similar statute see Justis' Annotations, chapter 72, section 2.

See Gregory's Forms No. 515; compare with section 5149.

Sec. 5164. Effect of certain words of release in a deed.—Whenever in any deed there shall be used the words: "The said grantor (or the said .....) releases to the said grantee (or the said .....) all his claims upon the said lands," such deed shall be construed as if it set forth that the grantor (or releasor) hath remised, released, and forever quitted claim, and by these presents doth remise, release, and forever quit claim unto the grantee, (or releasee) his heirs and assigns, all right, title, and interest whatsoever, both at law and in equity, in or to the lands and premises granted, (or released) or intended so to be, so that neither he nor his personal representative, his heirs, or assigns, shall, at any time hereafter, have, claim, challenge, or demand the said lands and premises, or any part thereof, in any manner whatever. (Code 1887, § 2439.)

Under the provisions of this section, a release deed is sufficient to convey all the right, title, and interest of the grantor in the premises released, whether in possession or not. Harman v. Stearns, 95 Va. 58, 27 S. E. 601.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 72, section 3.

See Gregory's Forms Nos. 515, 526; 2 Minor (4th Ed.) 919; notes under section 5163.

Sec. 5165. Form of a lease.—A deed of lease may be made in the following form, or to the same effect: "This deed, made the ..... day of ....., in the year ..... between (here insert the names of parties), witnesseth: that the said .....doth (or do) demise unto the said ....., his personal representative and assigns, all, etc., (here describe the property) from the ..... day of ....., for the term of ....., thence ensuing, yielding therefor during the said term the rent of (here state the rent, and mode of payment). Witness the following signature and seal (or signatures and seals)." (Code 1887, § 2440.)

No set form of words is necessary to constitute a lease. A contract between two persons that one should have during the life of the other land, negroes, etc., he paying therefrom a stipulated annual sum, is a rental. Michie v. Wood, 5 Rand. 571.

An agreement signed by parties to lease a specified building for a certain time at a stated rental, and which concludes with "the above to be covered by a regular lease subject to approval by all parties," is not a binding contract. Boisseau v. Fuller, 96 Va. 45, 30 S. E. 457.

The owners of land granted to another the right to enter thereon to test and search for minerals and oil, and to mine and quarry thereon, the party of second part to have the right to erect buildings and machinery for work in the mines, and to pay $25 per year if minerals were not mined, and to pay a royalty on all oils and ores shipped. The instrument was termed therein a lease, and was to continue ninety-nine years. Held that it was a lease and not a revocable license. Young v. Ellis, 91 Va. 297, 21 S. E. 480.

For creation of leases, see 4 Va. Law Reg. 108.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 72, section 4.

See Gregory's Forms Nos. 515, 523.

Digitized by Google

Sec. 5166. Form of deed of trust to secure debts, etc.—A deed of trust to secure debts or indemnify sureties may be in the following form, or to the same effect: "This deed, made the ..... day of ....., in the year ....., between ..... (the grantor), of the one part, and ..... (the trustee), of the other part, witnesseth: that the said ..... (the grantor) doth (or do) grant unto the said ..... (the trustee), the following property (here describe it): In trust to secure (here describe the debts to be secured or the sureties to be indemnified, and insert covenants or any other provisions the parties may agree upon). Witness the following signatures and seals (or signature and seal)." (Code 1887, § 2441.)

The object of these sections is to save labor in the preparation of deeds of trust, and therefore they provide for a sale for cash, and of the property conveyed, or so much thereof as may be necessary. These terms were prescribed in reference to what was supposed to be suitable to a majority of cases of deeds of trust. These sections refer to personal as well as real estate. Michie v. Jeffries, 21 Grat. 334. See Barton's C. Pr. (2 Ed.) 1095 et seq.

A deed substantially in the form prescribed for a deed of trust by this section is a deed of trust and not a mortgage. The fact that it did not prescribe any terms of sale is immaterial where the trustee, making a sale thereunder, complied in all respects with the following section. Hopkins v. Givens, 119 Va. 578, 89 S. E. 871.

As to form of trust deed and what is sufficient, see Clark v. Moore, Trustee, 76 Va. 265; see also Gregory's Forms Nos. 515, 524, 525.

For monographic note on deeds of trust, see Cadwallader v. Mason, Wythe 188, Va. Rep. Ann.

Discussed, 11 Va. Law J. 577.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 72, section 5.

Sec. 5167. Duties and compensation of trustees.—The trustee in any such deed, except so far as may be therein otherwise provided, shall, whenever required by any creditor secured, or any surety indemnified by the deed, or the personal representative of any such creditor or surety, after the debt due to such creditor, or for which such surety may be liable, shall have become payable and default shall have been made in the payment thereof, or any part thereof, by the grantor, sell the property conveyed by the deed, or so much thereof as may be necessary, at public auction, for cash, having first given reasonable notice of the time and place of sale, and shall apply the proceeds of sale, first to the payment of expenses attending the execution of the trust, including a commission to the trustee of five per cent. on the first three hundred dollars, and two per cent. on the residue of the proceeds, and then, pro rata (or in the order of priority, if any, prescribed by the deed), to the payment of the debts secured and the indemnity of the sureties indemnified by the deed, and shall pay the surplus, if any, to the grantor, his heirs. personal representatives, or assigns. (Code 1887, § 2442.)

Duties, etc., of trustees.—The trustee in a deed of trust is the agent of both parties, and is bound to act impartially between them. It is his duty to sell the estate to the best advantage, and in any case where it is necessary to invoke the aid of a court of equity to remove impediments

Digitized by Google

which are in the way of a fair execution of the trust. Muller v. Stone, 84 Va. 834, 6 S. E. 223, 10 Am. St. Rep. 889; Lane v. Tidball, Gilmer 130; Gay v. Hancock, 1 Rand. 72, Miller v. Argyle, 5 Leigh 460; Wilkins v. Gordon, 11 Leigh 547; Miller v. Trevilian, 2 Rob. 1-25; Bryan v. Stump, 8 Grat. 241, 56 Am. Dec. 139; Rossett v. Fisher, 11 Grat. 492; White v. Ass'n, 22 Grat. 233; Quarles v. Lacy, 4 Munf. 251; Gay v. Hancock, 1 Rand. 72; Chowning v. Cox, Id. 306, 10 Am. Dec. 530; Gibson v. Jones, 5 Leigh 370; Shultz v. Hansbrough, 33 Grat. 576; Morriss v. Va. Co., 90 Va. 374, 18 S. E. 843; Hogan v. Duke, 20 Grat. 244; Shurtz v. Johnson, 28 Grat. 657; National Mut. B. & L. Ass'n v. Ashworth, 22 S. E. 521. 1 Va. Law Reg. 519; Hudson v. Barham, 101 Va. 63, 43 S. E. 189, 8 Va. Law Reg. 740.

If a trustee with power of sale of real estate attempts to make sale while there is a cloud upon the title or doubt as to the debts secured or the amounts or priorities thereof, or dispute as between the creditors as to their claims, a court of equity, on a bill filed by any person having an interest, will restrain him until these impediments to a fair sale have been removed, as far as practicable. Muller v. Stone, 84 Va. 834, 6 S. E. 223, 10 Am. St. Rep. 889; Shultz v. Hansbrough, 33 Grat. 567; Gay v. Hancock, 1 Rand. 72; Faulkner v. Davis, 18 Grat. 652, 98 Am. Dec. 698; Miller v. Argyle, 5 Leigh, 460; Beale v. Seiveley, 8 Leigh 675; Long v. Israel, 9 Leigh 558; Peers v. Barnett, 12 Grat. 416; Bryan v. Stump, 8 Grat. 247, 56 Am. Dec. 139; Rosenberger v. Keller, 33 Grat. 494; Koger v. Kane, 5 Leigh 606; Lane v. Tidball, Gilmer 130; Hogan v. Duke, 20 Grat. 244; Shickel v. Berryville, 99 Va. 88, 37 S. E. 813; Hudson v. Barham, 43 S. E. 189, 8 Va. Law Reg. 740.

But it is only when the aid of a court of equity is necessary that it ought to be applied for, and it is only in such a case that its aid will be extended. Hudson v. Barham, 101 Va. 63, 43 S. E. 189, 8 Va. Law Reg. 740; Muller v. Stone, 84 Va. 834, 6 S. E. 223, 10 Am. St. Rep. 889.

It is the duty of a trustee to be present at the sale and to superintend and control it; and if it is so conducted as to prevent fair competition, whether cognizant of the circumstances or not, he is bound to make good the loss, Harvey v. Steptoe, 17 Grat. 293; Morriss v. Va. Co., 90 Va. 373, 18 S. E. 843; and to determine what part of trust subject shall be sold, and, if he has difficulty in doing so, a reference to a commissioner may be made, Michie v. Jeffries, 21 Grat. 334. While the law forbids a trustee to sell more than what is sufficient to satisfy the debts, it is not error to advertise the whole property conveyed in the deed for sale, Moore v. Barksdale, 2 Va. Dec. 416, 25 S. E. 529; Cleaver v. Matthews, 83 Va. 801, 3 S. E. 439; or to sell all if interest of owners demand or they request it, Michie v. Jeffries, 21 Grat. 334.

Discretion of trustee.—The sale by a trustee in a deed of trust of only a part of the land sufficient to satisfy the debt is a valid exercise of his discretion, where it is shown that the debtor made no request to him to sell a greater amount. Miller v. Mann, 88 Va. 212, 13 S. E. 337.

A deed of trust directing a sale, but not in terms requiring a subdivision of the property, should be construed with reference to Code 1873, chapter 113, section 6 (same as this section), requiring the trustee "to sell the property or so much as is necessary"; and if the land will bring a better price if sold in lots, and the owner so requests, and the trustee refuses, a court of equity will intervene. Morriss v. Va. Co., 90 Va. 370, 18 S. E. 843; Terry v. Fitzgerald, 32 Grat. 843; Thomas v. Farmers Nat. Bank, 86 Va. 293, 9 S. E. 1122; Crenshaw v. Seigfried, 24 Grat. 272.

Protection of trustee under order of court.—Where a trustee is acting under the orders of a court, his possession is the possession of the court, and any interference with his possession, without leave of the court first obtained, will be enjoined. Ford v. Watts, 95 Va. 192, 28 S. E. 179.

When deed not fraudulent on face.—A trust deed for the benefit of creditors is not fraudulent on its face, merely because it provides that the trustee may carry on the grantor's business, and does not in terms direct him to sell when required by the creditors secured by the deed, since the trustee is required by this section to sell at the instance of creditor. Taylor v. Mahoney, 94 Va. 508, 27 S. E. 107; 3 Va. Law Reg. 116.

Digitized by Google

Compensation and expenditures.—A court of chancery cannot allow to a trustee substituted by it any greater compensation than that provided for by the trust, except by consent of parties in interest. So. Ry. Co. v. Glenn, 98 Va. 309, 36 S. E. 395.

Where trustee in second deed takes possession of horses, etc., thereby conveyed, with provision for immediate possession, and after complying with provisions of deed, and notifying creditors in first deed, sold them, acting with discretion, held, that he was entitled to deduct from proceeds the cost of keeping horses until sale, and expenses of sale, including his commissions and necessary counsel fees. Guggenheimer v. Rogers, 95 Va. 711, 29 S. E. 874.

Trustees who, in good faith, engage counsel to aid them in the execution of the trust, are entitled to pay them out of the trust fund or to be reimbursed out of that fund for all expenses which they have incurred, including a reasonable attorney's fee. Cochran v. R. & A. R. Co., 91 Va. 339, 21 S. E. 664.

To justify employment by a trustee of counsel whose fee will come out of the fund, two conditions are essential. First, the trustee must act in good faith: and, second, there must be some reasonable ground to justify trustee and to render employment of counsel reasonably necessary for the protection of the trust property. Stull v. Harvey, 112 Va. 816, 72 S. E. 701.

If the grantor enjoins the trustee from making sale and makes the creditor who is sui juris a party defendant, trustee is not justified in employing counsel. Stull v. Harvey, 112 Va. 816, 72 S. E. 701.

Where the deed provided that the trustee might employ such assistance as he deemed necessary, and the trust estate was large, and it was necessary to keep numerous books, etc., the trustee employed a clerk and rented an office. Held, this was proper. Southern v. Glenn, 98 Va. 309, 36 S. E. 395.

Where land was sold under a deed of trust, and the money applied to the payment of the expenses of executing the trust and the payment of the debt secured, it was held that the trustee cannot be held responsible for proceeds of sale by prior judgment creditor. Nelson v. Turner, 97 Va. 54, 33 S. E. 390.

It is proper to allow compensation for the services of the auctioneer in making a sale ordered by the court and also expenses of a former advertisement, if the sale of property by the trustee had been enjoined by the debtor and the injunction dissolved. Hogan v. Duke, 20 Grat. 244, and note Va. Rep. Ann.

Sale— *Must follow terms of deeds.*—A sale by a trustee in a deed of trust must be in accordance with the terms of the trust deed. Unless discretion is given to the trustee, the sale must be advertised as set forth, take place at the time and place and in the manner prescribed, in the deed. Wilson v. Wall, 99 Va. 353, 38 S. E. 181; Morriss v. Va. Co., 90 Va. 370, 18 S. E. 843; Gibson v. Jones, 5 Leigh 370; Norman v. Hill, 2 Pat. & H. 676; Heermans v. Montague, 2 Va. Dec. 6, 20 S. E. 899; Shurtz v. Johnson, 28 Grat. 658; Walker v. Beauchler, 27 Grat. 509.

But where a sale is made under a deed of trust upon different terms from those provided in the deed, a party who has assented to the change, and which was made partly for his benefit, cannot afterwards complain. Orr v. Chandler, 86 Va. 938, 11 S. E. 978; Womack v. Paxton, 84 Va. 9, 5 S. E. 550.

Advertisement of sale.—No general rule can be laid down as to length of time property should be advertised for sale. Ordinarily a direction to duly advertise is sufficiently complied with by advertising in manner usual with prudent men in management of their own affairs or by following rule of local courts. Wilson v. Wall, 99 Va. 353, 38 S. E. 181. See Morriss v. Va. Co., 90 Va. 370, 18 S. E. 843.

Where sale under a trust deed is impeached upon the ground that the sale was not advertised in accordance with the deed, held that, unless the sale was advertised in accordance with the deed, the sale was invalid, and that the burden of proof is upon those insisting on the sale to prove that the advertisement was made. Gibson v. Jones, 5 Leigh 370.

Digitized by Google

Under this section it is the duty of the trustee in selling under a deed of trust to conform substantially to all material stipulations of the deed under which he acts. If the deed requires advertisement of the time, terms, place of sale, and description of the property before making sale and the advertisement is silent as to the terms of sale, the sale will be set aside as invalid. Preston v. Johnson, 105 Va. 238, 53 S. E. 1.

Place.—Where there is no direction in a deed of trust where a sale of the trust property shall be held, the determination of the place of sale is with the trustee. But where either party objects to the place selected by him he may apply to a court of equity for instructions prior to sale. Morriss v. Va. Co., 90 Va. 370, 18 S. E. 843.

Where a grantor conveyed her equity of redemption to a trustee in trust to secure a certain debt, and the deed provided that in case of default the trustee should sell, at such place as he should think proper, held, that the sale by the trustee in Baltimore of land in York county was a valid exercise of the discretion conferred on him by the deed. Shurtz v. Johnson, 28 Grat. 658; but see Morriss v. Va. Co., 90 Va. 379, 18 S. E 843; Barton, Ch. Pr. (2d Ed.) 473.

Where deed does not prescribe the place of sale, and trustee and debtor cannot agree thereon, wish of debtor should prevail. Morriss v. Va. Co., 90 Va. 370, 18 S. E. 843.

Terms.—Where the deed of trust provided that, if at the time of sale any of the notes secured thereby shall not be due, the purchase money necessary to pay the same shall be made payable when such notes mature, held, that the trustee cannot sell for cash to pay a note not due at the time of sale. Patch v. Morrisett, 2 Va. Dec. 127, 22 S. E. 173.

When sale set aside.—Where the trustee makes a sale of the trust property while there is a cloud on the title which it is his duty to remove, the sale will be set aside. Rossett v. Fisher, 11 Grat. 492; Roberts v. Roberts, 13 Grat. 641, 70 Am. Dec. 435; Washington Co. v. Alexander, 19 Grat. 617, 10 Am. Dec. 710; Graeme v. Cullen, 23 Grat. 267; Shurtz v. Johnson, 28 Grat. 662; Horton v. Bond, Id. 825; Preston v. Stuart, 29 Grat. 303; Shultz v. Hansbrough, 33 Grat. 567; Muller v. Stone, 84 Va. 837, 6 S. E. 223, 10 Am. St. Rep. 889; Alexander v. Howe, 85 Va. 202, 7 S. E. 248; Brown v. Lawson, 86 Va. 285, 9 S. E. 1014; Thomas v. Bank, 86 Va. 293, 9 S. E. 1122.

A court of equity will set aside a sale and conveyance by trustee if the requisites of the deed of trust have not been complied with. Taylor v. King, 6 Munf. 358, 8 Am. Dec. 746; Harris v. Harris, 6 Munf. 368.

Where at time land is conveyed to secure a debt grantor has but an equitable estate, although he is entitled to legal title, it is an abuse of power in trustee to sell before getting legal title, and a court of equity will set sale aside. Rossett v. Fisher, 1 Grat. 492.

Where there is no proof that a sale under a deed of trust had been advertised as required by the deed, and the deed from the trustee to the purchaser recites that the sale was for cash, and the trust deed provides for a sale upon other terms, and the property sold for an inadequate price—held, the sale must be set aside and a resale ordered. Norman v. Hill, 2 Pat. & H. 676.

Where trustees did not sell in accordance with a decree of sale, but sold land in small quantities and bought some of it themselves, the court will set aside the conveyance. Quarles v. Lacy, 4 Munf. 251.

B. gave a deed of trust on land in Alexandria county to secure a debt, and the deed provided for a sale upon default after advertising same for twenty days in a newspaper published in Alexandria county, after the execution of the deed B. left the county, the said county being in the possession of Federal troops. Upon default in the payment the trustee advertised the sale, which took place in Georgetown, a place outside of the state, and the property was bought by a married woman, who was a relation of the creditors. The property sold at a reduced price. Held, that B. being in the Confederate lines, and the creditors in the Union lines, the sale under the trust deed was invalid; that a subsequent purchaser, who was present at the sale, stood in no better position than the purchaser at the sale. Walker v. Beauchler, 27 Grat. 511.

Title under sale.—Where property has been sold under a deed of

Digitized by Google

trust, the deed of the trustee passes the legal title to the purchaser; but in equity a purchaser at a sale made under a deed of trust takes upon himself the risk of the regularity and fairness of the sale. Norman v. Hill, 2 Pat. & H. 676; Taylor v. King, 6 Munf. 358, 8 Am. Dec. 746; Harris v. Harris, Id. 376; Gibson v. Jones, 5 Leigh 370; Sulphur Mines Co. v. Thompson, 93 Va. 293, 25 S. E. 232.

A trustee in a deed of trust was authorized, upon default in the payment of the sum secured, to advertise the property for thirty days, by posting notices in three public places, and sell the same; but instead of advertising, the trustee made a deed of bargain and sale to the beneficiary, in consideration of $100 credited on the debt. Held, that the deed from the trustee passed no title. Heermans v. Montague, 2 Va. Dec. 6, 20 S. E. 899.

Equitable interference.—Where a trustee is insolvent, a court of equity, upon application of one who is interested, should, where the money derived from the sale of the trust subject will pass through the trustee's hands, require security from him before he is allowed to sell the property. Terry v. Fitzgerald, 32 Grat. 848; McCullough v. Sommerville, 8 Leigh 415.

Where debtor conveyed property to trustees for the benefit of his creditors, and the trustees refuse to act, two of his creditors file their bill in equity for themselves and all other creditors, and pray for the appointment of trustees to execute the trust and for general relief, held, the court should not simply appoint other trustees, but should have the trust administered under its supervision and control. Reynolds v. Bank of Va., 6 Grat. 174.

It lies within the discretion of the court whether on dissolving an injunction to a sale under a trust deed it should dismiss the bill, or retain it with the view of supervising the administration of the trust. Robinson v. Mays, 76 Va. 708; Hogan v. Duke, 20 Grat. 244, and note Va. Rep. Ann.; Hudson v. Barham, 101 Va. 63, 43 S. E. 189, 8 Va. Law Reg. 740; Michie v. Jeffries, 21 Grat. 334.

Where a court of equity has acquired jurisdiction over a trustee and the subject of the trust, the trustee is powerless to exercise his functions as trustee without the express order of the court. Maddux v. Triplett, 89 Va. 323, 15 S. E. 897; Georgia v. Bartlett, 91 Va. 305, 21 S. E. 476, 50 Am. St. Rep. 832.

Where equity has obtained jurisdiction of the trust subject it is especially proper, where the trustee is a bankrupt, for the court to retain the case and have the trust administered under its direction, and to require the trustee to give security for the faithful performance of his duties. Hogan v. Duke, 20 Grat. 244.

Where a trust deed provided for a sale in accordance with section 6, chapter 113, Code 1873 (same as this section), a sale by a trustee will not be enjoined upon the ground that the sale will be greatly inequitable, "inasmuch as it is notorious that real estate in that section brings but a proportion of its value on deferred payments, and if sold for cash as proposed, at a time of great financial depression, must be disposed of at an unnecessary sacrifice." Muller v. Stone, 84 Va. 834, 6 S. E. 223, 10 Am. St. Rep. 889.

Generally.—A conveyenace to trustees to secure creditors, amongst whom are the trustees themselves, is in legal effect a mortgage, and the regular course of procedure is to file a bill in equity for the foreclosure. If, however, the trustees proceed to sell under the deed and make conveyance, their grantees take the legal title. Morgan v. Glendy, 92 Va. 86, 22 S. E. 854.

A person named trustee in a deed to secure debts united in sales necessary in the execution of the trust and other formal acts, but receives none of the trust funds, they being received by his co-trustee, and he is guilty of no fraud in relation thereto. Held, he is not responsible for the misapplication or waste of the funds by his co-trustee. Griffin v. Macaulay, 7 Grat. 476.

A trustee holding the legal title is always a necessary party to any suit wherein the trust subject is in litigation, and it is error to enter a decree disposing of the trust subject unless he is a party. Horton v. Bond,

Digitized by Google

28 Grat. 815; Fisher v. Dickenson, 84 Va. 329, 4 S. E. 737; Clough v. Thompson, 7 Grat. 26: Barton, Ch. Pr. (2d Ed.) 197.

Where a deed of trust conferred power of sale in the personal representatives of the trustee, if the trustee died before exercising the power, his personal representatives being clothed with the mere naked power, they cannot convey a good title unless they comply with the conditions of the deed authorizing a sale. Sulphur Co. v. Thompson, 93 Va. 293, 25 S. E. 232.

The fact that the power of sale in a deed of trust, and the estate and interest coupled therewith, are subsequently separated, the power of sale passing by the express terms of the deed to the personal representatives of the trustee, and the estate passing to his heirs, will not revoke said power. Sulphur Co. v. Thompson. 93 Va. 293, 25 S. E. 232.

Where property is conveyed to two or more trustees jointly to secure debts, the estate they take is joint and inseverable, their title joint and indivisible. Hence notice to one of such trustees is notice to all. There can be no such thing as a purchaser partly bona fide. Chapman v. Chapman, 91 Va. 397, 21 S. E. 813, 50 Am. St. Rep. 846.

A purchaser of land at a trustee's sale made under an ordinary deed of trust cannot maintain, against the trustee and beneficiary in the deed of trust, a suit in equity to recover for a deficiency in acreage. Motley v. Hodges, 120 Va. 498, 91 S. E. 757.

Under the last clause of section 6, chapter 72, W. Va. Code (Va. Code, section 5167), where a debtor conveys property to a trustee for benefit of creditors, and it is made the duty of the trustee to take possession, control, manage, and administer the trust property, the commissioner of accounts should make the same allowances to him for reasonable expenses, compensation, etc., as would be allowed an executor or other fiduciary under section 17, chapter 87, Id. (Va. Code 5425). Beecher v. Foster (W. Va.), 9 Va. Law Reg. 15, 19, 22, and note.

See Barton, Ch. Pr. (2d Ed.), pp. 472, 771; 2 Min. (4th Ed.) 259 et seq.; 3 Va. Law Reg. 828; 1 Va. L. Reg. N. S. 191.

Deed of trust on stock of goods, 2 Va. Law Reg. 62; 3 Va. Law Reg. 849, 905.

Naked power and those coupled with an interest or trust, 3 Va. Law Reg. 81.

As to widow's dower in surplus, see section 5119.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 72, section 6.

See Gregory's Forms Nos. 515, 516, 518, 521, 523, 524, 525.

Sec. 5168. Appurtenances, etc., included in deed of land.—Every deed conveying land shall, unless an exception be made therein, be construed to include all buildings, privileges, and appurtenances of every kind belonging to the lands therein embraced. (Code 1887, § 2443.)

Easements.—Servitudes adopted by the owner of lands which are plainly visible or notorious, and from the character of which it may be fairly presumed that he intended their preservation as necessary to the convenient enjoyment of the property, become, when the lands are divided and pass into other hands, permanent appurtenances thereto, and neither the owner of the dominant nor servient portions of the land have power to adversely interfere with their proper use and enjoyment. Scott v. Moore, 98 Va. 668, 37 S. E. 342, 81 Am. St. Rep. 749.

Permission to grantee to use dock while grantors own it, or until it is filled in, does not make an easement appurtenant to grantee's land. Hardy v. McCullough, 23 Grat. 251, and note Va. Rep. Ann.

Where a conveyance of land reserves to the owner of a furnace the right to raise ore from the ore bank on the land conveyed in the deed, the ore does not pass as appurtenant to the land. Lee v. Bumgardner, 86 Va. 315, 10 S. E. 3.

What passes as easements.—Where the owner of two adjoining lots constructed a well-defined alleyway in the rear of one of them leading to the other, and through it laid sewer connections for the other, it was cut

Digitized by Google

off from the first lot, and used exclusively for the benefit of the second, the first having alley and sewerage connections directly with the street: Held, this alley is a continuous and permanent or necessary easement for the second lot. Scott v. Moore, 98 Va. 668, 37 S. E. 342, 81 Am. St. Rep. 749.

Where a dike was erected by the owner of land, and same was afterwards divided, the right to the advantage that arises from the dike being on the land passed to his grantee or devisee, and the owner of the other tract cannot erect a dike on his land so as to nullify the effect of the old dike. Burwell v. Hobson, 12 Grat. 322, 65 Am. Dec. 247.

Whenever on one of two tracts of land owned by the same person, an easement exists in favor of the other, and one is conveyed, whether the easement passes depends upon the terms of the grant. If expressed, the terms prevail; if not expressed, its passage as incident will be presumed when the easement is apparent, continuous, and necessary. Sanderlin v. Baxter, 76 Va. 299, 44 Am. Rep. 165.

If the owner of two adjoining lots sells both at the same time, each grant carries all of the apparent and continuous easements which are necessary for the reasonable use of the property granted, and which have been or are at the time of the grant used by the grantor for the benefit of such property. Scott v. Moore, 98 Va. 668, 37 S. E. 342, 81 Am. St. Rep. 749.

A conveyance to the "high-water mark," as a general rule, vests in the grantee the right to the soil between ordinary high and low water mark, as incident or appurtenant to the adjacent land. A grant may be so limited to high-water mark as to exclude riparian rights as incident to it, but the intention must be clear and manifest upon the face of the deed. Waverly v. White, 97 Va. 176, 33 S. E. 534, 5 Va. Law Reg. 399, 45 L. R. A. 227, and note.

What does not pass.—Land cannot be appurtenant to land nor pass with it. Lee v. Bumgardner, 86 Va. 315, 10 S. E. 3.

Where land held in common is divided in a partition suit in which it is provided that the mineral rights in the entire tract shall remain undivided, the right reserved is not an easement, but the entire ownership in the ore in the land divided. A purchaser of one of the subdivisions does not acquire any right or interest in the mineral rights, since they do not pass as appurtenant to the land. Barksdale v. Parker, 87 Va. 141, 12 S. E. 344.

Where one of two adjoining lots owned by the same parties is sold at auction, and at the time of sale nothing is said of an easement running from the lot through the one sold, and such easement was not to be seen and not known to the purchaser, held purchaser is entitled to have his lot free from easement. Scott v. Beutel, 23 Grat. 1.

Where a deed conveyed land bordering in part on a road which was designated as the line, reserved to the grantor, his heirs or assigns, the road as it then existed, and it appeared that the grantor held other land bordering in part on the road, and that the termini of said road were in the grantor's land, and such remaining land was subsequently conveyed, in suit between first and second grantees, held, that the reservation of the road was a right appurtenant to the land of the grantor not first conveyed, and therefore passed to the second grantee. French v. Williams, 82 Va. 462, 4 S. E. 591.

Generally.—Where there is a grant of an estate described generally, everything that belongs to it, or is used with it, or is reasonably essential to its enjoyment, passes as incident to the principal. Scott v. Moore, 98 Va. 668, 37 S. E. 342, 81 Am. St. Rep. 749.

Where the deed conveys, without any reservation, the grantee takes all conveyed by the deed, unincumbered, unless in some way notice is brought home to him that the land is sold subject to the incumbrance of some easement or privilege in another person or in the public. Deacons v. Doyle, 75 Va. 262.

Where land was sold without restriction or reservation, it embraces underlying minerals. Steinman v. Vicars, 99 Va. 595, 39 S. E. 227.

Discussed, 8 Va. Law J. 310.

Digitized by Google

For W. Va. decisions on similar statute see Justis' Annotations, chapter 72, section 10.

See Gregory's Forms Nos. 515, 516, 521, 523, 524, 526.

Sec. 5169. Deeds good between parties.—Any deed, or a part of a deed, which shall fail to take effect by virtue of this chapter, shall, nevertheless, be as valid and effectual and as binding upon the parties thereto, so far as the rules of law and equity will permit, as if this chapter had not been enacted. (Code 1887, § 2444.)

See Gregory's Forms No. 515.

Sec. 5170. Effect of certain words in a deed.—When a deed uses the words "the said ..... covenants," such covenant shall have the same effect as if it was expressed to be by the covenantor, for himself, his heirs, personal representatives, and assigns, and shall be deemed to be with the covenantee, his heirs, personal representatives, and assigns. (Code 1887, § 2445.)

For W. Va. decisions on similar statute see Justis' Annotations, chapter 72, section 12.

See Gregory's Forms No. 515.

Sec. 5171. Effect of covenant of general warranty.—A covenant by the grantor in a deed, "that he will warrant generally the property hereby conveyed," shall have the same effect as if the grantor had covenanted that he, his heirs, and personal representatives, will forever warrant and defend the said property unto the grantee, his heirs, personal representatives, and assigns, against the claims and demands of all persons whomsoever. (Code 1887, § 2446.)

Nature and extent of warranty.—Warranty, as known to the common law, was exclusively a covenant real, running with the land. The remedy for its breach was not in damages, but primarily in the recovery of other land. In this sense, however, it has since been discontinued, and is now considered a personal covenant sounding in damages. Under our statutes and decisions it is treated as a covenant to warrant and defend, while it has also all the effects of a covenant for quiet enjoyment. Burtners v. Keran, 24 Grat. 65; Tabb v. Binford, 4 Leigh 132, 36 Am. Dec. 317.

In a deed of bargain and sale the grantor covenants as follows: And the said T. doth hereby covenant, for himself and his heirs, to and with the said B., that he, the said T., will warrant and forever defend to the said B., his heirs and assigns, the title to the said parcel of land against all persons whatever. Held, that this covenant was not a mere warranty real, but was a personal covenant upon which an action of covenant lay for the bargainee, on being evicted, against the administrator of his bargainor. Tabb v. Binford, 4 Leigh 132.

Where husband and wife convey, with general warranty, wife's life estate in land, the warranty does not run with the land and is only coextensive with the wife's life estate. McDonald v. Rothgeb, 112 Va. 749, 72 S. E. 692.

A covenant of warranty runs with the land for the protection of the owner in whose time the breach occurs, and may be enforced by the covenantee and his representatives and assigns. To constitute a breach of such a contract there must be an eviction, or the plaintiff must be prevented from taking possession of the premises by another in possession under a better title existing at the time of the sale and deed. Marbury v. Thornton, 82 Va. 702, 1 S. E. 909; Dickinson v. Hoomes, 8 Grat. 396; Sheffey v. Gardiner, 79 Va. 313; Washington v. Thornton, 83 Va. 157, 2 S. E. 193.

If a covenant of warranty could be treated merely as a covenant against incumbrances, a prior incumbrance being on the property at the

Digitized by Google

time of the execution of the deed to the grantee, it would be instantly broken, and then become a mere right of action not assignable at law, and which could not pass by deed of trust from the grantee. Washington v. Thornton, 83 Va. 157, 2 S. E. 193; Marbury v. Thornton, 82 Va. 702, 1 S. E. 909.

A covenant of warranty cannot be treated as a covenant against existing incumbrances. Marbury v. Thornton, 82 Va. 702, 1 S. E. 909; Findlay v. Toncray, 2 Rob. 379; Dickinson v. Hoomes, 8 Grat. 395; Washington v. Thornton, 83 Va. 157, 2 S. E. 193.

C. and S., being jointly in possession as joint owners of land, jointly sell same to G. and S., and convey it to them. In their deed they say: And the said C. and S. covenant that they will warrant generally, etc. Held, this is a joint and several warranty, and both warrantors are responsible to the vendee, upon eviction, for the payment of the full measure of damages. Click v. Green, 77 Va. 827.

A vendor who has neither possession nor title cannot pass either by his conveyance. The clause of general warranty could not operate as real covenant unless the vendees entered, and could pass to the assignee only along with and incident to the land. The land not passing, the warranty could not pass. Randolph v. Kinney, 3 Rand. 394.

A vendor who conveys with general warranty, without any other covenants, makes himself only responsible for eviction, and secures to himself the advantage of every doubt which hangs over the title being removed by the lapse of time. However bad the title may be, the vendee cannot sue upon his warranty until evicted. Beale v. Selveley, 8 Leigh 674.

General warranty as estoppel.—Where land is conveyed with general warranty, and the grantor does not own it at the time of the conveyance, but subsequently acquires the same land, such acquisition inures to the benefit of the grantee, because the grantor is estopped to deny, against the terms of his warranty, that he had the title in question; but it does not operate actually to transfer the estate subsequently acquired. Burtners v. Keran, 24 Grat. 65; and note Va. Rep. Ann.; Raines v. Walker, 77 Va. 95; Baugh v. Same, Id. 102; Gregory v. Peoples, 80 Va. 357; Young v. Young, 89 Va. 678, 17 S. E. 470, 23 L. R. A. 642; Reynolds v. Cook, 83 Va. 817, 3 S. E. 710, 5 Am. St. Rep. 317. But see section 5202 which affects this doctrine.

A grantor is estopped to claim a title subsequently acquired, not only when he has conveyed with warranty, but also where the deed of conveyance cites or affirms, expressly or impliedly, that the grantor is seized of a particular estate which the deed purports to convey, and upon the faith of which the bargain is made. Townsend v. Outten, 95 Va. 536, 28 S. E. 958, note 4 Va. Law Reg. 44; Nye v. Lovitt, 92 Va. 710, 24 S. E. 345. See section 5202.

Although if the warrantor afterwards acquire title on his own account, and with his own means, the title enures to the benefit of the warrantee, yet if he buys with another's money it enures to the benefit of the latter. 2 Min. (4th Ed.) 710; Gregory v. Peoples, 80 Va. 357; Bank v. Carrington, 7 Leigh 566; Kane v. O'Connors, 78 Va. 80; Raines v. Walker, 77 Va. 95. See section 5202.

A testator devised land to each of his children, but directed that if any of them died his or her estate should be equally divided between the survivors or their representatives. All of the children took possession of the estate. In 1819 one of the sons sold the estate devised to him, and the other children united in the covenants in the deed, which were as follows: "And the said A., for himself and his heirs, and the said B., C., D., E., for themselves and their heirs, as contingent devisees or legatees under the will of R., deceased, by whom said land was devised to A., do hereby covenant and agree to and with said Y. that they will warrant and defend the fee simple estate and complete right and title to said land to him, and his heirs and assigns, forever, against themselves and their heirs, and against the claim and demand of any person or persons claiming from, by, or under them, in virtue of the will aforesaid, and do relinquish and fully confirm to said Y. all the right they or their heirs now have, or might or may hereafter have, to said land, or any part

Digitized by Google

thereof, to him, and his heirs and assigns, forever, free from them the said B., C., D., E., and their heirs, and of all other persons in the whole world." The children of B., the others having died without issue, sought to recover the land as purchasers under the will of the grandfather. Held, that the covenants of B. extend to the claim of the children, though they claim not as heirs, but by devise under the will of their grandfather. Dickinson v. Hoomes, 8 Grat. 363.

Where a man conveyed land to his wife, with warranty against the claims of himself and heirs, his children, deriving title from their mother, will not be affected by the warranty. Urquhart v. Clarke, 2 Rand. 549.

The heirs of a wife are not barred from claiming the land to which she was entitled by the collateral warranty of the husband, who was their father, in his deed conveying it to the purchasers from him. Norman v. Cunningham, 5 Grat. 63.

Where there is no estoppel without warranty.—Where the owner of an equitable estate conveys the lands without general warranty, and the deed contains no recital that the grantor has the legal title, such deed does not estop the grantors as to an after-acquired legal estate in the land, but only operates to give a lien on the equitable estate. Doswell v. Buchanan, 3 Leigh 365, 23 Am. Dec. 280. See section 5202 and revisors' note.

When purchaser not estopped by recitals of deed.—Because a deed recites that "immediate possession is delivered," and declaration avers no eviction, covenantee is not thereby estopped to deny that he got possession. Sheffey v. Gardiner, 79 Va. 313.

Where purchaser has knowledge of defect.—As a general rule, where the purchaser has knowledge of a defect in the title, but is willing to accept the property with a covenant of general warranty, his only remedy would be at law, after eviction, and he would have no right, in the absence of fraud or mistake, to withhold the payment of the purchase money. Faulkner v. Davis, 18 Grat. 661, 98 Am. Dec. 698.

A vendee who purchases with notice of the infirmities of his title, and puts improvements on the land, which he conveys at an advanced price, can, when evicted from five-sixteenths of the land, recover from his vendor only five-sixteenths of the price he paid, while he must pay his grantee five-sixteenths of the advanced price he received. Conrad v. Effinger, 87 Va. 59, 12 S. E. 2, 24 Am. St. Rep. 646.

If a purchaser knew, when he made a contract, that there was a defect in the title, which would take considerable time to remove; or if he acquires this knowledge after sale, and acquiesces in the delay; or proceeds after the knowledge of the defect with the execution of the contract —he has no ground of complaint. Vail v. Nelson, 4 Rand. 478.

When collection of purchase money enjoined.—If a grantee accepts the title and receives the deed, he will generally have to look only to the covenants contained therein for his indemnity and protection against any defects that may be in the title. If there be no covenants in the deed covering such defects, he will be without remedy, for he will have no right, unless there is fraud or such a mistake as to require a court of equity to grant relief. If there be such a covenant in the deed the vendee has his remedy at law, and a court of equity will interpose to stop proceedings for the collection of the purchase money only on the grounds that suit has been brought or is threatened against him on account of such defect, or that such defect certainly exists, or that some other peculiar equity exists. Faulkner v. Davis, 18 Grat. 660, 98 Am. Dec. 698; Ralston v. Miller, 3 Rand. 44, 15 Am. Dec. 704.

Where it is clearly shown that the title to a portion of the land conveyed to a purchaser under a general warranty deed is defective, he has a right, notwithstanding a deed with general warranty has been made, to enjoin the collection of the purchase money; and such right is not impaired though the vendor is seeking to collect the purchase money not directly from the purchaser, but from a third person, on a collateral security assigned to him by the purchaser. Clarke v. Hardgrove, 7 Grat. 399, note Va. Rep. Ann.

A court of equity will enjoin the collection of the purchase money of land on the ground of defect of title, after vendee has taken possession under conveyance from the vendor with general warranty, if the title is

Digitized by Google

questioned by a suit either prosecuted or threatened, or if the purchaser can show clearly that the title is defective. Clarke v. Hardgrove, 7 Grat. 399, and note Va. Rep. Ann.; Koger v. Kane, 5 Leigh 606; Ralston v. Miller, 3 Rand. 44, 15 Am. Dec. 704; Peers v. Barnett, 12 Grat. 416.

Relief for breach of warranty.—Under a general warranty deed, until eviction, a vendee cannot assert a claim for damages, and this claim he can assert in a court of law, because a court of equity is not the proper tribunal to give damages for a breach of warranty. Long v. Israel, 9 Leigh 556; Koger v. Kane, 5 Leigh 606; see also Abernathy v. Phillips, 82 Va. 769, 1 S. E. 113; Jackson v. Turner, 5 Leigh 119; Threlkeld v. Fitzhugh, 2 Leigh 451; Click v. Green, 77 Va. 827.

When the premises are in the actual possession of third party under paramount title, at the date of the conveyance, it is unnecessary to aver or prove actual entry or eviction in an action for the breach of warranty of title to the land. Sheffey v. Gardiner, 79 Va. 313.

Where a vendee, with warranty of title (the vendor being guilty of no fraud), buys a better title, he (the vendor) can only be compelled to refund to the vendee the amount of the money paid for the better title. The vendee cannot disavow vendor's title. Roller v. Effinger, 88 Va. 641, 14 S. E. 337.

Equity will only relieve a purchaser who has obtained a deed where there has been an actual eviction, or where a suit is depending or threatened, or when the vendee, placing himself in the attitude of the superior claimant, can show a clear outstanding title or incumbrance. Beale v. Seiveley, 8 Leigh 675; Ralston v. Miller, 3 Rand. 44, 15 Am. Dec. 704; Yancey v. Lewis, 4 Hen. & M. 390; Grantland v. Wight, 5 Munf. 295; Koger v. Kane, 5 Leigh 606; Richards v. Mercer, 1 Leigh 125.

Measure of damages for breach.—Where there has been an eviction, the measure of damages to be recovered against the vendor, on his covenant of warranty, is not the value of the land at the time of the eviction, but the purchase money with interest, not from the day of sale, but from the actual eviction, the costs incurred by the vendee in defending the title, and such damages as he may have paid to the person evicting him. Jackson v. Turner, 5 Leigh 127; Threlkeld v. Fitzhugh, 2 Leigh 451; Sheffey v. Gardiner, 79 Va. 313; Click v. Green, 77 Va. 827; Crenshaw v. Smith, 5 Munf. 415; Nelson v. Matthews, 2 Hen. & M. 164, 3 Am. Dec. 620; Lowther v. Com., 1 Hen. & M. 202; Abernathy v. Phillips, 82 Va. 779, 1 S. E. 113; Stout v. Jackson, 2 Rand. 132; Conrad v. Effinger, 87 Va. 59, 12 S. E. 2, 24 Am. St. Rep. 646; Humphreys v. McClenachan, 1 Munf. 493; Haffey v. Birchetts, 11 Leigh 83; 2 Min. (4th Ed.) 726; Thompson v. Guthrie, 9 Leigh 101, 33 Am. Dec. 225, and note Va. Rep. Ann.; Roller v. Effinger, 88 Va. 641, 14 S. E. 337.

If several tracts of land be sold as adjoining each other, for a gross sum, and no specification be made at the time of the contract of the quantity or separate value of each parcel, and there be a deficiency in the quantity of each, the purchaser will be entitled to compensation for such deficiency, according to the average value of the whole tract, and not of the several tracts taken separately. Nelson v. Matthews, 2 Hen. & M. 164, 3 Am. Dec. 620.

Where a grantor is called upon to defend the title, and immediately employs competent counsel to do so, the grantee cannot, when evicted, recover from him counsel fees as well as the value of the land. Conrad v. Effinger, 87 Va. 59, 12 S. E. 2, 24 Am. St. Rep. 646.

Grantee cannot recover attorneys' fees against grantor when the latter himself defends suit for eviction with a competent attorney of his own. Conrad v. Effinger, 87 Va. 59, 12 S. E. 2.

Upon breach of warranty of title the vendee is entitled to the amount of the purchase money paid by him with interest from eviction and costs. Id.

What averment of breach not sufficient.—A declaration in covenant stated that, in consequence of a prior lien and encumbrance upon the tract of land in question, the plaintiff has been disturbed in and evicted from the possession and enjoyment of the said tract of land. There was no averment that the plaintiff was kept out of possession of the premises by any person or persons in possession under a paramount title, or that he

Digitized by Google

was evicted by judgment of eviction followed by ouster. Held demurrable. Marbury v. Thornton, 82 Va. 702, 1 S. E. 909.

Generally.—In Virginia a vendor usually enters into a covenant of general warranty, unless he sells under a power. In these cases he generally covenants only for himself and his heirs. Rucker v. Lowther, 6 Leigh 269; 2 Min. (4th Ed.) 725.

For monographic note on Covenants, see Todd v. Summers, 2 Grat. 167, Va. Rep. Ann., 44 Am. Dec. 379.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 72, section 13.

See notes to section 5172 as to the covenant of special warranty. See Gregory's Forms No. 515.

Sec. 5172. Of special warranty.—A covenant by any such grantor "that he will warrant specially the property hereby conveyed" shall have the same effect as if the grantor had covenanted that he, his heirs, and personal representatives, will forever warrant and defend the said property unto the grantee, his heirs, personal representatives and assigns, against the claims and demands of the grantor, and all persons claiming or to claim by, through, or under him. (Code 1887, § 2447.)

Caveat emptor applies strictly to special warranty.—Where a vendee takes a conveyance with special warranty of title, the rule caveat emptor strictly applies. Beale v. Seiveley, 8 Leigh 672.

Where A. sells and conveys land to B. with general warranty, and B. sells and conveys to C. such title as A. has conveyed to him, equity will not give C. relief against B. on the ground of defect of title, because C. purchased of him only A.'s title, nor give him relief against A., for A. has no claim against C. which he can be enjoined from enforcing. Koger v. Kane, 5 Leigh 606.

A mistake in respect to the title is no ground for relief in equity to a purchaser, where he takes upon himself the risk as to the title, as he does when he purchases land without any agreement, express or implied, for a conveyance with warranty of title. Sutton v. Sutton, 7 Grat. 234, 56 Am. Dec. 109.

If a vendor expressly sells such title as he has, and does not pretend to have a perfect title, and sells without warranty, he is entitled to specific execution without being first required to show a clear title. Sutton v. Sutton, 7 Grat. 234, 56 Am. Dec. 109; Bailey v. James, 11 Grat. 468, 62 Am. Dec. 659; Goddin v. Vaughn, 14 Grat. 124; Vail v. Nelson, 4 Rand. 478.

A trustee who sells the trust property and such title only as is vested in him according to the terms prescribed, and without warranty or fraud, incurs no responsibility to the purchaser. Sutton v. Sutton, 7 Grat. 234, 56 Am. Dec. 109.

Where property is sold by the trustee for what it will bring, and there is no warranty of title or quantity, the purchaser is not entitled to relief for a mistake in the estimated quantity of the land. Sutton v. Sutton, 7 Grat. 234, 56 Am. Dec. 109. See, also, Motley v. Hodges, 120 Va. 498, 91 S. E. 757, cited under section 5167.

Land is purchased by the acre. After the survey is started the vendee agreed to take it at the quantity for which the vendor held it, and the survey is stopped. Held, he is concluded by his agreement, and is not entitled to an abatement from the purchase money for a deficiency in the quantity. Peers v. Barnett, 12 Grat. 408.

The grantee in a quitclaim deed with covenant of special warranty, which purports to convey "such interest only as the grantors now have, whatever that may be," takes in subordination to a prior unrecorded deed, and such quitclaim deed cannot be introduced in evidence to defeat the title deduced under such prior unrecorded deed. Virginia v. Fields, 94 Va. 102, 26 S. E. 426, 3 Va. Law Reg. 665.

Generally.—A deed recited that the grantors "will warrant specially the land hereby conveyed; that they have the right to convey the said land

Digitized by Google

to the said grantees; that the said grantees shall have quiet possession thereof free from all encumbrances; that they shall execute such further assurances of said land as may be requisite; and that they have done no act to encumber the same." Held, that the word "specially" governs and controls all the succeeding covenants. Allemong v. Gray, 92 Va. 216, 23 S. E. 298. Compare Dickinson v. Hoomes, 8 Grat. 363.

A grantor who conveys land with special warranty and a covenant of quiet possession is estopped to assert an after acquired title against his grantee. Hurley v. Charles, 112 Va. 706, 72 S. E. 689. See section 5202 and revisors' note.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 72, section 14.

See notes to section 5171 as to covenant of general warranty; as to relief for breach of warranty; measure of damages, &c.; as to knowledge of defects on part of purchaser, &c., &c.

See Gregory's Forms Nos. 515, 516, 518, 521, 526.

Sec. 5173. Words, "with general warranty," and "with special warranty," construed.—The words "with general warranty," in the granting part of any deed, shall be deemed to be a covenant by the grantor "that he will warrant generally the property hereby conveyed." The words "with special warranty," in the granting part of any deed, shall be deemed to be a covenant by the grantor "that he will warrant specially the property hereby conveyed." (Code 1887, § 2448.)

See Gregory's Forms Nos. 515, 516, 518, 521, 526.

Sec. 5174. Covenant of "right to convey."—A covenant by the grantor in a deed for land, "that he has the right to convey the said land to the grantee," shall have the same effect as if the grantor had covenanted that he has good right, full power, and absolute authority, to convey the said land, with all the buildings thereon, and the privileges and appurtenances thereto belonging, unto the grantee, in the manner in which the same is conveyed or intended so to be by the deed, and according to its true intent. (Code 1887, § 2449.)

Breach of covenant, and remedy.—If it is broken, and he fails of that seisin, he has a right to reclaim the purchase money. But if by virtue of another covenant in the same deed (for further assurance of title), which was also taken to assure to him the subject-matter of the conveyance, he has obtained that seisin, it would be inequitable that he should have the seisin, and be allowed besides to recover back the consideration paid for it. The grantor may supply the missing link in the chain of title whereby grantee is assured possession. Building v. Fray, 96 Va. 559 32 S. E. 58.

A covenant in a deed by the grantor, "that he has a right to convey," is broken, if at all, as soon as the deed is made, and the grantee may bring his action at once without averring eviction or special damages. Kinzie v. Riely, 100 Va. 709, 42 S. E. 872.

A covenant of seisin (right to convey) is not broken by an outstanding contingent right of dower, since such right does not affect the grantee's possession or legal title. Building v. Fray, 96 Va. 559, 32 S. E. 58.

Where grantor conveys land with covenant of "right to convey" and "further assurance," he may supply a missing link in his chain of title before his grantee has been disturbed in his possession and before action brought. Building v. Fray, 96 Va. 559, 32 S. E. 58.

Breach may be pleaded under section 6145.—In an action brought for the recovery of the purchase price of land conveyed, the grantee may, under section 6145, Code, file a special plea for the breach of warranty or covenant for title, unless the defense set up would require a rescission

Digitized by Google

of the contract, and the grantor to be reinvested with the title conveyed. Kinzie v. Riely, 100 Va. 709, 42 S. E. 872, 8 Va. Law Reg. 655, note; Sheffey v. Gardiner, 79 Va. 313; Grayson v. Buchanan, 88 Va. 251, 13 S. E. 457; Watkins v. West Wytheville, 92 Va. 1, 22 S. E. 554; Mangus v. McClelland, 93 Va. 786, 22 S. E. 364; 4 Min. (3d Ed.) 795, 796.

Upon a covenant to make a good title to certain lots of land (according to a certain plat for extending the streets of a town), which included the streets and appurtenances thereon mentioned, and that the covenantee, his heirs and assigns, may at all times thereafter enter into possession and enjoy the said lots, with the streets, etc., without the let, hindrance, or molestation of the covenantor, his heirs and assigns, a court of equity will by injunction compel the vendor to remove the obstructions from the streets, and leave them open for the benefit of the vendee and his assigns. Brooke v. Barton, 6 Munf. 306.

When only nominal damages recoverable.—If there had been no eviction and no special damages, his recovery would be merely nominal damages. A recovery of nominal damages would, however, bar his claim, although he was afterwards evicted from the land which his grantor had no right to convey. If his claim for damages was set up by way of set-off, a recovery of nominal damages would equally bar any future action for the breach. Kinzie v. Riely, 100 Va. 709, 42 S. E. 872, 8 Va. Law Reg. 647, and note.

Nominal damages only can be recovered for breach of a covenant of seisin, where, before injury sustained, the paramount title is perfected in the covenantor and vests by inurement in the grantee. Building v. Fray, 96 Va. 559, 32 S. E. 58.

Generally.—The covenants in this section and the three following, known as the "English covenants," are placed in deeds in addition to "warranty," because the latter is unavailing until actual eviction.

The covenant of seisin (or right to convey) is intended to secure to the grantee a legal seisin in the land conveyed. Building v. Fray, 96 Va. 559, 32 S. E. 58.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 72, section 16.

See Gregory's Forms No. 515.

Sec. 5175. For "quiet possession," and "free from encumbrances."—A covenant by any such grantor, "that the grantee shall have quiet possession of the said land" shall have as much effect as if he covenanted that the grantee, his heirs, and assigns, might, at any and all times thereafter, peaceably and quietly enter upon and have, hold, and enjoy, the land conveyed by the deed, or intended so to be, with all the buildings, thereon and the privileges and appurtenances thereto belonging, and receive and take the rents and profits thereof, to and for his and their use and benefit, without any eviction, interruption, suit, claim, or demand whatever. If to such covenant there be added "free from all encumbrances," these words shall have as much effect as the words "and that freely and absolutely acquitted, exonerated, and forever discharged, or otherwise, by the said grantor or his heirs saved harmless and indemnified of, from, and against, any and every charge and encumbrance whatever." (Code, 1887, § 2450.)

Where a tract of land through which a public highway runs is sold and the conveyance contains a covenant against encumbrances, the public highway is not an encumbrance which is included in the covenant, and the grantee is not entitled to any abatement of the purchase price. Jordan v. Eve, 31 Grat. 1; Deacons v. Doyle, 75 Va. 258; 2 Min. (4th Ed.) 721. Cases distinguished, Trice v. Kayton, 84 Va. 217, 4 S. E. 377, 10 Am. St. Rep. 836.

A grantee, upon the order of the city authorities directing him to

Digitized by Google

remove a fence and building as encroaching on the street, proceeded to pull down those structures after notice to his vendor. The deed from the vendor described the property by metes and bounds, and conveyed the property with general warranty and covenants of title. Held, that while the highway was observable, yet the hidden fact that the buildings were upon a part of the highway was not apparent, and could not have been in contemplation of the parties, and that the grantee was entitled to recover for a breach of his covenant of quiet possession. Trice v. Kayton, 84 Va. 217, 4 S. E. 377, 10 Am. St. Rep. 836. See, also, Jordan v. Eve, 31 Grat. 1.

A grantor who conveys land with special warranty and a covenant of quiet possession is estopped to assert an after acquired title against his grantee. Hurley v. Charles, 112 Va. 706, 72 S. E. 689. See section 5202.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 72, section 17.

See Gregory's Forms No. 515.

Sec. 5176. For "further assurances."—A covenant by any such grantor "that he will execute such further assurances of the said lands as may be requisite" shall have the same effect as if he covenanted that he, the grantor, his heirs, or personal representative, will at any time, upon any reasonable request, at the charge of the grantee, his heirs, or assigns, do, execute, or cause to be done or executed, all such further acts, deeds and things, for the better, more perfectly, and absolutely conveying and assuring the said lands and premises, hereby conveyed or intended so to be, unto the grantee, his heirs, and assigns in manner aforesaid, as by the grantee, his heirs, or assigns, his or their counsel in the law, shall be reasonably devised, advised, or required. (Code 1887, § 2451.)

Where, under a covenant for further assurance, the covenantor perfects the seisin before injury, by supplying missing link in his life, the grantee cannot rescind as for breach of covenant of seisin. Building v. Fray, 96 Va. 559, 32 S. E. 58.

A contract for the sale of land provided that the grantors, on the payment of the first instalment of the price, would make title in fee to, and, by such conveyances as the grantees or their counsel should reasonably require, convey and release such land in possession to the grantees, free from encumbrances or demands. Held, to mean that a deed with proper covenants would be made conveying the premises in question, and that the grantee's satisfaction with the title was not a condition precedent to make such contract binding. Gish v. Moomaw, 89 Va. 376, 17 S. E. 324. This case distinguished from Watts v. Holland, 86 Va. 999, 11 S. E. 1015, and Averett v. Lipscombe, 76 Va. 404.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 72, section 18.

See Gregory's Forms No. 515.

Sec. 5177. Of "no act to encumber."—A covenant by any such grantor "that he has done no act to encumber the said lands" shall have the same effect as if he covenanted that he had not done or executed, or knowingly suffered, any act, deed, or thing whereby the lands and premises conveyed, or intended so to be, or any part thereof, are or will be charged, affected, or encumbered in title, estate, or otherwise. (Code 1887, § 2452.)

This covenant does not protect the purchaser against a public highway existing at the time of the purchase, but it does protect against a

Digitized by Google

private way or other easement of which he has no notice. 2 Min. (4th Ed.) 721; Jordan v. Eve, 31 Grat. 1; Scott v. Beutel, 23 Grat. 1; Deacons v. Doyle, 75 Va. 261.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 72, section 19.

See Gregory's Forms No. 515.

Sec. 5178. Of lessee "to pay the rent," and "to pay the taxes." —In a deed of lease, a covenant by the lessee "to pay the rent" shall have the effect of a covenant that the rent reserved by the deed shall be paid to the lessor, or those entitled under him, in the manner therein mentioned; and a covenant by him "to pay the taxes" shall have the effect of the covenant that all the taxes, levies, and assessments upon the demised premises, or upon the lessor on account thereof, shall be paid by the lessee or those claiming under him. (Code 1887, § 2453.)

Where the lessee covenants to pay the rent, and to pay all taxes and other public dues of every kind, the expense of paving was held not a tax or public due, within the meaning of the covenant. Bolling v. Stokes, 2 Leigh 178, 21 Am. Dec. 606.

Where a married woman becomes lessee of property for a term of years her estate is liable for rent during the whole term, although she died soon after making the lease, and the property is occupied by others, against whom the right of distress for rent is never exercised by the landlord. Hutchings v. Commercial, 91 Va. 68, 20 S. E. 950.

See further as to rent, chapter 227.

Form of lease of messuage, with covenants, 4 Min. (3d Ed.), p. 1600.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 72, section 20.

See Gregory's Forms No. 523.

Sec. 5179. "That he will not assign, etc., and "that he will leave the premises in good repair."—In a deed of lease, a covenant by the lessee that "he will not assign without leave" shall have the same effect as a covenant that the lessee will not, during the term, assign, transfer, or set over the premises, or any part thereof, to any person, without the consent, in writing, of the lessor, his representative, or assigns. And a covenant by him that "he will leave the premises in good repair" shall, subject to the qualifications of section fifty-one hundred and eighty, have the same effect as a covenant that the demised premises will, at the expiration or other sooner determination of the term, be peaceably surrendered and yielded up unto the lessor, his representatives, or assigns, in good and substantial repair and condition, reasonable wear and tear excepted. (Code 1887, § 2454.)

Revisors' Note.—The words, "subject to the qualifications of section fifty-one hundred and eighty," found in lines seven and eight of the text, are new.

Where there are repairs stipulated in the lease to be made by the lessee, but no time within which they are to be completed, the tenant has until the expiration of the lease within which to make the repairs, unless there is something in the nature of the repairs which requires them to be made before. Colhoun v. Wilson, 27 Grat. 646.

A lessor covenants to put certain repairs upon the demised premises, which he fails to do. In an action of replevin upon a distress for rent, the tenant may set off the damages accrued by the failure of the lessor to

Digitized by Google

make the repairs, under the 62d section of the act, Supp. Rev. Code, p. 157 (similar to section 6145). Murray v. Pennington, 3 Grat. 92.

If it is intended to restrict and bar the power of assignment, it must be done by special and precise stipulations. Such restrictions, however, are not favored by the law and are strictly construed. Wainwright v. Bankers L. & I. Co., 112 Va. 630, 72 S. E. 129.

For a case in which a forfeiture was held to be waived by the acceptance of rent, see McKildoe's Ex'or v. Darracott, 13 Grat. 278.

See articles on Covenant to Keep in Repair, 7 Va. L. Reg. 159; see 5 Va. Law Reg. 52; 7 Va. Law Reg. 357.

As to liability of tenant for permissive waste, see 4 Va. Law Reg. 110.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 72, section 21.

See Gregory's Forms No. 523.

Sec. 5180. Reduction of rent, if buildings destroyed, or lessee deprived of possession.—No covenant or promise by a lessee to pay the rent, or that he will keep or leave the premises in good repair, shall have the effect, if the buildings thereon be destroyed by fire or otherwise, in whole or in part, without fault or negligence on his part, or if he be deprived of the possession of the premises by the public enemy, of binding him to make such payment or repair or erect such buildings again, unless there be other words showing it to be the intent of the parties that he should be so bound. But in case of such destruction, there shall be a reasonable reduction of the rent, for such time as may elapse until there be again upon the premises buildings of as much value to the tenant for his purposes as what may have been so destroyed; and, in case of such deprivation of possession, a like reduction until possession of the premises be restored to him. (Code 1887, § 2455.)

Revisors' Note.—The words, "keep or" and "or repair" found in lines two and six-seven of the text, respectively, are new, as are also the words, "in whole or in part," appearing in line four. The first insertion settles the question discussed in Richmond Ice Co. v. Crystal Ice Co., 99 Va., at page 244, 37 S. E. 851. As to the words "in whole or in part," see 11 Va. Law Reg. 689.

History of the section.—At common law, there was no suspension or abatement of the rent or relaxation of the covenant to repair, on account of the accident. The revisors of 1849 proposed to change this rule, and reported a section for that purpose (Rep. Rev. 1849, pp. 610, 611). The Legislature adopted so much of it as related to the covenant or promise to repair and rejected the rest. The whole section as reported by the revisors of 1849, extended so as to include deprivation of possession by the public enemy, is carried into the Code of 1887. Burks' Address, 2 Barton L. Pr. (2d Ed.) 1378.

See, also, 13 Va. Law J. 131, where it is shown that the common-law rule was changed by the revisal of 1849, except as to rent, though recommended by the revisors. Rep. Rev. 610, 611, and note. "The rule and the cases following it are overturned by section 2455 (5180), and the change is extended not only to rent, but to 'deprivation of possession by the public enemy.'"

See, also, Richmond v. Crystal, 99 Va. 239, 37 S. E. 851, as to history and intent of this statute.

When tenant entitled to apportionment.—Where, in a lease, the covenant "to keep in repair" was immediately followed by the words, "that it will repair at its own expense all glass broken during the tenancy; that any damage caused by the bursting of water pipes, from the failure

Digitized by Google

to turn off the water in cold weather, will be repaired at the expense of the lessee; that it will leave the property in good repair"; and property was totally destroyed—held that, upon the destruction of the premises without the negligence of the lessee, he was entitled to an apportionment of the rent. Richmond v. Crystal, 99 Va. 239, 37 S. E. 851; 6 Va. Law Reg. 826, and note.

Where a lease was made of a mill, together with a tract of land adjoining, and a black man as miller, for a term of years, rendering an annual rent, and the miller had been previously emancipated by writing of record, and at the end of the first year left the service of the lessee, the rent will be apportioned. Newton v. Wilson, 3 Hen. & M. 470.

When rent suspended.—A lease provided "that the tenant was to keep up the repairs of the mill, except heavy repairs, such as if the dam or forebay should be injured by high water, or if the main shaft or wheel should give way so as to require a new one; in this case it was to be repaired by the landlord in a reasonable time after breach, and he was not to lose the rent if he should go on to do the work according to contract." The mill was wholly destroyed by accidental fire during the term, and the lessor refuses to rebuild same. Held, that the rent is suspended from the time of the destruction of the premises. Thompson v. Pendell, 12 Leigh 591.

Tenant not liable for damage without default.—Where lessee rents land, with its appurtenances, for stipulated rent, and agrees to return the land, with all its appurtenances, at the expiration of his lease, held, this could not be construed to make liable the tenant to rebuild certain appurtenances which had been destroyed during the term, but without his fault or negligence. Maggort v. Hansbarger, 8 Leigh 532.

In the absence of express covenant to pay the rent, the tenant is not liable for same, where the premises are destroyed, whatever the rule may be in case of such express covenants. White v. Stuart, 76 Va. 546.

Where contract operates as deed, though styled lease.—E. owned a life estate in property, both real and personal, including slaves, and S. owned the remainder. E. and her trustee entered into a contract called a lease, by which they conveyed to S. the life estate of E. in the whole of the property, S. to pay, annually as rent, $900, and to pay all taxes and legal charges on the estate, and the usual remedies for the recovery of these annual sums reserved. S. was put in the possession of the property, and treated it as his own. Held, that though the instrument was termed a lease, and the sum reserved called rent, the contract was a surrender, and the life estate of E. was merged into the estate of S. While not an express surrender as to the land, yet as S. had been delivered the possession, and had paid money under it, it had all the legal effect of a surrender by deed. S. not entitled to an abatement of the annual payments, because the slaves had been set free by the United States. Scott v. Scott, 18 Grat. 150. See 6 Va. Law Reg. 59; 7 Va. Law Reg. 159; 2 Min. (4th Ed.) 923, 924.

Burden of Proof.—To come within this statute, the burden is on the tenant to show that the destruction was without his fault or negligence, and that the value of the leased premises was for his purposes, diminished. Richmond Ice Co. v. Crystal Ice Co., 103 Va. 465, 49 S. E. 650.

Generally.—A decree fixing upon a party liability for rents is interlocutory until the amount of the rent is ascertained. Goodloe v. Woods, 115 Va. 540, 80 S. E. 108.

For note upon liability of tenant to make repairs in case of partial destruction of building by fire, see 11 Va. Law Reg. 689. See revisors' note above and present section.

Discussed in Arbenz v. Exley, 44 S. E. (W. Va.) 149.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 72, section 22.

See Burks' Pleading and Practice, p. 15; Gregory's Forms No. 523.

Sec. 5181. Covenant "for lessee's quiet enjoyment."—A covenant by a lessor "for the lessee's quiet enjoyment of his term," shall have the same effect as a covenant that the lessee, his personal

Digitized by Google

representative, and lawful assigns, paying the rent reserved, and performing his or their covenants, shall peaceably possess and enjoy the demised premises, for the term granted, without any interruption or disturbance from any person whatever. (Code 1887, § 2456.)

Where a conveyance is of a freehold estate, words of lease do not amount to a covenant of quiet enjoyment. Black v. Gilmore, 9 Leigh 446, 33 Am. Dec. 253.

A person assigning a valuable lease, without any special agreement to be responsible for the title, is not bound to restore the purchase money because of the eviction of the assignee in consequence of a defect in the lessor's title, especially when the lessor has not been resorted to or shown to be insolvent, and where the possibility of the eviction was in contemplation of both parties at the time of the assignment. McClenahan v. Gwynn, 3 Munf. 556.

Where declaration alleges that defendant by indenture did rent and lease to plaintiff a tract of land, held, that no covenant for quiet enjoyment can be inferred from words set forth. Black v. Gilmore, 9 Leigh 446, 33 Am. Dec. 253.

Where the lessee has been prevented by the lessor, by an injunction from enjoying the benefits of his lease, and afterwards the injunction has been dissolved, the lessee is not barred of his right of action at law on the covenants in the lease by the fact that he has a right of action on the injunction bond. Hubble v. Cole, 88 Va. 236, 13 S. E. 441, 13 L. R. A. 311, 29 Am. St. Rep. 716.

Where a lease is assigned, and the assignee is evicted through a defect in the lessor's title, he may sue the lessor for compensation. McClenahan v. Gwynn, 3 Munf. 556.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 72, section 23.

See Gregory's Forms No. 523.

Sec. 5182. Effect of provision for re-entry by lessor.—If in a deed of lease it be provided that "the lessor may re-enter for default of ..... days in the payment of rent, or for the breach of covenants," it shall have the effect of an agreement that if the rent reserved, or any part thereof, be unpaid for such number of days after the day on which it ought to have been paid, or if any of the other covenants on the part of the lessee, his personal representative, or assigns, be broken, then, in either of such cases, the lessor, or those entitled in his place at any time afterwards, into and upon the demised premises, or any part thereof, in the name of the whole, may re-enter, and the same again have, repossess, and enjoy, as of his or their former estate. (Code 1887, § 2457.)

Before exercising this right to re-entry, the lessor must make demand upon the tenant for the payment of the rent, unless by special agreement the requirement is dispensed with. Johnston v. Hargrove, 81 Va. 118.

Where a lease for 99 years provided for payment of annual sum as rent, free from taxes and other impositions, and that upon default in the payment of rent for six months after it became due the lessor may re-enter and hold the same until rent is paid, and also that at the expiration of the lease that same may be renewed upon the same conditions, upon the payment of one year extraordinary rent, and for drawing the necessary papers—held, that the right to renew was not lost by the failure of the parties to renew for several years after the expiration of the lease, where all rent and taxes had been paid, and the lessor had accepted the rent after the lease had expired, and no demand for renewal

Digitized by Google

had been made, and that as soon as notice to quit had been served on the lessee they at once had the necessary papers prepared, and tendered the rent extraordinary required. Selden v. Camp, 95 Va. 527, 28 S. E. 877. See section 5448, as to city tenant; also sections 5530-1-2-3, as to relief from forfeiture.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 72, section 24.

See Gregory's Forms No. 523.

Sec. 5183. Vendor's equitable lien abolished.—If any person hereafter convey any real estate, and the purchase money, or any part thereof remain unpaid at the time of the conveyance, he shall not thereby have a lien for such unpaid purchase money, unless such lien is expressly reserved on the face of the conveyance. (Code 1887, § 2474.)

Implied liens.—Prior to the adoption of this section (July 1, 1850) vendor had an implied equitable lien for unpaid purchase money, and could enforce it against the land in the hands of the vendee, purchaser with notice, or volunteers. Wilcox v. Calloway, 1 Wash. 38; Cole v. Scott, 2 Wash. 141; Graves v. McCaul, 1 Call 414; Love v. Braxton, 5 Call 537; Duval v. Bibb, 4 Hen. & M. 113, 4 Am. Dec. 506; Wilson v. Graham, 5 Munf. 297; Williams v. Price, Id. 407; Tayloe v. Adams, Gilmer 329; Hatcher v. Hatcher, 1 Rand. 53; Tompkins v. Mitchell, 2 Rand. 428; Little v. Brown, 2 Leigh 353; Moore v. Holcombe, 3 Leigh 597, 24 Am. Dec. 683; James v. Bird, 8 Leigh 510, 31 Am. Dec. 668; Brawley v. Catron, 8 Leigh 522; Page v. Booth, 1 Rob. 161; Wade v. Greenwood, 2 Rob. 474, 40 Am. Dec. 759; Wilson v. Davisson, 2 Rob. 384; Richeson v. Richeson, 2 Grat. 497; Sharp v. Kerns, Id. 348; Beirne v. Campbell, 4 Grat. 125; Stephens v. Hutchison, 6 Grat. 147; Kyles v. Tait, Id. 44; Cox v. Romine, 9 Grat. 27; McCandlish v. Keen, 13 Grat. 621; Day v. Hale, 22 Grat. 146.

Reserved lien.—The vendor, retaining the title, has a lien on the land for the unpaid purchase money, which may be enforced on the land in the hands of vendee, purchaser for value with or without notice, and creditors and other persons holding by, through, or under the vendee. Cole v. Scott, 2 Wash. 141; Hatcher v. Hatcher, 1 Rand. 53; Beverley v. Ellis, 10 Leigh 1; Clarke v. Curtis, 11 Leigh 559, 37 Am. Dec. 625; Hanna v. Wilson, 3 Grat. 243, 46 Am. Dec. 190; Hopkins v. Cockerell, 2 Grat. 88; Knisely v. Williams, 3 Grat. 265, 46 Am. Dec. 193; Stephens v. Hutchison, 6 Grat. 147; Lewis v. Caperton, 8 Grat. 148; Stuart v. Abbott, 9 Grat. 252; Yancey v. Mauck, 15 Grat. 300; Day v. Hale, 22 Grat. 146; Patton v. Hoge, Id. 443; McClintic v. Wise, 25 Grat. 448, 18 Am. Rep. 694; Coffman v. Niswander, 26 Grat. 737; Shipe v. Repass, 28 Grat. 716; Coles v. Withers, 33 Grat. 186; Stoner v. Harris, 81 Va. 451; Culbertson v. Stevens, 82 Va. 406, 4 S. E. 607.

Since Code 1849, a vendor, in order to be entitled to a lien for the unpaid purchase money, must expressly reserve his lien on the face of the conveyance. Roanoke Co. v. Simmons, 2 Va. Dec. 70, 20 S. E. 955.

The statement in a deed that it is made "in consideration of five hundred dollars secured to be paid" is not an express reservation of a vendor's lien within the meaning of this section. Harris v. Shield, 111 Va. 643, 69 S. E. 933.

Lien not destroyed.—Taking a judgment at law does not defeat or destroy the lien. Kane v. Mann, 93 Va. 239, 24 S. E. 938; Paxton v. Rich, 85 Va. 378, 7 S. E. 533, 1 L. R. A. 639.

Nor the taking of a new bond for the same debt. Shultz v. Hansbrough, 33 Grat. 567.

Nor surrendering the bond of the vendee and taking the bond of a third person, if the parties agree that the lien is to be retained. Carper v. Marshall, 98 Va. 438, 36 S. E. 526, 6 Va. Law Reg. 350.

A vendor who expressly reserves a lien upon the land, and takes also a bond for the purchase money, has two securities, to either of which he may resort at pleasure. The lien is a security, not for the bond, but for

Digitized by Google

the debt; therefore a cancellation or surrender of the bond cannot extinguish the debt and the lien given to secure it, unless the transaction manifestly and plainly was so intended, and the burden is on the purchaser to show such intention. So long as the debt exists, the court will not presume the chief security taken for its payment has been surrendered without satisfaction, unless upon the clearest and most convincing testimony. Coles v. Withers, 33 Grat. 186.

The lien exists until it is clearly shown that it has been waived, released, or satisfied. Jordan v. Buena Vista Co., 95 Va. 285, 28 S. E. 323, 3 Va. Law Reg. 825.

Where it is reserved in a deed which has been duly recorded it still exists, though the records have been destroyed, and may be enforced against the lands in the hands of a purchaser for value. Armentrout v. Gibbons, 30 Grat. 632. Vendor does not lose his lien by taking other security for the debt. Hatcher v. Hatcher, 1 Rand. 53; Watts v. Kinney, 3 Leigh 272, 23 Am. Dec. 266; Knisely v. Williams, 3 Grat. 265, 46 Am. Dec. 193; Lewis v. Caperton, 8 Grat. 148; Stuart v. Abbott, 9 Grat. 252; Yancey v. Mauck, 15 Grat. 300; Day v. Hale, 22 Grat, 146; Summers v. Darne, 31 Grat. 806; Coles v. Withers, 33 Grat. 196; Gibert v. Washington, etc., R. Co., 33 Grat. 597; Frazier v. Hendren, 80 Va. 270; Stimpson v. Bishop, 82 Va. 190; Fidelity Ins. Co. v. S. V. R. R. Co., 86 Va. 13, 9 S. E. 759, 19 Am. St. Rep. 858; Jameson v. Rixey, 94 Va. 344, 26 S. E. 861, 64 Am. St. Rep. 726.

Vendor taking bond of vendee with third party as security does not lose his lien. Hatcher v. Hatcher, 1 Rand. 53.

A vendor who retains the title stands on higher ground than a vendor who has parted with his title, and is asking a court of equity to set up an implied lien in his favor, and the doctrine of waiver of the implied lien by taking a different security has no application to where the title is retained. Lewis v. Caperton, 8 Grat. 148.

B., a vendor, retained the title to secure a bond given for the purchase money. Afterwards he takes from the vendee, C., an order on D. in lieu of the bond. D. was indebted to C. for the purchase money of another tract of land, to secure which C. had retained the title. D. refused to accept the order. Held, that B.'s lien was not lost by his taking the order and surrendering bond. Knisely v. Williams, 3 Grat. 266.

Y. sold land to M., retained the title, and took bonds from M. for the purchase money. Afterwards, upon M. executing a bond to S. with Y. as surety, to satisfy debt of Y., the bonds given by M. to Y. were destroyed. Afterwards M. became insolvent, and Y. had to pay the balance to S. Held, that Y.'s lien was not lost by the surrender of the bonds, and that purchaser from M. took the land charged with his lien, and that same could be enforced on the land in their hands. Yancey v. Mauck, 15 Grat. 300.

A contract made by one of the executors of a vendor will not be so construed as to release the vendor's lien. Such a contract would work a devastavit. Stuart v. Abbott, 9 Grat. 252.

Lien destroyed.—Where a vendor at a sale for the default in payment of the purchase money takes first mortgage bond in satisfaction of his lien, and conveys the property to the purchaser, he loses the benefit of his vendor's lien, and is postponed to the claim of one of the vendees who owned the property at the time of the sale for default, and in whose favor a decree has subsequently been entered, giving him a lien on the property in the hands of the purchaser at the sale. Frazier v. Hendren, 80 Va. 270.

Where land is sold in a suit brought by the vendor to enforce the specific performance of the contract, the lien the vendor had by reason of the retention of the title was destroyed by the sale in the suit. Woods v. Ellis, 85 Va. 471, 7 S. E. 852.

Where vendor takes a deed of trust void for want of due registry, he loses the implied lien existing before 1850. Hunton v. Wood, 101 Va. 54, 43 S. E. 186.

The abolishing of the implied equitable lien does not affect the lien of the vendor who retains the title. Yancey v. Mauck, 15 Grat. 300; Stoner v. Harris, 81 Va. 460.

Digitized by Google

Rights of assignees.—Where a note was given and a lien reserved to secure unpaid purchase money, but no mention made in the deed about the note, it was held that a conveyance by the vendee, with a relinquishment of the lien by the vendor, carries the complete title free from the lien, and that the assignees of the note could not enforce his claim against the land in the hands of a purchaser without notice. National Bank v. Harman, 75 Va. 604.

A purchaser of land on which there had been reserved a lien by a prior vendor cannot, when he is compelled to pay said lien, subject the land of another grantee of his grantor, where said grantee had acquired title to his land prior to the purchaser, who bought the encumbered land. Miller v. Holland, 84 Va. 652, 5 S. E. 701. An assignment of the debt is an assignment pro tanto of the lien. Hanna v. Wilson, 3 Grat. 243, 46 Am. Dec. 190; Knisely v. Williams, 3 Grat. 265, 46 Am. Dec. 193; McClintic v. Wise, 25 Grat. 448, 18 Am. Rep. 694.

An assignee of a vendor's lien is an assignee of a chose in action, and the assignment carries no interest in the land upon which the debt is secured. Penn v. Hearon, 94 Va. 773, 27 S. E. 599; Gordon v. Rixey, 76 Va. 694.

The assignees have priority in the order of their assignment as to the proceeds of the land. Paxton v. Rich, 85 Va. 378, 7 S. E. 531, 1 L. R. A. 639. Nor can the assignor sue in equity for the benefit of his assignee. Penn v. Hearon, 94 Va. 773, 27 S. E. 599.

An assignee is entitled to the rights of the assignor, and nothing more. He is not such a purchaser as will be protected by section 6471. A judgment, though undocketed, is good against a subsequent creditor with or without notice. Gordon v. Rixey, 76 Va. 694.

Enforcement of lien.—Enforcement in equity of a reserved vendor's lien is a matter of right. Smith v. Henkel, 81 Va. 524.

A purchaser of land on which a vendor's lien is reserved acquires the entire title, subject only for the unpaid purchase money. This lien is recognized and enforced only in courts of equity. National Bank v. Harman, 75 Va. 604.

In a suit to enforce a vendor's lien there may be a personal decree for the purchase money before sale. Dellinger v. Foltz, 93 Va. 729, 25 S. E. 998; Fayette Land Co. v. L. & N. R. R. Co., 93 Va. 274, 24 S. E. 1016.

A decree of sale is not defective because a portion of the amount is not yet due where the date at which it becomes due is given. Moore v. Green, 90 Va. 181, 17 S. E. 872.

In a suit to enforce a vendor's lien, the court may decree a sale of the land without first ascertaining whether the rents and profits would be sufficient to pay the lien within five years (as provided in section 6472, in case of a suit to enforce the lien of a judgment), as such case is not governed by that statute. Neff v. Wooding, 83 Va. 432, 26 S. E. 731, 11 Va. Law J. 634.

The decree directing the property to be sold to satisfy a vendor's lien should allow a reasonable time to redeem the property, and should provide for a sale upon reasonable credit, unless from the peculiar circumstances, which must appear from the record, different terms are advisable. Tennent v. Pattons, 6 Leigh 196; Haffey v. Birchetts, 11 Leigh 83; Brien v. Pittman, 12 Leigh 379; Wade v. Greenwood, 2 Rob. 474, 40 Am. Dec. 759; Kyles v. Tait, 6 Grat. 44, and note Va. Rep. Ann.; Pairo v. Bethell, 75 Va. 833.

Limitations.—Laches, and even gross laches, is not enough to raise a presumption of payment or abandonment of a vendor's lien. It must be gross laches unexplained, together with evidence affording the presumption of abandonment of the right. Ginter v. Breeden, 90 Va. 565, 19 S. E. 656. This lien may be enforced in equity within twenty years, even though the action on the debt is barred by the statute of limitations. Tunstall v. Withers, 86 Va. 892, 11 S. E. 565; Paxton v. Rich, 85 Va. 378, 7 S. E. 531, 1 L. R. A. 639. See section 5827.

No lapse of time short of the presumption of payment will affect his right to enforce his lien, even though the statute of limitations would bar his claim on the note or other security. Hanna v. Wilson, 3 Grat. 243,

Digitized by Google

46 Am. Dec. 190, and note thereto, Va. Rep. Ann.; Hopkins v. Cockerell, 2 Grat. 88. See section 5827 and notes.

Nor would an assignee be barred though his claim against the assignor is barred. McClintic v. Wise, 25 Grat. 448, 18 Am. Rep. 694.

A decree for an account of liens made on a creditors' bill to enforce liens on the land of the debtor suspends the running of the statute of limitations on a judgment to enforce a vendor's lien obtained shortly after the entry of the decree. Paxton v. Rich, 85 Va. 378, 7 S. E. 531, 1 L. R. A. 639.

Pleading.—A bill of review will not lie to modify a decree of sale in a suit to enforce a vendor's lien, since a bill of review is a proper remedy only where a final decree is to be corrected, the decree of sale being interlocutory only. The bill for injunction in this case should have been treated as a petition to rehear. Dellinger v. Foltz, 93 Va. 729, 25 S. E. 998. See, also, Spoor v. Tilson, 97 Va. 279, 33 S. E. 609. In a suit to enforce a vendor's lien, in order for a purchaser to obtain a rescission of the contract and return of the purchase money on the ground of fraud the purchaser must file a cross-bill. Spoor v. Tilson, 97 Va. 279, 33 S. E. 609.

Remedies of vendor.—A vendor may file his bill in equity for the specific performance of the contract, and have the land sold to satisfy his debt. Hatcher v. Hatcher, 1 Rand. 53; Hopkins v. Cockerell, 2 Grat. 88; Knisely v. Williams, 3 Grat. 265, 46 Am. Dec. 193; Beirne v. Campbell, 4 Grat. 125; Lewis v. Caperton, 8 Grat. 148; Stuart v. Abbott, 9 Grat. 252; Yancey v. Mauck, 15 Grat. 300; Woods v. Ellis, 85 Va. 471, 7 S. E. 852.

And he may sue out injunction to restrain waste, so that value of lien will not be impaired. Clarke v. Curtis, 11 Leigh 559, 37 Am. Dec. 625.

While an action at law by a vendor on an executory contract of sale would give him a right to subject the personal estate of the purchaser, he is entitled to something more. He may enforce his lien against the land, but he can only do so in a court of equity, because his lien is not recognized in a court of law. Ayres v. Robins, 30 Grat. 105, and note thereto Va. Rep. Ann.

Generally.—A. sold to B., by parol, land for which he took purchase-money bonds, one of which was assigned to H.; afterwards, upon B.'s default, the land was sold, and again bought by A.; A., when he sold to B., had not obtained a conveyance from his vendor, but did so before the sale; A., not paying the entire purchase money due under the sale for B.'s default, has never obtained a deed from the court; A. afterwards sold by parol to E., who executed his bond for the balance of the purchase money; A. assigned this bond to G.—held, that H., the assignee of the first purchase money bond, had a prior lien to G. Stoner v. Harris, 81 Va. 451.

In a suit to enforce vendor's lien reserved on land which has been partitioned among heirs of vendee, it is not error to apportion the lien ratably amongst such heirs. Max Meadows Co. v. McGavock, 96 Va. 131, 30 S. E. 460.

The widow of the vendee is not entitled to dower in the land on which the lien is reserved as against the lien. Culbertson v. Stevens, 82 Va. 406, 4 S. E. 607. And where lien was enforced in lifetime of husband, widow was not entitled to dower in surplus. Wilson v. Davisson, 2 Rob. 384. See section 5119 and notes.

A widow who pays the balance of the purchase money secured by vendor's lien on her deceased husband's property is entitled to be subrogated to the rights of the holder of the lien as against creditors of her husband. Simmons v. Lyle's Adm'r, 32 Grat. 752.

Lien may be enforced against the land without first exhausting the personal property of the deceased vendee. Armentrout v. Gibbons, 30 Grat. 632.

A purchaser who assumes the payment of the debt secured by lien is primarily liable for same. Shultz v. Hansbrough, 33 Grat. 567.

The recordation of the lien does not impose upon subsequent grantors the duty to inquire for latent equities or secret liens, and they will not be

Digitized by Google

bound by such where they have no notice of same. Yancey v. Blakemore, 95 Va. 263, 28 S. E. 336.

The object and effect of the vendor's lien is merely to hold the estate bound for the purchase money, to the exclusion of all other claims, whether on the part of creditors or purchasers. The vendor has no interest in the land, but only a right to charge it with the payment of his debt. The lien passes at his death as personalty, and an assignment carries the lien. Gordon v. Rixey, 76 Va. 694.

A. and B. purchased land from C., on which a vendor's lien was retained. Afterwards they partitioned the land. E. subsequently bought A.'s portion, and also obtained some of the bonds from C. B. sold to D. his portion of the land. Held, that E., when he acquired the bond, also acquired C.'s lien; that he could have compelled A. to remove the encumbrance before he paid for same, and that the court, having all parties before it, would credit said bond on the amount due by E. to A.; that A, being thus compelled to pay more than his part of the purchase money, was not subrogated to that extent to the rights of C., as against the land of B., in the hands of his vendor, D.; that the lien of C., being recorded, was notice to D. Dobyns v. Rawley, 76 Va. 537.

Where, by decree of court, a trustee was directed to sell land, and the vendee executed his bonds for the unpaid purchase money secured by vendor's lien, the trustee, after collecting some of the bonds, resigned, and the court appointed another trustee, who was directed to collect the balance of the bonds, which he did, and so reported to the court, which confirmed the report, and directed a conveyance to the purchaser. Subsequently the first trustee filed his bill, alleging that he had advanced the money to the purchaser to pay one of the bonds, and praying that the lien reserved where the land was sold be enforced for his benefit. Held, that he was entitled to relief prayed for. Price v. Davis, 88 Va. 939, 14 S. E. 704.

The mere fact that a vendor who sold land to a corporation is a stockholder in the corporation does not estop him from enforcing his lien against the land in the hands of a purchaser from the corporation. Biggs v. Elliston Dev. Co., 93 Va. 404, 25 S. E. 113, 2 Va. Law Reg. 614.

Where the lien is reserved in accordance with the statute, it is as valid as to the estate or interest in the land conveyed as the implied vendor's lien would have been before the enactment of the statute, whether the interest conveyed is a fee simple or a mere equitable interest. Dingus v. Minneapolis, 98 Va. 737, 37 S. E. 353.

Where parties owning land in common agreed to sell same, and to retain lien for the purchase money, and one of the parties buy the property, held he could buy only the interest of the other parties, and that the vendor's lien attached only to that portion that was sold. Johnson v. Nat. Bank, 33 Grat. 473.

The extent of the lien does not depend upon the extent of the interest of the vendor in the land conveyed, but upon the contract of the parties. The question whether the interests are joint or several, divided or undivided, is a matter of no consequence. Patterson v. Grottoes Co., 93 Va. 578, 25 S. E. 602, 2 Va. Law Reg. 687; Patton v. Hoge, 22 Grat. 443.

Where two parties owning separate interests in a tract of land enter into separate contracts with a purchaser for the sale of their respective interests, and afterwards one general warranty deed was made by them, conveying the entire tract of land to the vendee, in consideration of a gross sum, the deed recited that a vendor's lien was retained on the land conveyed to secure four bonds, two made payable to one, and two to the other, vendor. Held, that not merely the interest that each vendor had owned, but the entire tract of land conveyed, was subject to the payment of the debt due each vendor. Patterson v. Grottoes Co., 93 Va. 578, 25 S. E. 602, 2 Va. Law Reg. 687.

Where B. & C. were partners and joint owners of a parcel of land, and conveyed to A. their interest. B. receiving cash and C. receiving notes for the purchase money secured by vendor's lien on the property conveyed by the deed, the vendor's lien attaches to the whole interest conveyed in the deed, and is not limited to the interest conveyed by C. Patton v. Hoge, 22 Grat. 443.

Where a lien is reserved, the vendee cannot bind the vendor by any

Digitized by Google

contract prejudicial to his interest. A vendor may subject the streets and alleys as well as the lots which have been laid off on a tract of land sold by him to his vendee, and on which the lien is retained, and if a sale of the lots in the inverse order of their alienation would not be sufficient to pay his debt he is entitled to have the land sold as a whole. Biggs v. Elliston Development Co., 93 Va. 404, 25 S. E. 113, 2 Va. Law Reg. 614.

Discussed, 10 Va. Law J. 515.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 75, section 1.

CHAPTER 210.

Acts Valid Between the Parties, but Void as to Creditors and Purchasers.

Sec.
5184. Fraudulent acts that are void; bona fide purchasers not affected.
5185. Gifts, conveyances, etc., that are voluntary, or upon consideration of marriage, void as to prior creditors.
5186. Judgment or decree not necessary before suit by creditor to avoid gift, transfer, etc., of debtor's estate; measure of relief; extent of lien given creditor; how perfected against creditors and purchasers.
5187. To prevent persons engaged in buying and selling merchandise while indebted, from selling their entire stock of merchandise in bulk, or selling the major portion thereof, otherwise than in the ordinary course of trade.
5188. Loans, and reservations of a use or property, to be recorded.
5189. Reservation of title to and liens on goods and chattels sold to be void as to creditors and purchasers unless in writing and recorded.
5190. How a lien or reservation provided by the preceding section is to be enforced.
5191. Release of contract or lien provided by section fifty-one hundred and eighty-nine.
5192. Contracts in consideration of marriage, or for the sale of real estate, etc., void as to creditors and purchasers unless in writing.
5193. If in writing and recorded, as valid as deeds.
5194. Contracts, deeds, etc., that are void as to creditors and purchasers unless recorded.
5195. Where to be recorded.
5196. When goods, etc., are removed from county, etc., when and where writing to be recorded.
5197. No mortgage, deed of trust, etc., upon personal property in another State an encumbrance when removed to this State unless recorded in this State.
5198. Priority of writings, when admitted to record same day.
5199. When writings to be recorded in county, and when in corporation.
5200. Words "creditors and purchasers," how construed; lien of subsequent purchaser for purchase money paid before notice.
5201. When purchaser not affected by record of deed or contract.
5202. Effect when grantor conveys property which he does not own at time but subsequently acquires.

Sec. 5184. Fraudulent acts that are void; bona fide purchasers

Digitized by Google

not affected.—Every gift, conveyance, assignment, or transfer of, or charge upon, any estate, real or personal, every suit commenced, or decree, judgment, or execution suffered or obtained, and every bond or other writing given with intent to delay, hinder, or defraud creditors, purchasers, or other persons of or from what they are or may be lawfully entitled to, shall, as to such creditors, purchasers, or other persons, their representatives, or assigns, be void. This section shall not affect the title of a purchaser for valuable consideration, unless it appear that he had notice of the fraudulent intent of his immediate grantor or of the fraud rendering void the title of such grantor. (Code 1887, § 2458.)

General Rules.—No attempt is here made to brief all Virginia cases on the subject of fraudulent conveyances. These are collected in the various digests, and in an extensive note to Cochran v. Paris, 11 Grat. 348, Va. Rep. Ann.

Few of the many decisions on this subject can be said to be founded strictly on the statutes.

Several general rules, however, not peculiar to our statutes, are here given for convenience.

(1) *In contests between wife and husband's creditors, burden of showing bona fides is on wife or persons claiming under her.*—Boyce v. Strother, 1 Va. Dec. 127; note, 7 Va. Law Reg. 730; 5 Va. Law Reg. 321; Lile's Notes to 1 Min. 73; Noyes v. Carter, 2 Va. Dec. 218, 23 S. E. 1; Darden v. Ferguson, 2 Va. Dec. 496, 27 S. E. 435.

For a case discussing the presumption of fraud in a conveyance by husband to wife, see Atkinson v. Solenberger, 112 Va. 667, 72 S. E. 727.

Transactions between husband and wife must be closely scrutinized to see that they are fair and honest. The presumptions are in favor of the creditors and not in favor of the title of the wife, and the proof is upon her to show by clear and satisfactory evidence the bona fides of the transaction. Eason v. Lyons, 114 Va. 390, 76 S. E. 957; Hughson v. Dameron, 113 Va. 607, 75 S. E. 92.

She must show that original transaction was a loan, not a gift, and a contemporaneous promise to pay. Mere possession of bond does not prove loan as of its date. Robinson v. Bass, 100 Va. 190, 40 S. E. 660; Runkle v. Runkle, 98 Va. 663, 37 S. E. 279; McConville v. Bank, 98 Va. 9, 34 S. E. 891; Crowder v. Garber, 97 Va. 565, 34 S. E. 470; Spence v. Repass, 94 Va. 716, 27 S. E. 583; Kinnier v. Woodson, 94 Va. 711, 27 S. E. 457; Flynn v. Jackson, 93 Va. 341, 25 S. E. 1; Coutts v. Greenhow, 2 Munf. 363, 5 Am. Dec. 472.

The law presumes husband to be owner of all property acquired or of which wife may be in possession during coverture. Hoge v. Turner, 96 Va. 625, 32 S. E. 291.

Postnuptial settlements are presumed voluntary. Hatcher v. Crews, 78 Va. 460; Fink v. Denny, 75 Va. 663.

But if debt is secured to husband as trustee for wife, and he alone has authority to collect it, the receipt of money by him does not raise presumption of gift, and deed made to wife in consideration of such debt is valid, McConville v. Bank, 98 Va. 9, 34 S. E. 891; or if wife was sole trader, and resources might reasonably have come from such business, Kinnier v. Woodson, 94 Va. 711, 27 S. E. 457.

If a wife to whom property has been fraudulently conveyed has given a valid lien on the property she is liable to the creditors for the amount of the same. Carner v. Middlekauf, 117 Va. 474, 85 S. E. 473.

Where a conveyance to a wife is declared fraudulent as to creditors of her insolvent husband because the consideration was furnished by him, the wife is to be regarded as a trustee for such creditors. Carner v. Middlekauf, 117 Va. 474, 85 S. E. 473.

Where an insolvent husband furnishes the consideration for a conveyance to his wife, the transaction must be treated as prima facie actually fraudulent in a contest between creditors of the husband on the one hand,

Digitized by Google

the husband and his wife on the other. Carner v. Middlekauf, 117 Va. 474, 85 S. E. 473.

In a contest between the wife and the creditors of her husband, the burden is on the wife to show the good faith of the transaction, such as that the consideration was paid out of her own separate estate. The presumption is in favor of the creditors, and not of the wife's title. The mere holding of the husband's bond is insufficient to establish the relation of debtor and creditor between them as of the date of the bond. Rankin v. Goodwin, 103 Va. 81, 48 S. E. 521. Kline v. Kline, 103 Va. 203, 48 S. E. 890.

(2) *Retention of personal property by vendor after sale is prima facie fraudulent, but this presumption may be rebutted by proof.*—Davis v. Turner, 4 Grat. 422; Forkner v. Stuart, 6 Grat. 197; Brockenbrough v. Brockenbrough, 31 Grat. 580; Stoneburner v. Motley, 95 Va. 784, 30 S. E. 364; Norris v. Lake, 89 Va. 513, 16 S. E. 663; Didier v. Patterson, 93 Va. 534, 25 S. E. 661; 2 Va. Law Reg. 62; Hughes v. Epling, 2 Va. Law Reg. 448, 93 Va. 424, 25 S. E. 105.

(3) *Conveyances professedly to indemnify creditors, but expressly or impliedly reserving to grantor powers inconsistent with and adequate to defeat such purpose, are void as to creditors and purchasers.*—Wray v. Davenport, 79 Va. 19; McCormick v. Atkinson, 78 Va. 8; Burton v. Mill Id. 468; Curd v. Miller, 7 Grat. 185; Addington v. Etheridge, 12 Grat. 436; Hughes v. Epling, 93 Va. 424, 25 S. E. 105; Saunders v. Waggoner, 82 Va. 316; Spence v. Bagwell, 6 Grat. 444; Sheppard v. Turpin, 3 Grat. 373, and note Va. Rep. Ann.; Lang v. Lee, 3 Rand. 410.

(4) *In order to vitiate deed, both parties must concur in fraud* [but see (8)].—Herring v. Wickham, 29 Grat. 628, 26 Am. Rep. 405; Lucas v. Clafflin, 76 Va. 269; Oberdorfer v. Meyer, 88 Va. 384, 13 S. E. 756; Paul v. Baugh, 85 Va. 955, 9 S. E. 329; Montgomery v. Rose, 1 Pat. & H. 5; Parr v. Saunders, 1 Va. Dec. 725, 11 S. E. 979.

Although the fraudulent intent of the grantor be established, a deed will not be set aside unless it be also shown that the grantee had notice of such purpose. Shoemaker v. Chapman Drug Co., 112 Va. 612, 72 S. E. 221.

(5) *The act of limitation of five years (section 5820) does not apply to suits to set aside a conveyance for actual fraud.*—Flook v. Armentrout, 100 Va. 638, 42 S. E. 686.

(6) *A voluntary conveyance, without fraud, is void as to existing creditors, but only as to them.*—Whitten v. Saunders, 75 Va. 563; Witz v. Osburn, 83 Va. 227, 2 S. E. 33; Building Association v. Reed. 96 Va. 350, 31 S. E. 514; De Farges v. Ryland, 87 Va. 404, 12 S. E. 805, 24 Am. St. Rep. 659; Johnston v. Gill, 27 Grat. 587; Bank v. Patton, 1 Rob. 499.

(7) *Burden of proving notice of fraud is on him alleging it, and will not be presumed from confidential relation between grantor and grantee.*—Snyder v. Grandstaff, 96 Va. 473, 31 S. E. 647, 70 Am. St. Rep. 863; Saunders v. Parrish, 86 Va. 592, 10 S. E. 748; Herring v. Wickham, 29 Grat. 628, 26 Am. Rep. 405; Hickman v. Trout, 83 Va. 478, 3 S. E. 131. But where prima facie case is made burden shifts. Hickman v. Trout, supra. And if grantor in voluntary deed is indebted, it is conclusively presumed to be fraudulent. Hutchison v. Kelly, 1 Rob. 132, 39 Am. Dec. 259; Chamberlayne v. Temple, 2 Rand. 384, 14 Am. Dec. 786; but see Davis v. Payne, 4 Rand. 332.

(8) *The provisions of a mortgage or deed of trust may be of such a character as of themselves to furnish conclusive evidence of a fraudulent intent; but the presumption of law is in favor of honesty, and court cannot presume fraud unless the terms of instrument preclude any other inference.*—Williams v. Lord, 75 Va. 390; Brockenbrough v. Brockenbrough, 31 Grat. 580; Perry v. Shenandoah, 27 Grat. 755.

A transaction may of itself and by itself furnish the most satisfactory proof of fraud, so conclusive as to outweigh answer of defendant called upon for discovery, and even evidence of witnesses. Parr v. Saunders, 1 Va. Dec. 726, 11 S. E. 979.

A trustee may be authorized to close out a stock of goods in the course of trade, and even to replenish so as to aid in sale. Marks v. Hill,

Digitized by Google

15 Grat. 400, and notes Va. Rep. Ann.; Taylor v. Mahoney, 94 Va. 508, 27 S. E. 107.

(9) *It is not necessary to prove actual knowledge by grantee of grantor's fraud.*—Circumstances naturally calculated to arouse suspicions of a reasonably prudent man are sufficient, and he is chargeable with knowledge of fact with which he is sought to be charged, whether he makes inquiry or not. Such circumstances must be such as to affect conscience of purchaser, and strong and clear enough to fix upon him imputation of bad faith. Flook v. Armentrout, 100 Va. 638, 42 S. E. 686; Anderson v. Mills, 100 Va. 420, 41 S. E. 854; Fischer v. Lee, 98 Va. 159, 35 S. E. 441; Newberry v. Bank, 98 Va. 471, 36 S. E. 515; American v. Mayo, 97 Va. 182, 33 S. E. 523; Ferguson v. Daughtrey, 94 Va. 308, 26 S. E. 822; Hickman v. Trout, 83 Va. 478, 3 S. E. 131; University v. Snyder, 100 Va. 567, 42 S. E. 337. And this is true of pledgees also. Fischer v. Lee, 98 Va. 159, 35 S. E. 441. Notice of fraud to trustee is notice to creditors. Oberdorfer v. Meyer, 88 Va. 384, 13 S. E. 756.

(10) *As between parties equally guilty, equity will not interfere, except where policy of law requires it.*—Owen v. Sharp, 12 Leigh 427; Terrell v. Imboden, 10 Leigh 321; James v. Bird, 8 Leigh 510, 31 Am. Dec. 668; Harris v. Harris, 23 Grat. 737; Tate v. Liggat, 2 Leigh 84; Almond v. Wilson, 75 Va. 628; Barnett v. Barnett, 83 Va. 504, 2 S. E. 733; Starke v. Littlepage, 4 Rand. 368; Smith v. Chilton, 84 Va. 840, 6 S. E. 142, 2 Va. Law Reg. 722.

Fraud held not to be proven.—University v. Snyder, 100 Va. 567, 42 S. E. 337; Fidelity v. Engleby, 99 Va. 168, 37 S. E. 957 (but transaction declared voluntary); Fischer v. Lee, 98 Va. 159, 35 S. E. 441; Beverage v. Ralston, 98 Va. 625, 37 S. E. 283; Millhiser v. McKinley, 98 Va. 207, 35 S. E. 446; Hurst v. Leckie, 97 Va. 550, 34 S. E. 464, 75 Am. St. Rep. 798; Piedmont v. Hatcher, 94 Va. 229, 26 S. E. 505; Kinnier v. Woodson, 94 Va. 711, 27 S. E. 457; Long v. Meriden, 94 Va. 594; 27 S. E. 499; Taylor v. Mahoney, 94 Va. 508, 27 S. E. 107; Didier v. Patterson, 93 Va. 534, 25 S. E. 661; Engleby v. Harvey, 93 Va. 440, 25 S. E. 225; Norris v. Lake, 89 Va. 513, 16 S. E. 663; Leath v. Watson, 89 Va. 722, 17 S. E. 4; Penn v. Penn, 88 Va. 361, 13 S. E. 707; Burruss v. Trant, 88 Va. 980, 14 S. E. 845; Furlong v. Sanford, 87 Va. 506, 12 S. E. 1048; Saunders v. Parrish, 86 Va. 592, 10 S. E. 748; Jones v. Christian, 86 Va. 1017, 11 S. E. 984; Paul v. Baugh, 85 Va. 955, 9 S. E. 329; Rixey v. Deitrick, 85 Va. 42, 6 S. E. 615; Fisher v. Dickenson, 84 Va. 318, 4 S. E. 737; Barnett v. Barnett, 83 Va. 504, 2 S. E. 733; Scott v. Rowland, 82 Va. 484, 4 S. E. 595; Baker v. Naglee, 82 Va. 876, 1 S. E. 191; Waller v. Johnson, 82 Va. 967, 7 S. E. 382; Gregory v. Peoples, 80 Va. 355; Batchelder v. White, Id. 103; Clay v. Walter, 79 Va. 92; Avis v. Lee, 77 Va. 553; Elder v. Harris, 76 Va. 187; Herring v. Wickham, 29 Grat. 628, 26 Am. Rep. 405 (as to wife); Forkner v. Stuart, 6 Grat. 197; Davis v. Turner, 4 Grat. 422; Dashiell v. Bank, 2 Va. Dec. 120, 22 S. E. 169; Harvey v. Anderson, 2 Va. Dec. 385, 24 S. E. 914; Oberdorfer v. Meyer, 88 Va. 384, 13 S. E. 756 (as to grantee); McCue v. Harris, 86 Va. 687, 10 S. E. 981; Lucas v. Clafflin, 76 Va. 269; Tebbs v. Lee, Id. 744; Sutherlin v. March, 75 Va. 223.

Transactions between husband and wife and vice versa sustained.—Robinson v. Bass, 100 Va. 190, 40 S. E. 660; Catlett v. Alsop, 99 Va. 680, 40 S. E. 34; McConville v. Bank, 98 Va. 9, 34 S. E. 891; Spence v. Repass, 94 Va. 716, 27 S. E. 583; Stonebraker v. Hicks, 94 Va. 618, 27 S. E. 497; Benjamin v. Madden, 94 Va. 66, 26 S. E. 392; Noble v. Davies, 1 Va. Dec. 633, 4 S. E. 206; McConville v. Bank, 5 Va. Law Reg. 695, and note (in part); Snyder v. Grandstaff, 96 Va. 473, 31 S. E. 647, 70 Am. St. Rep. 863; Building Ass'n v. Reed, 96 Va. 345, 31 S. E. 514 (in part); McCue v. Harris, 86 Va. 687, 10 S. E. 981; Bank v. Patton, 1 Rob. 499.

Deed from husband to wife and vice versa set aside as fraudulent.—Fidelity v. Engleby, 99 Va. 168, 37 S. E. 957; Runkle v. Runkle, 98 Va. 663, 37 S. E. 279; Crowder v. Garber, 97 Va. 565, 34 S. E. 470; Hoge v. Turner, 96 Va. 625, 32 S. E. 291; Flynn v. Jackson, 93 Va. 341, 25 S. E. 1; Rixey v. Deitrick, 85 Va. 42, 6 S. E. 615; Robbins v. Armstrong, 84 Va. 810, 6 S. E. 130; Beecher v. Wilson, 84 Va. 813, 6 S. E. 209, 10 Am. St. Rep. 883; Witz v. Osburn, 83 Va. 227, 2 S. E. 33; Burton v. Mill, 78 Va.

Digitized by Google

468; Hatcher v. Crews, Id. 460; Fink v. Denny, 75 Va. 663; William and Mary v. Powell, 12 Grat. 372; Boyce v. Strother, 1 Va. Dec. 127; Grant v. Sutton, 2 Va. Dec. 149, 22 S. E. 490; Darden v. Ferguson, 2 Va. Dec. 496, 27 S. E. 435; Hughes v. Kelley, 2 Va. Dec. 588, 30 S. E. 387; McConville v. Bank, 5 Va. Law Reg. 695, and note thereto (in part); Building Ass'n v. Reed, 96 Va. 345, 31 S. E. 514 (in part); De Farges v. Ryland, 87 Va. 404, 12 S. E. 805, 24 Am. St. Rep. 659; Lewis v. Mason, 84 Va. 731, 10 S. E. 529; Sledge v. Reed, 112 Va. 202, 70 S. E. 523.

Transactions between members of family other than husband and wife set aside.—National Bank v. Hancock, 100 Va. 101, 40 S. E. 611, 57 L. R. A. 728, 93 Am. St. Rep. 933; American v. Mayo, 97 Va. 182, 33 S. E. 523; Todd v. Sykes, 97 Va. 143, 33 S. E. 517; Stoneburner v. Motley, 95 Va. 784, 30 S. E. 364; Ferguson v. Daughtrey, 94 Va. 308, 26 S. E. 822; Hazlewood v. Forrer, 94 Va. 703, 27 S. E. 507; Jones v. McGruder, 87 Va. 360, 12 S. E. 792; Slater v. Moore, 86 Va. 26, 9 S. E. 419; Hickman v. Trout, 83 Va. 478, 3 S. E. 131; Moore v. Ullman, 80 Va. 307; Wray v. Davenport, 79 Va. 19; Johnson v. Wagner, 76 Va. 587; Peay v. Morrison, 10 Grat. 149; Curd v. Miller, 7 Grat. 185; Parr v. Saunders, 1 Va. Dec. 725, 11 S. E. 979; Davis v. Anderson, 99 Va. 620, 39 S. E. 588.

Sustained.—Millhiser v. McKinley, 98 Va. 207, 35 S. E. 446; Gardner v. Gardner, 98 Va. 525, 36 S. E. 985; Alsop v. Catlett, 97 Va. 364, 34 S. E. 48; Rixey v. Deitrick, 85 Va. 42, 6 S. E. 615.

Transactions between parties other than members of families set aside.—Anderson v. Mills, 100 Va. 420, 41 S. E. 854; Newberry v. Bank, 98 Va. 471, 36 S. E. 515; Catt v. Knabe, 93 Va. 736, 26 S. E. 246; Spooner v. Hilbish, 92 Va. 333, 23 S. E. 751, note 2 Va. Law Reg. 60; Davis v. Bonney, 89 Va. 755, 17 S. E. 229; Hisle v. Rudasill, 89 Va. 519, 16 S. E. 673; Rucker v. Moss, 84 Va. 634, 5 S. E. 527; Armstrong v. Lachman, 84 Va. 726, 6 S. E. 129; Smith v. Chilton, 84 Va. 840, 6 S. E. 142; Saunders v. Waggoner, 82 Va. 316; McCormick v. Atkinson, 78 Va. 8; Perry v. Shenandoah, 27 Grat. 755; Addington v. Etheridge, 12 Grat. 436; Spence v. Bagwell, 6 Grat. 444; Sheppard v. Turpin, 3 Grat. 373; Shaver v. Swartz & Levy, 1 Va. Dec. 56.

Writing Valid Between Parties.—This section, as well as the unvarying decisions of this court, declares that as between the parties such writing shall be valid. Ratliff v. Ratliff, 102 Va. 880, 10 Va. Law Reg. 343, 346 and note, 47 S. E. 1007.

The rule that such deeds are valid between the parties does not apply where grantor is mentally incapable. Tatum v. Tatum's Adm'r, 101 Va. 77, 43 S. E. 184.

Badges of Fraud.—While relationship is not a badge of fraud yet transactions between relatives will be more closely scrutinized than in other cases. Ford v. Chelf, 112 Va. 98, 70 S. E. 500.

The relationship of the parties and the insolvency of the grantor in a deed do not of themselves constitute badges of fraud. Baldwin v. Winfree, 116 Va. 16, 81 S. E. 36.

Where a son unites with a court commissioner in the conveyance of land to his mother, who had been substituted as purchaser in his stead, and the deed is attacked as in fraud of the son's creditors, the fact that the mother anticipates one of the deferred payment bonds is no badge of fraud. Ford v. Chelf, 112 Va. 98, 70 S. E. 500.

Mere inadequacy of price is not alone sufficient to avoid deed, unless it be so gross as to shock the conscience and furnish decisive evidence of fraud. Flook v. Armentrout, 100 Va. 638, 42 S. E. 686; Millhiser v. McKinley, 98 Va. 207, 35 S. E. 446.

For a case discussing the badges of fraud and the presumptions and burden of proof when a conveyance is attacked on the ground of fraud, see Shoemaker v. Chapman Drug Co., 112 Va. 612, 72 S. E. 221. See, also, Catlett v. Alsop, 99 Va. 680, 40 S. E. 34; Fischer v. Lee, 98 Va. 159, 35 S. E. 441; American v. Mayo, 97 Va. 182, 33 S. E. 523; Alsop v. Catlett, 97 Va. 364, 34 S. E. 48; Todd v. Sykes, 97 Va. 143, 33 S. E. 517; Ferguson v. Daughtrey, 94 Va. 308, 26 S. E. 822; Hazlewood v. Forrer, 94 Va. 703, 27 S. E. 507; Paul v. Baugh, 85 Va. 955, 9 S. E. 329; Hickman v. Trout, 83 Va. 478, 3 S. E. 131; Witz v. Osburn, 83 Va. 227, 2 S. E. 33; Young v. Willis, 82 Va. 294; Williams v. Lord, 75 Va. 390.

Digitized by Google

Insolvency does not deprive owner of property of right to sell it, unless sale be made with intent to hinder, delay, and defraud creditors; and even then title to purchasers will not be invalidated if sale is for valuable consideration, and purchaser has no notice of fraudulent intent of grantor. Ferguson v. Daughtrey, 94 Va. 308, 26 S. E. 822; Shields v. Mahoney, 94 Va. 487, 27 S. E. 23; Baldwin v. Winfree, 116 Va. 16, 31 S. E. 36.

For articles on "Fraudulent Conveyance Law and Bankruptcy," see 18 Va. L. Reg. 14; 17 Va. L. Reg. 657 and 737.

Generally.—The fact that creditors may be delayed or hindered is not sufficient to vacate deed, in the absence of fraudulent intent. Keagy v. Trout, 85 Va. 390, 7 S. E. 329; Young v. Willis, 82 Va. 291; Peters v. Bain, 133 U. S. 670, 10 Sup. Ct. 354, 33 L. Ed. 696. But see Garland v. Rives, 4 Rand. 282, 15 Am. Dec. 756. Choses in action may be assigned as security for existing debt and also for future advances. Assignment absolute in form may be shown to be security for debt. If made in good faith, fact that assignor checks on assignee for balance over amount of assignment is not fraud. Such assignment as badge of fraud is repelled by evidence of bona fides. Didier v. Patterson, 93 Va. 534, 25 S. E. 661, 2 Va. Law Reg. 60; Alexandria Sav. Inst. v. Thomas, 29 Grat. 483, cited in Driver v. McLaughlin, 20 Am. Dec. 661, and note.

While it is true that personal representative of decedent cannot impeach, under this section, a transaction made by his decedent in his lifetime, yet it is his right and duty to recover as assets of estate the subject of gift or voluntary assignment not perfected in lifetime of decedent. When such representative is creditor also, he may sue in dual capacity to annul assignment, made by decedent, of insurance, where neither policy nor assignment was delivered to assignee, where there was no consideration, and deficiency of assets to pay decedent's debts. Spooner v. Hilbish, 92 Va. 333, 23 S. E. 751.

If owner of goods is fraudulently induced to sell them, title passes, but he may reclaim them, on discovering fraud, before they pass into hands of bona fide purchaser. Oberdorfer v. Meyer, 88 Va. 384, 13 S. E. 756.

If bill contain definite, specific, and precise charges of facts constituting fraud on grantee in deed of trust, and he fail to answer, it should be taken for confessed, and deed set aside. Fischer v. Lee, 98 Va. 159, 35 S. E. 441.

In suit to set aside deed as fraudulent, where it appears that grantee had notice of fraud before paying deferred payment bonds, and also of plaintiff's execution against his grantor, decree should be entered against him in favor of plaintiff for amount of such bonds, with interest. Newberry v. Bank, 98 Va. 471, 36 S. E. 515.

Section 1, chapter 114, Code 1873 (same as this section), protects against fraudulent transfer of all claims, debts, and demands, including claims to damages for breach of contract to marry for which judgment may, after execution of conveyance, be obtained. Burton v. Mill, 78 Va. 468.

Creditor secured in trust deed, and claiming under it, may nevertheless assail other debts secured therein. Runkle v. Runkle, 98 Va. 663, 37 S. E. 279.

Conveyances from parent to child are not guarded with a jealous eye, but are generally presumed to be free from suspicion. Rixey v. Rixey, 103 Va. 414, 49 S. E. 586.

Discussed in opinion in Quinn-Marshall Co. v. Whittaker, 116 Va. 965, 83 S. E. 398; also in 8 Va. Law J. 758, 13 Va. L. J. 661; 2 Min. (4th Ed.) 682, 683.

For monographic note on Fraudulent and Voluntary Conveyances, see Cochran v. Paris, 11 Grat. 348, Va. Rep. Ann.

For article on the right of fraudulent vendee to share with attacking creditors in proceeds of property as to debt unconnected with fraud, see 15 Va. Law Reg. 497 and 657.

Cited but not construed in Richardson v. Pierce, 105 Va. 631, 54 S. E. 480.

Digitized by Google

For W. Va. decisions on similar statute see Justis' Annotations, chapter 74, section 1.

Sec. 5185. Gifts, conveyances, etc., that are voluntary, or upon consideration of marriage, void as to prior creditors.—Every gift, conveyance, assignment, transfer, or charge, which is not upon consideration deemed valuable in law, or which is upon consideration of marriage, shall be void as to creditors whose debts shall have been contracted at the time it was made, but shall not, on that account, merely, be void as to creditors whose debts shall have been contracted or as to purchasers who shall have purchased after it was made; and though it be decreed to be void as to a prior creditor, because voluntary or upon consideration of marriage, it shall not, for that cause, be decreed to be void as to subsequent creditors or purchasers. (Code 1887, § 2459.)

Rules as to husband and wife.—*Payment out of wife's separate estate.*—In the absence of actual fraud participated in by her, if wife can prove actual payment of adequate consideration for husband's settlement upon her (burden of proof being on her), either out of separate estate or funds supplied by friends, or from sources other than husband, conveyance will be sustained. Flynn v. Jackson, 93 Va. 341, 25 S. E. 1; Stonebraker v. Hicks, 94 Va. 618, 27 S. E. 497; Spence v. Repass, 94 Va. 716, 27 S. E. 583.

Husband using wife's money.—Where husband collects and uses money of wife as his own a gift is presumed, unless there is an express, contemporaneous agreement to repay, and a settlement subsequently made upon wife cannot be sustained as to existing creditors, unless it is made in pursuance of such contemporaneous agreement. Beecher v. Wilson, 84 Va. 813, 6 S. E. 209, 10 Am. St. Rep. 883; Hannon v. Hounihan, 85 Va. 429, 12 S. E. 157; Throckmorton v. Throckmorton, 91 Va. 42, 22 S. E. 162; Building Ass'n v. Reed, 96 Va. 345, 31 S. E. 514.

If debt is secured to husband as trustee for wife, and he alone has authority to collect it, the receipt of money by him does not raise presumption of gift nor is she compelled to prove promise on his part to pay or account for it, and deed made to wife, in consideration of such indebtedness, is valid, and will be upheld. McConville v. Bank, 5 Va. Law Reg. 695, 98 Va. 9, 34 S. E. 891; 5 Va. Law Reg. 709.

Earnings of wife.—Under statute, husband is entitled to wife's services in household without compensation, and cannot, as against creditors, settle property upon her in payment therefor. Richmond Ry. v. Bowles, 92 Va. 738, 24 S. E. 388.

Wife surety for husband.—Where wife assumes liability or encumbers her property with lien as surety for husband, he may make valid settlement on her to extent of such lien or liability. Filler v. Tyler, 91 Va. 458, 22 S. E. 235; Flynn v. Jackson, 93 Va. 341, 25 S. E. 1; Johnston v. Gill, 27 Grat. 587.

Antenuptial contracts.—A deed made by intended wife followed by marriage is conclusively presumed to be in consideration thereof, and is based on valuable consideration, except as to existing creditors, but is void as to them. Snyder v. Grandstaff, 96 Va. 473, 31 S. E. 647, 70 Am. St. Rep. 863.

As to antenuptial contracts, see 2 Min. (4th Ed.) 684-686, 697.

Dower in fraudulently conveyed property.—Where real estate is purchased by and deeded to wife, and is successfully attacked by husband's creditors, as being in fraud of their rights, he having paid purchase money, the husband has no seisin, actual or constructive, out of which wife can be endowed. Grant v. Sutton, 2 Va. Dec. 149, 22 S. E. 490.

Voluntary postnuptial settlement is void as to existing creditors, and will be presumed to be voluntary, unless valuable consideration is shown by legal evidence. Rixey v. Deitrick, 85 Va. 42, 6 S. E. 615; Robbins v.

Digitized by Google

Armstrong, 84 Va. 810, 6 S. E. 130; Lewis v. Mason, 84 Va. 731, 10 S. E. 529; Witz v. Osburn, 83 Va. 227, 2 S. E. 33; De Farges v. Ryland, 87 Va. 404, 12 S. E. 805, 24 Am. St. Rep. 659.

Improvements put upon separate estate of wife by insolvent husband, in fraud of creditors, may be followed by creditors, and separate estate charged with their value. Building Ass'n v. Reed, 96 Va. 350, 31 S. E. 514.

Limitation of Actions.—Where no actual fraud is charged, voluntary marriage settlement cannot be set aside after five years from recordation. McCue v. Harris, 86 Va. 687, 10 S. E. 981.

Generally.—This section overrules Herring v. Wickham, 29 Grat. 628, 26 Am. Rep. 405; Triplett v. Romine, 33 Grat. 651; Clay v. Walter, 79 Va. 92—in that conveyances, etc., upon consideration of marriage, are made void as to existing creditors.

The revisors of the Code of 1887, placed property given in consideration of marriage in the same class of other voluntary settlements, declaring them void as to existing creditors. See Burks' Address, 2 Barton L. Pr. (2d Ed.) 1379.

Conveyance founded upon moral obligation, which imposed no legal obligation at the time it was furnished, is void as to creditors. Davis v. Anderson, 7 Va. Law Reg. 399, 99 Va. 620, 39 S. E. 588. To be sufficient to sustain a promise or contract, it must be one which was once a valuable consideration, but has ceased to be binding for some supervenient cause. Id.

Under this section, so far as the means of the insured are withdrawn from creditors to pay premiums, they are entitled out of the proceeds of the policy to have the sum so paid applied to their claims. Stigler v. Stigler, 77 Va. 163. See also 6 Va. Law Reg. 862.

See note to Hunters v. Waite, 3 Grat. 26, Va. Rep. Ann.; Cochran v. Paris, 11 Grat. 348, Va. Rep. Ann.; Hutchison v. Kelly, 1 Rob. 123, 39 Am. Dec. 250, Va. Rep. Ann.

Discussed, 8 Va. Law J. 583; 10 Va. Law J. 265; 13 Va. Law J. 131.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 74, section 2.

See notes to section 5184.

Sec. 5186. Judgment or decree not necessary before suit by creditor to avoid gift, transfer, etc., of debtor's estate; measure of relief; extent of lien given creditor; how perfected against creditors and purchasers.—A creditor before obtaining a judgment or decree for his claim may, whether such claim be due and payable or not, institute any suit which he might institute after obtaining such judgment or decree to avoid a gift, conveyance, assignment, or transfer of or charge upon the estate of his debtor declared void by either of the two preceding sections; and he may in such suit have all the relief in respect to said estate to which he would be entitled after obtaining a judgment or decree for the claim which he may be entitled to recover. A creditor availing himself of this section shall have a lien from the time of bringing his suit on all the estate, real and personal, hereinbefore mentioned, and a petitioning creditor shall be entitled to a like lien from the time of filing his petition in the court or in the clerk's office of the court in which the suit is brought. If the proceeds of sale be insufficient to satisfy the claims of all the creditors whose liens were acquired at the same time they shall be applied ratably to such claims, and the court may make a personal decree against the debtor for any deficiency remaining on the claim of any creditor after applying thereto his share of the proceeds of sale, or if he be not entitled to

Digitized by Google

share in such proceeds, may render a personal decree against the debtor for the full amount of the creditor's claim. This section is subject to the provisions of section sixty-four hundred and sixty-nine. (Code 1887, § 2460; 1889-90, p. 73; 1893-4, p. 614.)

Revisors' Note.—The revised section omits the provision formerly appearing in this section pertaining to the docketing of the lis pendens in view of the last sentence, which is new. Section 6469, referred to in the last sentence and made a part of this section, applies to every lis pendens. As section 6469 stood before the revision (section 3566 of the Code of 1887) it required that the docketing be done only against purchasers for value without notice of REAL ESTATE. The lis pendens required by section 5186 as it stood before the revision extended not only to purchasers of real estate but of personal property, and also to CREDITORS. No serious objection was seen to protecting SUBSEQUENT purchasers for value of personal property as well as of real property (see section 6469), but it was deemed unwise to extend the protection to creditors. The case of Davis v. Bonney, 89 Va. 755, 17 S. E. 229, presents an instance of the unjust working of the former law.

Lien of creditor.—Creditor successfully attacking fraudulent deed has lien on property conveyed, and creditor coming into suit has lien from time of filing petition, but as against purchasers for value without notice, and creditors with or without notice, from time of filing his lis pendens. Davis v. Bonney, 89 Va. 755, 17 S. E. 229, citing and commenting on Wallace v. Treakle, 27 Grat. 479, the ruling in which is changed by this section to the extent of giving the attacking creditor a lien "from the time of bringing his suit," and a suit is brought when and as soon as the summons issues. See section 6061, 13 Va. Law J. 131. The present revision further changes the law as it stood when Davis v. Bonney, supra, was decided. There is no longer any necessity for the docketing of a lis pendens as between creditors. See revisors' note above, section 6469 and revisors' note.

Creditor successfully attacking deed for fraudulent debt is not entitled to be substituted to position formerly occupied by fraudulent debt. His lien, if not previously acquired, dates only from institution of suit, and is subordinate to liens already acquired. Deed is valid as to bona fide debts, and fraudulent debt is eliminated. Craig v. Hoge, 95 Va. 282, 28 S. E. 317.

See note 1 Va. Law Reg. 294, under caption, "Suits to Avoid Fraudulent Conveyances."

Where fraudulent deed is set aside, the property thereby conveyed will be treated as though such deed had not been made. Ferguson v. Daughtrey, 94 Va. 315, 26 S. E. 822.

The lien provided for by this section is never perfected unless and until the deed or other act of the debtor attacked is adjudicated to be fraudulent and void. The lien otherwise remains inchoate. Quinn-Marshall Co. v. Whittaker, 116 Va. 965, 83 S. E. 398.

The lien given by this section may be, and in the case in judgment was, waived by the subsequent contracts and dealings of the creditor with the debtor. Quinn-Marshall Co. v. Whittaker, 116 Va. 965, 83 S. E. 398.

Homestead.—Under Const. 1902, section 191, grantors in deed set aside as fraudulent cannot claim homestead in property thereby conveyed. See note to section 6531.

To give court in which homestead deed is attacked for fraud jurisdiction over goods, there must be valid attachment thereof, and if attachment is dismissed suit should be. Simon v. Ellison, 2 Va. Dec. 203, 22 S. E. 860.

Filing homestead deed is not such conveyance or assignment as can be attacked under this section. Id.

When suit hereunder is authorized.—Where the insolvency of a firm is self-proclaimed, and one partner, for a pecuniary consideration and the undertaking of the other to pay debts of firm, retires therefrom, leaving all social assets in possession of other, who proceeds to sell and

Digitized by Google

collect, and advertises that firm has been dissolved, and that he will continue in business and settle debts of concern, held that this was a transfer of partnership property from firm to continuing member, and authorized creditors at large of firm to sue hereunder. Johnston v. Straus (C. C.) 26 Fed. 57.

This section authorizes a creditor at large to bring a bill in equity for any cause of action on which he might obtain a judgment at common law or suit in equity, and is not confined to suits brought to set aside assignments made to hinder, delay, and defraud creditors. Shufeldt v. Jenkins (C. C.) 22 Fed. 369.

This section allows a bill to be filed by a creditor to set aside a conveyance, declared void by sections 5184 and 5185, before obtaining judgment or decree (this is upon the grounds that the above sections refer to fraudulent acts that are void), and expressly contains, in section 5184, a reservation in favor of a purchaser for valuable consideration without fraud, and section 5185 refers to voluntary conveyances not upon valuable consideration. Brown v. Putney, 90 Va. 453, 18 S. E. 883.

This section does not authorize a suit under section 5187 by a creditor against an attachment garnishee until judgment is had in the attachment proceedings by virtue of which the garnishee becomes a debtor of the creditor. Trimble v. Covington Co., 112 Va. 826, 72 S. E. 724.

Federal Courts.—This section giving simple contract creditors a right to sue in equity to set aside fraudulent conveyances made by the debtor, does not give the federal courts in this State a jurisdiction similar to that of the state courts, in equity, when originally instituted in the federal court or where the suit was removed from the state court. 14 Va. Law Reg. 337.

Generally.—This section is intended to benefit those creditors who by their diligence succeed in bringing into court for distribution a fund or assets placed beyond the reach of the unsecured creditor by the fraudulent or voluntary act of the debtor. Quinn-Marshall Co. v. Whittaker, 116 Va. 965, 83 S. E. 398.

If bill contains positive and specific allegations of fraud, they are taken as true if bill is taken pro confesso. Welsh v. Sollenberger, 85 Va. 441, 443, 8 S. E. 91.

In suits under this section the beneficiaries in the deed which is assailed are necessary parties. 17 Va. L. J. 452.

Cited but not construed, Newberry v. Collier, 111 Va. 238, 68 S. E. 974; Vashon v. Barrett, 99 Va. 348, 38 S. E. 200; Noyes v. Carter, 2 Va. Dec. 218, 23 S. E. 1.

For necessity for lis pendens, and the recording and indexing of the same, see section 6469 and notes.

Discussed, 5 Va. Law J. 603; 8 Va. Law J. 763; 10 Va. Law J. 705.

See Burks' Pleading and Practice, p. 386.

See note to Sprinkle v. Dillard (circuit court of Henrico), 10 Va. Law Reg. 430.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 74, section 3 and chapter 133, section 2.

See Gregory's Forms Nos. 345, 347.

Sec. 5187. To prevent persons engaged in buying and selling merchandise, while indebted, from selling their entire stock of merchandise in bulk, or selling the major portion thereof, otherwise than in the ordinary course of trade.—The sale, transfer or assignment in bulk of any part or the whole of a stock of merchandise, or the fixtures pertaining to the conduct of said business, otherwise than in the ordinary course of trade, and in the regular and usual prosecution of the seller's business, shall be void as against creditors of the seller, unless the seller and purchaser at least five days before the sale, make a full detailed inventory showing the quantity, and so far as possible with the exercise of reasonable

Digitized by Google

diligence, the cost price to the seller, of each article to be included in the sale; and unless the purchaser demands and receives from the seller a written list of names and addresses of creditors of the seller, with the amount of indebtedness due or owing to each, and certified by the seller under oath, to be to the best of his knowledge and belief, a full, accurate and complete list of his creditors and of his indebtedness; and unless the purchaser shall, at least five days before taking possession of such merchandise or paying therefor or giving some note or other evidence of indebtedness therefor, notify personally or by registered mail, every creditor, whose name and address is stated in such list, of the proposed sale, stating the aggregate value of the merchandise proposed to be sold, as shown by such inventory, the consideration to be paid therefor, and the time and manner of payment.

The seller and purchaser shall each preserve the inventory, list and affidavit required by this section for the period of six months after such sale and purchase, and the same shall be open to the inspection of the creditors of the seller.

After the expiration of said six months no suit or action shall be brought to have declared void, or the effect of which will be to have adjudicated void, any such sale or purchase, as is mentioned in this section.

Sellers and purchasers under this section shall include corporations, co-partnerships, and individuals, but nothing contained in this section shall apply to sales by executors, administrators, receivers, assignees under voluntary assignments for the benefit of creditors, trustees in bankruptcy, or by any one acting under judicial process. (1902-3-4, pp. 518, 884; 1916, p. 413.)

Revisors' Note.—This section is largely based on the former law, but contains changes in phraseology as well as in meaning. The revised section is the result of a consideration of the former Virginia act in connection with the laws of other states.

The reference in the parentheses to Acts 1916 should be to page 713, not 413.

It is within the police power of the state to regulate sales of entire stocks in trade of merchants so as to prevent fraud on innocent creditors, and a state statute prohibiting such sales except under reasonable conditions as to previous notice is not unconstitutional under the due process and equal protection clause of the 14th Amendment. Lemieux v. Young, 211 U. S. 489. Cited and followed in Kidd Dater & Price Co. v. Musselman G. Co., 217 U. S. 461.

See editorial as to constitutionality, 16 Va. Law Reg. 218. See also 10 Va. L. Reg. 270; 11 Va. L. Reg. 143, 424, 692, 13 Va. L. Reg. 180; 14 Va. L. Reg. 64; Wright v. Hart, 182 N. Y. 350, 2 L. R. A. (N. S.) 338; Walp v. Mooar, 76 Conn. 515; Squire v. Tellier, 185 Mass. 18, 102 Am. St. Rep. 322; Collection of Cases, 20 L. R. A. (N. S.) 160.

This section creates no new right of action. If a cause of action exists this section attaches certain consequences to the doing or omission to do certain things. It is by virtue of section 5186 that a creditor before judgment or decree may institute suit to avoid a transfer, etc., of the estate of his debtor. Trimble v. Covington Co., 112 Va. 826, 72 S. E. 724.

Suit under this section can only be instituted by a creditor existing at the date of sale. Trimble v. Covington Co., 112 Va. 826, 72 S. E. 724.

Digitized by Google

Sec. 5188. Loans, and reservations of a use or property, to be recorded.—Where any loan of goods or chattels is pretended to have been made to any person with whom, or those claiming under him, possession shall have remained five years without demand made and pursued by due process of law on the part of the pretended lender, or where any reservation or limitation is pretended to have been made of a use or property, by way of condition, reversion, remainder, or otherwise, in goods or chattels, the possession whereof shall have so remained in another as aforesaid, the absolute property shall be taken to be with the possession, and such loan, reservation, or limitation void as to creditors of and purchasers from the person so remaining in possession, unless such loan, reservation, or limitation be declared by will, which or a copy of which is, or by deed, or other writing, duly admitted to record within the said five years in the county or corporation in which said goods or chattels may be. (Code 1887, § 2461.)

"Goods and chattels."—Sections 5142, 5188 and 5194 all relate to same kind of property, i. e., "goods and chattels," and so closely connected that whatever was meant by "goods and chattels" in one of these sections must have been intended of same words in others. "Goods and chattels" mean visible, tangible property only, and do not include choses in action. First Nat. Bank v. Holland, 99 Va. 505, 39 S. E. 126, 55 L. R. A. 155, 86 Am. St. Rep. 898, 7 Va. Law Reg. 204. See, also, Kirkland v. Brune, 31 Grat. 126.

Where loanee has not had possession for five years.—Purchaser from loanee, who has not been in possession of property for five years, acquires no title against owner, nor can his possession be added to that of loanee from whom he purchased to defeat owner's claim. Lightfoot v. Strother, 9 Leigh 451.

Where father sends slave to son by agent who neglects to inform son that slave is a loan, and both father and son die before five years, the father disposing of said slave by will, the father is not affected by neglect of agent, and such slave may be recovered for his estate after five years from loan. Dickinson v. Dickinson, 2 Grat. 493.

Possession of mortgagee after mortgage.—Where certain parties having become sureties of an executor, a deed is made by him mortgaging slaves to secure them, which contains no provisions that possession shall remain with him until default, although after such mortgage he remains in possession more than five years, and creditor of mortgagor has them sold under execution, such possession does not make slaves liable under statute. Rose v. Burgess, 10 Leigh 186.

Where loanee holds possession five years.—Five years' peaceable possession of slaves under loan, not evidenced by a deed, vests title in loanee, which inures in favor of his creditors, and cannot be divested as to them by returning same to lender, after the said five years have expired. Garth v. Barksdale, 5 Munf. 101.

A deed declaring loan of slave from father to his daughter during her life, and a gift to her children after her death (being admitted to record on proof by one witness only), is not good against her husband's creditors or purchasers from him without notice of such deed, possession having remained with such husband for five years. Lacy v. Wilson, 4 Munf. 313.

Effect of lender resuming possession.—A demand of slaves by the lender, who thereupon receives them, and immediately redelivers them to loanee, to be held on same terms as before such receipt, demand and redelivery being in private, is not sufficient to bar rights of creditors. Boyd v. Stainback, 5 Munf. 305.

If no writing declaring such loan be recorded, no demand be made

Digitized by Google

by lender and pursued by course of law for more than five years after possession commenced, the loan is void as to loanee's creditors, whose rights cannot be affected by lender's subsequent resumption of possession. But the creditors meant are those whose debts were contracted before resumption of possession or conveyance of the chattels by the lender, they having given credit to loanee on apparent ownership of property. Scott v. Jones, 76 Va. 233.

Where possession has remained with loanee five years, and is then resumed by lender, possession must continue with lender for full period of five years from time it was actually resumed before title will be revested in him as against creditors of loanee. Pate v. Baker, 8 Leigh 80.

Where, under parol loan, debtor remained in possession of slaves for five years, they are liable to his creditors, though possession is resumed by lender before execution issues. Beale v. Digges, 6 Grat. 582, and note on Fraudulent and Voluntary Conveyances to Cochran v. Paris, 11 Grat. 348, Va. Rep. Ann.; Taylor v. Beale, 4 Grat. 93.

Deed recorded after five years.—Where after loanee has remained for five years in possession of property lender makes deed, declaring original loan and continuing it, but deed is not recorded, it does not affect, nor is evidence against creditor of person in possession. Pate v. Baker, 8 Leigh 80.

Acts valid between parties.—If not in writing duly recorded, loans of chattels, under section 3, chapter 114, Code 1873 (same as this section), are void as to creditor of loanee, but valid as between parties, no matter how long loanee may keep possession; but operation of statute will be avoided by lender's resuming possession, or granting chattels to another, by writing duly recorded, within five years. Scott v. Jones, 76 Va. 233; Collins v. Lofftus, 10 Leigh 5, 34 Am. Dec. 719.

W. H., by will dated 1879, gave a slave then in possession of his son-in-law, W. B., to his two grandsons, J. B. and E. B., sons of said W. B., and at that time infants, as soon as they come to lawful age. In 1792 he verbally lent the slave to his son-in-law for the purpose of assisting in the maintenance of his children, reserving the right to take him back whenever he should think proper, and in 1796, four years afterwards, died. In same year his will was admitted to record, the surviving grandchildren still being under age; and in 1801, when that grandchild attained full age, the slave was taken in execution and publicly sold as the property of W. B. It was held that the recording of the will in 1796 was a sufficient declaration to protect the rights of the grandchild in opposition to claim of father's creditors. Beasley v. Owen, 3 Hen. & M. 449.

L., in 1809, then residing in Virginia, made a conveyance in trust for his wife of certain personal property and slaves, which deed was duly recorded. The property remained in possession of husband and wife while they resided in Virginia. In 1814 they moved to Washington, taking the trust property with them. In 1817 L. borrowed money from Bank on note endorsed by trustee in deed of 1809, and executed deed of trust on property conveyed by deed of 1809 to secure Bank, and then died insolvent. During residence in Washington he sold some of slaves without objection by his wife or trustees. Bank then filed bill to subject remainder of trust property to its debt. Held, that deed of 1809 was sufficient to protect the property against subsequent creditors of or purchasers from L., and that, deed being properly recorded in Virginia, the removal of property to Washington did not affect title of wife or her trustees. Bank v. Lee, 13 Pet. 107, 10 L. Ed. 81.

Generally.—This section had its origin in the custom of lending slaves.

Section 2, chapter 101, Rev. Code, p. 372 (same as this section), does not apply to property remaining in possession of debtor for more than five years on hire. McKenzie v. Macon, 5 Grat. 379.

Although parol declaration of trust, where property is given to one party for another, is valid as between parties thereto, yet as between cestui que trust and creditors such reservation is void. London v. Turner, 11 Leigh 403.

Digitized by Google

A chose in action is a mere right of action to a personal chattel not in possession. Yerby v. Lynch, 3 Grat. 471.

Sec. 5189. Reservation of title to and liens on goods and chattels sold to be void as to creditors and purchasers unless in writing and recorded.—Every sale or contract for the sale of goods and chattels wherein the title thereto or lien thereon is reserved until the same be paid for, in whole or in part, or the transfer of title is made to depend on any condition where possession is delivered to the vendee, shall, in respect to such reservation and condition, be void as to creditors of and purchasers for value without notice from such vendee, until such sale or contract be evidenced by writing signed by the vendor and the vendee, setting forth the date thereof, the amount due, when and how payable, a brief description of the goods and chattels, and the terms of the reservation or condition, and until and except from the time the writing evidencing such sale or contract is duly admitted to record in the county or corporation in which said goods or chattels may be, or in the clerk's office of the Chancery Court of the city of Richmond, if said goods and chattels be in that city, or, if said goods and chattels consist of locomotives, cars, or other rolling stock, equipments, or personal property of any description, to be used in or about the operation of any railroad, until and except from the time the said writing is duly admitted to record in the clerk's office of the circuit court of the county or the corporation court of the city, wherein the principal office in this State of the company operating the railroad is located, or in the clerk's office of the Chancery Court of the city of Richmond, if said principal office is within the corporate limits of the said city, and a copy of said writing be filed in the office of the State Corporation Commission, and each locomotive, car, or other piece of the rolling stock be plainly and permanently marked with the name of the vendor on both sides thereof followed by the word "owner." Such writing shall be acknowledged or attested by a subscribing witness as to both the vendor and vendee. It shall be the duty of the clerk to record such writing in the book of miscellaneous liens and index it in the name of both the vendor and vendee, for which service he may charge a fee not exceeding twenty-five cents, but no tax shall be charged thereon. No writing shall be deemed to be admitted to record under this section unless and until the same has been indexed according to law. All sales or contracts for the sale of goods and chattels other than locomotives, cars, and railroad equipment, heretofore docketed without acknowledgment or proof shall have the same force and effect as if the same had been duly acknowledged or proved. (Code 1887, § 2462; 1889-90, p. 108; 1893-4, p. 422; 1904, p. 96.)

Revisors' Note.—This section is taken from the first part of the act last cited, amending section 2462 of the former Code. Attention is called to the requirement of the revised section that the writing itself and not a more memorandum thereof must be recorded, and that it must be ac-

Digitized by Google

knowledged or attested by a subscribing witness as to both the vendor and vendee. It would seem that all writings that are recorded should have some proof of due execution. The writing is to be recorded in the book of miscellaneous liens, as to which see section 3393, and it is not deemed to be admitted to record unless properly indexed.

Requisites for validity.—In order that the registry of a conveyance may operate as constructive notice to subsequent purchasers and encumbrancers, its language must be such that if a subsequent purchaser or incumbrancer should examine the instrument itself, he would obtain thereby actual notice of all the rights which were intended to be created or conferred by it. Nat. Cash Register Co. v. Burrow, 110 Va. 785, 67 S. E. 370; Same v. Norfolk Realty Co., 110 Va. 791, 67 S. E. 372.

For contracts not fulfilling the requisites under the former section see Natl. Cash Register v. Burrow, 110 Va. 785, 67 S. E. 370; Natl. Cash Register Co. v. Norfolk Realty Co., 110 Va. 791, 67 S. E. 372.

Goods and Chattels.—The term "goods and chattels" used in this section is restricted to "visible, tangible and movable" personal property, and does not include choses in action. "Movable" means that which may be lifted, carried, drawn, turned or conveyed, or in any way made to change its place or position. Monarch Laundry v. Westbrook, 109 Va. 382, 63 S. E. 1070; First Nat. Bank v. Holland, 99 Va. 505, 39 S. E. 126, 55 L. R. A. 155, 86 Am. St. Rep. 898, 7 Va. Law Reg. 204.

Property affected; description.—A contract which leaves the designation of the specific property resting exclusively in the minds of the parties fails to meet the requirements of this section. The description of the property cannot be arrived at by applying the testimony of the parties to the contract. Nat. Cash Register Co. v. Norfolk Realty Co., 110 Va. 791, 67 S. E. 372.

A contract reserving title under this section, which provides for such "additional shafting, piping, connections, etc., as may be required to complete the said plant as to the motive power of the same" is too vague and indefinite in its description of the additional shafting, etc., to enable a stranger to identify the property with any degree of accuracy, hence the title sought to be reserved cannot be protected as against a subsequent purchaser for value and without other notice thereof. Monarch Laundry v. Westbrook, 109 Va. 382, 63 S. E. 1070.

Reservation of title to engines, boilers and machinery which a vendor, by a writen contract, sells to a vendee, and installs for use in a laundry plant is valid as against subsequent purchasers of the plant from the vendee or mortgagees thereof, where it appears that this section has been complied with, and the vendee or mortgagee of realty, with notice of the rights of third parties in fixtures, takes subject to such rights. Monarch Laundry v. Westbrook, 109 Va. 382, 63 S. E. 1070.

Deferred payments.—The docketing of a contract providing for notes payable in monthly instalments after maturity of first note, but authorizing the purchaser to date the first note at such time as he may elect and to insert the date either before or after the execution of the note, does not give notice of when and how the deferred payments are to be made, is not a sufficient compliance with the statute and hence is not constructive notice. Nat. Cash Register Co. v. Burrow, 110 Va. 785, 67 S. E. 370.

Purchaser for value.—Trustee in deed to secure creditors is purchaser for value, within meaning of this section, and if it be alleged that he is purchaser with notice burden of proving it is on the party alleging it. The proof, however, may be circumstantial, but must be such as to affect his conscience, and so strong and clear as to put upon him the imputation of bad faith. Arbuckle v. Gates, 4 Va. Law Reg. 237, 95 Va. 802, 30 S. E. 496.

An assignee for creditors is a purchaser for value, within the meaning of this section. Corbett v. Riddle, 209 Fed. 811.

An unrecorded contract under this section is void as to vendee's trustee in bankruptcy. Chesapeake v. Seldner, 122 Fed. 593, 58 C. C. A. 261. But see Holt v. Henley, 232 U. S. 637, and amendment to Bankruptcy Act therein referred to.

The rights of a vendor of goods sold on conditional sale prior to the

Digitized by Google

amendment of June 25, 1910, to the Bankruptcy Act, are unaffected by that act, though the contract of sale was not recorded. Holt v. Henley, Trustee, 232 U. S. 637.

In Holt v. Henley, Trustee, 232 U. S. 637, the validity of the amendment of June 25, 1910, to the Bankruptcy Act was attacked on the ground that that amendment was in fact an amendment of a State statute. But the court did not decide the question.

Authentication for recordation.—Prior to amendment of 1893-94, p. 422, the clerk had no authority to docket memorandum of contract until it had been authenticated in manner necessary for recordation. Callahan v. Young, 90 Va. 574. Attention is here called to the provisions of the present section. See revisors' note above.

Generally.—Previous to this statute the law was that where a vendor agreed to sell personal property for a price to be paid at a future time, and deliver the possession but expressly retained title to the property until payment, such an agreement constituted a conditional sale; and though by parol or by an unrecorded instrument, such reservation was valid as against vendees, creditors and subsequent purchasers with or without notice. This section restricts that doctrine for the protection of innocent third parties. Monarch Laundry v. Westbrook, 109 Va. 382, 63 S. E. 1070.

This section is a remedial statute and should be liberally construed. Liquid Carbonic Co. v. Whitehead, 115 Va. 586, 80 S. E. 104.

The effect of this section cannot be avoided by calling the contract a lease and providing that the purchase price shall be rent. Corbett v. Riddle, 209 Fed. 811.

A contract by shipbuilding company with the United States whereby all parts of the machinery paid for by the government under the specified system of partial payments became thereby the sole property of the United States is not such a contract as is required to be recorded under this section. William R. Trigg Co. v. Bucyrus, 104 Va. 79, 51 S. E. 174.

Vendor of goods by unrecorded bill of sale, retaining title, delivers possession but retains control of goods and requires daily report of sales to be made to him, and fails to keep up stock according to contract, while vendees perform theirs, at length sues out attachment, and seizes goods for alleged balance. His claim must be postponed to other debts against vendees. Hash v. Lore, 88 Va. 716, 14 S. E. 365.

A lien for purchase money of rolling stock reserved by contract under this section is in no wise inconsistent with existence of a lien, under section 6438. Newgass v. Atlantic (C. C.), 56 Fed. 676.

This section changes the rule of McComb v. Donald, 82 Va. 903, 5 S. E. 558.

Discussed, 6 Va. Law J. 584; 12 Va. Law J. 681; 13 Va. Law J. 132, 532.

Commented upon in note to Sprenkle v. Dillard (circuit court of Henrico county), 10 Va. Law Reg. 433.

See Gregory's Forms No. 548.

Sec. 5190. How a lien or reservation provided by the preceding section is to be enforced.—All reservations, liens, conditions, and the collection of all money mentioned in any such written contract, whether recorded or not, may be enforced on a petition to a justice of the peace when the amount of value involved is within his jurisdiction, and no other pleadings before him shall be necessary, or by bill in equity in the circuit, corporation, or city court having equity jurisdiction, when the amount or value involved is within its jurisdiction. Such petition or bill shall be filed by the person entitled to recover, and all other persons whose rights will be affected thereby shall be made defendants. It shall state the contract and the plaintiff's claim and describe the property with reasonable certainty. The testimony in the case shall be given orally before such

Digitized by Google

court or justice. The court or justice shall determine all questions arising out of, or under, the contract, which are properly made by the pleadings, and render such judgment as shall seem right and proper. The property may be sold, or possession delivered, or such other disposition made of it as the court or justice may direct, and, in a proper case, a personal judgment may be rendered against any one or more of the defendants. Pending the litigation authorized by this section, the possession of the goods and chattels shall be determined by chapter two hundred and thirty-seven of this Code, the provisions whereof are hereby made applicable, as far as practicable, to any proceeding under this section, except that instead of the provision of section fifty-seven hundred and ninety-seven "that the affiant verily believes the plaintiff is entitled to recover the same" the affiant shall state that affiant verily believes the plaintiff is entitled to recover the same, or to subject it to a lien for the purchase price thereof, as the case may be. When the proceeding is before a justice the defendant shall have at least five days' notice before a hearing is had, and the judgment when rendered may be enforced like any other judgment before a justice. (1902-3-4, p. 895; 1904, p. 352; 1908, p. 376; 1915, p. 218.)

Revisors' Note.—This section is taken from the second subdivision of the act of 1904 (Acts 1904, p. 96) amending section 2462 of the former Code. The former law left it uncertain whether the procedure in court was a procedure at law or in equity, and consequently serious difficulties arose as to how the record should be made up for a writ of error or appeal. In Mitchell Transparent Ice Co. v. Triumph Electric Co., 116 Va. 725, 82 S. E. 730, the court evidently treated the case as a proceeding at law with enlarged powers given to the trial judge. In order to remedy the troubles that arose out of this part of the former law, the revised section provides that the lien shall be enforced by bill in equity. No jury trial is given as a matter of right, but the case is governed by the general law on the subject of issues out of chancery. It is provided that the testimony shall be taken orally, so as to avoid delays incident to suits in chancery, and the right to possession pending the litigation is made the same as in detinue. The provision that a personal judgment may be rendered in a proper case is new, but simply makes statutory the decision of the court in Liquid Carbonic Co. v. Whitehead, 115 Va. 586, 80 S. E. 104.

The references at the end of this section should be stricken out and "Id." inserted in lieu thereof.

See notes to preceding section.

In Levy v. Davis, 115 Va. 814, 80 S. E. 791, it was held that there was nothing in subdivision 2 of section 2462 of Pollard's Code 1904 (corresponding to this section) to indicate a purpose on the part of the Legislature to abolish pre-existing remedies in that class of cases. In that case an action of detinue was brought. In view of the changes made in this section by the present revision, it would be safer hereafter to pursue the remedy given by it and not resort to detinue.

Sec. 5191. Release of contract or lien provided by section fifty-one hundred and eighty-nine.—Every vendor in a contract for the sale of personal property docketed under section fifty-one hundred and eighty-nine shall, upon payment to him of the amount of the purchase price in full, as set forth in said contract, cause the same to be marked satisfied upon the margin of the page of the book where the same is recorded, which note of satisfaction, when signed

Digitized by Google

by such vendor, his agent or attorney, and attested by the clerk in whose office such contract is docketed, shall operate as a release of all claims of such vendor therein, and the clerk for attesting such release shall have a fee of twenty-five cents, to be paid by the vendee. Any vendor who shall fail to release a contract, after the whole amount thereof has been paid to him, for a period of fifteen days after he shall have received notice from the vendee to mark the contract satisfied, shall forfeit five dollars to the vendee. If the vendee is indebted for rent of the house wherein the personal property described in such contract is stored or kept, and the landlord has taken action to recover said rent, the vendor, at the request of the landlord, his agent or attorney, shall state on oath the balance due on said contract of sale, and upon the payment of the same by the vendee, or his landlord, shall mark the said contract satisfied in accordance with the terms and provisions of this section, and for failure so to do shall forfeit five dollars to the party making such payment. (Id.)

Revisors' Note.—This section is taken from the act of 1904 (Acts 1904, p. 352). Verbiage and unnecessary provisions are omitted, as is also the provision requiring the clerk to mark the lien satisfied "upon the written notice by the vendor, his duly authorized agent or attorney." The party, his agent or attorney, can easily go to the clerk's office and mark it satisfied without writing to the clerk. The omitted provision is unnecessary, besides it opens the door for forged written directions, and does not conform to the language used in other sections for making similar releases. See, for instance, sections 6456 and 6466 relating to marking deeds of trust and judgments satisfied.

Source: 1902-3-4, p. 895; 1904, p. 352.

Sec. 5192. Contracts in consideration of marriage, or for the sale of real estate, etc., void as to creditors and purchasers unless in writing.—Every contract, not in writing, made in respect to real estate or goods and chattels, in consideration of marriage, or made for the conveyance or sale of real estate, or a term therein of more than five years; and every bill of sale or contract for the sale of goods and chattels when the possession is allowed to remain with the seller, shall be void, both at law and in equity, as to purchasers for value and without notice and creditors. (Code 1887, § 2463; 1902-3-4, p. 598.)

Revisors' Note.—As section 5194 stood before the revision (section 2465 of the Code of 1887, as amended), it contained the following parenthetical clause: "And any such bill of sale or contract shall be in writing and signed by the vendor." A doubt existed as to whether this meant IF IT IS IN WRITING, or if it MUST BE IN WRITING. It is believed the word "shall" was intended to be used in the sense of "must," otherwise there would be a large number of contracts not in writing which would not be met by the statute. In order to set this doubt at rest, that provision has been transferred to section 5192, necessitating a corresponding change in section 5193.

History of section.—Previous to the Code of 1887, there had been a number of decisions holding that "a parol contract for purchase of land so far executed as to vest in purchaser an equitable right was good as against creditors of vendor under registry laws." These cases are as follows: Floyd v. Harding, 28 Grat. 401; Hicks v. Riddick, Id. 418; Burkholder v. Ludlam, 30 Grat. 255, 32 Am. Rep. 668; Long v. Hagers-

Digitized by Google

town, Id. 665; Trout v. Warwick, 77 Va. 731; Halsey v. Peters, 79 Va. 60; Bowman v. Hicks, 80 Va. 806; Powell v. Bell, 81 Va. 222; Griggsby v. Osborn, 82 Va. 373; Brown v. Butler, 87 Va. 621, 13 S. E. 71; Reynolds v. Necessary, 88 Va. 125, 13 S. E. 348. They were based upon the fact that Code 1873, chapter 114, section 5 (Code 1849, chapter 118, section 5), required only written contracts for land to be recorded. To remedy this, section 2463 of the Code of 1887 was enacted, thus abrogating the rule laid down in foregoing cases. See note to Braxton v. Bell, 1 Va. Law Reg. 682.

Object of the section.—One of the objects of this section was to place a purchaser of land under a parol contract, as to purchasers for value without notice, and creditors, in the same condition as purchasers under a writing who had failed to register it as provided by sections 5193 and 5194. Norfolk & P. Traction Co. v. White, 113 Va. 102, 73 S. E. 467.

This section has no application to resulting trusts and does not subject the land held by the resulting trustee to a judgment against him. Straley v. Esser, 117 Va. 135, 83 S. E. 1075.

For a review of this section and the reason for its enactment, see Straley v. Esser, 117 Va. 135, 83 S. E. 1075.

Generally.—Sections 2463-2465 of the Code of 1887 did not authorize recordation of any contract for sale of personal property except one made in consideration of marriage, and recordation thereof was not notice. Braxton v. Bell, 92 Va. 229, 23 S. E. 289, and note thereto, 1 Va. Law Reg. 682.

An unrecorded deed is void as to all creditors who, but for such deed, would have right to subject property thereby conveyed, whether such debts were contracted before or after such deed. The word "subsequent" in section 5194 applies to purchasers only. Price v. Wall's Ex'r, 5 Va. Law Reg. 404.

The proviso at the end of section 2465 of Pollard's Code (1904) applies to possession taken under such contracts as are described in this section. Norfolk & P. Traction Co. v. White, 113 Va. 102, 73 S. E. 467. The substance of that proviso is the following words of the present section 5194: "But the mere possession of real estate shall not of itself be notice to purchasers thereof for value of any interest or estate therein of the person in possession."

See Burks' Address, 2 Barton L. Pr. (2d Ed.), p. 1379, upon the subject of marriage as a valuable consideration.

For article upon the effect of possession of land without recorded title, with reference to legislation subsequent to the decision in the case of Chapman v. Chapman, 91 Va. 397, 21 S. E. 813, see 11 Va. Law Reg. 455. See also Id., 153 and 10 Id. 504, note.

Compare with sections 5141 and 5561, subsection 6.

As to meaning of "goods and chattels," see note to section 5189.

Discussed, 13 Va. Law J. 132.

Sec. 5193. If in writing and recorded, as valid as deeds.—Any such contract or bill of sale as is mentioned in the preceding section, if in writing and signed by the owner of the property, shall, from the time it is duly admitted to record, be, as against creditors and purchasers, as valid, so far as it affects real estate, as if the contract were a deed conveying the estate or interest embraced in the contract, and so far as it affects goods and chattels, as if possession had completely passed at the time of such admission to record. (Code 1887, § 2464.)

Revisors' Note.—See revisors' note to the preceding section.

By written contract between W. and G., executed January 30, 1866, W. sold G. tract of land, at which time G. paid part of the purchase money, and W. bound himself on payment of balance to make deed to G., which contract was executed and acknowledged, but not recorded. On May 21, 1866, W. conveyed said land to G. with general warranty, and

Digitized by Google

deed was recorded next day. G. owed balance on purchase price, and at request of W. executed bond to S. therefor. On May 16, 1866, during term of court, begun on 14th, H. & J. each recovered judgments against W., which were docketed June 6, 1866. February 11, 1866, A. recovered judgment against W., which was docketed May 16, 1866. On May 29, 1866, at a term of circuit court begun that day, P. recovered judgment against W., which was docketed July 6, 1866. Held, contract of January 30, 1866, not having been recorded, was void as to judgment creditors of W. whose judgments were duly docketed; but P.'s judgment, having been recovered after deed from W. was recorded, constitutes no lien. Hart v. Haynes, 1 Va. Dec. 201, and note.

This section as it read in Code of 1887 did not authorize recordation of any contract for sale of personal property, except one made in consideration of marriage, and recordation of any other was of no effect. Braxton v. Bell, 92 Va. 229, 23 S. E. 289, and note, 1 Va. Law Reg. 682.

A trust deed of chattels, valid and recorded in another State, is valid here, though not recorded here. Craig v. Williams, 90 Va. 500, 18 S. E. 899, 44 Am. St. Rep. 934. But see section 5197.

For article upon the effect of possession of land without recorded title, see 11 Va. Law Reg. 153 and 455.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 74, section 4.

Cited but not construed, Norfolk & P. Traction Co. v. White, 113 Va. 102, 73 S. E. 467.

Sec. 5194. Contracts, deeds, etc., that are void as to creditors and purchasers unless recorded.—Every such contract in writing, and every deed conveying any such estate or term, and every deed of gift, or deed of trust, or mortgage conveying real estate or goods and chattels and every such bill of sale, or contract for the sale of goods and chattels, where the possession is allowed to remain with the grantor, shall be void as to subsequent purchasers for valuable consideration without notice and creditors, whether general or by lien, until and except from the time it is duly admitted to record and indexed as required by law, in the county or corporation wherein the property embraced in such contract, deed, or bill of sale may be; but the mere possession of real estate shall not of itself be notice to purchasers thereof for value of any interest or estate therein of the person in possession. A recordation under this section shall not affect the rights of a creditor acquired under section fifty-two hundred and twenty-four. (Code 1887, § 2465; 1895-6, p. 842; 1897-8, p. 833; 1899-00, p. 89.)

Revisors' Note.—See revisors' note to section 5192 concerning the transfer of a parenthetical clause from this section to that section. Two important changes have been made in section 5194 (2465 of the former Code): (1) Under the former language of the section it was held in two cases that the word "creditors" meant LIEN CREDITORS only, and as a necessary consequence "pocket liens," if for a bona fide debt, were held valid as against general creditors and entitled to preference. Now the insertion of the words "whether general or by lien" makes the statute applicable in express terms to general creditors as well as lien creditors, thereby changing the law as announced in McCandlish v. Keen, 13 Grat. 615, and Dulaney v. Willis, 95 Va. 606, 29 S. E. 824. (2) The writing must not only be admitted to record but must be indexed before the recordation will be efficacious.

The last sentence is new, and makes statutory the decision in Partlow v. Lickliter, 100 Va. 681, 42 S. E. 671.

History of the section.—In the case of Chapman v. Chapman, 91 Va. 397, 21 S. E. 813, 1 Va. Law Reg. 195, and note, it was held that a pur-

Digitized by Google

chaser for value of real property in the possession of another was put upon his inquiry as to the rights of the one so in possession, and he will be affected with knowledge of whatever rights such possessor has, and such knowledge is held to be the same, in effect, as the notice which is imputed by the registry acts. Under section 2463 of the former Code, the court had held that possession under parol contract was good as against creditors of grantor. To remedy this, the act of 1895-6, p. 842, was passed amending section 2465 of the Code of 1887 as follows: "Provided, that possession of any such estate or term, without notice or other evidence of title, shall not be notice to said subsequent purchasers for valuable consideration." In the amendment to this section (Acts 1897-8, p. 833) this saving clause was omitted, but it was restored by act amending this section (1899-00, p. 89). See 4 Va. Law Reg. 617, 629. The present section changes the phraseology of the amendment and now it is provided that "the mere possession of real estate shall not of itself be notice to purchasers thereof for value of any interest or estate therein of the person in possession."

As to two important changes made in this section by the present revision, see revisors' note above.

"Goods and chattels" in section 5, chapter 114, Code 1873 (same as this section before amendments) refer to and include only visible and tangible property, and not choses in action. Kirkland v. Brune, 31 Grat. 126.

See also note to section 5188, as to meaning of goods and chattels.

Purchasers for value.—Where the consideration for conveyance of land is debt due at time from vendor to vendee, purchaser is purchaser for valuable consideration, within meaning of registry acts, and having purchased and taken conveyance without notice of an attachment, which had been previously levied upon land, but not docketed, is entitled to hold land free from lien of attachment. Cammack v. Soran, 30 Grat. 292.

Under chapter 114, section 5, Code 1873 (same as this section before amendments), it is not necessary that a purchaser for value, claiming against an unrecorded deed of trust, should have taken a conveyance of the legal title. It is sufficient if he has best right to call for it. Preston v. Nash, 75 Va. 949, 6 Va. Law Reg. 836.

A trustee and the creditor secured by deed are purchasers for valuable consideration, within the meaning of the statute (Code 1873, chapter 114, section 5, same as this section before amendments), and their title is not affected by a prior deed of the grantor unless they had notice at the date of their purchase, and prior deed illegally admitted to record cannot give constructive notice. Davis v. Beazley, 75 Va. 491; Davis v. Sims, 1 Va. Dec. 390.

To be a purchaser for value, the plaintiff must show that he paid a fair value for the land. Clinchfield Coal Corp. v. Steinman, 213 Fed. 557.

A deed is made conveying personal property to trustees for creditors, and trustees take possession of and proceed to sell property under trust. Though deed was not duly recorded, yet, property having been delivered to trustees, this was a valid transfer, and protects property against creditors, who had not acquired lien before transfer was consummated. Clark v. Ward, 12 Grat. 440.

"By subsequent purchasers are intended, as we think, purchasers of the same subject embraced in the instrument declared to be void. This would seem to be the natural construction of the section considered alone, but it is strengthened by section 11 of same chapter (similar to this section), which defines or explains the words 'creditors' and 'purchasers' as used in any previous section. Burks, J., in Harman v. Oberdorfer, 33 Grat. 497.

Where goods fraudulently purchased are conveyed by vendee to secure creditors, who, as well as trustee, are ignorant of fraud, the deed will not be set aside on suit of vendor of assignor. Oberdorfer v. Meyer, 88 Va. 384, 13 S. E. 756.

A purchaser without notice of prior unrecorded deed of trust has

Digitized by Google

priority over it, even though he has no deed therefor. Preston v. Nash, 76 Va. 1.

H., having only equitable estate in lands, conveys same by deed of bargain and sale, without warranty, to trustees to secure a debt to B., and this is duly recorded. Afterwards H. acquires legal title, and then conveys land to D., with warranty. Held, that a deed of trust executed to secure debt to B. was executed when B. had not the legal estate, and contained no clause of warranty. The legal estate did not enure to trustees for B., who has lien only on equitable estate, and that recordation of deed conveying equitable estate to secure was not constructive notice of that deed to D., because the statute requiring deeds to be recorded makes them void to subsequent purchasers without notice if not recorded, but gives them no additional validity if recorded. To sustain a plea of purchase without notice the party must be complete purchaser before notice; that is, must have paid purchase money and received a deed. Doswell v. Buchanan, 3 Leigh 366, 23 Am. Dec. 280; 5 Va. Law Reg. 864.

To maintain the defense of purchaser for value without notice the alienees must aver and prove (1) that they are purchasers for valuable consideration; (2) that the consideration has been actually paid; (3) that they have received, or are best entitled to receive, conveyance of the property, and (4) that those essentials all occurred prior to their having notice of the adverse claim. The burden of establishing the first three essentials rests on alienees; and to affect them with notice of his adverse claims, rests on claimant. Lamar v. Hale, 79 Va. 147.

Notice.—Notice to affect purchasers for value with charges on property purchased may be actual or constructive. Whatever suffices to put purchaser on inquiry which should lead to the discovery of the charge is constructive notice. Lamar Exr. v. Hale, 79 Va. 147. See note of Fisher v. Borden below.

Generally, a purchaser with notice from a purchaser without notice acquires good title, but this rule is subject to this exception, that if a purchaser with notice sells to a purchaser without notice and afterward re-acquires the property, he does not obtain a better title than he had in the beginning. Yost v. Critcher, 112 Va. 870, 72 S. E. 594.

The assignee of a debt secured by a deed of trust is not protected unless he takes the assignment without notice that his assignor had knowledge, before taking the deed to secure his debt, of a prior lien of an unrecorded deed first made. Fisher v. Borden, 111 Va. 535, 69 S. E. 636.

Whatever is sufficient to put a party on inquiry will charge him with actual notice of the facts of which a diligent pursuit of that inquiry would have informed him. For case where party was held purchaser with notice because he did not follow inquiry, see Fisher v. Borden, 111 Va. 535, 69 S. E. 636.

A purchaser is not chargeable with constructive notice of all matters of record, but only of such as the title deeds of the estate refer to, or put him on inquiry for. Providence F., etc., Club v. Gill, 117 Va. 557, 85 S. E. 464.

In determining whether a purchaser had notice of any defect of title, inadequacy of price is a potent factor. Clinchfield Coal Corp. v. Steinman, 213 Fed. 557.

A deed of conveyance of land duly recorded which recites various deferred payments of purchase money and that they are "all secured by a deed of trust on the land itself, which deed and this are parts of the same transaction" is constructive notice to subsequent purchasers of the land of the lien for the unpaid purchase money although the deed of trust referred to as securing the same be not recorded. Charlottesville Hdw. Co. v. Perkins, 118 Va. 34, 86 S. E. 869.

Under section 5, chapter 118, Code 1860 (same as this section before amendments), a recorded deed of trust on real estate is constructive notice to subsequent purchaser. McCormack v. James (D. C.), 36 Fed. 14.

Creditors.—As noted above, this section now includes general creditors. The result of this change is to modify the effect of the cases under this heading.

Digitized by Google

Section 11, chapter 118, Code 1849 (same as this section before amendments), in relation to creditors and purchasers who shall be protected against unrecorded deeds, does not include creditors claiming under a devise for payment of debts, or under the statute subjecting real estate to their payment. But the creditor who may avoid such deed must have some lien, by judgment or otherwise, which entitles him to charge specifically the subject conveyed. McCandlish v. Keen, 13 Grat. 615. But see the section as amended.

By section 5, chapter 114, Code 1873 (same as this section before amendments), unrecorded deed is absolutely void as to creditors with or without notice (Heermans v. Montague, 2 Va. Dec. 6, 20 S. E. 899); and unrecorded contracts for sale of real estate are void as to creditors without notice (Dobyn v. Waring, 82 Va. 159).

Where a woman about to be married makes a conveyance of her personal property to a third person, with the privity and approbation of her intended husband, the marriage takes place a few minutes after the conveyance, and the husband takes possession after the marriage, the property thus conveyed will not be subject to husband's creditors, as his possession was not that of his wife (she not being sui juris), and her short possession between the time of conveyance and marriage not being sufficient, or of a nature to render deed fraudulent. Such a conveyance, although not recorded, is not void under statute of frauds, even supposing it to be a trust deed, against husband's creditors, as statute only applies to creditors of grantor. Land v. Jeffries, 5 Rand. 211.

One who claims for tort is a "creditor." Johnson v. Wagner, 76 Va. 587.

An unrecorded deed is void as to all creditors who but for deed would have had right to subject property conveyed to their debts, whether contracted before or after such deed. The word "subsequent" in this section applies to purchasers only. Price v. Wall, 97 Va. 335, 33 S. E. 599, 75 Am. St. Rep. 788.

The rights of general creditors of a decedent are subject to all equities attaching to a decedent's estate at the time of his death. General creditors take the estate in the plight in which they find it. Dulaney v. Willis, 95 Va. 606, 29 S. E. 324. But see present section and revisors' note.

Recordation of deed.—It will be noted that the statute, as amended, requires the deed to be indexed before it is notice.

Before last amendment of section 3567 of the Code of 1887 it was decided that a decree rendered or judgment confessed in vacation operates as a lien from first moment of day on which decree is rendered or judgment confessed, and takes precedence over deed of trust recorded same day, though it may have been recorded before decree was rendered or judgment confessed. Law takes no notice of fraction of days to lien of judgment or decree, while a deed, as against subsequent purchasers for value without notice, and creditors, operates only from time it is recorded. Hockman v. Hockman, 2 Va. Law Reg. 523, and note, p. 526, 93 Va. 455, 25 S. E. 534, 57 Am. St. Rep. 816. On this subject see section 6470 and notes.

Where deed is duly proved or acknowledged, and ordered to be recorded, and is left with clerk for that purpose, it shall be considered as recorded from that time, although in fact it may be lost by negligence of clerk and never recorded; and a deed under these circumstances will be preferred to subsequent deed which has been duly recorded, although the party to such subsequent deed may not have had notice of the prior deed. Beverley v. Ellis, 1 Rand. 102; 7 Va. Law Reg. 834. See, also, Va. Building & Loan Co. v. Glenn, 99 Va. 460, 39 S. E. 136, 7 Va. L. Reg. 314, and note; Mer. Bk. v. Brown, 96 Va. 614, 32 S. E. 64. **Indexing is now required.**

Certificate of clerk of registry court written on deed that it has been admitted to record is evidence and notice of the fact, though the clerical act of spreading it on book in extenso be never performed (Davis v. Sims, 1 Va. Dec. 390), or if it is in fact lost by clerk (Beverley v. Ellis, 1 Rand. 102). **Indexing is now required.**

Digitized by Google

The endorsement of the clerk on the deed of the day when it was left with him to be recorded, and his return to the court of deeds left with him to be recorded, is not conclusive as to the day when the deed was so left, but the true day may be shown by parol evidence. Horsley v. Garth, 2 Grat. 471.

When deed from husband to wife valid.—Relinquishment of dower, to extent of its value, is sufficient consideration of postnuptial settlement, as against husband's existing creditors, and where made before relinquishment no distinct proof of previous agreement is necessary. Though made fraudulently as to husband's creditors, fraud will not be imputed to her. But it must be duly recorded, else it is void as to husband's creditors, without notice, whose claims accrued after its execution, but before its recordation. Strayer v. Long, 86 Va. 562, 10 S. E. 574.

Exchange of property.—If upon an exchange of lands the parties execute mutual conveyances, but the grantee of one tract fails to record his deed, a judgment against his grantor binds the land given in exchange as well as that received. The rights of parties are not affected by character of consideration for unrecorded deed. Price v. Wall, 97 Va. 335, 33 S. E. 599, 75 Am. St. Rep. 788.

Bill of sale as mortgage.—A bill of sale, though absolute on its face, may be a mortgage, and if so, and it is not recorded, it is void as against subsequent purchasers for value without notice. Bird v. Wilkinson, 4 Leigh 266.

Conveyance of such interest only as vendor has.—A grantee in a quit claim deed with covenant of special warranty which purports to convey "such interest only as the grantors now have, whatever that may be," holds an inferior title to a prior unrecorded deed. Va., etc., Coal & Iron Co. v. Fields, 94 Va. 102, 26 S. E. 426.

The grantee of all the right, title and interest of the grantor in a lot of land acquires only such right, title and interest as his grantor had and no more, and is chargeable with notice of, and bound by, a prior unrecorded contract between his grantor and a third person. Stephen Putney Co. v. R., F. & P. R. R. Co., 116 Va. 211, 81 S. E. 93.

A deed conveying "all lots remaining unsold" in a designated plat and expressing the intention of the grantor "to convey all property now owned and controlled," does not operate to convey lots which had been previously sold by the grantor to other persons even though they had not recorded their deeds. This section does not apply because the deed purports to convey only all lots unsold. McNamara v. Boyd, 112 Va. 145, 70 S. E. 694.

Possession of land as notice.—See first subdivision of notes under this section.

The proviso at the end of this section of Pollard's Code (1904) applies to the possession of a prior purchaser of land, whether his purchase was under an unwritten contract (such as is mentioned in section 5192) or under a written instrument (such as is described in this section). Norfolk & P. Traction Co. v. White, 113 Va. 102, 73 S. E. 467. The proviso referred to is contained in substance in this section.

For article upon the effect of the possession of land without recorded title, see 11 Va. Law Reg. 153 and 455.

Personal Property left with Vendor.—It is not necessary, in order to render a bill of sale void under this section, that it should appear by the provisions of the writing itself that the possession of the property was to remain with the seller. Fields-Watkins Co. v. Hensley, 117 Va. 661, 86 S. E. 113.

"If there is a bill of sale and possession is left with the vendor in order to defeat the claims of purchasers for value without notice, it must be recorded. If there is no bill of sale and possession is left with vendor, it is prima facie fraudulent." Luck v. Kersley (circuit court Hanover), 14 Va. Law Reg. 102.

Priorities.—In April, 1850, W. N. conveyed real estate to secure debt to P., but deed was not recorded until 1858. In 1851 W. N. sold same estate to S., who took and held possession continuously and notoriously under his contract from date of his purchase, and paid price, but received no conveyance, and had no notice of trust deed until March, 1861, when

Digitized by Google

trustee advertised sale. S. enjoined sale. Purchaser has priority over creditor. Preston v. Nash, 76 Va. 1.

Land sold and purchased under a written contract, which has not been recorded, though the purchase money has been paid, and purchasers have held for years under their contract, is liable for judgment obtained against grantor before contract is recorded. Young v. Devries, 31 Grat. 304. See, also, Hart v. Haynes, 1 Va. Dec. 201, and note.

Effect of section 2483 of Code of 1887 (section 6436 of this Code) is to modify registry law as contained in this section so far as to give priority to a mechanic's lien on land of grantee who has failed to record his deed over judgments subsequently obtained against grantor. Pace v. Moorman, 99 Va. 250, 37 S. E. 911.

"In 1867, on bond of M. & B. to P., assigned by P. to R., latter obtained judgment, which was docketed in 1869. In 1866 M. granted his land to B., reserving lien for purchase money, and in 1870 assigned purchase money bonds to G. for value without notice of judgment. In contest for priority between R., as judgment creditor, and G., as assignee of vendor's lien and bonds thereby secured, the lien of judgment has priority." Gordon v. Rixey, 76 Va. 694.

A deed is void as to creditors "until and except from time it is duly admitted to record." And it is only deeds recorded within sixty days from their date of acknowledgment which relate back and are valid as of that date. Slater v. Moore, 86 Va. 26, 9 S. E. 419. Under the present law, indexing is required, and there is no relation back. The period of sixty days referred to in the note of the case of Slater v. Moore, was later reduced to twenty days (section 2467 of the Code of 1887), then to ten days (Acts 1895-6, p. 285), and at its session of 1916 the General Assembly repealed the said section 2467 (Acts 1916, p. 490). At one time the period was eight months. See Eppes v. Randolph, 2 Call 125; Roanes v. Archer, 4 Leigh 550; Harvey v. Alexander, 1 Rand. 219, 10 Am. Dec. 519.

Judgment creditor whose judgment is duly docketed, and who has brought suit to subject land of debtor, has priority over grantee of judgment debtor claiming under deed not recorded until after suit and twenty months after acknowledgment of deed. Robinson v. Bank, 1 Va. Dec. 769, 17 S. E. 739.

If grantee, who failed to record his deed, induce grantor to make new deed to grantee's wife, who records same, and, together with her husband, executes a deed of trust on property for loan with which to pay purchase price, the deed and deed of trust, when recorded, operate to invest trustee with title to property as against creditors of grantor, and they cannot subject it to judgments obtained against grantor subsequent to its recordation. As against creditors of grantor, unrecorded deed is mere nullity, and must be treated as if it had never been executed; but they cannot treat it as nullity for some purposes and valid for others, nor does fact that it may be valid between the parties and as to subsequent purchasers with notice affect them. Bankers v. Blair, 99 Va. 609, 39 S. E. 231, 86 Am. St. Rep. 914, and same case styled Banker v. Hornish, 7 Va. Law Reg. 253, note. See note, 1 Va. Law Reg. 229.

C., in 1849, gives deed on land to secure bona fide debt, which is duly acknowledged and certified for record, but is not recorded until after his death. He makes his will in December, 1849, by which he charges his whole estate with payment of his debts, and dies in 1851, indebted more than his whole estate will pay, but there were no judgment creditors. Held, the deed of trust, though not recorded, is valid against his creditors. McCandlish v. Keen, 13 Grat. 615. See present section and revisors' note.

A mortgage of slaves is recorded in county of A., slaves being at that time in county of B., and after recording mortgage slaves are removed to A., but deed is not recorded anew there after such removal. Mortgagor then mortgages same slaves to another person, and this mortgage is recorded in A., where the slaves are at the time of execution and recordation thereof. Held, first mortgage was not duly recorded and is void as to second. Lane v. Mason, 5 Leigh 520.

At February term, 1857, of court a judgment was obtained against

Digitized by Google

S. and H., his surety, and docketed April 1, 1857. Execution issued, and was paid by H. On October 8, 1856, S., by written agreement under seal, sold to E. a house and lot and delivered possession, and on 18th of same month S. conveyed same to E. This deed was acknowledged on same day, H. being one of the justices who took acknowledgment, but was not presented for record until March 9, 1857. Until bill by H. against E. and S. to be substituted to lien of judgment against S., held he was entitled to be subrogated, and judgment having been docketed within twelve months from date of rendition, and deed not having been recorded within sixty days from its acknowledgment, the judgment has priority, the agreement, not being recorded, being void as to creditor, and to H., claiming under creditor. Notice of deed or written contract for land does not affect creditor of grantor. Eidson v. Huff, 29 Grat. 338. As to the period of sixty days just referred to, see note of Slater v. Moore, supra, and statement following that note.

In January, 1862, C. by agreement in writing sold W. a lot in Danville, and in same month conveyed it to him. Agreement was never recorded, and deed was not recorded until 1873, September 18th. W., having paid all purchase money, conveyed the lot to secure R. $4,000 by deed August 24, 1866. In April, 1868, W. was declared bankrupt, giving in lot as part of his estate. In May, 1868, register conveyed lot to assignee in bankruptcy, and in September, 1868, on joint application of assignee and R., as lien creditor, the court in bankruptcy ordered a sale, which was made and confirmed to R., and deed ordered and made and possession taken. In 1872 M. recovered judgment against C. in corporation court in Danville, which was docketed March 11, 1873. Although M. had notice of sale by C. to W., the lot is liable to judgment. March v. Chambers, 30 Grat. 299.

Generally.—It is not necessary for the United States to comply with the registry laws of the State in order to preserve a lien created by contract with it. The lien, without recordation, is superior to the claims of all other creditors who have no prior lien. United States v. William R. Trigg Co., 115 Va. 272, 78 S. E. 542.

The change in and amendments to this section and the two preceding sections overturn the rule laid down in Braxton v. Bell, 92 Va. 229, 23 S. E. 289, 1 Va. L. R. 682, to the effect that this section did not authorize recordation of any contract for sale of personal property except one made in consideration of marriage, and that recordation of such contract was not notice.

Under this section a bill of sale does not take effect as a transfer until recorded, and such transfer constitutes a voidable preference under the United States Bankruptcy Act. In re Montague, 143 Fed. 428.

It is not believed that release deeds are contemplated by this section. 10 Va. Law Reg. 504.

Cited but not construed in Bugg v. Seay, 107 Va. 648, 60 S. E. 89; Seward & Co. v. Miller & Higdon, 106 Va. 309, 55 S. E. 681. Monarch Laundry v. Westbrook, 109 Va. 383, 63 S. E. 1070; 17 Va. Law Reg. 793; Hay v. Alexandria (C. C.), 20 Fed. 15; Hunton v. Wood, 101 Va. 55, 43 S. E. 186.

Discussed, 7 Va. Law J. 129.

Followed in Hodgson v. Butts, 3 Cranch 140, 2 L. Ed. 391.

As to gifts of chattels between parties, see section 5142.

See Barton, C. Pr. (2d Ed.) 396, 552, 932, 990, 1030, 1032, 1063.

For W. Va. decisions on similar statute see Justis' Annotation , chapter 74, section 5.

Sec. 5195. Where to be recorded.—Notwithstanding any such writing shall be duly admitted to record in one county or corporation wherein there is real estate or goods or chattels, it shall nevertheless be void as to such creditors and purchasers in respect to other real estate or goods or chattels without the same, until it is duly admitted to record in the county or corporation wherein such other real estate or goods or chattels may be; but it shall be sufficient to

Digitized by Google

record a deed releasing the lien of a deed of trust, in whole or in part, either in the county or city in which the property thereby released is located, or in the county or city in which the property so released was situated at the time of the recordation of the deed of trust; and any recordation thereof so made of any such release is hereby validated. (Code 1887, § 2466; 1916, p. 707.)

Where a deed conveys several tracts of land lying separately in different counties, the recordation thereof in only one of the counties is not effectual in regard to the tract or tracts lying in the other counties. Horsley v. Garth, 2 Grat. 471, 44 Am. Dec. 393.

The clerk of a county or corporation court has no authority to admit to record a deed which does not convey land lying in his county or corporation; and a copy of such deed, authenticated by the clerk, is not competent evidence in place of the original. Pollard v. Lively, 2 Grat. 216.

Sec. 5196. When goods, etc., are removed from county, etc., when and where writing to be recorded.—If any goods or chattels mentioned in such writing be removed from a county or corporation in which it is admitted to record, the said writing shall, within one year after such removal, be admitted to record in the county or corporation to which the property is so removed; otherwise the same, for so long a time thereafter as it is not admitted to record in such last mentioned county or corporation, shall, as to the property so removed, be void as to such creditors or purchasers. But such writing shall not be so void in respect to the interest of any infant, or insane person, if before the end of one year after the disability shall cease, the writing be recorded in the county or corporation to which the property is removed. (Code 1887, § 2468.)

Revisors' Note.—The words, "a time thereafter" found in line six of the text, are new. This insertion, however, does not change the law. See Hardaway v. Jones, 100 Va. 488, 41 S. E. 957. The saving in favor of married women, formerly appearing in the last sentence of the section, has been stricken out in view of chapter 207.

Goods and chattels.—The words "goods and chattels," mentioned in registry acts, do not include a mere chose in action, such as debt, or claim for money, and assignment of such debt or claim for value, though not recorded, will be good against a subsequent attachment thereof. Kirkland v. Brune, 31 Grat. 126.

Description of property.—A deed of trust on personal property gives a sufficiently definite description when it enables a stranger to identify the property by the aid of proper inquiry such as the instrument itself indicates and directs. Williamson v. Payne, 103 Va. 551, 49 S. E. 660.

Creditors.—A deed of trust conveying chattels is recorded in county where property is at time of making deed. Afterwards grantor is permitted to move same out of county, and such deed is not recorded in county to which he moves within twelve months. After action brought in last county, but before judgment, deed is recorded in last county. Held, deed is valid against creditor. Bryan v. Cole, 10 Leigh 497.

Removal without consent of trustee.—Deed of trust conveying slaves is recorded in county where they are. Afterwards a third person takes one to another county and sells him, and he remains with purchaser more than twelve months, without deed being in county where he is. In action by trustee in deed against purchaser it is not to be presumed that slave was removed with assent of trustee, but that fact must be proved by purchaser, and in such case, slave being removed without assent of trustee, deed, though not recorded in county to which slave was removed

Digitized by Google

within twelve months, is valid as to creditors. Crouch v. Dabney, 2 Grat. 415.

Deed of marriage settlement made of slaves then in Hanover, and duly recorded there, husband entitled to and holding possession thereunder removes them to Richmond, and within twelve months after removal mortgages them for his own debt, contrary to settlement. Trustee under settlement fails to have it recorded in Richmond within twelve months after removal, but within twelve months files bill in chancery against mortgagee, asserting title to slaves. Held, mortgagee is purchaser with notice of settlement within twelve months after removal to Richmond, and as to him failure of trustee to record settlement in Richmond does not make it void. Hughes v. Pledge, 1 Leigh 443.

Generally.—Mortgage of slaves is recorded in county of A., when slaves are in county of B., but afterwards they are removed to A., mortgage not being re-recorded. Mortgagor then mortgages slaves to another, and it is also recorded in A., where slaves are at time of execution and recordation. Held, first mortgage was not properly recorded, and second mortgage has priority. Lane v. Mason, 5 Leigh 520.

Where grantor in deed of trust recorded in county where property is, within twelve months removes property to another county and sells it, purchaser acquires no title thereto if description of property in trust deed was sufficient. Hardaway v. Jones, 100 Va. 483, 41 S. E. 957, 8 Va. Law Reg. 276, note.

Person living in Fluvanna, owning canal boat plying between Richmond and Lynchburg, sold it to resident of Richmond, and recorded mortgage thereon in Fluvanna, and within twelve months thereafter in Richmond. Between these dates creditors of purchaser seized same in Richmond. Held, the mortgage was properly recorded. Lucado v. Tutwiler, 28 Grat. 39.

Prior to section 5197, case of Craig v. Williams, 90 Va. 500, 18 S. E. 899, 44 Am. St. Rep. 934, had held foreign mortgage of personalty good, though not recorded here.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 74, section 7.

Sec. 5197. No mortgage, deed of trust, etc., upon personal property in another State an encumbrance when removed to this State unless recorded in this State.—No mortgage, deed of trust, or other encumbrance created upon personal property while such property is located in another State shall be a valid encumbrance upon said property after it is removed into this State as to purchasers for valuable consideration without notice and creditors unless and until the said mortgage, deed of trust, or other encumbrance be recorded according to the laws of this State in the county or corporation in which the said property is located in this State. (1893-4, p. 545.)

Revisors' Note.—The words "and until" in lines five and six of the text are new, and make the meaning what was no doubt intended.

Reverses Craig v. Williams, 90 Va. 500; 18 S. E. 899, 44 Am. St. Rep. 934. See note 7 Va. Law Reg. 506; Burks' Pleading and Practice, p. 715.

Sec. 5198. Priority of writings, when admitted to record same day.—Where two or more writings embracing the same property are admitted to record in the same county or corporation on the same day, if the previous sections do not provide for the case, that which was first admitted to record shall have priority in respect to the property in such county or corporation. (Code 1887, § 2469.)

Where three mortgages are executed on same subject, on same day, one after another, and are proved and admitted to record in same order,

Digitized by Google

and there is no agreement that any should have priority, or should stand on equal footing, the one first recorded has priority. Naylor v. Throckmorton, 7 Leigh 98, 30 Am. Dec. 492.

As to priority among judgment liens, see section 6470.

Sec. 5199. When writings to be recorded in county, and when in corporation.—The provisions of this and any other chapter of this Code or of any subsequent statute, by virtue of which a writing is to be or may be recorded in the county or corporation wherein the property embraced in such writing is, shall be construed, in respect to the county, as relating only to property within the said county and without the corporate limits of the corporation having a court wherein writings may be lawfully admitted to record, and, in respect to the corporation, as relating only to property within the corporate limits of said corporation having such a court. (Code 1887, § 2470.)

By charter of city of Lynchburg, jurisdiction was given hustings court for space of one mile without and around said city. Deed of trust conveying real estate lying outside corporation limits, but within one mile, was recorded in clerk's office of hustings court. Held (before present statute), this was valid recordation, and has priority over subsequent judgments docketed in county court clerk's office. Blackford v. Hurst, 26 Grat. 203; Burgess v. Belvin, 32 Grat. 633; Campbell v. Nonpareil, 75 Va. 292. As to mechanic's lien, see Boston v. Railroad, 76 Va. 180.

Sec. 5200. Words "creditors and purchasers," how construed; lien of subsequent purchaser for purchase money paid before notice.—The words "creditors" and "purchasers," where used in any previous section of this chapter, shall not be restricted to the protection of creditors of and purchasers from the grantor, but shall also extend to and embrace all creditors and purchasers who, but for the deed or writing, would have had title to the property conveyed, or a right to subject it to their debts. And as against any person claiming under a deed or other writing which shall not have been admitted to record before payment by a subsequent purchaser for valuable consideration of the whole or a part of his purchase money, such subsequent purchaser, notwithstanding such deed or other writing be admitted to record before he becomes a complete purchaser, shall, in equity, have a lien on the property purchased by him, for so much of his purchase money as he may have paid before notice. (Code 1887, § 2472.)

"This section was reported by the revisors and its adoption recommended 'to put an end to the judicial strife' exhibited in the decisions in Anderson v. Anderson, 2 Call 198; Land v. Jeffries, 5 Rand. 211; Thomas v. Gaines, 1 Grat. 347." Burks, J., in Harman v. Oberdorfer, 33 Grat. 497, quoting Report of Revisors, p. 615, and note.

This section adopts the view of Judge Cabell (dissenting in Doswell v. Buchanan), and gives to a subsequent purchaser a lien upon the property for so much of the purchase money, whether the whole or a part, as he may have paid before notice. 13 Va. Law J. 133.

The effect of filing a petition in bankruptcy is to make all petitioning creditors "creditors" in the sense of this statute. Chesapeake v. Seldner 122 Fed. 593, 58 C. C. A. 261.

Section 11, chapter 118, Code 1849 (same as this section), does not apply to creditors claiming under a devise for payment of debts, and as between holder of deed of trust executed before but recorded after will

Digitized by Google

making such devise, holder thereof has priority. McCandlish v. Keen, 13 Grat. 616. See section 5194 and notes.

Where person having equitable estate sells it without warranty, and subsequently acquires legal estate, and sells it to another, the deed conveying the legal estate is not affected by prior deed conveying equitable estate, though it is recorded. Doswell v. Buchanan, 3 Leigh 365, 23 Am. Dec. 280. See following section and notes.

Cited but not construed in Wasserman v. Metzer, 105 Va. 753, 54 S. E. 893.

Sec. 5201. When purchaser not affected by record of deed or contract.—A purchaser shall not, under this chapter, be affected by the record of a deed or contract made by a person under whom his title is not derived; nor by the record of a deed or contract made by any person under whom the title of such purchaser is derived, if it was made by such person before he acquired the legal title of record. (Code 1887, § 2473.)

Revisors' Note.—The object of the change in the phraseology of this section is to make the meaning clearer. The section had its origin in the Code of 1849 (Code 1849, p. 510, chapter 118, section 12), and the revisors in their report refer to it and explain its intent (Report of Revisors, p. 616). The revisors of 1887 left the language untouched, except to omit the words "or chapter one hundred and nineteen," trusting to the Report of the Revisors of 1849 to carry the proper interpretation.

Standing alone, the latter part of the section as it appears in the Codes of 1849 and 1887 is difficult of interpretation, but when read in connection with the comments of the revisors of the Code of 1849, and the decision of the court in Doswell v. Buchanan, 3 Leigh 365, the meaning is more apparent. The prime object of the revisors of 1849 was to enact that a purchaser in buying land should not be compelled to examine the title, so far as any grantor was concerned, back of the time when the grantor in the particular case acquired the legal title, for if such a requirement were necessary, there would be no limit to the examination of the record, and practically every deed or contract made by any party who had at any time owned the land would have to be examined in order that a person might safely purchase. The principle of Doswell v. Buchanan was simply this, that if, after a person purchased land or acquired an EQUITABLE INTEREST in it, BUT BEFORE HE ACQUIRED THE LEGAL TITLE, conveyed it, or gave an encumbrance on it, and AFTERWARDS acquired the legal title and sold the land, that the purchaser would not have to go back of the date when the LEGAL title was acquired and would be unaffected by the sale or encumbrance made while he held only an equitable title, although recorded, if he had no knowledge of it. The purchaser would get a good title if the chain was complete and disclosed no defects after the party acquired the legal title. It must be borne in mind in this connection that a person would acquire the legal title, not only by obtaining a deed to the land, but by having a contract for its purchase duly recorded. Section 5193 of this chapter provides that if the written contract is duly admitted to record, it shall be as valid as against creditors and purchasers as if the contract was a deed conveying the estate or interest embraced in the contract. Consequently, in a draft of section 5201 notice has to be taken, not only of a deed, but of such a contract as is mentioned in section 5193.

Where person owning equitable estate in property executes mortgage on it without warranty, and subsequently acquires legal title, such acquisition of legal title does not enure to benefit of grantees in deed of trust, and a purchaser of such legal estate is not charged with constructive notice of deeds of trust. Doswell v. Buchanan, 3 Leigh 365, 23 Am. Dec. 280. This case discussed in Preston v. Nash, 76 Va. 1.

Digitized by Google

A purchaser of real estate has constructive notice of recorded title papers of vendor, and it is the duty of such purchaser to examine the proper records to ascertain whether his vendor or those under whom he claims have made any prior conveyances of same or encumbered it. Pillow v. Southwest, 92 Va. 144, 23 S. E. 32, 53 Am. St. Rep. 804.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 74, section 10.

Sec. 5202. Effect when grantor conveys property which he does not own at time but subsequently acquires.—When a deed purports to convey property, real or personal, describing it with reasonable certainty, which the grantor does not own at the time of the execution of the deed, but subsequently acquires, such deed shall, as between the parties thereto, have the same effect, as if the title which he subsequently acquires were vested in him at the time of the execution of such deed, and thereby conveyed.

Revisors' Note.—This section is new. It has been held in a number of cases that where land is conveyed with general warranty and the grantor does not own it at the time of the conveyance, but subsequently acquires the same land, such acquisition enures to the benefit of the grantee, because the grantor is ESTOPPED to deny, against the terms of his warranty, that he had the title in question, but it does not operate actually to TRANSFER the estate subsequently acquired. (See cases cited in annotations to section 5171.) The new section applies to deeds of both real and personal property, and whether there is a covenant of general warranty or not, and is restricted to the parties to the deed.

CHAPTER 211.

Authentication and Record of Deeds and Other Writings; Factors and Agents.

Sec.
5203. Power of attorney, where recorded.
5204. When and where writings admitted to record.
5205. Certificates of acknowledgment within the United States or its dependencies upon which writings are admitted to record; who may take them.
5206. Acknowledgments outside of the United States and its dependencies.
5207. Acknowledgments on behalf of corporations and others.
5208. Deeds of corporations; how to be executed and acknowledged.
5209. Notaries or other officers who hold stock in companies may take acknowledgments of deeds or other writings which said companies execute, if officers are not otherwise interested.
5210. Requiring notaries to affix to certificates of acknowledgment taken by them upon writings which are admitted to record, the date when their term of office shall expire; women notaries changing name.
5211. Conveyance from husband and wife; effect on right of wife.
5212. Where original is lost how copy admitted to record; when, copies of certain writings recorded in courts, etc., of West Virginia.

Digitized by Google

Sec.
5213. Writings not duly acknowledged, how copied for preservation.
5214. Clerks to admit to record rosters of camps of Confederate veterans.
5215. Appointment of attorney in fact by married woman; effect of writing executed by such attorney.
5216. Partition, and recovery, of land, and assignment of dower, to be recorded and indexed.
5217. How city or town lots laid out; plat.
5218. What plat to contain; acknowledgment; recordation.
5219. Effect of recording plat.
5220. Alteration and vacation of streets.
5221. How plat vacated in whole or in part; enclosing streets, alleys, etc.
5222. Clerk to mark plat "vacated."
5223. Power appointing an agent to conduct a mercantile business to be in writing and recorded; a copy to be posted conspicuously in the place of business.
5224. If factor, agent, etc., who is a trader, fail to disclose name of principal or partner, or do business in his own name, property used in such business liable for his debts; exception.
5225. Continuing in force acts establishing Torrens system.

Sec. 5203. Power of attorney, where recorded.—A power of attorney may be admitted to record in any county or corporation. (Code 1887, § 2499.)

Before there was a provision for the recordation of powers of attorney, it was decided that a copy of the power taken from the record was not competent evidence. Carter v. Robinett, 33 Grat. 429.

Under a former statute (1 Rev. Code, p. 363, chapter 99, section 7), authorizing deeds to be acknowledged before any two justices of the peace, it was held that the certificate of the justices is sufficient for the admission of the power of attorney to record with the conveyance, although it does not certify the instrument to any court or clerk's office for the purpose of being recorded. Shanks v. Lancaster, 5 Grat. 111, 50 Am. Dec. 108.

A power of attorney to sell lands does not require, as between the parties, any particular mode of attestation, but may be proved in same way any other fact is proved. Newman v. Chapman, 2 Rand. 93, 14 Am. Dec. 766.

Where A. and his wife executed a power of attorney to B. to convey certain lands, and same is duly acknowledged, the power of attorney while void as to the wife (under the law as it then existed), a deed executed by B. under the power, is good as to her husband A. Shanks v. Lancaster, 5 Grat. 111, 50 Am. Dec. 108.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 73, section 1.

See Gregory's Forms Nos. 554, 555, 556, 557, 558.

Sec. 5204. When and where writings admitted to record.—Except where it is otherwise provided, the circuit court of any county, or the corporation court of any city, other than the city of Richmond, in which any writing is to be or may be recorded, and the Chancery Court of the city of Richmond, when any such writing is to be or may be recorded in said city, or the clerk of any such court, or his duly qualified deputy, in his office, shall admit to record any such writing as to any person whose name is signed thereto, when it shall have been acknowledged by him, or proved

Digitized by Google

by two witnesses as to him in such court, or before such clerk, or his duly qualified deputy, in his office, or in the manner prescribed in sections fifty-two hundred and five to fifty-two hundred and eight, inclusive, and when such writing is signed by a person acting on behalf of another, or in any representative capacity, such acknowledgment before such court or clerk, or his deputy, may be in accordance with the provisions of said sections. (Code 1887, § 2500; 1895-6, p. 542; 1904, p. 319.)

Revisors' Note.—The amendment of 1904 (Acts 1904, p. 319) validated certain admissions to record. This provision has been omitted. See section 8 of this Code.

Acknowledgment.—A certificate of acknowledgment recited that, "at a court held for A. county, February 4, 1867, this deed was produced into court, and, being duly acknowledged and stamped according to law, was therefore ordered to be recorded." Teste: B. C. C. Held, that it showed that court for said county was held on day named, that the deed was produced into court, acknowledged and ordered to be recorded, and was sufficient; and, though the language of the certificate was doubtful, yet as it recites due acknowledgment, and shows an order for recordation, the order must be presumed to have been properly made until the contrary is shown. Peyton v. Carr's Ex'x, 85 Va. 456, 7 S. E. 848.

An instrument purporting to convey land, with a scroll attached to the grantor's name, though the scroll is not recognized in the body of the instrument, will be held to be a deed where the instrument has been acknowledged in court by the grantor as his deed for the purpose of having it recorded. Ashwell v. Ayres, 4 Grat. 283.

This section does not require that the acknowledgment should contain the statement that it was taken in the clerk's office, and the presumption is that the officer did his duty and took it in his office. Clinchfield Coal Corp. v. Steinman, 223 Fed. 743, 1 Va. L. R. N. S. 632.

Proved by witnesses.—It is not necessary for a subscribing witness to a deed to remember the transaction in order to constitute sufficient formal proof. It is sufficient if they can testify that they recognize the signature as their own. Currie v. Donald, 2 Wash. 58; Clarke v. Dunnavant, 10 Leigh 13; 2 Min. (4th Ed.) 953; 2 Barton's C. Pr. (2d Ed.) 1025.

A deed to a married woman, which was proved for recordation by her husband as one of the witnesses to the deed, was invalid as a recorded deed. Johnston v. Slater, 11 Grat. 321.

A person who signs a bond as surety may acknowledge the bond in court, or its execution out of court may be proved by witnesses. Board of Sup'rs of Washington County v. Dunn, 27 Grat. 615. See, also, Calwell v. Com., 17 Grat. 391.

It is not necessary that witnesses should be subscribing witnesses to a deed in order to prove same for recordation. Turner v. Stip, 1 Wash. 322.

Evidence.—A deed acknowledged or proved before a court of one county which conveys land in another county, and is ordered to be certified to the court of the county in which the land lies, and upon the certificate recorded in the general court where deeds were authorized to be recorded, a duly authenticated copy of the deed recorded in the general court is admissible in evidence in the absence of the original. Pollard's Heirs v. Lively, 4 Grat. 73.

The clerk of a county or corporation court has no authority to admit to record a deed which does not convey land lying in his county or corporation, and a copy of such deed, authenticated by the clerk, is not competent evidence in place of the original. Id.

The certificate of the clerk, under this section, cannot be impeached by his own testimony. Clinchfield Coal Corp. v. Steinman, 223 Fed. 743.

Recordation ministerial.—The recordation of a deed is a ministerial act, which act a clerk of a court may be compelled to do by mandamus. The fact that the clerk who admitted the deed to record is trustee in the

Digitized by Google

deed of trust does not affect the validity of the recordation. Paul v. Baugh, 85 Va. 955, 9 S. E. 329. See, also, Dawson v. Thurston, 2 Hen. & M. 132; Manns v. Givens, 7 Leigh 689; Randolph Justices v. Stalnaker, 13 Grat. 523; Carter v. Robinett, 33 Grat. 429; Horsley v. Garth, 2 Grat. 471, 44 Am. Dec. 393; Currie v. Donald, 2 Wash. 58; Corey v. Moore, 86 Va. 721, 11 S. E. 114.

Land in more than one county.—A deed conveying several tracts of land lying in different counties must be recorded in each county in order to be effective as notice to purchasers for value without notice and creditors. Horsley v. Garth, 2 Grat. 472, 44 Am. Dec. 393.

What amounts to recording.—See section 5194 and notes.

Generally.—Acknowledgments and proofs by writing are meant to effect precisely the same purpose; that is, to furnish such evidence of a prior execution of the deed as will authorize the recording. Roanes v. Archer, 4 Leigh 550.

See, also, notes to other sections of this chapter.

For monographic note on Acknowledgments, see Taliaferro v. Pryor, 12 Grat. 277, Va. Rep. Ann.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 73, section 2.

See Gregory's Forms Nos. 342, 343, 344, 345, 346, 347, 348, 377, 545, 546, 551.

Sec. 5205. Certificates of acknowledgment within the United States or its dependencies upon which writings are admitted to record; who may take them.—Such court or clerk shall also admit any such writing to record as to any person whose name is signed thereto upon a certificate of his acknowledgment before the said clerk, or before the clerk of any court of record in this State, or before the clerk of any court without this State, but within the United States, or before a justice, a commissioner in chancery of a court of record or any officer who is authorized to take acknowledgment of deeds in the State or territory in which he acts, or a notary within the United States, or in the Philippine Islands, Porto Rico, or in any territory or other possession or dependency of the United States, written on or annexed to the same, to the following effect, to-wit:

County (or corporation) of ....., to-wit: I, ... clerk (or deputy clerk) of ..... court (or a justice of the peace, or commissioner in chancery of the ..... court, or notary public), for the county (or corporation) aforesaid, in the State (or territory or district) of ....., do certify that E. F. (or E. F. and G. H., and so forth), whose name (or names) is (or are) signed to the writings above (or hereto annexed), bearing date on the ..... day of ....., has (or have) acknowledged the same before me, in my county (or corporation) aforesaid. Given under my hand this ..... day of .....

Or upon the certificate of acknowledgment of such person before any commissioner appointed by the Governor, within the United States, so written or annexed, to the following effect, to-wit:

State (or territory or district) of ....., to-wit: I,..... ....., a commissioner appointed by the Governor of the State of Virginia for the said State (or territory or district) of .....,

Digitized by Google

certify that E. F. (or E. F. and G. H., and so forth), whose name (or names) is (or are) signed to the writing above (or hereto annexed), bearing date on the ..... day of ..... has (or have) acknowledged the same before me in my State (or territory or district) aforesaid. Given under my hand this ..... day of .....

Or upon the certificate of the clerk of any court of record in this State, or the clerk of any court of record out of this State and within the United States, that the said writing was proved as to him by two witnesses before such clerk or before the court of which he is clerk. (Code 1887, § 2501; 1889-90, p. 44; 1895-6, p. 542; 1902-3-4, p. 750.)

Revisors' Note.—This and the two following sections are taken from Acts 1902-3-4, p. 750, again amending section 2501 of the Code of 1887. No material change has been made in the meaning of any of these sections, except in section 5205, to which change attention is particularly called. It consists of the insertion of the words, "or any officer who is authorized to take acknowledgments of deeds in the state or territory in which he acts," found in lines seven and eight of the text. The recognition of such acknowledgments was deemed a safe extension of the statute. See in this connection, Acts 1916, p. 393; Acts 1918, p. 506.

On the subject of the repeal of validating acts, see section 8 of this Code and revisors' note.

Substantial compliance.—The acknowledgment of a deed, to entitle it to recordation, must be before the proper officers, and according to the form prescribed by law; and the certificate thereof in that form, or to that effect, must be written upon or annexed to the deed. The certificate must contain all the requisites of such form, and no omission can be supplied by parol evidence. But a substantial compliance is all that is required. Hurst v. Leckie, 97 Va. 550, 34 S. E. 458, 5 Va. Law Reg. 630; Hockman v. McClanahan, 87 Va. 33, 12 S. E. 230 (overruled by Geil v. Geil, 101 Va. 773, 45 S. E. 325); Virginia Coal & Iron Co. v. Roberson, 88 Va. 116, 13 S. E. 350; Hairston v. Randolph, 12 Leigh 445; Langhorne v. Hobson, 4 Leigh 224; Tod v. Baylor, Id. 498; Siter v. McClanachan, 2 Grat. 293; Saffell v. Orr, 109 Va. 768, 64 S. E. 1057.

It is the policy of the law to uphold certificates of acknowledgment. Technical errors will be disregarded if the law has been reasonably complied with. Geil v. Geil, 101 Va. 773, 45 S. E. 325.

A certificate of acknowledgment that H. J., "whose name appears, signed to the within deed, came this day before me, R. C. W., acting justice for said county, and acknowledged same to be his act and deed, and desired me to certify the same to the clerk of the county court of said county that it may be recorded," is a substantial compliance with the statute. McCormack v. James (D. C.), 36 Fed. 14.

A certificate which identifies the subscriber, specifies the writing subscribed, states the capacity in which subscriber executes the deed, and certifies his acknowledgment thereof, is sufficient. Banner v. Rosser, 96 Va. 238, 31 S. E. 67. See Merchants Bank of Baltimore v. Goddin, 76 Va. 506.

Result of defects.—A variance between the date of the deed and the date of the deed as certified to by a justice before whom the deed was acknowledged is not sufficient to invalidate the recordation of the deed, where the identity of the deed with the one mentioned in the certificate sufficiently appears from other parts of said certificate and the annexation to the deed. Horsley v. Garth, 2 Grat. 474, 44 Am. Dec. 393.

For article holding that certificate need not state where taken, see 4 Va. Law Reg. 342.

Where a deed executed by husband and wife is inoperative as to wife,

Digitized by Google

because her acknowledgment was improperly taken, it is yet good to pass his interest in the property. Siter v. McClanachan, 2 Grat. 280.

The fact that a deed of trust securing purchase money may not have been properly acknowledged and recorded will not affect the priority as between it and another trust deed, where the holder of the latter deed had actual knowledge of the existence of the former. Building & Loan Ass'n v. Blair, 98 Va. 490, 36 S. E. 513.

Officer before whom taken.—It was formerly not essential that the official character of the person taking the acknowledgment should appear in the certificate. It was presumed that it was made before an officer having authority. Harvey v. Borden, 2 Wash. 156; Ware v. Cary, 2 Call 263; Langhorne v. Hobson, 4 Leigh 224. It is otherwise under the present statute. Hurst v. Leckie, 97 Va. 562, 34 S. E. 468, 75 Am. St. Rep. 798.

A deed is properly admitted to record upon the certificate of acknowledgment describing the officer taking it, as aldermen of the city of New York, it being well known that justices of the peace in cities were at that time called aldermen. Welles v. Cole, 6 Grat. 645.

A certificate which is complete in every respect except that the official character of the officer is not specifically stated in the body of the certificate, but which is signed by him with the letters N. P. after his name is sufficient. Worley v. Adams, 111 Va. 796, 69 S. E. 929.

Where a certificate of acknowledgment sets forth in the body thereof that the acknowledgment was made before A., a commissioner in chancery, and it is also subscribed by him as such officer, this description implies that he was a commissioner of a court of record, as there was no other commissioner in chancery in this State. Hurst v. Leckie, 97 Va. 550, 34 S. E. 468, 75 Am. St. Rep. 798, 5 Va. Law Reg. 594, 630.

Under statute which provides for the appointment of deputy clerks of a county court, who may discharge the duties of the clerk, a deputy clerk has authority to take acknowledgments of deeds. Town of Gate City v. Richmond, 97 Va. 337, 33 S. E. 615, 5 Va. Law Reg. 391. The foregoing section now gives deputy expressed authority.

A grantee, trustee, or a beneficiary under a deed cannot take an acknowledgment to it with a view to its registration. A recordation based upon such acknowledgment is without effect as notice under the registry laws. Iron Belt Building & Loan Ass'n v. Groves, 96 Va. 138, 31 S. E. 23, 4 Va. Law Reg. 380; Davis v. Beasley, 75 Va. 491, 495; Clinch River Veneer v. Kurth, 90 Va. 737, 19 S. E. 878; Nicholson v. Gloucester Charity School, 93 Va. 101, 105, 24 S. E. 899; Raines v. Walker, 77 Va. 92; Bowden v. Parrish, 86 Va. 67, 9 S. E. 616, 19 Am. St. Rep. 873; Corey v. Moore, 86 Va. 721, 11 S. E. 114; Barton v. Brent, 87 Va. 385, 13 S. E. 29; Hunton v. Wood, 8 Va. Law Reg. 729, 43 S. E. 186. Compare National Mut. Building & Loan Ass'n v. Blair, 98 Va. 490, 36 S. E. 513; Hunton v. Wood, 101 Va. 54, 43 S. E. 186.

An acknowledgment made by parties to a deed before a notary, who is one of the trustees named in the deed, is invalid, and the fact that the notary did not know that he was named as trustee, and as soon as he learned that fact refused to accept the trust, does not alter or remove the defect in the acknowledgment. Iron Belt Building & Loan Ass'n v. Groves, 96 Va. 138, 31 S. E. 23, 4 Va. Law Reg. 380; Bowden v. Parrish, 86 Va. 67, 9 S. E. 616, 19 Am. St. Rep. 873.

Where a deed of trust to secure a debt to an eleemosynary corporation is acknowledged before an officer who is a member of that corporation, the fact that he is a member of that corporation does not invalidate the acknowledgment. Nicholson v. Gloucester Charity School, 93 Va. 101, 105, 24 S. E. 899.

As to acknowledgments taken before interested party, see 1 Va. Law Reg. 379.

A grantor who is clerk of a court cannot acknowledge the deed before himself for recordation, and if such a deed is recorded it does not give notice to any one. Davis v. Beazley, 75 Va. 491; Leftwich v. Richmond, 100 Va. 164, 40 S. E. 651.

Where a petition to enforce a recorded deed of trust to "Fayette Mauzy," as trustee, showed that the deed was acknowledged before "F. Mauzy, Clerk," the question whether the deed was improperly admitted to

Digitized by Google

record because of the identity of the trustee and the clerk cannot be raised by demurrer, but it is a matter of defense by way of plea or answer. It will not be presumed that an officer was guilty of improper conduct. Bell v. Wood, 94 Va. 677, 27 S. E. 504.

In a trust deed L. Triplett, Jr., was named as trustee. The certificate of acknowledgment began with "I, L. Triplett, Jr., a notary," etc., and signed, "L. Triplett, N. P." Held, that it did not necessarily follow from this that the trustee in the deed and the notary taking the acknowledgment were the same person. Corey v. Moore, 86 Va. 721, 11 S. E. 117. This case distinguished from Davis v. Beazley, 75 Va. 491, and Bowden v. Parrish, 86 Va. 67, 19 Am. St. Rep. 873, in that in those cases the bill charged directly that the acknowledgment of the deed was taken and certified by the trustee named therein; and the commissioner found this fact, and this question being raised in the proper manner, and within the proper time, the appellate court held the acknowledgment was invalid; while in the present case, the parties complaining, after being guilty of gross laches, and under circumstances which put them into the attitude of acquiescing in the assertion of rights adverse to them, then, after two years had elapsed from the commissioner's report, they for the first time complain, and present a case so defective that it could under no circumstances be entertained. Corey v. Moore, 86 Va. 721, 11 S. E. 114.

In case of deeds made by nonresident it is sufficient for a recordation thereof, that there be a certificate of the clerk of a district court of the United States that the grantor personally appeared in court and acknowledged the deed; this being accompanied by a certificate of the judge of the court that the clerk was then the officer he professed to be. Shutte v. Thompson, 15 Wall. 151, 21 L. Ed. 123.

Objection made for the first time in appellate court.—Where no objection is made in the pleading or in the court below to a deed of trust on the ground that it was void because the acknowledgments were taken before a notary who was agent for the grantee, it cannot be considered in the appellate court. Shenandoah Valley R. Co. v. Dunlop, 86 Va. 349, 10 S. E. 239.

Impeaching certificate.—The act of an officer in taking an acknowledgment of a deed is judicial in its character, and cannot be impeached collaterally. He determines whether the person whose name is signed to the deed is the actual grantor, and whether he truly acknowledges same as his act and deed, and after these points have been determined and certified by him in conformity to law, and the deed duly recorded, the proceeding has all the force and conclusiveness of a judgment of a court of record. It cannot be impeached, even directly, except in a court of equity, and not there, except upon the ground of fraud, or upon some other ground which reaches the conscience of the party. Murrell v. Diggs, 84 Va. 900, 6 S. E. 461, 10 Am. St. Rep. 893; Carper v. McDowell, 5 Grat. 212; Harkins v. Forsyth, 11 Leigh 294; Davis v. Beazley, 75 Va. 491; First Nat. Bank v. Paul, 75 Va. 594, 40 Am. Rep. 740; McCauley v. Grim, 115 Va. 610, 79 S. E. 1041.

The certificate of a clerk of the acknowledgment of a deed in his office by the parties thereto is conclusive, and cannot be impeached by extrinsic evidence, in a collateral proceeding, that the deed was in fact acknowledged out of the clerk's office. Carper v. McDowell, 5 Grat. 212.

In the absence of fraud, a notary's certificate of acknowledgment is deemed conclusive. Burson v. Andes, 83 Va. 445, 8 S. E. 249.

Validity cannot be questioned by party making acknowledgment.—A person who signs, seals, and delivers an instrument as his deed will never be heard to question its validity upon the ground that it was never acknowledged by him nor proved at the time of the delivery. It is the sealing and delivering that gives efficacy to the deed, not proof of the execution. And this principle applies to all bonds, whether executed by public officers or private parties, unless, indeed, there is some statute making acknowledgment or proof in court essential to the validity of the instrument. Board of Sup'rs of Washington County v. Dunn, 27 Grat. 616.

A deed of an uneducated deaf and dumb man, duly executed and acknowledged before a justice, cannot be set aside where it was shown that

Digitized by Google

the writing was explained to him and he was believed to understand it, and there was no fraud in the transaction. Morrison v. Morrison, 27 Grat. 190.

A notary who takes an acknowledgment will not be permitted to falsify same. Hockman v. McClanahan, 87 Va. 33, 12 S. E. 230; First Nat. Bank v. Paul, 75 Va. 601; Harkins v. Foysythe, 11 Leigh 301; Hairston v. Randolphs, 12 Leigh 459. See, also, note entitled "Officer cannot contradict certificate," under section 5211.

Acknowledgment not necessary between the parties.—A deed not acknowledged or not certified according to law, though actually admitted to record, cannot be read as evidence as a recorded deed, but is good between the parties. Raines v. Walker, 77 Va. 92.

Acknowledgment not conclusive.—The acknowledgment of a deed before two justices by the grantor, and their certificate of acknowledgment, is not conclusive evidence that the execution of the deed is complete and perfect. Hutchison v. Rust, 2 Grat. 394.

Acknowledgment may be complete execution.—Where a deed is acknowledged and certified to by the proper officers, by a grantor who retains possession of it, whether the acknowledgment is a complete execution of the deed depends upon the intention of the grantor at the time the acknowledgment was made, and his intention may be shown by evidence of statements made by him before the acknowledgment was taken. Hutchison v. Rust, 2 Grat. 394.

As to sufficiency of acknowledgments under ancient statutes, see Jennings & Robinson v. Attorney General, 4 Hen. & M. 424; Miller v. Pendleton, Id. 436; Turner v. Stip, 1 Wash. 412; Lockridge v. Carlisle, 2 Leigh 186; Roanes v. Archer, 4 Leigh 550; Cales v. Miller, 8 Grat. 6; Hassler's Lessee v. King, 9 Grat. 120; Smith v. Chapman, 10 Grat. 445; Shue v. Turk, 15 Grat. 263.

Validating acts.—Numerous validating acts on the subject of the acknowledgment and recordation of deeds and other writings have been passed since the Code of 1887. For the most part these have been omitted from the present Code, as to which see section 8 and revisors' note; section 5209.

Generally.—Deeds of corporations; how to be executed and acknowledged, sections 5208, 5207; notaries required to affix to certificate of acknowledgment the date when their terms of office shall expire, section 5210; women notaries changing name, section 5210; appointment of and effect of acknowledgments before commissioners, section 2853.

For discussion of acknowledgments, see 2 Barton's C. Pr. (2d Ed.). p. 1023 et seq.; 2 Min. (4th Ed.), p. 953 et seq.

For note as to acknowledgment of corporate deeds and contracts, see 11 Va. Law Reg. 617.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 73, section 3.

See Gregory's Forms Nos. 342, 343, 344, 345, 346, 347, 348, 377, 515, 516, 518, 521, 522, 524, 525, 526, 527, 545, 546, 551, 554, 555, 556, 557, 558, 562, 563, 564, 565, 570.

Sec. 5206. Acknowledgments outside of the United States and its dependencies.—Such court or clerk shall also admit any such writing to record as to any person whose name is signed thereto upon the certificate, under the official seal of any ambassador, minister plenipotentiary, minister resident, charge d'affaires, consul-general, consul, vice-consul, or commercial agent appointed by the government of the United States to any foreign country, or of the proper officer of any court of record of such country, or of the mayor or other chief magistrate of any city, town, or corporation therein, that the said writing was acknowledged by such person or proved as to him by two witnesses before any person having such

Digitized by Google

appointment, or before such court, mayor, or chief magistrate. (Id.)

Revisors' Note.—See revisors' note to the preceding section.

Certificates of acknowledgment to deeds and other writings taken before certain officials in foreign countries who failed to affix their official seals, validated. Acts 1918, chapter 54, p. 108.

Certificates of acknowledgment taken before notaries public in foreign countries validated. Acts 1918, chapter 342, p. 506.

See notes to preceding section.

Sec. 5207. Acknowledgments on behalf of corporations and others.—Where any such writing purports to have been signed in behalf or by authority of any person or corporation, or in any representative capacity whatsoever, the certificate of the acknowledgment by the person so signing the said writing shall be sufficient for the purposes of this and the three preceding sections, and for the admission of said writing to record as to the person or corporation on whose behalf it is signed, or as to the representative character of the person so signing the same, as the case may be, without expressing that such acknowledgment was in behalf or by authority of such other person or corporation, or was in a representative capacity. In the case of a writing signed in behalf or by authority of any person or corporation, or in any representative capacity, a certificate to the following effect shall be sufficient:

State (or territory or district) or ....., county (or corporation) of ....., to-wit: I, ..., a ..... (here insert the official title of the person certifying the acknowledgment) in and for the State (or territory or district) and county (or corporation) aforesaid, do certify that ..... (here insert the name or names of the persons signing the writing on behalf of the person or corporation, or the name of the person signing the writing in a representative capacity), whose name (or names) is (or are) signed to the writing above, bearing date on the ..... day of ....., has (or have) acknowledged the same before me in my county (or corporation) aforesaid. Given under my hand this ..... day of .....

Where authority is given in section fifty-two hundred and four or fifty-two hundred and five to the clerk of a court in or out of this State, but within the United States, such authority may be exercised by his duly qualified deputy. (Id.)

Revisors' Note.—See revisors" note to section 5205.

See notes to section 5205.

Sec. 5208. Deeds of corporations; how to be executed and acknowledged.—All deeds hereafter made by corporations shall be signed by the president, acting president, or vice-president of such corporation, or by such other person as may be authorized by the board of directors of such corporation to sign the same, who shall affix thereto the seal of the corporation, and if such deed is

Digitized by Google

to be recorded, shall acknowledge the same in the manner provided by section fifty-two hundred and seven. (Id.)

Revisors' Note.—This section is intended as an adaptation in part of the act of March 12, 1912 (Acts 1912, p. 273), but may be regarded as substantially new. It was deemed best, instead of authorizing an irregular way of executing deeds by corporations in the future, to prescribe a method by which the deeds may be executed in the future. The validating part of the act has been omitted, as to which omission see section 8 of this Code, and revisors' note.

The "Id." reference at the end of this section should be stricken out.

Sec. 5209. Notaries or other officers who hold stock in companies may take acknowledgments to deeds or other writings which said companies execute, if officers are not otherwise interested.—No acknowledgment heretofore taken to any deed or any writing executed by a company, or for the benefit of a company, shall be held to be invalid by reason of the said acknowledgment having been taken by a notary public or other officer duly authorized to take acknowledgments who, at the time of taking said acknowledgment, was a stockholder, an officer, or both, in the company which executed said deed or writing, or for the benefit of which said deed or writing was executed, but who was not otherwise interested in the property conveyed or disposed of by said deed or writing; and such deed or other writing, and the recordation thereof, shall be valid in all respects as if this section had been in force when it was executed. And hereafter any notary public or other officer duly authorized to take acknowledgments may take the acknowledgment to any deed or other writing executed by a company, or for the benefit of a company, although he may be a stockholder in such company: provided, he is not also at the time such an officer of said company that would have to unite in executing such deed or writing, or is not otherwise interested in the property conveyed or disposed of thereby. (1891-2, p. 233; 1893-4, p. 580; 1902-3-4, pp. 518, 829.)

See Merchants Bank v. Ballou, 98 Va. 112, 32 S. E. 481, in which it was held that section 2501b of Pollard's Code (similar to this section), could not affect rights which were vested at the date of the passage of the act.

Sec. 5210. Requiring notaries to affix to certificates of acknowledgment taken by them upon writings which are admitted to record, the date when their term of office shall expire; women notaries changing name.—Upon every certificate of acknowledgment taken by a notary within this State to any writing there shall be written in, or annexed to, such certificate the words following: "My term of office expires on the ..... day of .....," or words plainly showing when the term of such notary shall expire.

In the case of any woman duly appointed a notary public in this State who shall thereafter legally change her name, by marriage or otherwise, during her term of office as such notary, such notary, after such change of name as aforesaid, when taking ac-

Digitized by Google

knowledgments or doing other acts as such notary, shall write or have written or printed in, or annexed to, such certificate the words following: "I was commissioned notary as .....," or words plainly showing the name in which such commission as notary was issued to such woman.

Any notary who shall fail to comply with the foregoing provisions of this section shall forfeit not less than five nor more than twenty dollars, but any such failure shall not invalidate the certificate of acknowledgment. (1901-2, p. 147; 1910, p. 119.)

Sec. 5211. Conveyance from husband and wife; effect on right of wife.—When a husband and his wife have signed and delivered a writing purporting to convey any estate, real or personal, such writing, whether admitted to record or not, shall operate to convey from the wife her right of dower in the real estate embraced therein, and pass from her and her representatives all right, title and interest of every nature which at the date of such writing she may have in any estate conveyed thereby as effectually as if she were at the said date an unmarried woman. If the writing be a deed conveying the husband's land, no covenant or warranty therein on behalf of the wife shall operate to bind her any further than to convey her interest in such land, unless it be expressly stated that she enters into such covenant or warranty for the purpose of binding herself personally. (Code 1887, § 2502; 1889-90, p. 193.)

Revisors' Note.—This section makes material changes in the law as it existed before the revision. Formerly, the writing had to be admitted to record "as to the husband as well as the wife" in order to operate as a conveyance on her part (Building Co. v. Fray, 96 Va. 559, 32 S. E. 58); now, the execution and delivery of the writing is sufficient to convey all interest that she has in the property. The last sentence of the former section as amended was not very clear, and as statutory separate estates have been abolished, the revised section puts in another form what seemed to be the intent as to the effect of the wife's uniting in the covenants and warranties in her husband's deed. It will be further observed that the revised section omits contracts to convey. The amendment of 1889-90 inserting the provision about contracts did not make the residue of the section harmonize with the provision about contracts, as it made the contract for a conveyance operate as a conveyance, which could hardly have been intended, unless the terms of the contract had been complied with. Inasmuch as section 5134 makes the contracts of a married woman as obligatory upon her as the contracts of a man, it was deemed unnecessary to retain this provision. The words "or any writing authorizing another to convey, or contract to convey any such estate," have also been stricken out, as this provision is amply taken care of by section 5215. Formerly, the section contained a provision ALLOWING such writing to be admitted to record as to the husband and wife. Under section 5205, et seq., the clerk is to admit to record the writings therein mentioned as to ANY PERSON, which would include, of course, a married woman.

Privy examinations.—Under Code 1849, chapter 121, section 4, Code 1860, chapter 121, section 4, and Code 1873, chapter 117, section 4, it was necessary for the officer taking the acknowledgment to (1) "examine the wife privily and apart from her husband"; (2) the writing must be fully explained to her; (3) she must acknowledge the same as her act, and

Digitized by Google

(4) declare that she had executed it willingly, and (5) that she does not wish to retract it; (6) such privy examination, acknowledgment, and declaration to be thereupon recorded, etc.

Privy examinations were abolished by the Code of 1887, section 2502, which went into effect May 1, 1888; and by an act approved February 29, 1892 (Acts 1891-2, p. 798), taking effect from its passage, defective certificates of acknowledgments to deeds of married women were cured under certain conditions.

From May 1, 1888, to time of present revision.—See revisors' note above.

Present law.—The present Code makes material changes in the former statute, as to which see revisors' note above.

For former decisions as to acknowledgments by married women, especially as to their examination privily and apart from their husbands, see, as to act of 1748, Harvey v. Borden, 2 Wash. 156; Nelson v. Harwood. 3 Call 393. As to act of 1785, chapter 62, Currie v. Page, 2 Leigh 617; as to act of 1792, Ware v. Cary, 2 Call 263; Langhorne v. Hobson, 4 Leigh 224; Tod v. Baylor, Id. 508; Bryan v. Stump, 8 Grat. 241, 56 Am. Dec. 139. As to 1 Rev. Code, chapter 99, section 15, Sexton v. Pickering, 3 Rand. 468; Shanks v. Lancaster, 5 Grat. 111, 50 Am. Dec. 108; Grove v. Zumbro, 14 Grat. 501.

See, generally, Wynn v. Lovthan's Adm'r, 86 Va. 964, 11 S. E. 879; First Nat. Bank v. Paul, 75 Va. 600, 40 Am. Rep. 740; Healy v. Rowan, 5 Grat. 414, 52 Am. Dec. 94; Rorer's Heirs v. Roanoke Nat. Bank, 83 Va. 610, 4 S. E. 820; Siter v. McClanachan, 2 Grat. 280; Sewall v. Haymaker, 127 U. S. 719, 8 Sup. Ct. 1348, 32 L. Ed. 299; Geil v. Geil, 101 Va. 773, 45 S. E. 325.

As to certificate showing examination of wife "privily and apart," etc., Harvey v. Pecks, 1 Munf. 518; Scott v. Gibbon, 5 Munf. 90.

As to the writing being fully explained to her, Hairston v. Randolphs, 12 Leigh 458; Bolling v. Teel, 76 Va. 494; Virginia Coal & Iron Co. v. Roberson, 88 Va. 116, 13 S. E. 350.

As to her not wishing to retract, Grove v. Zumbro, 14 Grat. 501.

And certificate must show that the examination and explanation preceded acknowledgment, etc. Hockman v. McClanahan, 87 Va. 33, 12 S. E. 230, overruled in Geil v. Geil, 101 Va. 773, 45 S. E. 325.

Privy examination, etc., may take place after deed of husband and wife has been first recorded as to husband. Langborne v. Hobson, 4 Leigh 224.

The certificate of a clerk that a deed was acknowledged in court by a husband and wife, and ordered to be recorded, was not sufficient to make it her deed. Healy v. Rowan, 5 Grat. 414, 52 Am. Dec. 94.

Officer cannot contradict certificate.—Evidence of the officers who took the acknowledgment is inadmissible to contradict the facts to which they have certified. Harkins v. Forsyth, 11 Leigh 294, and note thereto, Va. Rep. Anno.; Hairston v. Randolphs, 12 Leigh 459; Carper v. McDowell, 5 Grat. 237, and note thereto, Va. Rep. Anno.; Johnston v. Slater, 11 Grat. 321, and note thereto, Va. Rep. Anno.; Taliaferro v. Pryor, 12 Grat. 286; Grove v. Zumbro, 14 Grat. 515; Price v. Holland, 1 Pat. & H. 299; Davis v. Beazley, 75 Va. 493; First Nat. Bank v. Paul, Id. 601; Burson v. Andes, 83 Va. 449, 8 S. E. 249; Murrell v. Diggs, 84 Va. 905, 6 S. E. 461, 10 Am. St. Rep. 893; Hockman v. McClanahan, 87 Va. 39, 12 S. E. 230; Hurst v. Leckie, 97 Va. 562, 24 S. E. 464, 75 Am. St. Rep. 798.

Parol evidence is not admissible to prove or disprove the privy examination of a wife, or in any manner affect the certificate of such examination. First Nat. Bank v. Paul, 75 Va. 600.

Deed otherwise void can derive no validity from privy examination, acknowledgment, etc. Deed void for duress, see Countz v. Geiger, 1 Call 190; deed to husband void on account of coverture, Switzer v. Switzer, 26 Grat. 574; void on account of infancy of wife, Thomas v. Gammel, 6 Leigh 9; but if she accepts part of purchase money after she becomes sui juris she will be held to have ratified her contract, Darraugh v. Blackford, 84 Va. 509, 5 S. E. 542.

Deed of partition.—Where a brother and sister jointly owned land, exe-

Digitized by Google

cuted a deed of partition, in which their respective wife and husband joined, and under which they have each held in severalty that portion assigned to them in the deed of partition, the deed of partition is valid and binding on the parties, although no acknowledgments of the privy examination of the wives are attached. Bryan v. Stump, 8 Grat. 241, 56 Am. Dec. 139.

Defective deed may be good executory contract.—An acknowledgment to a deed by a married woman on January 15, 1887, which fails to show that she declared that she willingly executed the same, or that she acknowledged said writing to be her act, is void. While such a deed may be invalid to pass the legal title to the land, it may be a good executory contract, enforceable in equity. Clinch River Veneer Co. v. Kurth, 90 Va. 737, 19 S. E. 878 (overruled in Geil v. Geil, 101 Va. 773, 45 S. E. 325). See, also, Virginia Coal & Iron Co. v. Roberson, 88 Va. 116, 13 S. E. 350. See, also, In re Anderson (D. C.), 23 Fed. 488.

A deed defectively executed prior to April 4, 1877, cannot be construed to be a contract charging the property of a married woman, because before that time, during coverture, she could not enter into contracts. Wynn v. Louthan's Adm'r, 86 Va. 946, 11 S. E. 879.

Where under a deed of marriage settlement a wife had a power of appointment in the event that she died without issue, provided she executed the power by a writing under her hand and seal, and where she afterwards united with her husband in a deed by which for valuable consideration she relinquishes her right in the land and dies without issue, held that though she was not privily examined as to her execution of the deed, yet the same being under her hand and seal in writing, as prescribed by the instrument vesting the power in her, she thereby destroyed her power of appointment. Hume v. Hord, 5 Grat. 374.

Mistake of clerk.—Where an acknowledgment of a wife to a deed is made in proper form as prescribed by Code 1873, the failure of the clerk in recording the deed to properly transcribe her acknowledgment does not, as between the parties to the deed, invalidate the deed. Thomas v. Stuart's Ex'r, 91 Va. 694, 2 S. E. 511.

Lost deed.—Where a deed executed by A. and his wife was lost before recordation, and B. executed a deed reconveying the land back to A., in which deed it was recited that the deed from A. and his wife to B. had been lost, and he released, granted, and forever quitclaimed to A. all claim in the land, as though the lost deed had never been executed, held, that the subsequent recordation of the lost deed carried no title; that the title to the land stood in A. and his wife, the same as if the lost deed had never been executed; and that A.'s wife and her children were entitled to that portion of the land that she owned at the time the lost deed was executed. Rorer's Heirs v. Roanoke Nat. Bank, 83 Va. 610, 4 S. E. 820. As to this, see present statute and revisors' note above.

Wife's liability for covenants, &c.—The effect of the amendment to this section, which provided that such "writing shall not operate any further upon the wife or her separate estate by means of any covenant or warranty contained therein, which is not made with reference to her separate estate as a source of credit, or if it relates to her said right of dower, or to any estate or interest conveyed other than her own, is not made with reference to her separate estate as a source of credit," was not the enlargement of the scope of the statute by reason of the married woman's act, but a restriction so as not to affect the separate estate unless the covenants in the deed were made with reference to her separate estate as a source of credit. Land v. Shipp, 98 Va. 284, 33 S. E. 393, 50 L. R. A 560, 6 Va. Law Reg. 158.

This section as amended, applied in Augusta Nat. Bank v. Beard's Ex'r, 100 Va. 687, 42 S. E. 694, citing Justis v. English, 30 Grat. 579.

The effect of the wife's uniting with her husband in the conveyance of his property is simply to relinquish her contingent right of dower in those lands conveyed. Corr v. Porter, 33 Grat. 278. If the wife does not unite with her husband in a deed conveying his land, she is not barred of her dower. Gardner v. Gardner, 98 Va. 525, 36 S. E. 985.

Where a wife unites with her husband in a conveyance to a trustee

Digitized by Google

to secure a debt by the husband to his wife, and subsequently the wife and husband unite in a general warranty deed conveying the same and other property to secure certain debts, the wife, by uniting in the second deed, does not relinquish her lien given under the first deed. Augusta Nat. Bank v. Beard's Ex'r, 100 Va. 687, 42 S. E. 694.

As the law stood in 1893, a deed from a commissioner in which a married woman united for the purpose of conveying her contingent right of dower, but in which her husband did not unite, was not sufficient to convey her contingent right, although the deed was signed and acknowledged by her and admitted to record as to her. And the fact that she has received the commuted value of her contingent dower right did not bar her from a claim against the purchaser after death of husband. The law favors dower, and will not, as a rule, bar it by anything short of the statutory requirements for that purpose. Lewis v. Apperson, 103 Va. 624, 49 S. E. 624. See section 5135.

The married woman's act (section 2286a of Pollard's Code, 1904) providing that a married woman may contract and be contracted with in the same manner as if single, did not by implication repeal Code (1887) 2502, nor was it affected by the repeal of section 2295 of the Code of 1887, relating to liability of separate estates of married women for their contracts. Augusta Nat. Bank v. Beard's Ex'r, 100 Va. 687, 42 S. E. 694. See, also, Dunn v. Stowers, 104 Va. 290, 51 S. E. 366.

For present married women's statutes, see chapter 207.

Generally.—For act validating conveyance of lands made under power of attorney by married woman jointly with her husband, see section 2298b of Pollard's Code (1904).

As to passing title when wife is insane, see section 5346.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 73, sections 4, 6.

Sec. 5212. Where original is lost how copy admitted to record; when copies of certain writings recorded in courts, etc., of West Virginia.—If it be proper for such writing to be admitted to record in the court of another county or corporation, and the same, before being so admitted to record in the court last mentioned, be lost or mislaid, on affidavit of this fact, such court, or the clerk thereof, may admit to record a copy of such writing from the records of another court, certified by its clerk; and the copy so admitted shall have the same effect as if the original had been admitted to record at the time the copy was admitted. And in any case where any such writing shall have been duly admitted to record, before the formation of the State of West Virginia, in any county or corporation now within the limits of that State, and such writing, after diligent search therefor, cannot be found, upon affidavit of that fact by any party in interest, his agent, or attorney, any court of this State, in which or the clerk's office of which the original might be recorded, or the clerk of any such court, may admit to record a copy of such writing from the records of the court of West Virginia, or the clerk's office of such court wherein the same is recorded, duly certified by the clerk thereof, under the seal of the said court; and the admission to record of such copy shall have the same effect as the admission to record of the original. (Code 1887, § 2506.)

Where the records kept in the clerk's office of a court have been destroyed by fire, and a paper purporting to be an official copy of a will recorded therein is certified to by former clerk of the court, and has been admitted to record under Acts February 19, 1840 (see Acts, chapter 55,

Digitized by Google

p. 47), the act of the clerk admitting the paper to record is conclusive as to whether the paper is what it purports to be; and evidence that the paper was not certified by the clerk whose name is signed thereto, but by some one not authorized to make the certificate, is not admissible in a collateral proceeding. Taliaferro v. Pryor, 12 Grat. 277.

Lien on land when Monroe county was a part of Virginia and judgment obtained there and certified to Bath county continued a lien in Bath county although Monroe county was a part of West Virginia. Gatewood's Admr. v. Goode, 23 Grat. 880.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 73, section 8.

Sec. 5213. Writings not duly acknowledged, how copied for preservation.—If any writing which it is lawful for a clerk to admit to record, on proper acknowledgment or proof, has been or shall be lodged in his office, and has remained or shall remain therein six months without being acknowledged or proved, so that it can be duly admitted to record, the clerk shall, for the preservation thereof, when required by any person interested, copy the same in a book separate from those in which writings so admitted are recorded, and keep an index to such book, as in the case of writings duly admitted to record. (Code 1887, § 2508.)

Sec. 5214. Clerks to admit to record rosters of camps of Confederate veterans.—The clerk of the corporation court of any city or the circuit court of any county, when requested so to do by the duly organized camp of Confederate veterans located in said city or county, shall admit to record in the clerk's office of said city or county a full and complete roster of said camp, giving the names of the members of said camp from its beginning, and the company, regiment and battalion or battery to which each member belonged; also to record the name or names of such former residents of said city or county as enlisted or served in the Confederate army or navy in another State or county, or who served in said army or navy and died either in said service or since, stating in each case the rank, company, regiment or other service of such person or persons, which said roster or other list of names shall be duly certified as being correct by the commander of said camp, by direction of the camp, with the seal thereof affixed, duly attested by the adjutant. No fee shall be allowed or paid to the clerk for his services. (1910, p. 392.)

Sec. 5215. Appointment of attorney in fact by married woman; effect of writing executed by such attorney.—A married woman, whether a resident of this State or not, may, in conjunction with her husband, by power of attorney duly executed, acknowledged, and certified, as to each of them, as prescribed in section fifty-two hundred and five or fifty-two hundred and six, appoint an attorney in fact, for her, and in her name, to execute and acknowledge for record, any deed or other writing which she might execute and acknowledge in conjunction with her husband; and every deed or other writing so executed and acknowledged by such attorney in

Digitized by Google

fact (in pursuance of said power of attorney while the same remains in force), shall be valid and effectual, in all respects, to convey the interest and title of such married woman in and to the real estate thereby conveyed, and to bar her right of dower therein. (Code 1887, § 2509.)

Revisors' Note.—This section now conforms to section 5211.

Sec. 5216. Partition, and recovery, of land, and assignment of dower, to be recorded, and indexed.—The clerk of the court wherein there is any partition of, or assignment of dower in, land under any order, or any recovery of land under judgment or decree, shall transmit to the clerk of the court of each county or corporation wherein such land is, or if the land lies within the corporate limits of the city of Richmond, to the clerk of the Chancery Court of the said city, a copy of such order, judgment, or decree, and of such partition or assignment, and of the order confirming the same, and along therewith such description of the land as may appear in the papers of the cause. And the clerk of the court of such county or corporation, or of the said chancery court, as the case may be, shall record the same in his deed book, and index it in the name of the person who had the land before, and also in the name of the person who became entitled under such partition, assignment, or recovery. (Code 1887, § 2510.)

A decree in a suit brought by a judgment creditor against his debtor establishing a lost deed by which land had been conveyed to the debtor, and to enforce his judgment against the land, is a decree for the recovery of lands within this section. Clinchfield Coal Corporation v. Steinman, 213 Fed. 557.

The index is as much a part of the record as the decree itself. Clinchfield Coal Corp. v. Steinman, 213 Fed. 557.

The more common signification of "recovery" is the final adjudication that the title or right of possession was before acquired, and of right belongs, by virtue of the previous acquisition, to the party in whose favor the decree is made. Clinchfield Coal Corp. v. Steinman, 213 Fed. 557.

An index of a recovery under this section as follows: "Fleming, Philip and wife v. (Decree) James A. Collier, page No. 19," "Collier James A. from deed P. Fleming, page No. 19," held sufficient under this section. Clinchfield Coal Corp. v. Steinman, 213 Fed. 557.

A decree of partition vests the legal title. See section 5282.

Sec. 5217. How city or town lots laid out; plat.—Hereafter every owner or proprietor of any tract of land who has heretofore subdivided or shall hereafter sub-divide the same into three or more parts for the purpose of laying out any town or city, or any addition thereto, or any part thereof or suburban lots, shall cause a plat of such sub-division with references to known or permanent monuments to be made, which shall accurately describe all the subdivisions of such tracts or parcels of lands, and giving the dimensions and length and breadth thereof and the breadth and courses of all the streets and alleys established therein. Descriptions of lots or parcels of lands in such sub-divisions, according to the number and designation thereof on said plat, contained in conveyances or for the purpose of taxation and copies of such plats or extracts

Digitized by Google

therefrom, properly attested by the clerk in whose office said plats are recorded, shall have the same force and effect as evidence that copies of deeds now have, and shall be deemed good and valid for all intents and purposes. (1887-8, p. 553.)

Revisors' Note.—For an act relating to cities of not less than 60,000 nor more than 110,000 inhabitants, see Acts 1918, p. 765.

Sec. 5218. What plat to contain; acknowledgment; recordation.—Every such plat shall contain a statement to the effect that the above or foregoing sub-division of (here insert a correct description of the land or parcel sub-divided) as appears in this plat is with the free consent and in accordance with the desire of the undersigned owners and proprietors, which shall be signed by the owners and proprietors and shall be duly acknowledged before some officer authorized to take acknowledgments of deeds, and when thus executed and acknowledged said plat shall be filed for record and be recorded in the office of the clerk of the proper county or corporation court. (Id.)

Sec. 5219. Effect of recording plat.—The acknowledgment and recording of such plat shall operate to create a public easement or right of passage over such portion of the premises platted as is on such plat set apart for streets or other public use, and shall be equivalent to a deed in fee simple to such portion thereof as is therein dedicated to charitable, religious, or educational purposes; but nothing herein contained shall prevent the persons who set apart such lands for streets and alleys, their heirs and assigns, where otherwise they have the right and power to erect, put down, and maintain gas, water, and electric works, pipes, wires, and fixtures to erect, put down, and maintain the same along or under the portions so set apart. They shall not, however, obstruct or hinder passage over such streets or alleys further than is reasonably necessary while laying down, erecting, or repairing such works, pipes, wires, and fixtures. (Id.; 1889-90, p. 35.)

Extent and effect of dedication.—Purchasers of lots shown on a plat recorded under this section acquire vested easements in all the streets and alleys laid out and designated on the plat and may force dedication thereof. Sipe v. Alley, 117 Va. 819, 86 S. E. 122. Editorial comment, 1 Va. L. R. N. S. 547.

When the intention of the owner of land to dedicate it to a public street has been unequivocally manifested and there has been an acceptance by competent authority, the dedication is complete; and when it is complete it is irrevocable. Basic City v. Bell, 114 Va. 157, 76 S. E. 336, 18 Va. L. Reg. 733 and note.

While streets of an incorporated city or town dedicated under this section may thereby become public highways without any acceptance by the public, they do not become county roads until accepted or established as such by the county court. Port Norfolk Land Co. v. Portsmouth St. Ry. Co., 5 Va. Law Reg. 477.

The act from which this, the two preceding and the three following sections were taken cannot be construed to prohibit the creation of new or additional ways or easements not shown on the original plat. The manifest purpose and policy is to prevent a diminution of the public uses

Digitized by Google

and conveniences guaranteed in the original plan of subdivision. Daniel v. Doughty, 120 Va. 853, 92 S. E. 848.

Bridge on property.—Where a plat of lots showing streets, alleys, etc., and a bridge over a river connecting the lots with an adjacent town has been recorded as provided by this section, and lots have been sold with reference to the plat, and purchasers have relied upon the use of the bridge in purchasing, and it has been thrown open to the public the law implies a grant of the bridge as an easement to the property conveyed Oney v. West Buena Vista Land Co., 104 Va. 580, 52 S. E. 343.

Streets and alleys not opened.—Though a plat may be admitted to record and constitute a dedication, yet if it is never acted upon by opening the streets and alleys it would be, so far as the streets and alleys are concerned, inchoate merely and may be abrogated by subsequent events. Chambers v. Roanoke I. Ass'n, 111 Va. 254, 68 S. E. 980.

Fee in streets.—Upon the recordation of a plat in the manner prescribed by this section, the fee in the streets marked thereon remain in the dedicator, and purchasers of abutting lots acquire title to the middle of the street, subject in both cases to a right of passage in the public. Cottrell Real Estate, Ins. & Loan Co. v. Hampton Roads Ry. & Electric Co., 7 Va. Law Reg. 476, Circuit Court of Warwick Co.

Easements and additional burdens.—The primary purpose of a county road being a right of passage, an electric passenger railway, conducted solely for that purpose, uses the highway for a purpose only promotive of the object of its original dedication, and is not an additional burden thereon. Cottrell Real Estate, Ins. & Loan Co. v. Hampton Roads Ry. & Electric Co., 7 Va. Law Reg. 476.

While a local street railroad in such streets is not an additional servitude, a railway through such streets, extending from a neighboring city or town more than twenty miles distant, passing through three counties, having the right to transport freight, passengers, and baggage, must be classed as a commercial railroad, and is an additional servitude on such streets, for which the owner of the fee is entitled to compensation. Port Norfolk Land Co. v. Portsmouth St. Ry. Co., 5 Va. L. Reg. 477.

The mere dedication of certain rights of way marked "street" on a recorded plat will not subject such rights of way to all the easements of streets in cities and towns, unless public necessity requires it. Cottrell Real Estate & Ins. Co. v. Hampton Roads Ry. & Electric Co., 7 Va. Law Reg. 476, Circuit Court of Warwick Co.

A street railroad company has no right to occupy such streets with its tracks solely by virtue of authority in its charter thus to occupy county roads, subject to such conditions, limitations, and restrictions as may be imposed by the county court of the county whose road is used. Port Norfolk Land Co. v. Portsmouth St. Ry. Co., 5 Va. Law Reg. 477.

Repairs to property.—The grantor or dedicator of an easement is generally under no obligation to make repairs. This duty rests upon those who use the easement. Oney v. West Buena Vista Land Co., 104 Va. 580, 52 S. E. 343.

Discontinuance, vacation or abandonment of easement.—The burden of showing a discontinuance, vacation or abandonment of a street which has been dedicated to the public is upon the party who asserts it. Basic City v. Bell, 114 Va. 157, 76 S. E. 336, 18 Va. L. Reg. 733 and note. For discussion of the effect of non-use of a dedicated street, see this case.

When a street has been dedicated the burden of showing an abandonment is upon the party who asserts it. Sipe v. Alley, 117 Va. 819, 86 S. E. 122. Editorial comment, 1 Va. L. R. N. S. 547. For what constitutes abandonment, see this case.

The failure of lot owners who are entitled to the use of a bridge as an easement to their lots to keep the bridge in repair for an unreasonable length of time will amount to an abandonment of the easement. Oney v. Buena Vista Land Co., 104 Va. 580, 52 S. E. 343. See this case as to when the users will be given a reasonable time to repair.

Sec. 5220. Alteration and vacation of streets.—Streets and alleys so platted and laid out, or which have been platted or laid out un-

Digitized by Google

der any plat heretofore recorded, may be altered or vacated in the manner provided by law for the alteration or discontinuance of highways. (1887-8, p. 553.)

Sec. 5221. How plat vacated in whole or in part; enclosing streets, alleys, etc.—Any such plat may be vacated by the proprietors thereof at any time before the sale of any lot therein by a written instrument, declaring the same to be vacated, duly executed, acknowledged or proved and recorded in the same office with the plat to be vacated, and the execution and recording of such writing shall operate to destroy the force and effect of the recording of the plat so vacated and to divest all public rights in the streets, alleys, commons, and public grounds laid out or described in such plat. And in cases where any lots have been sold the plat may be vacated as herein provided by all the owners of lots in such plat joining in the execution of the writing vacating the same.

Any part of a plat may be vacated under the provisions and subject to the conditions of this and the preceding section, if such vacating does not abridge or destroy any of the rights or privileges of other proprietors in said plat; but nothing contained in this section shall authorize the closing or obstructing of any public highways laid out according to law. When any part of a plat shall be vacated as aforesaid the proprietors of the adjacent lots may enclose the streets, alleys, and public grounds adjoining said lots, or make such other disposition of the same as may be provided in the instrument vacating the same, and the title to the same shall be transferred or vest accordingly. (Id.)

Sec. 5222. Clerk to mark plat vacated.—The clerk of the circuit court of the county or corporation court of the city in whose office the plats aforesaid are recorded shall write in plain legible letters across that part of said plat so vacated the word "vacated," and also make a reference on the same to the volume and page in which the said instrument of vacation is recorded. (Id.)

Sec. 5223. Power appointing an agent to conduct a mercantile business to be in writing and recorded; a copy to be posted conspicuously in the place of business.—When any person, partnership, or corporation shall appoint an agent to conduct a mercantile business, such agent shall be conclusively presumed to have the right to buy and sell upon a credit and to do any and all acts in the conduct of such business that his principal could do, unless his appointment shall be in writing, duly acknowledged, setting forth fully the restrictions upon his powers, and recorded in the deed book in the clerk's office of the county or corporation in which such business is conducted, and unless a copy of such power be conspicuously posted in the place of business conducted by such agent. (1897-8, p. 104.)

Sec. 5224. If factor, agent, etc., who is a trader, fail to disclose

Digitized by Google

name of principal or partner, or do business in his own name, property used in such business liable for his debts; exception.—If any person transact business as a trader, with the addition of the words "factor," "agent," "and company," or "and co.," and fail to disclose the name of his principal or partner by a sign in letters easy to be read, placed conspicuously at the house wherein such business is transacted, and also by a notice published for two weeks in a newspaper (if any) printed in the city, town or county wherein the same is transacted; or if any person transact such business in his own name, without any such addition; all the property, stock, and choses in action acquired or used in such business shall, as to the creditors of any such person, be liable for the debts of such person. This section shall not apply to a person transacting such business under a license to him as an auctioneer or commission merchant. (Code 1887, § 2877.)

Knowledge.—Knowledge or want of knowledge on the part of the creditor of the principal does not affect the application of the statute. Hoge v. Turner, 96 Va. 624, 32 S. E. 291, overruling Trevilian v. Powell, 1856, 1 Quarterly Law J. 257. See note upon this case, 4 Va. Law Reg. 847. See, also, discussion 2 Va. Law Reg. 878.

Consignments.—Personal property consigned to trader under unrecorded written contract, or left with him for sale in the course of his business, under verbal instruction from the owner, is "property used in such business," within the meaning of this section, and is liable for the debts of such trader. But personal property stored with such person, with no power of sale, and office furniture rented with the building, are not so liable. Edmunds v. Hobbie Piano Co., 97 Va. 588, 34 S. E. 472. See note upon this case, 5 Va. Law Reg. 632.

Bill of sale.—The second clause of this section is not qualified by section 5194, and the "property, etc., used in such business" is liable for the payment of the trader's debts notwithstanding a bill of sale thereof may be recorded as provided by said section 5194. Partlow v. Lickliter, 100 Va. 631, 42 S. E. 671. The present revision makes statutory this decision. See section 5194 and revisors' note thereunder.

Publication.—A partnership in Richmond employed P. to carry on a business in Lynchburg under the style of "P., Agent for J. S. K.," the name of one of the partners. The provisions of the statute were complied with. In 1850 some of the partners retired, but the firm was continued under different name, new partners being admitted, J. S. K. continuing to be a partner. Held, that no new publication was necessary as to the agency in Lynchburg. Farmers Bank v. Kent, 16 Grat. 257.

Silent partners.—Does not apply to an avowed partnership of two or more persons doing business under a name which shows that it is in fact a partnership, and discloses full names of at least two of the partners. If there are other partners whose names are not thus disclosed, they will be liable as general partners when avowed or discovered. National Bank v. Cringan, 91 Va. 347, 21 S. E. 820.

Married woman.—It seems that a married woman was entitled to have the assets of the concerns in which she was engaged applied to the payment of the debts of those concerns in exoneration of her separate estate, and will not be deprived of that right by any fraud of her husband in trading in his name as agent without disclosing the name of his principal. Penn v. Whitehead, 17 Grat. 503, 94 Am. Dec. 478. But see Hoge v. Turner, 96 Va. 624, 32 S. E. 291.

Burden of proof.—In order to bring this particular case within the statute the burden was on the attacking creditor to prove that M. transacted business as a trader in his own name after sale. Benjamin v. Madden, 94 Va. 71, 26 S. E. 392.

Trustee in bankruptcy of merchant doing business in his own name

Digitized by Google

takes title to all the stock in his store, including goods held by him on consignment, to which he did not have title as between himself and consignor. Chesapeake Shoe Co. v. Seldner, 122 Fed. 593, 58 C. C. A. 261.

Generally.—Cited 17 Va. Law Reg. 793; Oglesby Co. v. Lindsay, 113 Va. 767, 72 S. E. 672.

See article on "Scope of Trader's Act," 13 Va. Law Reg. 172.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 100, section 13.

Sec. 5225. Continuing in force acts establishing Torrens system. —The act entitled "An act to provide for the settlement, registration, transfer, and assurance of titles to land, and to establish courts of land registration, with jurisdiction for said purposes, and to make uniform the laws of the States enacting the same," approved February twenty-fourth, nineteen hundred and sixteen, as amended by an act approved March twentieth, nineteen hundred and sixteen, is continued in force. (1916, pp. 70, 558.)

Revisors' Note.—Section 89 of the Torrens act was amended in 1918 (Acts 1918, p. 629).

See 2 Va. L. Reg. N. S. 1, 750.

CHAPTER 212.

Wills.

Sec.
5226. Construction of word "will."
5227. Who may make a will.
5228. Who may not.
5229. Mode of executing will prescribed.
5230. When execution of appointment by will valid.
5231. Will of personal estate of soldiers, etc., and non-residents.
5232. Revocation of wills by marriage.
5233. Revocation of wills generally.
5234. Revival of wills after revocation.
5235. Effect of subsequent conveyance on will.
5236. Will to be construed as if made just before testator's death.
5237. When advancement deemed satisfaction of devise or bequest.
5238. When issue of devisee or legatee to take estate.
5239. How devises that fail, etc., to pass.
5240. Devises in general terms; how construed.
5241. Extent, and operation of devises and bequests.
5242. Provision for pretermitted children where no child living when will made.
5243. Provision, where child living when will made.
5244. Creditors also competent.
5245. Also executors.
5246. On what wills preceding sections of this chapter to operate; when re-executed wills deemed to be made.
5247. Jurisdiction of probate of wills.
5248. Appointment of curator; when made; his duties.
5249. Probate of wills, the appointment of appraisers of the estates of decedents, and the appointment and qualification of personal representatives and curators, by the clerks of circuit courts
5250. How production of will compelled.

Digitized by Google

Sec.
5251. Probate of copy of will proved without the State; to what extent admitted to probate.
5252. When deposition of witness may be taken and read on probate of will.
5263. Person offering will for probate may have persons interested cited to appear.
5254. Circuit and corporation courts may do same.
5255. Process against persons interested; guardian ad litem.
5256. When court to hear motion.
5257. Court may require all testamentary papers to be produced; trial by jury; judgment.
5258. Effect of judgment.
5259. Motion for probate may be ex parte; when and by whom suit may be brought in such case to impeach or establish will.
5260. Saving in favor of infants and non-residents.
5261. What may be admitted as evidence on trial by jury.
5262. Wills to be recorded; provision for recording copies; effect of recordation; clerk to index wills.
5263. To protect the title of a bona fide purchaser of real estate for value from the heir at law of a decedent against a devise of the said real estate without notice to such purchaser.

Sec. 5226. Construction of word "will."—Except where it would be inconsistent with the manifest intent of the legislature, the word "will" shall extend to a testament, and to a codicil, and to an appointment by will, or by writing in the nature of a will, in exercise of a power; and also to any other testamentary disposition. (Code 1887, § 2511.)

This chapter is, in the main, taken from the Statute of Wills, 32 Hen. VIII, chapter 1, explained by 34 Hen. VIII, chapter 5, and the Statute of Frauds and Perjuries, 29 Car. II, chapter 3. See 4 Min. (3d Ed.) 90-92; 2 Min. (4th Ed.) 1000-1002.

For monographic note on Wills, see Hughes v. Hughes' Ex'r, 2 Munf. 209, Va. Rep. Anno.; on Legacies and Devises, Early v. Early, Gilmer 124, Va. Rep. Anno.

Sec. 5227. Who may make a will.—Every person not prohibited by the following section may, by will, dispose of any estate to which he shall be entitled, at his death, and which, if not so disposed of, would devolve upon his heirs, personal representative, or next of kin. The power hereby given shall extend to any estate, right, or interest to which the testator may be entitled at his death, notwithstanding he may become so entitled subsequently to the execution of the will. (Code 1887, § 2512.)

Married women.—In West v. West's Ex'rs, 3 Rand. 373, it was decided that a married woman having an equitable separate estate in fee could not dispose of it by will unless the power to make such disposition was expressly conferred by the instrument creating the estate. This case was adhered to until the general revision of 1849, the rule of West v. West was changed so as to allow a married woman to dispose of her separate equitable estate fee by will. This provision was carried without change into the Code of 1887, section 2513. The effect of this was to give the married woman the right to dispose of her equitable separate fee by will, if not expressly or impliedly restricted by the instrument creating the estate. Justis v. English, 30 Grat. 571; 2 Va. Law Reg. 530: Chapman v. Price, 83 Va. 392, 11 S. E. 879; Kiracofe v. Kiracofe, 93 Va. 591, 25 S. E. 601; Andes v. Roler, 98 Va. 622, 37 S. E. 297; Hutchings v. Com. Bank, 91 Va. 68, 20 S. E. 950; Dillard v. Dillard's Ex'rs, 2 Va. Dec.

Digitized by Google

28, 21 S. E. 669. By Acts 1899-00, p. 753, section 2513 was amended by striking out the provision as to married women. The present revision (see section 5134) makes statutory the decision in Chapman v. Price, above cited.

A married woman dying in 1899 could not by will dispose of property acquired under section 1 of the Smith act (1876-7, p. 333). Coleman v. Wood, 108 Va. 457, 62 S. E. 388. For present liberal provisions, relating to married women, see chapter 207.

After acquired lands.—A will made prior to July 1, 1850 (when Code 1849 took effect), although the testator may have died afterwards, is to be construed in respect to its effect in passing after-acquired lands as the law was prior to the date named. (Raines v. Barker, 13 Grat. 128, 67 Am. Dec. 762); so that in order to pass such after-acquired lands they must appear to be contemplated (Harrison v. Allen, 3 Call 289; Gibson v. Carrell, 13 Grat. 136; 2 Min. [4th Ed.] 1002).

Even though the codicil refers to personal estate only, it may operate as a republication as to realty, so as to pass after-acquired lands. Corr v. Porter, 33 Grat. 278.

Generally.—This section confirms Turpin v. Turpin, 1 Wash. 75.

Under this section, an estate devised by A. to B., who is sui juris, will pass to C. by the will of B., though made in the lifetime of A., provided A. dies without revoking the devise, and B. survives him, and then dies without revoking his will. Thorndike v. Reynolds, 22 Grat. 21, 27.

Right of entry or of action may be devised. Taylor's Devisees v. Rightmire, 8 Leigh 468.

See notes to section 5228.

As to when a will is construed to speak, see section 5236.

See 16 Va. L. Reg. 659.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 1.

Sec. 5228. Who may not.—No person of unsound mind, or under the age of twenty-one years, shall be capable of making a will, except that minors eighteen years of age or upwards, may, by will, dispose of personal estate. (Code 1887, § 2513; 1899-00, p. 753.)

A minor between the ages of eighteen and twenty-one years left a will relating to both real and personal property, Held, the will was void and of no effect as to the real property mentioned therein, but valid so far as it disposed of his personal property. Early v. Arnold, 119 Va. 500, 89 S. E. 900.

As to testamentary capacity, see Mercer v. Kelso's Adm'r, 4 Grat. 106; Greer v. Greer, 9 Grat. 330; Young v. Barner, 27 Grat. 96; Chappell v. Trent, 90 Va. 849, 19 S. E. 314.

For extent of influence sufficient to invalidate a will. Whitesel v. Whitesel, 23 Grat. 904; Riddell v. Johnson's Ex'r, 27 Grat. 152; Parramore v. Taylor, 11 Grat. 220; Cheatham v. Hatcher, 30 Grat. 56, 32 Am. Rep. 650; Simmerman v. Songer, 29 Grat. 9.

Cited in editorial, 20 Va. L. Reg. 709.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 2.

Sec. 5229. Mode of executing will prescribed.—No will shall be valid unless it be in writing and signed by the testator, or by some other person in his presence and by his direction, in such manner as to make it manifest that the name is intended as a signature; and moreover, unless it be wholly in the handwriting of the testator, the signature shall be made or the will acknowledged by him in the presence of at least two competent witnesses, present at the same time; and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary. If the will be wholly in the handwriting of the

Digitized by Google

testator that fact shall be proved by at least two distinterested witnesses. (Code 1887, § 2514.)

Revisors' Note.—The last sentence is new. See 2 Va. L. Reg. N. S. 405. Attention is also called to a change of language in lines five and six of the text—"unless it be WHOLLY IN THE HANDWRITING of the testator." Formerly, the words "unless it be wholly written by the testator" were used. For objections to the former language, see 2 Va. Law Reg. N. S. 404. See, also, 2 Minor on Real Property, section 1256.

Writing—Intent.—Each and every part must be in writing, and executed in the mode prescribed by statute, and if any part is in parol such part is void and inoperative, in the absence of fraud. Sims v. Sims, 94 Va. 583, 27 S. E. 436, 64 Am. St. Rep. 772; Sprinkle v. Hayworth, 26 Grat. 392. For exception on ground of resulting trust, Sims v. Sims, 94 Va. 583, 27 S. E. 436, 64 Am. St. Rep. 772; Sprinkle v. Hayworth, 26 Grat. 392.

The will may consist of several testamentary papers, executed at different times. Gordon v. Whitlock, 92 Va. 723, 24 S. E. 342; Schultz v. Schultz, 10 Grat. 358, 373, 60 Am. Dec. 335.

To prove that a will is not holograph, but a forgery, it is competent to introduce evidence, not only that the writing is not that of the alleged testator, but also that it is the writing of some other person. Brown v. Hall, 85 Va. 157, 159, 7 S. E. 182; Tucker v. Calvert, 6 Call 90.

A paper is not to be established as a man's will merely by proving that he intended to make a disposition of his property similar to, or even identically the same with, that contained in the paper. It must satisfactorily appear that he intended the very paper to be his will. Sharp v. Sharp, 2 Leigh 262. See, also, Hocker v. Hocker, 4 Grat. 277; Waller v. Waller, 1 Grat. 454, 42 Am. Dec. 564; Pollock v. Glassell, 2 Grat. 439; McBride v. McBride, 26 Grat. 481. To this rule there is one exception, viz., where the draft or notes of a will embody the provisions actually designed by the testator with reference to his property. This, however, is only permitted when the testator is prevented by the act of God from completing the instrument in the form in which he designed it. Even here it is essential that the paper shall contain the final determination of the testator with regard to the disposition of his estate. McBride v. McBride, 26 Grat. 481.

No particular language or form is necessary to constitute a valid will, and the surrounding circumstances are admissible to explain, in a proper case, the intention of the testator; but one may execute a paper with every formality known to the law and by it devise all of his property, but unless he intends that very paper to take effect as a will, it is no will. Early v. Arnold, 119 Va. 500, 89 S. E. 900.

It is not necessary to the validity of a will that it should have a testamentary form. A deed poll, or an indenture, a bond, a marriage settlement, a letter, a promissory note, have been held valid as a will. McBride v. McBride, 26 Grat. 480; Cody v. Conly, 27 Grat. 319. See, also, Gibson v. Gibson, 28 Grat. 44.

Signature.—The name of a testator at the commencement of a holograph will is an equivocal act, and unless it appears affirmatively from something on the face of the paper that it was intended as his signature it is not a sufficient signing under the statute. Ramsey v. Ramsey's Ex'r, 13 Grat. 664; Roy v. Roy's Ex'r, 16 Grat. 418, 84 Am. Dec. 696; Waller v. Waller, 1 Grat. 465, 42 Am. Dec. 564; Warwick v. Warwick, 86 Va. 596, 10 S. E. 843, 6 L. R. A. 775; Perkins v. Jones, 84 Va. 362, 363, 4 S. E. 833, 10 Am. St. Rep. 863. See, also, 3 Lom. Dig. 70, and 2 Min. (4th Ed.) 1011; Selden v. Coalter, 2 Va. Cas. 553.

But where a testator made a complete and orderly disposition of his property, ending with the words, "I, W. D., say this is my last will and testament," held sufficient signature. Dinning v. Dinning, 102 Va. 461, 46 S. E. 473.

The statute does not require the signature to be at the foot, but it is still an equivocal circumstance if placed anywhere else. Rep. Revisors

Digitized by Google

1849, note; Ramsey v. Ramsey's Ex'r, 13 Grat. 666; Waller v. Waller, 1 Grat. 465, 42 Am. Dec. 571.

The signature may be before or after attestation. Rosser v. Franklin, 6 Grat. 1, 52 Am. Dec. 97; Parramore v. Taylor, 11 Grat. 226; Beane v. Yerby, 12 Grat. 239; Green v. Crain, Id. 252.

In holographic wills proof of the handwriting establishes the identity of the paper and the connection of the maker of the will with it. The finality of such will depends upon the signature, which must be made "in such manner as to make it manifest that the name is intended as a signature." Murguiondo v. Nowlan, 115 Va. 160, 78 S. E. 600.

A holograph will to which the testator affixes the initials of his name at the end of the writing is sufficiently signed under this section. Pilcher v. Pilcher, 117 Va. 356, 84 S. E. 667, 1 Va. L. R. N. S. 34.

For note of case as to signature of will where a marginal writing is on the last page, see 11 Va. Law Reg. 849.

Separate sheets of paper.—The will of a testatrix was written on six sheets of paper. When the attesting witnesses were called each one of the sheets, except the last, had already been signed by the testatrix, who, in the presence of the witnesses, affixed her signature to the margin of the last sheet nearly opposite to the end of the will, which had a concluding clause. Held, a sufficient signature. Murguiondo v. Nowlan, 115 Va. 160, 78 S. E. 600.

Attestation by subscribing witnesses.—It is not necessary that each of the attesting witnesses, at some time prior to the signing, should have known that the other was to be an attesting witness and had been requested to act in that capacity. Savage v. Bowen, 103 Va. 541, 49 S. E. 668, 10 Va. L. Reg. 975, and note.

It is not necessary that attesting witnesses should be expressly requested by the testator to act in that capacity, as the request may be implied from surrounding circumstances. Id.

Notwithstanding the case of Savage v. Bowen, supra, it is believed to be best for the attestation clause to state that the witnesses subscribed at the request of the testator and that the clause should be dated. The clause will thus serve to refresh the memory of the witness, and preserve in writing facts to be proven at probate.

Holographic wills.—A holograph will signed and sealed by testator is not vitiated by containing an unsigned attestation clause, as no witnesses are necessary. Waller v. Waller, 1 Grat. 454, 42 Am. Dec. 564; Perkins v. Jones, 84 Va. 358, 4 S. E. 833, 10 Am. St. Rep. 863.

Competent witnesses.—On this subject see revisors' notes to sections 5244 and 6209. For the former law see Bruce v. Shuler, 108 Va. 670, 62 S. E. 973, and note, 14 Va. L. Reg. 800, 2 Min. (4th Ed.) 1013, 4 Va. L. Reg. 327.

Present at the same time.—The two witnesses must be present together at the same time when the testator acknowledges his signature or the instrument to be his act, but it is not necessary that the attesting witnesses to a will shall subscribe their names in the presence of each other. Parramore v. Taylor, 11 Grat. 220; Beane v. Yerby, 12 Grat. 239, 244; Green v. Crain, Id. 257. The statute overrules Dudleys v. Dudleys, 3 Leigh 436.

Signature made or will acknowledged in the presence of witnesses.—The witnesses need not have seen the testator sign; it is sufficient to acknowledge the will or the signature to them. Dudleys v. Dudleys, 3 Leigh 436; Rosser v. Franklin, 6 Grat. 25, 52 Am. Dec. 97; Beane v. Yerby, 12 Grat. 239; 3 Lom. Dig. 43.

Signature by the witnesses.—Witnesses may sign before the testator signs. Parramore v. Taylor, 11 Grat. 246; Pollock v. Glassell, 2 Grat. 439; Rosser v. Franklin, 6 Grat. 1, 52 Am. Dec. 97; Sturdivant v. Birchett, 10 Grat. 67. They may adopt a signature already on the instrument diverso intuitu. Pollock v. Glassell, 2 Grat. 439. Witnesses may attest the will by making mark. Jesse v. Parker, 6 Grat. 57; Sturdivant v. Birchett, 10 Grat. 76.

Attesting witness need not subscribe his own name, nor even make his mark; the validity of the attestation depends on the signing of the

Digitized by Google

name of the witness by his authority and in his presence, not on his doing some manual act in connection with his signature. Jesse v. Parker, 6 Grat. 57.

Number of witnesses.—Some States require three witnesses to a will and at least one State requires a will to be under seal (see Nevada General Statutes [Bailey & Hammond] section 3002). Inasmuch therefore as the testator at the time of his death may own property in another State, it is well to have will under seal and attested by three witnesses.

Witnesses to subscribe to the will in presence of testator.—The idea of presence requires the attestation to occur within the range of the testator's vision, and within a reasonable degree of proximity, in case of one who has the faculty of sight, and with consciousness on the part of the testator of the presence of the witnesses, presence meaning conscious presence. Baldwin v. Baldwin's Ex'r, 81 Va. 410, 413, 59 Am. Rep. 669. Tucker v. Sandidge, 85 Va. 570, 8 S. E. 650.

To be in the same room with the testator when the witness subscribes the will is prima facie in his presence, which, however, may be repelled by proof that the testator was so situated relatively to the witness that he could not see the act of attestation, and could not without help place himself in a position to see. If he could see, or could without help place himself in a position to see, it is immaterial whether he really did see or not. Neil v. Neil, 1 Leigh 6; Sturdivant v. Birchett, 10 Grat. 67, 86; Pollock v. Glassell, 2 Grat. 439; Cheatham v. Hatcher, 30 Grat. 56, 32 Am. Rep. 650; Young v. Barner, 27 Grat. 106; Baldwin v. Baldwin's Ex'r, 81 Va. 405, 59 Am. Rep. 669.

An attestation not made in the same room is prima facie not an attestation in his presence, but this also may be repelled by showing that, from the position actually occupied by the testator, he could plainly see the act of attestation. Nock v. Nock's Ex'rs, 10 Grat. 106; Young v. Barner, 27 Grat. 105; Moore v. Moore's Ex'r, 8 Grat. 307. See, also, Sturdivant v. Birchett. 10 Grat. 67; also, 6 Va. Law Reg. 193, 16 Va. L. Reg. 915.

For note on attestation in the presence of testator, see 12 Va. Law Reg. 327, 332.

No form of attestation necessary.—This section does not require the attestation to be in any particular form or in any particular place on the paper; yet the witnesses, unless the will be holograph, must subscribe as witnesses, though the word "witnesses" need not appear. Peake v. Jenkins, 80 Va. 293.

Proof of will.—While a will must be attested by two competent witnesses, its due execution may be proven by one—by whom, however, must be proven all the facts required by statute and among them that it was attested by two competent witnesses. Bruce v. Shuler, 108 Va. 670, 62 S. E. 973. See also note 14 Va. Law Reg. 800. For present law on the subject of the competency of attesting witnesses, see revisors' notes to sections 5244 and 6209.

The statute prescribes the number of witnesses by whom the will shall be attested, but not the number by whom it shall be proved. See 4 Min. (3d Ed.) 107, and cases there cited as how attestation shall be proved. Pollock v. Glassell, 2 Grat. 460; Jesse v. Parker's Adm'rs, 6 Grat. 64, 52 Am. Dec. 102; Johnson v. Dunn, 6 Grat. 627; Lamberts v. Cooper's Ex'r, 29 Grat. 67; Cheatham v. Hatcher, 30 Grat. 60, 32 Am. Rep. 650.

A will must be subscribed, but need not be proved by two witnesses. Cheatham v. Hatcher, 30 Grat. 56, 32 Am. Rep. 650; Jesse v. Parker's Adm'rs, 6 Grat. 57, 52 Am. Dec. 102; Lamberts v. Cooper's Ex'r, 29 Grat. 67; Pollock v. Glassell, 2 Grat. 460; Johnson v. Dunn, 6 Grat. 627.

For sufficient formal proof of a will, although the attesting witnesses have forgotten the transaction, see Clarke v. Dunnavant, 10 Leigh 13; Young v. Barner, 27 Grat. 106.

For attestation by two witnesses, one of whom was not a creditable witness, see Johnson v. Dunn, 6 Grat. 625.

Generally.—In the matter of executing a will, the statutory requirements must be complied with, but substance must not be sacrificed to form, nor the end of the law to the means used for attaining it. Savage v. Brown, 103 Va. 540, 49 S. E. 668.

Digitized by Google

As to attesting witnesses testifying to incapacity of testator, see Cheatham v. Hatcher, 30 Grat. 64, 32 Am. Rep. 650.

For discussion of this section, see 2 Va. Law Reg. 469.

As to attestation of will of a blind man, see Boyd v. Cook, 3 Leigh 32, 1 Va. L. R. N. S. 796.

As to jurisdiction of probate of wills, see section 5247.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 3.

See Gregory's Forms Nos. 279, 530.

Sec. 5230. When execution of appointment by will valid.—No appointment made by will, in exercise of any power, shall be valid unless the same be so executed that it would be valid for the disposition of the property to which the power applies, if it belonged to the testator; and every will so executed, except the will of a married woman, shall be a valid execution of a power of appointment by will, notwithstanding the instrument creating the power expressly require that a will made in execution of such power shall be executed with some additional or other form of execution or solemnity. (Code 1887, § 2515.)

The effect of this statute is that, in all appointments to be made by will, the will must be executed as the statute of wills, and not as the power may require, except the will of a married woman, which must conform, it seems, to the power, if that requires additional witnesses or ceremonies, but must always conform to the statute. 2 Min. (4th Ed.) 819.

The donee of a power under the will may exercise the power of appointment by will in the lifetime of the testator. Thorndike v. Reynolds, 22 Grat. 21, 27. And if the donee of the power dies in the lifetime of the donor, having executed the power, it is valid to pass the estate at the death of the donor. Id. 28.

The power to "nominate by last will and testament or power of appointment in presence of two witnesses" is duly executed by a holograph will, the phrase, "in the presence of two witnesses," qualifying merely power of appointment. Shearman's Adm'r v. Hicks, 14 Grat. 96, 100.

A marriage settlement gives a power to the wife to dispose of the settled estate by gift or devise, under her hand and seal, attested by two or more witnesses. Held, that a testamentary paper signed by the wife, with a scroll annexed to her name, attested by the requisite number of witnesses, though the scroll is not recognized in the body of the instrument, is a valid will under the power, and that such a paper, duly executed, referring to and recognizing another testamentary paper, previously executed according to the statute of wills, but not according to the power, will constitute the paper recognized a valid testamentary paper. Pollock v. Glassell, 2 Grat. 439.

As to the wife's equitable separate estate, it is now settled that the expression of one mode of alienation by the wife is not the exclusion of all others, unless there be negative words excluding her power of alienation in any other manner than that mentioned in the settlements (Price v. Planters Nat. Bank, 92 Va. 468, 23 S. E. 887, 32 L. R. A. 214), thus settling "a much vexed question." See Williamson v. Beckham, 8 Leigh 20; Lee v. Bank of United States, 9 Leigh 200; Woodson v. Perkins, 5 Grat. 345, 351; McChesney v. Brown's Heirs, 25 Grat. 393; Justis v. English, 30 Grat. 565, 571; Bain v. Buff's Adm'r, 76 Va. 371; Frank v. Lilienfield, 33 Grat. 377, 295; Christian v. Keen, 80 Va. 369, 374; Green v. Claiborne, 83 Va. 386; Burks' Separate Estate, 34-39.

Where husband devised his estate to his wife with power to dispose of it by will, she cannot execute the power by a conveyance during her lifetime, the execution of a deed being not a defective attempt to execute the power which the court can aid and remedy, but in plain disregard of it. Gaskins v. Finks, 90 Va. 384, 19 S. E. 166.

For valid execution of power of appointment by will of a married

Digitized by Google

woman, see Thorndike v. Reynolds, 22 Grat. 21, 31; by deed, Hume v. Hord, 5 Grat. 374.

Discussed, 10 Va. Law J. 329.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 4.

Sec. 5231. Will of personal estate of soldiers, etc., and non-residents.—Notwithstanding the two preceding sections, a soldier being in actual military service, or a mariner or seaman being at sea, may dispose of his personal estate as he might heretofore have done; and the will of a person domiciled out of this State at the time of his death, shall be valid as to personal property in this State, if it be executed according to the law of the State or country in which he was so domiciled. (Code 1887, § 2516.)

As to nuncupative wills of soldiers in actual military service, see 2 Min. (4th Ed.) 1020, 1021; 4 Min. (3d Ed.) 96, 97.

As to lex domicilii governing in case of wills of chattels, see 2 Min. (4th Ed.) 1011; 3 Min. (2d Ed.) 129, 130.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 5.

Sec. 5232. Revocation of wills by marriage.—Every will made by a man or woman shall be revoked by his or her marriage, except a will made in exercise of a power of appointment, when the estate thereby appointed would not, in default of such appointment, pass to his or her heir, personal representative, or next of kin. (Code 1887, § 2517.)

The conflict of decisions in Wilcox v. Rootes, 1 Wash. 140, and Yerby v. Yerby, 3 Call 334, and evils resulting therefrom, led to this statute, which declares that marriage alone, save in the excepted cases, shall be an absolute revocation. Phaup v. Wooldridge, 14 Grat. 332, 337. See 4 Min. (3d Ed.) 99; 2 Min (4th Ed.) 1027.

A mistaken view of a testatrix that her marriage subsequent to the execution of her will was not a revocation thereof does not estop her heirs from claiming that the will was revoked under this section. Hale v. Hale, 90 Va. 728, 19 S. E. 739.

Cited but not construed, Wood v. Tredway, 111 Va. 526, 69 S. E. 445; Saunders v. Link, 114 Va. 285, 76 S. E. 327, 18 Va. L. Reg. 683 and note; Avant v. Cook, 118 Va. 1, 86 S. E. 903.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 6.

Sec. 5233. Revocation of wills generally.—No will or codicil, or any part thereof, shall be revoked, unless under the preceding section, or by a subsequent will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is required to be executed, or by the testator, or some person in his presence and by his direction, cutting, tearing, burning, obliterating, canceling, or destroying the same, or the signature thereto, with the intent to revoke. (Code 1887, § 2518.)

Will or codicil or writing, declaring intention to revoke.—Formerly a will of personal estate could be revoked by a subsequent writing, not written or subscribed by the testator, but prepared by his directions. Glasscock v. Smith, 1 Call 479; Bates v. Holman, 3 Hen. & M. 502.

Erroneous advice causing testatrix to make a codicil revoking a legacy would not avoid the revocation. The mistake which induces the revocation must appear on the face of the will. Skipwith v. Cabell's Ex'r, 19 Grat. 758.

Digitized by Google

A clause of revocation contained in an invalid will is not valid. Barksdale v. Barksdale, 12 Leigh 535.

The mere fact of making a subsequent testamentary paper does not work a revocation of a prior one, in the absence of express revocation, unless the two are incapable of standing together. Gordon v. Whitlock, 92 Va. 728, 24 S. E. 342.

Cancelling, destroying, &c.—Where a testator destroys a codicil, which itself revoked a will, and directed a will in another person's custody to be destroyed, but no act towards it was done, it was no revocation of the will. Malone's Adm'r v. Hobbs, 1 Rob. 346, 39 Am. Dec. 263. And so when a blind man orders his will to be destroyed, and believes that it was destroyed accordingly, but no act is done towards its destruction, it is not a revocation. The act and intention must concur. Boyd v. Cook, 3 Leigh 32. See, also, Malone's Adm'r v. Hobbs, 1 Rob. 346, 39 Am. Dec. 263; Bates v. Holman, 3 Hen. & M. 502.

The codicil being prima facie dependent on the will, the cancellation of the will is an implied revocation of the codicil; but the converse is not true, for a will is not dependent on a codicil. Malone's Adm'r v. Hobbs, 1 Rob. 366, 39 Am. Dec. 263.

Certain words cancelled.—Where a paper offered for probate has been proved to have been properly executed as a will, but certain words in it have been cancelled since its execution, the whole paper, including the cancelled words, is to be treated by the probate court as the last will of the deceased, in the absence of evidence that the cancellation was the act of the deceased. or that the instrument was found after the testator's death among his repositories in such mutilated condition. Harris v. Wyatt, 113 Va. 254, 74 S. E. 189.

Presumption upon failure to find will.—Where it appears that a person has made a will which cannot be found after his death, the prima facie presumption is that it was destroyed by the testator animo revocandi; and this is especially true where the will is traced in his possession, and never traced out of it, and the burden of showing some other cause of its disappearance is on those who seek to establish it. Shacklett v. Roller, 97 Va. 639, 34 S. E. 492; Appling v. Eades' Adm'r, 1 Grat. 286; 2 Min. (4th Ed.) 1024; 7 Va. Law Reg. 455.

And if there be duplicates in the hands of different persons, and that copy in the custody of the testator be not found after his death, all are revoked, for all constitute but one will. 2 Min. (4th Ed.) 1024; Appling v. Eades' Adm'r, 1 Grat. 286.

Generally.—Evidence that a subsequent will had been made and stolen from testator, without any proof of its contents, and proof of his declaration after the will was stolen that he would die intestate and leave his estate to be distributed according to the statute, is not sufficient evidence of a revocation of a former will. Hylton v. Hylton, 1 Grat. 161.

The death of the husband, as a revocation of the will of his wife, validly made in his lifetime, is not embraced in this enumeration, and must therefore be excluded; and therefore it cannot be necessary to re-execute and republish it after his death to preserve its validity. Thorndike v. Reynolds, 22 Grat. 33.

On the subject of Revocation of Wills, see 2 Min. (4th Ed.) 1021-1029; also, Lawson v. Morrison, 2 Am. L. C. 643.

For revocation of a will by cancelling, see 7 Va. Law Reg. 455.

For revocation implied from marriage, see section 5232.

For revocation implied from the birth of subsequent children, see sections, 5242, 5243.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 7.

See Gregory's Forms No. 533.

Sec. 5234. Revival of wills after revocation.—No will or codicil, or any part thereof, which shall be in any manner revoked, shall, after being revoked, be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required,

Digitized by Google

and then only to the extent to which an intention to revive the same is shown. (Code 1887, § 2519.)

No particular words are necessary to be used in a codicil to effect a republication of the will to which it is annexed. It is only necessary that it shall appear that the testator referred to and considered the paper his will at the time he executed the codicil. Corr v. Porter, 33 Grat. 278. Republication of a will has a twofold effect: First, to give the will all the effect of a will made at the time of its republication; and, secondly, to set up and establish a will that has been revoked. Corr v. Porter, 33 Grat. 278; 2 Min. (4th Ed.) 1029.

Where a will which revokes a former will is destroyed by the testator animo revocandi, with intention that the former will shall be his will, but he does not re-execute it, or make a will reviving it, though he retains it uncanceled, it is not revived by the destruction of the last will. Rudisill's Ex'r v. Rodes, 29 Grat. 147. See 3 Min. (2d Ed.) 552.

Cited but not construed in Saunders v. Link, 114 Va. 285, 76 S. E. 327, 18 Va. L. Reg. 683 and note.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 8.

Sec. 5235. Effect of subsequent conveyance on will.—No conveyance or other act, subsequent to the execution of a will, shall, unless it be an act by which the will is revoked as aforesaid, prevent its operation, with respect to such interest in the estate comprised in the will, as the testator may have power to dispose of by will at the time of his death. (Code 1887, § 2520.)

A will is not revoked by a subsequent deed disposing of all the testator's property. Collup v. Smith, 89 Va. 258, 15 S. E. 584; King's Ex'rs v. Sheffey's Adm'r, 8 Leigh 614, 619; Hughes v. Hughes' Ex'r, 2 Munf. 209.

For a deed of trust which was not a revocation of a previous will, see Hughes v. Hughes' Ex'r, 2 Munf. 209.

The proceeds of lands, directed by testator to be sold, is devised; subsequently the testator aliens by deed the same land; the alienation of the property revoked the devise of its proceeds. King's Ex'rs v. Sheffey's Adm'r, 8 Leigh 614; Collup v. Smith, 89 Va. 258, 15 S. E. 584. See, also, Hughes v. Hughes' Ex'r, 2 Munf. 209.

See article, 2 Va. L. Reg. N. S. 641.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 9.

Sec. 5236. Will to be construed as if made just before testator's death.—A will shall be construed, with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will. (Code 1887, § 2521.)

After-acquired lands.—Previous to 1850 (when this section became operative), it was the rule that a will made after 1787 might pass after-acquired lands, if it evidently contemplated such property, but not otherwise (Harrison v. Allen, 3 Call 289 [2d Ed. 251]); and that the addition of a codicil to a will was not sufficient to operate as a devise of lands purchased by the testator between the date of the will and the date of the codicil, there being no words in the codicil to indicate such to be the intention of the testator (Kendall's Ex'r v. Kendall, 5 Munf. 272). Now, by the statute, the will applies to such property, real and personal, as it is fairly applicable to at the death of the testator. 2 Min. (4th Ed.) 1001, 1002.

A will made prior to July 1, 1850, though testator died afterwards, is to be construed in respect to passing after-acquired lands, as the law was prior to that date. Raines v. Barker, 13 Grat. 128, 67 Am. Dec. 762; Gibson v. Carrell, 13 Grat. 136.

Digitized by Google

The obvious effect of this section was to make wills speak with respect to real estate, as they had done under the common law with respect to personal estate, as of the death of the testator. Kent v. Kent, 106 Va. 199, 55 S. E. 565.

Effect of death of legatee before will was written.—The legacy does not lapse or become void, but, under sections 5236 and 5238, passes to the issue of the legatee who survive the testator, unless a different disposition thereof is made or required by the will. Wildberger v. Cheek's Ex'rs, 94 Va. 517, 27 S. E. 441.

Effect of codicil.—The effect of a republication is to bring down the will to the date of the codicil, so that both instruments are to be considered as speaking at the same date and taking effect at the same time. Corr v. Porter, 33 Grat. 278; Hatcher v. Hatcher, 80 Va. 169.

Intention.—When a will may be construed to speak and take effect is, in a qualified sense, a question of intention. A clause in a will granting to testator's wife certain property, with power to make a will in the lifetime of testator, is intended to speak and take effect immediately. Thorndike v. Reynolds, 22 Grat. 21, 27.

Property acquired from person living when will is made.—The will of a wife though made in the lifetime of her husband, disposing of all her estate, passes that acquired from her husband as well as that personally owned by her. Bowe v. Bowe's Administrators, 118 Va. 28, 86 S. E. 856.

W. Va. decisions.—For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 10.

Sec. 5237. When advancement deemed satisfaction of devise or bequest.—A provision for or advancement to any person shall be deemed a satisfaction in whole or in part of a devise or bequest to such person, contained in a previous will, if it would be so deemed in case the devisee or legatee were the child of the testator; and whether he be a child or not, it shall be so deemed in all cases in which it shall appear from parol or other evidence to have been so intended. (Code 1887, § 2522.)

An advancement is a gift by anticipation of the whole or part of what it is supposed a child will be entitled to on the death of the giver intestate. Darne's Ex'r v. Lloyd, 82 Va. 859, 5 S. E. 87, 3 Am. St. Rep. 123; Chinn v. Murray, 4 Grat. 397.

Legacy adeemed by marriage contract. Hansbrough's Ex'rs v. Hooe, 12 Leigh 316, 37 Am. Dec. 659.

Where a legacy is given to a child, and afterwards an advancement is made to that child, such advancement shall be taken as a satisfaction of the legacy, but this presumption may be rebutted by evidence. Jones v. Mason, 5 Rand. 577, 16 Am. Dec. 761; Strother's Adm'r v. Mitchell's Ex'r, 80 Va. 149; Hansbrough's Ex'rs v. Hooe, 12 Leigh 316, 322, 37 Am. Dec. 659. But when the gift is before the making of the will, and the will does not charge it as an advancement, the court cannot so charge it in settling the estate. Strother v. Mitchell, supra.

Devises of real estate are revoked by subsequent advances. Hansbrough's Ex'rs v. Hooe, 12 Leigh 320, 37 Am. Dec. 659.

Although the property advanced and the property bequeathed are not ejusdem generis, the one may be a satisfaction of the other, if the intention of the testator be apparent that such should be the effect. Kelly v. Kelly's Ex'rs, 6 Rand. 196, 18 Am. Dec. 710; Jones v. Mason, 5 Rand. 577, 16 Am. Dec. 761.

On advancements, see section 5278; also note, Taliaferro v. Pryor, 12 Grat. 277, Va. Rep. Ann.

See note of Cottrell v. Mathews, 120 Va. 847, 92 S. E. 808, under section 6098.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 11.

Sec. 5238. When issue of devisee or legatee to take estate.—If a

Digitized by Google

devisee or legatee die before the testator, leaving issue who survive the testator, such issue shall take the estate devised or bequeathed, as the devisee or legatee would have done if he had survived the testator, unless a different disposition thereof be made or required by the will. This rule shall also apply to a devise or bequest to several jointly, one or more of whom die in the life time of the testator. (Code 1887, § 2523.)

Revisors' Note.—The last sentence is new. See in this connection, section 5159 and revisors' note; Lockhart v. Vandyke, 97 Va. 357, 33 S. E. 613.

A legacy to the wife who survives the testator will not sink into the residuum of the estate, but will pass to her issue. Wood v. Sampson's Ex'r, 25 Grat. 845.

Under sections 5236 and 5238, a legacy bequeathed to a legatee who was dead at the time the will was written does not lapse or become void, but passes to the issue of the legatee who survives the testator, unless a different disposition thereof is made or required by the will. Wildberger v. Cheek's Ex'rs, 94 Va. 517, 27 S. E. 441.

This section, as it read in Code of 1887, was not applicable where, independently of it, no lapse could occur, and therefore could be invoked in case of a devise to two as joint tenants, for by the force and effect of the joint taking the share of the party deceased would survive to the survivor or survivors. Lockhart v. Vandyke, 97 Va. 357, 361, 33 S. E. 613; 2 Min. (4th Ed.) 249; also Pendleton v. Hoomes, Wythe 94, 5 Va. Law Reg. 309. Note that the last sentence of the present section overturns this ruling.

Quaere, does the issue take directly from the testator, as statutory substitute for their ancestor, and consequently free from his debts or liabilities? It would seem so. See 5 Va. Law Reg. 321, 327, where the history of this section is thoroughly discussed.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 12.

Sec. 5239. How devises that fail, etc., to pass.—Unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised in any devise in such will, which shall fail or be void, or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will. (Code 1887, § 2524.)

Before the enactment of this statute, it was held that specific or pecuniary legacies, which fail by lapse or otherwise, fall into the residuum, and go to the residuary legatees; but that when a residuary devise or bequest fails from any cause, the subject of it, to the extent of such failure, goes to the heirs or distributees at law. Frazier v. Frazier's Ex'rs, 2 Leigh 642, 649. And since this statute was enacted the same doctrine has been laid down in a dictum of Judge Moncure in Stone's Ex'r v. Nicholson, 27 Grat. 8. See 2 Min. (4th Ed.) 1010.

The residuary legatee is entitled to whatever may fall into the residue after making the will, (1) by invalid or ineffectual disposition, (2) by lapse, (3) by the incapacity of the specific or general legatee to take, or (4) where property acquired subsequent to the will is thereby undisposed of. Gallagher v. Rowan's Adm'r, 86 Va. 823, 826.

The object of this section was to put real estate and personal property on the same footing in respect to void and lapsed legacies. Kent v. Kent, 106 Va. 199, 55 S. E. 565.

See note of Cottrell v. Mathews, 120 Va. 847, 92 S. E. 808, under section 6098.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 13.

Sec. 5240. Devises in general terms; how construed.—A devise

Digitized by Google

of the land of the testator, or of the land of the testator, in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include his leasehold estates, or any of them to which such description shall extend, as well as freehold estates, unless a contrary intention shall appear by the will. (Code 1887, § 2525.)

The common-law rule was that when a testator, having both freehold and leasehold lands in a particular place, devises "all his lands" in that place, only the freehold lands would pass, although if he had no freehold lands there leasehold lands would pass. Aylett's Ex'r v. Aylett, 1 Wash. 300; 2 Min. (4th Ed.) 1003. The statute qualifies this rule.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 14.

Sec. 5241. Extent, and operation of devises and bequests.—A devise or bequest shall extend to any real or personal estate (as the case may be) which the testator has power to appoint as he may think proper and to which it would apply if the estate were his own property, and shall operate as an execution of such power, unless a contrary intention shall appear by the will. (Code 1887, § 2526.)

The testatrix being empowered to appoint the property as she chose, a residuary clause in her will operates, by force of this section, as an execution of the power, a contrary intention not appearing by the will. Under this section, where it is not intended to execute a general power the intention to exclude the power should be stated on the face of the will. Machir v. Funk, 90 Va. 287, 18 S. E. 197.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 15.

Sec. 5242. Provision for pretermitted children where no child living when will made.—If any person die leaving a child, or his wife with child which shall be born alive, and leaving a will made when such person had no child living, wherein any child he might have is not provided for or mentioned, such will, except so far as it provides for the payment of the debts of the testator, shall be construed as if the devises and bequests therein had been limited to take effect, in the event that the child shall die under the age of twenty-one years, unmarried, and without issue. (Code 1887, § 2527.)

The words "devise" and "bequest" in this section were intended to embrace any and all dispositions of the property made in the will which affect or change in any way the title of the pretermitted child to that portion of the estate to which it was entitled under the general law, independently of the will, and covers the case of an alienation under a power of sale for reinvestment given in the will, as fully as the direct devise of the same property in the terms of the will. Wood v. Tredway, 111 Va. 526, 69 S. E. 445.

All the provisions of the will except those relating to the payment of debts or the appointment of an executor become inoperative during the child's minority and finally void when he arrives at the age of 21 years or marries. If, however, he dies under age, unmarried and without issue, all of the provisions of the will become operative and effective. Wood v. Tredway, 111 Va. 526, 69 S. E. 445.

Digitized by Google

As to effect of subsequent adoption of minor child upon will, see Bell v. Jones (corporation court of Lynchburg), 9 Va. Law Reg. 1070.

For article upon subsequent birth of children as a revocation of a will, see 9 Va. Law Reg. 473, 579.

See 2 Min. (4th Ed.) 1027, 1028.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 16.

Sec. 5243. Provision, where child living when will made.—If a will be made when a testator has a child living, and a child be born afterwards, such after-born child, or any descendant of his, if not provided for by any settlement, and neither provided for nor expressly excluded by the will, but only pretermitted, shall succeed to such portion of the testator's estate as he would have been entitled to if the testator had died intestate; towards raising which portion the devisees and legatees shall, out of what is devised and bequeathed to them, contribute ratably, either in kind or in money, as a court of equity, in the particular case, may deem most proper. But if any such after-born child, or descendant, die under the age of twenty-one years, unmarried, and without issue, his portion of the estate, or so much thereof as may remain unexpended in his support and education, shall revert to the person to whom it was given by the will. (Code 1887, § 2528.)

Any provision for a child which shows that he has not been forgotten is sufficient to prevent the application of the statute. Allison v. Allison's Ex'rs, 101 Va. 537, 44 S. E. 904, 63 L. R. A. 920.

The rule in Yerby v. Yerby, 3 Call 334, is changed by this statute.

The statute was first enacted December 5, 1794, and is not applicable to the case of a testator who made his will and died prior to that date. Savage v. Mears, 2 Rob. 570; 2 Min. (4th Ed.) 1028.

For case explaining the former statute, see Armistead v. Dangerfield, 3 Munf. 20, 5 Am. Dec. 501.

Cited but not construed, Wood v. Tredway, 111 Va. 526, 69 S. E. 445; cited in a review of the decision of Allison v. Allison, 1 Va. L. R. N. S. 663.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 17.

Sec. 5244. Creditors also competent.—If a will charging any estate with debts be attested by a creditor, or the wife or husband of a creditor whose debt is so charged, such creditor shall notwithstanding be admitted a witness for or against the will. (Code 1887, § 2530.)

Revisors' Note.—Section 2529 of the Code of 1887 was on the subject of the competency of devisees and legatees, their wives or husbands, as attesting witnesses to wills. This section, which was construed in Bruce v. Shuler, 108 Va. 670, 62 S. E. 973, has been omitted and thereby repealed, as a result of which the competency of attesting witnesses to wills is now governed by section 6208, this section and the following section. The exceptions to the rule that interest does not disqualify no longer exist, and section 3346 of the Code of 1887 has been omitted and thereby repealed. See revisors' note to section 6209.

As is stated in the revisors' note above, section 2529 of the Code of 1887 has been repealed. On that subject see Martz's Ex. v. Martz's Heirs, 25 Grat. 363; 2 Min. 1014, 1015, 4 Va. L. Reg. 327, 329; Bruce v. Shuler, 108 Va. 670, 62 S. E. 973, 14 Va. L. Reg. 800.

Sec. 5245. Also executors.—No person shall, on account of his

Digitized by Google

being an executor of a will, be incompetent as a witness for or against the will. (Code 1887, § 2531.)

See Coalter's Ex'r v. Bryan, 1 Grat. 18, 87, 94; Martz's Ex'r v. Martz's Heirs, 25 Grat. 363.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 20.

Sec. 5246. On what wills preceding sections of this chapter to operate; when re-executed wills deemed to be made.—The preceding sections of this chapter shall not extend to any will made before the first day of July, eighteen hundred and fifty, but the validity and effect of such will shall be determined by the laws in force on the day before the first day of July, eighteen hundred and fifty, in like manner as if those laws, so far as they relate to the subject, were herein enacted in place of such sections. Every will re-executed or republished, or revived by any codicil, shall, for the purposes of this chapter, be deemed to have been made at the time at which the same shall be so re-executed, re-published, or revived. (Code 1887, § 2532.)

In Raines v. Barker, 13 Grat. 128, 67 Am. Dec. 762, the will was construed under the law as it was previous to 1st July, 1850.

Sec. 5247. Jurisdiction of probate of wills.—The circuit and corporation courts of the Commonwealth, and the clerks of the said circuit courts, shall have jurisdiction of the probate of wills according to the following rules—that is to say: In the county or corporation wherein the decedent has a mansion house or known place of residence; if he has no such house or place of residence, then in a county or corporation wherein any real estate lies that is devised or owned by the decedent; and if there be no such real estate, then in the county or corporation wherein he dies or a county or corporation wherein he has estate: provided, however, that in the city of Richmond the Chancery Court of said city shall have such jurisdiction. (Code 1887, § 2533; 1887-8, p. 16; 1893-4, p. 898; 1902-3-4, p. 673; 1904, p. 206.)

Revisors' Note.—The part of this section held unconstitutional in McCurdy v. Smith, 107 Va. 757, 60 S. E. 78, has been stricken out.

Probate jurisdiction is also conferred on the law and chancery courts of the cities of Norfolk and Roanoke by sections 5935 and 5947, respectively.

THE JURISDICTION of a court of probate is not to ascertain and enforce rights of property, but to establish, preserve and perpetuate an important muniment of title. Tyson v. Scott, 116 Va. 243, 81 S. E. 57.

Effect of Judgment of Probate Court.—A court of probate occupies the place of a jury as to the fact, and ought to find all proper inferences from the facts proved. Smith v. Jones, 6 Rand. 36. Its judgment is a judgment in rem. Until reversed, it binds not only the immediate parties to the proceeding, but all other persons (though infants at the time) and all courts. Coalter's Ex'r v. Bryan, 1 Grat. 18; Wills v. Spraggins, 3 Grat. 555; Schultz v. Schultz, 10 Grat. 358, 60 Am. Dec. 335; Ballow v. Hudson, 13 Grat. 682; Connolly v. Connolly, 32 Grat. 664; Gibson v. Beckham, 16 Grat. 321; Hutcheson v. Priddy, 12 Grat. 85. Thus Ex parte Barker, 2 Leigh 719, is directly overruled. See Schultz v. Schultz, 10 Grat. 378. See, also, 2 Min. (4th Ed.) 1042; 4 Min. (3d Ed.) 103, 110, 112.

In regard to grants of administration, the general principle is that

Digitized by Google

a judgment of a court of general jurisdiction over the subject is conclusive until it is avoided or expires by its own limitation, and this although the facts of the particular case were not such as to give the court jurisdiction over that case. Fisher v. Bassett, 9 Leigh 119, 33 Am. Dec. 227; Burnley's Representatives v. Duke, 2 Rob. 102; Ballow v. Hudson, 13 Grat. 681; Andrews v. Avory, 14 Grat. 229, 73 Am. Dec. 355 (footnote Va. Rep. Ann.); Gibson v. Beckham, 16 Grat. 321.

The sentence of a court of probate of competent jurisdiction admitting a will to probate cannot be denied in any collateral proceeding touching the will. Its validity can only be tested by resorting to the means provided by law for that specific purpose. Avant v. Cook, 118 Va. 1, 86 S. E. 903.

As to when and by whom suit may be brought to impeach or establish will when probate was ex parte, see section 5259.

Situs of Personal Estate.—Demands against the Commonwealth belong to the county or corporation wherein is the seat of government. Com. v. Hudgin, 2 Leigh 248. Promissory notes, bills of exchange, and all simple contract debts belong to the county or corporation where the debtor resides. Fisher v. Bassett, 9 Leigh 119, 33 Am. Dec. 227. Specialties generally belong where they happen to be at decedent's death; and if not then in the State, they are believed to belong where the debtor resides. Ex parte Barker, 2 Leigh 719; Fisher v. Bassett, 9 Leigh 119, 33 Am. Dec. 227; 4 Min. (3d Ed.) 104; 2 Min. (4th Ed.) 1033.

Practice.—It is the practice in Virginia in ex parte probate of wills for witnesses to be asked whether the testator was of sound mind at the time of the execution of the wil. This would seem unnecessary in view of Hopkins v. Wampler, 108 Va. 705, 62 S. E. 926. It would seem that even if witnesses should disclaim any knowledge as to the soundness of the testator's mind, yet the will would have to be admitted to probate, because of the presumption of sanity. But if the courts are to continue to ask the witnesses as to the sanity of the testator, would it not be well to have the attestation clause, where one is used, recite the fact that the testator's mind was sound in the opinion of the witnesses, thereby preserving in writing the facts necessary to be proven at probate?

Generally.—A will devising lands in this State may be admitted to probate in this State, although it may have been declared void in another State. Rice v. Jones, 4 Call 89.

As to by whom a will should be submitted for probate, see 2 Min. (4th Ed.) 1033; also Win v. Bob, 3 Leigh 140, 23 Am. Dec. 258; Mercer v. Kelso's Adm'r, 4 Grat. 106; Schultz v. Schultz, 10 Grat. 358, 369, 60 Am. Dec. 335.

As to appointment of executors and administrators see section 5358, 5360, 5249. See latter section for further provisions as to power of clerks to probate wills, etc.

Cited but not construed in Saunders v. Link, 114 Va. 285, 76 S. E. 327.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 22.

See Gregory's Forms Nos. 277, 278, 279, 280, 281, 282, 283, 285.

Sec. 5248. Appointment of curator; when made; his duties.—Such court or clerk may appoint a curator of the estate of a decedent during a contest about his will, or during the infancy, or in the absence of an executor, or until administration of the estate be granted, taking from him bond in a reasonable penalty. The curator shall take care that the estate is not wasted before the qualification of an executor or administrator, or before such estate shall lawfully come into possession of such executor or administrator. He may demand, sue for, recover, and receive all debts due to the decedent, and all his other personal estate, and likewise may lease or receive the rents and profits of any real estate whereof the dece-

Digitized by Google

dent or testator may have died seized or possessed. He shall pay debts, so far as such payment may not affect the priority in the order of payment prescribed by law, and may be sued in like manner as an executor or administrator; and upon the qualification of an executor or administrator shall account with him for and pay and deliver to him such estate as he has in his hands or may be liable for. (Code 1887, § 2534; 1902-3-4, p. 674.)

Revisors' Note.—The words, "lying within the limits of the county or corporation from the court of which said curator may have received his appointment," formerly appearing at the end of the next to the last sentence, have been omitted.

It was formerly held that a curator of a decedent's estate is not liable to suit of the decedent's creditors in chancery. Wynn's Ex'rs v. Wynn's Adm'rs, 8 Leigh 264; Wilson's Curator v. Shelton's Adm'r, 9 Leigh 342. But by this statute a curator may be sued in like manner as an executor or administrator.

The administrator de bonis non may maintain the suit against the curator and his sureties under the statute. Helsley v. Craig's Adm'r, 33 Grat. 716.

An order of a court of chancery appointing a receiver of an estate pending litigation over the will will be treated as an appointment of a curator under this section, when it appears that the appointment was made after notice, upon a bill supported by affidavit, the allegations of which are not denied by pleadings, affidavit or otherwise. McCurdy v. Smith, 107 Va. 757, 60 S. E. 78.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 23.

Sec. 5249. Probate of wills, the appointment of appraisers of the estates of decedents, and the appointment and qualification of personal representatives, and curators, by the clerks of circuit courts. —The clerk of any circuit court may apoint appraisers of estates of decedents, admit wills to probate, appoint, and qualify executors, administrators and curators of decedents, and require and take from them the necessary bonds in the same manner and with like effect as the court could do if in session. Such powers and duties may be exercised and discharged as well during the sessions of the court as at other times.

Such clerk shall keep an order book, in which shall be entered all orders made by him respecting the subjects aforesaid. Any person interested may, within one year after the entering of such an order, appeal therefrom as a matter of right, upon giving bond as provided by law, to the court whose clerk has made the order. Upon application being made for such appeal, the said clerk shall enter forthwith in his order book an order allowing such appeal, and docket the same as a preferred cause for trial at the next term of the court. The said court, at any term, shall hear and determine the matter as though it had been presented to the said court in the first instance, and shall cause a copy of the order on the order book of the court embracing its final action to be copied by the clerk into his order book. At any time after such appeal is allowed the said court, or the judge thereof in vacation, may make

Digitized by Google

any such order for the protection of the parties interested or for the protection or preservation of any property involved as might have been made had the matter been originally presented to the court, or as may seem needful. (1902-3-4, p. 386; 1904, p. 205.)

Revisors' Note.—So much of this section as was held unconstitutional in McCurdy v. Smith, 107 Va. 757, 60 S. E. 78, has been omitted. As the section stood before the revision, it authorized clerks to appoint committees. This provision no longer appears in the section.

Effect of clerk's judgment.—Under this section the clerk may admit a will to probate or reject it and, in either event, his sentence is a judgment in rem whose validity can be drawn in question only by appeal in the manner and within the time prescribed by this section. No bill to impeach the will lay under section 2544 of the Code of 1887. Saunders v. Link, 114 Va. 285, 76 S. E. 327, 18 Va. L. Reg. 683 and note; Ramsey v. Dodd, 114 Va. 295, 76 S. E. 315. Section 2544 of the Code of 1887 is section 5259 of this Code, with important changes, as to which see revisors' note to section 5259.

Until reversed, the judgment of a clerk under this section binds, not only the immediate parties to the proceedings, but all other persons (though infants at the time), and all courts. Saunders v. Link, 114 Va. 295, 76 S. E. 327, 18 Va. L. Reg. 683 and note; Ramsey v. Dodd, 114 Va. 295, 76 S. E. 315.

Appeals from Clerk.—On an appeal from the clerk, under this section, the court takes jurisdiction and hears and determines "the matter as though it had been presented to the court in the first instance." And all appropriate remedies provided by law with respect to the probate of wills by courts may then be called into activity, and all rights and reservations which pertain to such case are preserved. Saunders v. Link, 114 Va. 285, 76 S. E. 327, 18 Va. L. Reg. 683 and note; Ramsey v. Dodd, 114 Va. 295, 76 S. E. 315.

The right of appeal from the order of a clerk admitting a will to probate under this section is more in the nature of an appeal than a writ of error. Tyson v. Scott, 116 Va. 243, 81 S. E. 57; editorial on this case, 20 Va. L. Reg. 70.

Generally.—Where parties to probate proceedings under this section, instead of appealing under this section, brought suit under section 2544 of the Code of 1887 (5259 of this Code) to impeach the will, and such suit was dismissed, an appeal afterwards taken under this section was not a "new suit" within the meaning of section 5826. Tyson v. Scott, 116 Va. 243, 81 S. E. 57.

See 18 Va. L. Reg. 707.

See notes to sections 5247, 5259.

Section 2701 provides that deputies may perform duties of clerk unless expressly forbidden by law.

Sec. 5250. How production of will compelled.—Any such court, on being informed that a person has in his custody the will of a testator, may summon him, and by proper process compel him to produce the same. (Code 1887, § 2535.)

This section was intended to afford an ancillary means of facilitating the probate of wills, and furnishes no authority to a court to require a legatee under a will, which no one is seeking to have probated, to transfer the possession thereof to its clerk merely for its safekeeping. In re Nicholas' Will, 116 Va. 949, 83 S. E. 368, 20 Va. L. Reg. 707.

As to punishment for destroying or concealing a will, see section 4458.

Sec. 5251. Probate of copy of will proved without the State; to what extent admitted to probate.—Where a will relative to an estate within this State has been proved without the same, an authenticated copy thereof, and the certificate of probate thereof may be offered for probate in this State. When such copy is so offered, the court

Digitized by Google

or the clerk thereof to which it is offered shall presume, in the absence of evidence to the contrary, that the will was duly executed and admitted to probate as a will of personalty in the State or country of the testator's domicile, and shall admit such copy to probate as a will of personalty in this State. And if it appear from such copy that the will was proved in the foreign court of probate to have been so executed as to be a valid will of lands in this State by the law thereof, such copy may be admitted to probate as a will of real estate. The probate of any such copy of a will before any such clerk shall have the same legal operation and effect as if such copy had been admitted to probate by said court. (Code 1887, § 2536; 1906, p. 62.)

In Ex parte Povall, 3 Leigh 816, the court, construing the former statute (1 Rev. Code 1819, p. 378), said: It is the settled construction of the statute that when the authenticated copy is produced, if it shows that the will has been so proved in a foreign court as that if proved in like manner by witnesses here it could only be admitted as a will of personalty, it shall be so admitted here; but if the evidence taken in a foreign court be such that if taken in this court it would be sufficient to establish it as a will of lands, it shall be admitted to probate here also as a will of lands.

The construction of a former statute in Ex parte Povall, 3 Leigh 816, is approved in the present statute. The basis of the statute is the principle of universal public law that in the case of personal property the lex domicilii governs the will, while in the case of real property lex loci rei sitae governs. 2 Min. (4th Ed.) 1040. See, also, Burnley's Adm'r v. Duke, 1 Rand. 108.

The fact of the due authentication of the copy is determined by its admission to probate, and this determination is conclusive on all persons and all courts until reversed in some appropriate proceeding. It cannot be collaterally assailed. Bryan v. Nash, 110 Va. 329, 66 S. E. 69.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 25.

Sec. 5252. When deposition of witness may be taken and read on probate of will.—When any will, or authenticated copy thereof, is offered for probate, and a witness attesting the same resides out of this State, or though in this State is confined in another county or corporation under legal process, or is unable from sickness, age or any other cause, to attend before the court or clerk where the same is offered, the same may be proved by the deposition of the subscribing witness or witnesses, which shall be taken and certified as depositions are taken in other cases, except that no notice need be given of the time and place of taking the same, unless it be in a case in which the probate is opposed by some person who has made himself a party; and the proof so given shall have the same effect as if it had been given before such court or clerk. For the purpose of making such proof, the party offering such will or copy shall be permitted to withdraw temporarily the original thereof upon leaving an attested copy with such court or clerk. (Code 1887, § 2537.)

Revisors' Note.—This section has been so changed as to apply to cases before the clerk, as well as before the court, in order to make the

Digitized by Google

county court had decided the case upon its merits and that its judgment was conclusive on the question until reversed.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 31.

Sec. 5259. Motion for probate may be ex parte; when and by whom suit may be brought in such case, to impeach or establish will.—Any court having jurisdiction of the probate of wills under section fifty-two hundred and forty-seven may, however, without summoning any party, proceed to probate and admit the will to record, or reject the same. After a sentence or order under this section or under section fifty-two hundred and forty-nine, a person interested, who was not a party to the proceeding, may proceed by bill in equity to impeach or establish the will, on which bill a trial by jury shall be ordered to ascertain whether any, and if any, how much of what was so offered for probate, be the will of the decedent. The court may also, if it deem proper, require all testamentary papers of the same decedent to be produced, and direct the jury to ascertain whether any, or if there be more than one, which of the papers produced, or how much of what was so produced, be the will of the decedent. If the sentence or order be made by the court in the exercise either of its original jurisdiction or on appeal from the clerk, such bill shall be filed within two years from the date of such order made by the court. If no appeal be taken from a sentence or order made by the clerk under section fifty-two hundred and forty-nine, the bill shall be filed within two years from the date of such order or sentence by the clerk. If no such bill be filed within that time, the sentence or order shall be forever binding. No bill shall be filed under this section except in the court in which, or in the clerk's office of which, the will was admitted to probate. (Code 1887, § 2544.)

Revisors' Note.—This section changes the rule announced in Saunders v. Link, 114 Va. 285, 76 S. E. 327. It will be observed that the appeal of right under section 5249 from the action of the clerk must be taken within one year from the entry of the order by the clerk, but that the bill in equity under this section (issue devisavit vel non) may be filed within two years from the date of the order made by the court, whether in the exercise of its original jurisdiction or on appeal from the clerk, and that if no appeal is taken from the action of the clerk within one year, then the bill may be filed within two years from the date of such order or sentence by the clerk.

Formerly, under this section, the issue was limited to the ascertainment of "whether any, and if any, how much of what was SO OFFERED FOR PROBATE, be the will of the decedent." The third sentence of the revised section, therefore, is substantially new (see section 5257), and is broad enough to comprehend not only all testamentary papers admitted to probate in the court, but all testamentary papers of the testator. See 2 Va. Law Reg. (N. S.) 437.

The last sentence is new.

Effect of Probate.—The sentence of a court of probate of competent jurisdiction, admitting a will to probate, is conclusive evidence of the due making thereof, and cannot be denied in any collateral proceeding touching the will, and its validity can be called into question only in the mode

Digitized by Google

pointed out by the statute, upon an issue of devisavit vel non. Norvell v. Lessueur, 33 Grat. 222; Robinson v. Allen, 11 Grat. 785; Vaughan v. Green, 1 Leigh 287; Wills v. Spraggins, 3 Grat. 555; Parker's Ex'rs v. Brown's Ex'rs, 6 Grat. 554; Coalter's Ex'r v. Bryan, 1 Grat. 18; Schultz v. Schultz, 10 Grat. 358, 60 Am. Dec. 335; Fisher v. Bassett, 9 Leigh 119, 33 Am. Dec. 227; Burnley's Representatives v. Duke, 2 Rob. 102. See Bagwell v. Elliott, 2 Rand. 190; West v. West's Ex'rs, 3 Rand. 373, 386; Ballow v. Hudson, 13 Grat. 672.

Powers of the Court.—And the court can only exercise the special and limited powers conferred upon it by the statute; it can only ascertain by a jury whether the paper is or is not the will of the decedent; it cannot make any order respecting his estate, and a decree appointing a receiver to take charge of the estate is ultra vires and void. Kirby v. Kirby, 84 Va. 627; Coalter's Ex'r v. Bryan, 1 Grat. 18; Hartman v. Strickler, 82 Va. 233; Lamberts v. Cooper's Ex'r, 29 Grat. 61; Connolly v. Connolly, 32 Grat. 657; Malone's Adm'r v. Hobbs, 1 Rob. 366, 39 Am. Dec. 263.

Under this section the court can only ascertain whether the paper or papers is or are the last will and testament of the deceased. No other relief can be had. Harris v. Wyatt, 113 Va. 254, 74 S. E. 189.

Trial by jury.—Upon the trial of an issue devisavit vel non, the mode of proceeding upon the trial is substantially the same as upon the trial of common-law actions. Lamberts v. Cooper's Ex'r, 29 Grat. 66; Coalter's Ex'r v. Bryan, 1 Grat. 18, 85; Malone's Adm'r v. Hobbs, 1 Rob. 346, 389, 39 Am. Dec. 263; Hartman v. Strickler, 82 Va. 225.

The language of this section "a trial by jury shall be ordered" only means a jury trial accompanied by all the incidents and modes of procedure attendant upon such a proceeding. The word "shall" does not prevent a waiver of a trial by jury, but is to be construed in the sense of "may." A demurrer to the evidence is not an invasion of the province of the jury on such trial. Meade v. Meade, 111 Va. 451, 69 S. E. 330; see 16 Va. Law Reg. 695 for annotation of this case.

Proceeding.—The word "proceeding" refers to the entire proceeding including the order admitting the will to probate or rejecting it, and one who had previous to such order withdrawn as a party therefrom is not concluded thereby. Dillard v. Dillard's Ex'r, 78 Va. 208.

Court.—The word "court," as formerly employed in this section, was not intended to include the clerk. Saunders v. Link, 114 Va. 285, 76 S. E. 327, 18 Va. L. Reg. 683 and note; Ramsey v. Dodd, 114 Va. 295, 76 S. E. 315.

Parties interested.—Under section 5242 (as to pretermitted children) in the case of an adopted child dying under age of twenty-one years, unmarried and without issue, both legatees and next of kin have interest within the meaning of this section. Bell v. Jones (corporation court of Lynchburg), 9 Va. Law Reg. 1070.

The objection upon the merits of a paper offered for probate is conclusively binding upon the legatee, though he was an infant at the time and not party to the proceeding. Wills v. Spraggins, 3 Grat. 555. But see section 5260, and note.

The Issue.—Where a bill states a case which, if true, avoids the whole paper which had been probated as the will of the decedent, and answer accepts the issue thus tendered, and undertakes to maintain the will in its entirety, the issue is not erroneous for the reason that it was not so framed as to establish a part of the paper, as it was not intended by this section to make hard and fast the exact terms in which the issue should be framed. Rowland v. Rowland, 104 Va. 673, 52 S. E. 366.

Plaintiff and Defendant.—The party sustaining the will is the plaintiff, and entitled to the opening and closing of the case before the jury, and the party contesting the will is the defendant; and this, though contestant may propose to admit on the record a prima facie case in favor of the will. Coalter v. Bryan, 1 Grat. 18.

The Limitation.—And after the lapse of the time prescribed, the probate cannot be called in question, how erroneous soever the sentence may be. Nalle's Representatives v. Fenwick, 4 Rand. 585; Street's Heirs v. Street, 11 Leigh 498; Schultz v. Schultz, 10 Grat. 358, 60 Am. Dec. 335:

Digitized by Google

Robinson v. Allen, 11 Grat. 785; Parker's Ex'rs v. Brown's Ex'rs, 6 Grat. 554; Norvell v. Lessueur, 33 Grat. 224.

Generally.—As this section read in Code of 1887, it was held that no bill lay under this section, to impeach a will admitted to probate by the clerk under section 2639a of Pollard's Code (1904). Saunders v. Link, 114 Va. 285, 76 S. E. 327; Ramsey v. Dodd, 114 Va. 295, 76 S. E. 315, 18 Va. L. Reg. 683 and note. These rulings are overturned by the section as amended by the present revision.

Formerly, a bill might have been filed in the county court in chancery to impeach a will previously admitted to record in the district (or circuit) court, as a court of probate. Ford v. Gardner, 1 Hen. & M. 72.

Cited but not construed in Tyson v. Scott, 116 Va. 243, 81 S. E. 57, in editorial, 20 Va. L. Reg. 708.

See 18 Va. L. Reg. 707; 14 Va. L. Reg. 470; 13 Va. L. Journal 441; Burks' Pleading and Practice, p. 482.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 77, section 32.

See Gregory's Forms Nos. 277, 278, 279.

Sec. 5260. Saving in favor of infants and non-residents.—The two preceding sections are subject to this proviso: that any person interested who, at the time of the sentence or order, is under the age of twenty-one years, or of unsound mind, may file a bill in equity to impeach or establish the will within one year after he becomes of age, or is restored to sanity, as the case may be, and any person interested, who at that time resides out of this State, or shall have been proceeded against by order of publication, may, unless he actually appeared as a party, or was personally summoned, file such bill within two years after such sentence or order. (Code 1887, § 2545.)

Revisors' Note.—The saving in favor of persons of unsound mind is new.

Where one interested was an infant at the time of such decree, and was not a party to the proceeding nor represented therein, and new and material evidence has since been discovered, he may file a bill of review to set the decree aside, even though it has been affirmed in the Court of Appeals. Connolly v. Connolly, 32 Grat. 664; 4 Min. (3d Ed.) 110, 112.

For the rule as to infants prior to the statute, see Wells v. Spraggins, 3 Grat. 555.

Cited but not construed in Saunders v. Link, 114 Va. 285, 76 S. E. 327, 18 Va. L. Reg. 683 and note.

Sec. 5261. What may be admitted as evidence on trial by jury.—The record of what is proved or deposed in court by witnesses on the motion to admit a will to record, and any depositions lawfully taken out of court, on such motion, of witnesses who cannot be produced at a trial afterwards before a jury, may, on such trial, be admitted as evidence, to have such weight as the jury shall think it deserves. (Code 1887, § 2546.)

An executor claiming no interest as devisee or legatee under the will, and not having acted in such a way as to subject him to a decree for costs, was a competent witness beween parties claiming the estate he represented. Coalter v. Bryan, 1 Grat. 18.

See Gregory's Forms No. 340.

Sec. 5262. Wills to be recorded; provision for recording copies; effect of recordation; clerk to index wills.—Every will or authenti-

Digitized by Google

cated copy admitted to probate by any court or clerk of any circuit court shall be recorded by the clerk, and remain in the clerk's office, except during such time as the same may be carried to another court under a subpoena duces tecum. A duly certified copy of such will, or of any authenticated copy so admitted to record, may be recorded in any county or city, wherein there is any estate, real or personal, devised or bequeathed by such will.

It shall be the duty of the personal representative of the testator to cause a duly certified copy of any will or of any authenticated copy so admitted to record, to be recorded in any county or city wherein there is any real estate of which the testator died seized, or which is devised by his will.

Every will, or such a duly certified copy as is mentioned in this section, when duly recorded shall have the effect of notice to all persons of any devise or disposal by the will of real estate situated in a county or city in which such will or copy is so recorded.

It shall be the duty of every clerk on recording any will, or such a copy as is mentioned in this section, to index the same as required by law. (Code 1887, § 2547; 1897-8, p. 492; 1902-3-4, p. 674.)

Revisors' Note.—The last two paragraphs of this section are new.

Cited in 14 Va. Law Reg. 472.

See Gregory's Forms Nos. 277, 278, 279.

Sec. 5263. To protect the title of a bona fide purchaser of real estate for value from the heir-at-law of a descedent against a devise of the said real estate without notice to such purchaser.—The title of a bona fide purchaser without notice for valuable consideration from the heir-at-law of a person who has died heretofore, or who may die hereafter, having title to any real estate of inheritance in this Commonwealth, shall not be affected by a devise of such real estate made by the decedent, unless within one year after the testator's death the will devising the same, or if such will has been probated without this State, an authenticated copy thereof and the certificate of probate shall be filed for probate before the court or clerk having jurisdiction for that purpose, and shall afterwards be admitted to probate and recorded in the proper court or clerk's office as a will of real estate; provided that if any devisee under such will, is at the time of the testator's death an infant, or insane, the limitation created by this section shall not affect such infant, or insane person, until after the expiration of one year from the removal of his or her disability. (1914, p. 511; 1916, p. 509.)

Revisors' Note.—This section reduces the limitation from two years to one year. The parts of the act of 1916 which have served their purposes have been omitted.

Digitized by Google

CHAPTER 213.

Descents and Distributions.

Sec.
5264. Course of descents generally.
5265. How collaterals of half-blood inherit.
5266. When parties take per stirpes, and when per capita.
5267. When alienage of ancestor not to bar.
5268. When bastards take; when children of former slaves take.
5269. When marriage legitimates children.
5270. Issue legitimate, though marriage null.
5271. How posthumous children take.
5272. Descents from infants in certain cases.
5273. Distribution of personal estate.
5274. When homicide to bar acquisition of estate.
5275. Right of State, if no other distributee.
5276. When and how widow must renounce benefit of will; effect thereof.
5277. Rights of husband and wife barred by adultery.
5278. In division of estate of intestate, advancements to be brought into hotchpot.

Sec. 5264. Course of descents generally.—When any person having title to any real estate of inheritance shall die intestate as to such estate, it shall descend and pass in parcenary to such of his kindred, male and female, as are not alien enemies, in the following course:

First, To his children and their descendants;

Second, If there be no child, nor the descendant of any child, then to his father;

Third, If there be no father, then to his mother, brothers, and sisters, and their descendants.

Fourth, If there be no mother, nor brother, nor sister, nor any descendant of either, then one moiety shall go to the paternal, the other to the maternal kindred, in the following course:

Fifth, First to the grandfather;

Sixth, If none, then to the grandmother, uncles, and aunts, on the same side, and their descendants;

Seventh, If none such, then to the great grandfathers, or great grandfather, if there be but one;

Eighth, If none, then to the great grandmothers, or great grandmother, if there be but one, and the brothers and sisters of the grandfathers and grandmothers, and their descendants;

Ninth, And so on, in other cases, without end, passing to the nearest lineal male ancestors, and for want of them, to the nearest lineal female ancestors, in the same degree, and the descendants of such male and female ancestors.

Tenth, If there be no father, mother, brother, or sister, nor any descendant of either, nor any paternal kindred, the whole shall go

Digitized by Google

to the maternal kindred; and if there be no maternal kindred, the whole shall go to the paternal kindred. If there be neither maternal nor paternal kindred, the whole shall go to the husband or wife of the intestate; or if the husband or wife be dead, to his or her kindred, in the like course as if such husband or wife had survived the intestate and died entitled to the estate. (Code 1887, § 2548.)

The law of descents as originally prepared was the work of Thomas Jefferson. It has been modified in a few respects since then. 2 Min. (4th Ed.) 537, 542, 543. This statute wholly abrogates the common law of descents, and provides for every case which can happen. Browne v. Turberville, 2 Call 390; Templeman v. Steptoe, 1 Munf. 339; Davis v. Rowe, 6 Rand. 363; Garland v. Harrison, 8 Leigh 371; Stone v. Keeling, 5 Call 144. The statute is to be interpreted according to the analogies of the statute of distribution of a decedent's personal property and of the civil law, from which the statute as well as the statute of distribution was in most particulars taken. Davis v. Rowe, 6 Rand. 363.

For analysis of the chapter, see 2 Min. (4th Ed.) 540 et seq.

By this section two general courses of descent are provided, the first commencing with the children of the intestate and their descendants, and ending with his mother, brothers and sisters, and their descendants; and the second beginning with the grandfather, and ending with the husband or wife of his or her kindred. Moore v. Conner, 2 Va. Dec. 62, 20 S. E. 926.

This section prescribes the course of descents generally, and in all cases reference must first be had to this section to determine to which class it belongs. The other sections (5265, 5266, etc.) are but explanatory of how the estate shall be partitioned under the proper class when discovered, especially when some of those entitled to take are descendants of deceased members of the class, or some of the class are collaterals of the half blood. Moore v. Conner, 2 Va. Dec. 65, 20 S. E. 936.

"Title to any real estate of inheritance" embraces all estates of intestate, whether in possession or resting in title, whether present or reversionary. Medley v. Medley, 81 Va. 265, 274.

A vested remainder inherited under first subsection by the father. Waring v. Waring, 96 Va. 641, 643, 32 S. E. 150.

Mother, nieces and nephews inherit intestate's estate under third subsection. Moore v. Conner, 2 Va. Dec. 56, 20 S. E. 936.

A case governed by fourth subsection, one moiety going to the paternal, the other to the maternal kindred. Browne v. Turberville, 2 Call 390.

Wife's claim under tenth subsection defeated because there were paternal kindred. Hannon v. Hounihan, 85 Va. 439, 12 S. E. 157.

See section 5274—when homicide to bar acquisition of estate.

Cited in French v. Logan, 108 Va. 67, 60 S. E. 622.

For questions propounded and answered under this section see 9 Va. Law Reg. 747 and 846.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 78, section 1.

Sec. 5265. How collaterals of half blood inherit.—Collaterals of the half blood shall inherit only half so much as those of the whole blood; but if all the collaterals be of the half blood, the ascending kindred, if any, shall have double portions. (Code 1887, § 2549.)

Brothers of bastard half blood to him.—The brothers of a bastard, whether they be legitimate or illegitimate, are of the half blood to him, and when they come to the succession with the mother are entitled to half portions. Garland v. Harrison, 8 Leigh 368, 379; Hepburn v. Dundas, 13 Grat. 223.

Applications of the statute.—An uncle of the whole blood, three children of another uncle (deceased) of the whole blood, and an uncle of the half blood, being all the maternal kindred, were entitled, under section

Digitized by Google

5264, subsection 4, to a moiety of the intestate's estate, which was allotted as follows: Two-fifths to the uncle of the whole blood, two-fifths to the three cousins, and one-fifth to the uncle of the half blood. Browne v. Turberville, 2 Call 390.

The heirs of an intestate, under section 5264, subsection 3, were his mother, two sisters of the whole blood, and a brother of the half blood. The mother took two-sevenths, each of the sisters took two-sevenths, and the brother of half blood one-seventh. Blunt v. Gee, 5 Call 481.

The mother of the intestate, four nephews and nieces of the half blood, children of three brothers of the half blood, came into the inheritance. The nephews and nieces took per stirpes three-fifths, and the mother, being entitled to a double portion, took two-fifths. Moore v. Conner, 2 Va. Dec. 56, 20 S. E. 936.

For comments on this section see 14 Va. Law Reg. 795.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 78, section 2.

Sec. 5266. When parties take per stirpes, and when per capita.—When the children of the intestate, or his mother, brothers, and sisters, or his grandmother, uncles, and aunts, or any of his female lineal ancestors living, with the children of his deceased lineal ancestors, male and female, in the same degree, come into the partition, they shall take per capita or by persons; and where, a part of them being dead and a part living, the issue of those dead have right to partition, such issue shall take per stirpes or by stocks, that is to say, the shares of their deceased parents; but whenever those entitled to partition are all in the same degree of kindred to the intestate, they shall take per capita or by persons. (Code 1887, § 2550.)

This statute may be paraphrased thus: If the heirs are all in the same degree of relationship to the decedent, they take per capita or by persons (equally); if in unequal degree, the nearest take per capita, while the more remote take per stirpes, the shares of their deceased ancestors who are in the degree of the nearest. Davis v. Rowe, 6 Rand. 355; Ball v. Ball, 27 Grat. 326; 2 Min. (4th Ed.) 543.

B. dies intestate, leaving as heirs five children of her deceased son, S., six children of her deceased son W., and a grandchild of W., the only child of a deceased daughter of W. B.'s real estate is to be divided into twelve equal parts, of which the five children of her son S., the six children of her son W., and the grandchild of W., representing her deceased mother, are each to take a part. Ball v. Ball, 27 Grat. 325.

Where an intestate left surviving no father and no children or descendants, but left a mother and four nieces and nephew of the half blood, the nephews and nieces take per stirpes, and not per capita. Moore v. Conner, 2 Va. Dec. 56, 20 S. E. 936.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 78, section 3.

Sec. 5267. When alienage of ancestor not to bar.—In making title by descent, it shall be no bar to a party that any ancestor (whether living or dead), through whom he derives his descent from the intestate, is or hath been an alien. (Code 1887, § 2551.)

This section removes the bar of alienage through collateral as well as lineal kindred. Jackson v. Sanders, 2 Leigh 109; Garland v. Harrison, 8 Leigh 374; Hannon v. Hounihan, 85 Va. 429, 12 S. E. 157.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 78, section 4.

Sec. 5268. When bastards take; when children of former slaves take.—Bastards shall be capable of inheriting and transmitting in-

Digitized by Google

heritance on the part of their mother as if lawfully begotten. And the children of parents, one or both of whom were slaves at and during the period of cohabitation, and who were recognized by the father as his children, and whose mother was recognized by such father as his wife, and was cohabited with as such, and their descendants, shall be as capable of inheriting any estate whereof such father may have died seized or possessed, or to which he was entitled, as though such children had been born in lawful wedlock. (Code 1887, § 2552; 1902-3-4, p. 664.)

The bastard is not restricted to an inheritance from the mother, or through the mother in the direct line, but he may take an inheritance on the part of the mother from the collateral line. Garland v. Harrison, 8 Leigh 382; Hepburn v. Dundas, 13 Grat. 223.

In whatever capacity a legitimate son of the mother would have to inherit or transmit inheritance, the same attaches to a bastard, as to inheritance and transmission of inheritance on the part of the mother. The word "transmit" in the statute means transmit "through" and "from." Therefore a mother is capable of inheriting from her illegitimate son, and so are his illegitimate brothers. Garland v. Harrison, 8 Leigh 382, 394; Hepburn v. Dundas, 13 Grat. 223.

Upon a devise to a daughter for life, and at her death to be equally divided among her children, an illegitimate child of the daughter will take with her legitimate children. Bennett v. Toler, 15 Grat. 588, 78 Am. Dec. 638. See, also, Thomason v. Anderson, 4 Leigh 118; 5 Va. Law Reg. 111; 1 Min. (4th Ed.) 447.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 78, section 5.

Sec. 5269. When marriage legitimates children.—If a man, having had a child or children by a woman, shall afterwards intermarry with her, such child or children, or their descendants, if recognized by him before or after the marriage, shall be deemed legitimate. (Code 1887, § 2553.)

An illegitimate child born before 1st of January, 1787 (when this statute went into effect), of parents who intermarried also before that period, and who was recognized by the father before that period, was legitimated and entitled to an equal distribution of the father's unbequeathed estate with his other children born after marriage. Rice v. Efford, 3 Hen. & M. 225; Sleigh v. Strider, 5 Call 439. See, also, Bennett v. Toler, 15 Grat. 623, 78 Am. Dec. 638.

A child who died before the marriage of the parents leaving a legitimate child is, upon the marriage of the parents and recognition by the father, legitimated, so that the child will take as heir to the father. Ash v. Way's Adm'rs, 2 Grat. 203.

Neither this section nor the next applies to or legitimates the offspring of a cohabitation in this State between a white person and a negro, when the parents subsequently celebrate a ceremony of marriage outside of this State, in some place where marriage between such persons is lawful. Greenhow v. James' Ex'r, 80 Va. 636, 56 Am. Rep. 603.

This section does not apply where a marriage is not celebrated. Eldred v. Eldred, 97 Va. 630, 34 S. E. 477.

A child born out of wedlock but subsequently legitimated by this section does not meet the common law requirement that the child must be born alive during coverture to entitle the husband to curtesy. Bond v. Bond, 16 Va. Law Reg. 411 (circuit court Pulaski county), and discussion thereof, 16 Va. Law Reg. 709 and 801. See note of this case under section 5134.

As to negroes, see section 5091 and notes.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 78, section 6.

Digitized by Google

Sec. 5270. Issue legitimate, though marriage null.—The issue of marriages deemed null in law, or dissolved by a court, shall nevertheless be legitimate. (Code 1887, § 2554.)

The issue of a woman by a second marriage, which took place during the lifetime of the first husband and before the first marriage is dissolved, are legitimate, and will inherit from their father. Stones v. Keeling, 5 Call 143; Heckert v. Hile's Adm'r, 90 Va. 390, 18 S. E. 481. The case of Greenhow v. James' Ex'r, 80 Va. 636, 56 Am. Rep. 603, cited in notes to section 5269, and below, held not to overrule Stones v. Keeling, supra. Heckert v. Hile's Adm'r, supra.

This section and section 5269 are cited by Judge Cardwell in Offield v. Davis, 100 Va. 250, 263, 40 S. E. 910, as an argument for the invalidity of a common-law marriage in Virginia.

This section does not legitimate issue of cohabitation between a white person and a negro who afterwards marry out of State where such marriages are lawful. Greenhow v. James' Ex'or, 80 Va. 636, 56 Am. Rep. 603.

Cited but not construed in Lemons v. Harris, 115 Va. 809, 80 S. E. 740.

See notes to section 5091.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 78, section 7.

Sec. 5271. How posthumous children take.—Any person in ventre sa mere, who may be born in ten months after the death of the intestate, shall be capable of taking by inheritance in the same manner as if he were in being at the time of such death. (Code 1887, § 2555.)

Sec. 5272. Descents from infants in certain cases.—If an infant die without issue, having title to real estate derived by gift, devise, or descent from one of his parents, the whole of it shall descend and pass to his kindred on the side of that parent from whom it was so derived, if any such kindred be living at the death of the infant. If there be none such, then it shall descend and pass to his kindred on the side of the other parent. (Code 1887, § 2556.)

Blood of first purchaser.—This section is the only instance where the statute pays any attention to the blood of the first purchaser. 2 Min. (4th Ed.) 542; Medley v. Medley, 81 Va. 272.

Exclusion of one parent.—This statute excludes the mother when the inheritance was derived from the father, if there is living any brother or sister of such infant, or any brother or sister of the father, or any lineal descendant of either of them; and vice versa, where the inheritance was derived from the mother. Browne v. Turberville, 2 Call 398; Tomlinson v. Dillard, 3 Call 106 (93).

A married infant died leaving a child. Her real estate descended to the child subject to curtesy of husband, and upon the death of the child (an infant) passed to the heirs of the child on the part of the mother. Vaughan v. Jones, 23 Grat. 444, 458.

Infant's property derived directly by devise from the father goes at death of infant to her sisters to the exclusion of the mother. Davis v. Christian, 15 Grat. 11, 32.

Real estate must be derived directly from parent.—The real estate of an infant will descend in the same manner as that of an adult (1) unless it is derived by gift, devise, or descent from one of his parents, i. e., unless it is derived from his father or mother, not grandfather or grandmother; and (2) unless the estate is derived directly from one of his parents. 1 Va. Law Reg. 229.

The property must be derived from parent directly, not indirectly, in order to come under this statute. Davis v. Christian, 15 Grat. 11, 32; 1 Va. Law Reg. 229.

Digitized by Google

Generally.—The word "kindred," as used in this section, has the meaning of "next of kin." Bonewell v. Smith, 120 Va. 431, 91 S. E. 759.

Under this section, on failure of issue of an infant last seised, the inheritance descends to the infant's kindred on the side of that parent from whom the real estate was derived when, as in this case, there are such kindred living at the death of the infant. The statute does not permit us to ascend beyond the parent to the grandparent, or to any other ancestor of the infant, in order to reach the propositus from whom the inheritance shall descend. The parent only, and in no case any more remote ancestor is made by the statute such propositus. Whether the parent be or be not the first purchaser is immaterial. Bonewell v. Smith, 120 Va. 431, 91 S. E. 759.

This section designates the class to which realty should descend; the proportion is governed by section 5265. Mort v. Jones, 105 Va. 668, 14 Va. Law Reg. 795.

Application of the statute in Templeman v. Steptoe, 1 Munf. 339; Addison v. Core's Adm'r, 2 Munf. 279; Medley v. Medley, 81 Va. 272.

The paternal uncle preferred before maternal grandmother. Liggon v. Fuqua, 6 Munf. 281.

See notes to second 5347.

Sec. 5273. Distribution of personal estate.—When any person shall die intestate as to his personal estate or any part thereof, the surplus (subject to the provisions of chapter two hundred and seventy-four) after payment of funeral expenses, charges of administration and debts, shall pass and be distributed to and among the same persons, and in the same proportions, to whom, and in which real estate is directed to descend, except as follows:

First, Of infants.

The personal estate of an infant shall be distributed as if he were an adult;

Second, Of married persons.

If the intestate was married, the surviving husband or wife shall be entitled to one-third of such surplus, if the intestate left surviving issue of the marriage which was dissolved by the death of the intestate, or of a former marriage; but if no such issue survive, the surviving husband or wife shall be entitled to the whole of such surplus. (Code 1887, § 2557.)

Revisors' Note.—This section materially changes the law governing the distribution of the personal estate of married persons, and puts husband and wife on terms of equality in case of intestacy. Before the revision, if the intestate was a married woman, her husband was entitled to the whole of the surplus; if the intestate left a widow and issue by her, the widow was entitled to one-third of the surplus; if the intestate left a widow but no issue by her, the widow was entitled absolutely to such of the personal property in the surplus as was acquired by the intestate by virtue of his marriage with her prior to April 4, 1877, and remaining in kind at her death; and in this case she was also entitled, if the intestate left issue by a former marriage, to one-third; if no such issue, to one-half of the residue of the surplus.

Intestacy—When heir is not disinherited.—A paper, signed and sealed by the decedent, expressing the desire to disinherit two of his heirs, is not a devise or bequest of the testator's estate by implication, for a man cannot disinherit his heirs or next of kin in any other way than by giving his estate to some one else. Boisseau v. Aldridges, 5 Leigh 222, 27 Am. Dec. 590.

Executor not entitled to residuum of personal estate.—The words of

Digitized by Google

the statute "or any part thereof" refer to and direct distribution of everything that was not actually bequeathed by the will, and therefore since 1785, when this statute was enacted, the executor is not in any case entitled to the residuum of his testator's personal estate not actually bequeathed away by the will. Paup's Adm'r v. Mingo, 4 Leigh 163; Shelton v. Shelton, 1 Wash. 64. But see Wernick's Adm'r v. McMurdo, 5 Rand. 78.

Married women's personal property.—It seems that the executor or administrator who had survived his wife, but had never taken administration on her estate, may sue the guardian of the wife for her personal estate committed to him. Templeman v. Fauntleroy, 3 Rand. 434. For other cases under former statute, see Vaughan v. Jones, 23 Grat. 444; Andes v. Roller, 98 Va. 620, 37 S. E. 297; Wade v. Boxley, 5 Leigh 442.

Issue.—The word "children" in the act of 1785 was construed strictly, and not in the same sense as "issue." Bernard v. Hipkins, 6 Call 101, 104. Therefore the statute was subsequently changed.

Alienation barring wife's distributive share.—The wife has not such an interest in that portion of the personal estate of her husband to which she may be entitled in the event of his dying intestate, or leaving a will which she may renounce, as that an absolute and irrevocable, though merely voluntary, deed thereof, executed by him to his children by a former marriage, can be considered a fraud on her rights, or be set aside at her instance. Lightfoot's Ex'rs v. Colgin, 5 Munf. 42; Gentry v. Bailey, 6 Grat. 594.

Generally.—For the history of formation of statute, see note to Paup's Adm'r v. Mingo, 4 Leigh 173.

As to "legacies in disguise," see Ruth v. Owens, 2 Rand. 507.

Cited in Morris v. Garland's Adm'r, 78 Va. 225.

See section 5347 and notes.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 78, section 9.

Sec. 5274. When homicide to bar acquisition of estate.—No person shall acquire by descent or distribution, or by will, any interest in the estate of another whom he has killed in order to obtain such interest.

Revisors' Note.—This section is new.

For discussion of this subject prior to this section see 1 Va. L. R. N. S. 465.

Sec. 5275. Right of State, if no other distributee.—To the Commonwealth shall accrue all the personal estate of every decedent, of which there is no other distributee. (Code 1887, § 2558.)

Revisors' Note.—For an act relating to unclaimed bank deposits, see Acts 1918, p. 430.

As to escheats, see section 489, et seq.

Sec. 5276. When and how widow must renounce benefit of will; effect thereof.—When any provision for a wife is made in her husband's will, she may, within one year from the time of the admission of the will to probate, renounce such provision. Such renunciation shall be made either in person before the court in which the will is recorded, or by a writing recorded in such court, or the clerk's office thereof, upon such acknowledgment or proof as would authorize a writing to be admitted to record under chapter two hundred and eleven. If such renunciation be made, or if no provision for her be made in the will, she shall have such share of her husband's personal estate as she would have had if he had died intestate; otherwise, she shall have no more thereof than is given her by the will. (Code 1887, § 2559.)

Digitized by Google

Application of Statute.—This statute is applicable to personal estate alone. Ambler v. Norton, 4 Hen. & M. 35; Blunt v. Gee, 5 Call 481; Wiseley v. Findlay, 3 Rand. 361, 15 Am. Dec. 712; 3 Min. (2d Ed.) 530.

Effect of renunciation.—The effect of the renunciation is to throw the rights of the wife upon the other parts of the estate, and relieves that which was burdened, with the provision for her. Then equity requires that the interest devised to her should be given to the parties who are disappointed of their legacies by this election. Mitchell v. Johnson, 6 Leigh, 475; Findley's Ex'rs v. Findley, 11 Grat. 434; McReynolds v. Counts, 9 Grat. 242; Kinnaird v. Kinnaird, 8 Leigh 400, 31 Am. Dec. 658; Morris v. Garland's Adm'r, 78 Va. 226.

Manner of renunciation.—An election to take against the will cannot be made in any other form than that of a renunciation made in manner and time prescribed in this statute. Taylor v. Browne, 2 Leigh 419; Kinnaird v. Kinnaird, 8 Leigh 400, 31 Am. Dec. 658. And it matters not that no provision for nor mention of the wife is made in the will. Cocke's Ex'r v. Phillips, 12 Leigh 248.

Taking out letters of administration with will annexed does not amount to an election to take under the will. Taylor v. Brown, 2 Leigh 419.

It is not required that the provision giving personal estate to the wife, which provision she renounces, shall be declared or averred to be in lieu of her distributive share. Thornton v. Winston, 4 Leigh 174.

Antenuptial contract barring dower does not deprive her of distributive share.—An antenuptial contract barring dower does not deprive the wife of her distributive share in the personal estate. Findley's Ex'rs v. Findley, 11 Grat. 434.

Deed of settlement—Renunciation of will.—A man makes a deed of settlement of property upon the wife, and afterwards by will disposes of the property in a manner far less beneficial to the wife, and dies. The widow is not required by this statute, to renounce the provision made for her by will in order to claim under the deed of settlement. Taylor v. Browne, 2 Leigh 419.

Renunciation of will does not extinguish trust created thereby.—Personal property bequeathed to the wife for life, subject to a power of appointment vested in her, is a trust for the objects of the appointment; and the widow's renunciation of the will does not extinguish the trust; and, as the power was not executed by the trustee, the subject shall be divided among the testator's lineal descendants, according to the statute of distributions. Mitchell v. Johnson, 6 Leigh 461.

Quære, whether in the case of a testator making a provision for his wife for life, and giving her a power of appointment of the remainder, if the widow renounce the provision she thereby renounces the power of appointment also. Id.

Effect of not renouncing benefit of will.—If the widow does not renounce her husband's will within the time prescribed by statute, she loses her distributive share of the personal estate, and is confined to the provisions of the will, but is entitled to her dower in the lands. Blunt v. Gee, 5 Call 481; Noell v. Garnett, 4 Call 92; Wiseley v. Findley, 3 Rand. 372, 15 Am. Dec. 712; Thornton v. Winston, 4 Leigh 152, 174; Dupree's Adm'r v. Cary, 6 Leigh 36; McReynolds v. Counts, 9 Grat. 242; Wilson v. Knownslar's Ex'r, 79 Va. 479; Findley's Ex'rs v. Findley, 11 Grat. 434.

Quaere: A householder dies, leaving a widow, but no children, and he leaves a will whereby he bequeaths one-half of his personal estate to his wife in fee simple, and the other half to a nephew, and the widow does not renounce the will, what portion does she take under the will? Is she entitled to the poor debtor's exemption absolutely, and then one-half of the residue, or does she only take one-half of the estate left by said testator? 15 Va. Law J. 777; 16 Va. Law J. 251.

Disposition by husband in his lifetime defeats her claim.—While a husband cannot defeat the wife's claim to her distributive share by will, he may do so by an irrevocable disposition thereof in his lifetime. Light-

Digitized by Google

foot's Ex'rs v. Colgin, 5 Munf. 42; Gentry v. Bailey, 6 Grat. 594. And this although he secures a life estate to himself and though his purpose is to defeat his wife's claim. An irrevocable deed of trust is not to be considered a will in disguise merely because it disposes of nearly all of the grantor's personal property and reserves to the grantor the possession and control of the property during his life. Hall v. Hall, 109 Va. 117, 63 S. E. 420.

Generally.—For an elaborate discussion of a widow's right of renunciation and the acceleration of distribution, see 17 Va. Law Reg. 177.

Renunciation in Showalter v. Showalter, 107 Va. 713, 60 S. E. 48, held to be sufficient compliance with this section.

As to election of widow to waive jointure and demand dower, see section 5121.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 78, section 11.

Sec. 5277. Rights of husband and wife barred by adultery.—The provisions of section fifty-two hundred and seventy-three and fifty-two hundred and seventy-six are subject to the qualification that if either husband or wife leave the other and live in adultery, he or she shall have no part of the personal estate as to which the other consort dies intestate, unless before such death they were reconciled and lived together. (Code 1887, § 2560.)

Revisors' Note.—Formerly, this section barred the rights of the wife only; now it bars the rights of either husband or wife.

Dower barred by adultery of wife, section 5123; curtesy and other interest in wife's estate barred by desertion, section 5140.

Sec. 5278. In division of estate of intestate, advancements to be brought into hotchpot.—Where any descendant of a person dying intestate as to his estate, or any part thereof, shall have received from such intestate in his life-time, or under his will, any estate, real or personal, by way of advancement, and he, or any descendant of his, shall come into the partition and distribution of the estate with the other parceners and distributees, such advancement shall be brought into hotchpot with the whole estate, real and personal, descended or distributable, and thereupon such party shall be entitled to his proper portion of the estate, real and personal. (Code 1887, § 2561.)

Purpose of this statute.—The purpose is to bring about an equal division among the children or other descendants of all his estate, both real and personal, except so far as, in the exercise of the right of ownership, he may have thought fit to create a difference, not by constraining the child who has received the advancement to submit to the redivision, but subjecting him to an alternative. Chinn v. Murray, 4 Grat. 377; Hudson v. Hudson's Ex'r, 3 Rand. 120.

Advancements—Hotchpot—Definition.—An advancement is a giving by anticipation the whole or part of what it is supposed a child will be entitled to on the death of the parent. Chinn v. Murray, 4 Grat. 378, 397; Harley v. Harley, 6 Va. Law J. 172; Darne's Ex'r v. Lloyd, 82 Va. 861, 5 S. E. 87, 3 Am. St. Rep. 123; Nicholas v. Nicholas, 100 Va. 660, 42 S. E. 669, 866; Osgood v. Breed's Heirs, 17 Mass. 356; Appeal of Miller, 80 Am. Dec. 559, and note.

The child must not only have the enjoyment of the property and take the profits, but the parent must have parted irrevocably with his title to the property and passed it to the child. Christian v. Coleman's Adm'r, 3 Leigh 30; Williams v. Stonestreet, 3 Rand. 562; Kean v. Welch,

Digitized by Google

1 Grat. 406; Puryear v. Cabell, 24 Grat. 268; Darne's Ex'r v. Lloyd, 82 Va. 859, 5 S. E. 87, 3 Am. St. Rep. 123; West v. Jones, 85 Va. 616, 620, 8 S. E. 468.

Payment by father of gambling debt of son created an advancement. Carter v. Cutting, 5 Munf. 223.

Timber cut by one of the children off a tract not her own is to be charged to her in the division. Puryear v. Cabell, 24 Grat. 260.

Slaves were subjects of advancement in January, 1865. West v. Jones, 85 Va. 616, 8 S. E. 468; Puryear v. Cabell, 24 Grat. 260.

What in its inception was a loan may be made subsequently, by will or otherwise, an advancement. Darne's Ex'r v. Lloyd, 82 Va. 859, 5 S. E. 87, 3 Am. St. Rep. 123. The release or canceling of bonds of son to parent, with intention thereby to prefer him in life, is as much an advancement as so much cash. Bruce v. Slemp, 82 Va. 358, 4 S. E. 692.

Advancements depend upon intention.—While questions of advancement depend upon intention (McDearman v. Hodnett, 83 Va. 280, 2 S. E. 643; Watkins v. Young, 31 Grat. 84; Lewis v. Henry's Ex'rs, 28 Grat. 192; Lee's Ex'r v. Boak, 11 Grat. 182; Biedler v. Biedler, 87 Va. 309, 12 S. E. 753), yet the parent cannot by mere declaration of intention make that an advancement which is not such in law, nor prevent that from being an advancement which the law plainly declares to be such. Watkins v. Young, 31 Grat. 88-90, 2 Min. (4th Ed.) 516.

Gift by parent to child prima facie an advancement.—Whenever a parent makes to a child a transfer of property, either real or personal, or whenever he furnishes the purchase price of property, title to which is taken in the name of the child, a prima facie presumption of advancement arises. Watkins v. Young, 31 Grat. 84; McDearman v. Hodnett, 83 Va. 281, 2 S. E. 643; Gregory v. Winston's Adm'r, 23 Grat. 102; Bruce v. Slemp, 82 Va. 352, 4 S. E. 692. And so such a gift to a son-in-law is prima facie an advancement to the daughter (Peale's Adm'r v. Thurmond, 77 Va. 753; Bruce v. Slemp, 82 Va. 352, 4 S. E. 692; McDearman v. Hodnett, 83 Va. 281, 2 S. E. 643), the married woman's act not affecting questions of advancement (McDearman v. Hodnett, supra). But the presumption in both these cases may be rebutted, and for the purpose of showing the real intention of the ancestor his declarations or statements made at the time of the gift, or subsequently, are competent evidence, as well as circumstances of the ancestor and relations existing between him and the child. Watkins v. Young, 31 Grat. 84; McDearman v. Hodnett, 83 Va. 281, 2 S. E. 643; Chinn v. Murray, 4 Grat. 348. Gift of real estate cannot be by parol. Section 5141.

Hotchpot.—In considering what advancements are to be brought into hotchpot, regard must be had to section 5141, forbidding parol gifts of land. Nicholas v. Nicholas, 100 Va. 660, 42 S. E. 669, 866. See, also, section 5141 and notes.

Value to be accounted for.—The value of a present advancement (i. e., an advancement to take effect immediately) is to be estimated as at the date of the gift, without accountability of the donee for future rents, profits, increase, enhancement or gain; and, on the other hand, without resort to the intestate's estate for any depreciation, diminution, or loss, whether occasioned by mismanagement, misfortune, or accident. Beckwith v. Butler, 1 Wash. 224; Hudson v. Hudson's Ex'r, 3 Rand. 117; Knight v. Yarborough, 4 Rand. 566; Chinn v. Murray, 4 Grat. 379; Williams v. Stonestreet, 3 Rand. 359; Christian v. Coleman's Adm'r, 3 Leigh, 30; Knight v. Oliver, 12 Grat. 33; Puryear v. Cabell, 24 Grat. 260; Cabells v. Puryear, 27 Grat. 908; Barrett v. Morriss' Ex'r, 33 Grat. 273; Davies v. Hughes, 86 Va. 909, 11 S. E. 488; Kean v. Welch, 1 Grat. 406.

Quære, is this same rule applicable to future advancements, e. g., a gift by a father to a son of real estate in fee, but to commence in futuro, or with a reservation of a life estate to himself? Chinn v. Murray, 4 Grat. 379.

Rents and profits.—While it is the rule that neither rents nor profits of

Digitized by Google

land given as an advancement ought to be brought into hotchpot, yet where a father permits a child to rent out his land, and to receive the rents thereof for his or her use, such rents shall be brought into hotchpot as an advancement. Williams v. Stonestreet, 3 Rand. 559.

Debts.—Advancements made by the testator in his lifetime are not to be taken in account in fixing the proportion of the debts which each devisee is to pay. Gaw v. Huffman, 12 Grat. 628.

Interest on advancements.—The general rule as to interest on advancements is as follows: The party advanced is not to be charged with interest, because the advancement in his hands is no part of the estate. It belongs to him, and he cannot be charged interest on his own unless there be something in the will subjecting it to such a charge. Cabell v. Puryear, 27 Grat. 902, 908; Puryear v. Cabell, 24 Grat. 260; Barrett v. Morriss' Ex'r, 33 Grat. 273; Davies v. Hughes, 86 Va. 909, 11 S. E. 488.

But if the amount held by the several legatees be over and above the amount they were entitled to on the date fixed by the testator as the date of distribution, such excess is the property of the estate, in which all the distributees are equally interested, and upon this excess the legatees who have had the same must be charged interest from the day of distribution fixed by the testator. Cabells v. Puryear, 27 Grat. 902, 908; Barrett v. Morriss' Ex'r, 33 Grat. 273; Davies v. Hughes, 86 Va. 912, 11 S. E. 488. See 2 Min. (4th Ed.) 516, where the rule is incorrectly stated.

Refusal to bring advancement into hotchpot at one division no bar to participating in second division.—An heir at law, who has been advanced in the lifetime of his ancestor is entitled to participate in the division, after the death of the widow, in the real estate which had been assigned to her in dower, although he had refused to bring his advancements in hotchpot, in order to participate in the previous division of the estate, not embraced in the assignment to the widow. Persinger v. Simmons, 25 Grat. 238; Knight v. Oliver, 12 Grat. 33.

Ademption of legacy.—Where one in loco parentis gives a legacy as a portion, and afterwards advances in the nature of a portion to the same person, such advancement will be deemed an ademption of the legacy. Hansbrough's Ex'rs v. Hooe, 12 Leigh, 322, 37 Am. Dec. 659; Strother's Adm'r v. Mitchell's Ex'r, 80 Va. 149; Moore v. Hilton, 12 Leigh 1; Jones v. Mason, 5 Rand. 577, 16 Am. Dec. 761. Analogically, devises of real estate are revoked, adeemed, or satisfied. Hansbrough's Ex'rs v. Hooe, supra.

But when the gift is given before the making of the will, and the will does not charge it as an advancement, the court cannot so charge it in the settlement. Strother's Adm'r v. Mitchell's Ex'r, 80 Va. 149. See, also, Lee's Ex'r v. Boak, 11 Grat. 182.

Purchaser from descendant.—Complainant bought the interest of an heir of a decedent without making inquiry and without having knowledge of the fact that advancements had been made by the decedent (father) to the heir (son) in excess of the heir's interest in the estate. In a suit by the purchaser against the other heirs for partition, the lower court denied relief, which decree was affirmed on appeal, the court holding that, under this section, where the advancement to such descendant is equal to or exceeds his share of the estate, it bars his right to further participation; that while the section does not in terms refer to a purchaser from the descendant, yet such purchaser is charged with knowledge of the public statutes of the State and can only buy and can only take the interest of his grantor in the estate; and that the doctrine of bona fide purchaser has no application. Corbitt v. Wright, 120 Va. 471, 91 S. E. 612.

Generally.—By the act of 1785 advancements of real estate were only to be brought into hotchpot with real estate descended, and personal advancements only with personal estate. Since 1819 the law has been otherwise. Williams v. Stonestreet, 3 Rand. 559.

Advancements to children are not brought into hotchpot for the

Digitized by Google

benefit of the widow; she is only entitled to share in the estate of the intestate of which he died possessed. Knight v. Oliver, 12 Grat. 33.

This statute is mandatory and makes the bringing of advancements into hotchpot a condition precedent to participation in the estate. Mort v. Jones, 105 Va. 677, 54 S. E. 857.

For full treatment of the subject of Hotchpot, see 2 Min. (4th Ed.) 512 et seq.; Watkins v. Young, 31 Grat. 85 et seq.; Va. Rep Anno.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 78, section 13.

Digitized by Google

TITLE 47.

Partitions and Coterminous Owners.

CHAPTER 214.

Partitions and Coterminous Owners.

Sec.
5279. Jurisdiction of partition of land.
5280. When shares of two or more laid off together.
5281. When partition cannot be made, there may be allotment or sale; proceedings in case of sale; how proceeds distributed or invested; effect of sale on right of dower.
5282. Decree of partition to vest legal title.
5283. When proceeds of sale deemed personal estate.
5284. Shares of unknown parties.
5285. Effect of partition or sale on lessee's rights.
5286. Partition of goods, etc., by sale, if necessary.
5287. Working coal and other mines near land of another without his consent, prohibited.
5288. Owner to permit survey of mine.
5289. How entry for such purpose compelled.
5290. How adjoining fishing shores defined.
5291. Penalty for disturbing them.
5292. Arrest of non-resident offenders.
5293. Proceedings to acquire right to drain land through lands of others.
5294. Damages to be ascertained by commissioners; what notice to be given.
5295. Mode of draining to be described.
5296. Payment of damages and costs a pre-requisite to right to drain.
5297. Court may allow owners of lands desiring to drain same, to construct culverts, etc., under mill canals.

Sec. 5279. Jurisdiction of partition of land.—Tenants in common, joint tenants, and co-parceners shall be compellable to make partition; and a lien creditor or any owner of undivided estate in real estate may also compel partition for the purpose of subjecting the estate of his debtor or the rents and profits thereof to the satisfaction of his lien. Any court having general equity jurisdiction of the county or corporation wherein the estate, or any part thereof, is, shall have jurisdiction in cases of partition, and in the exercise of such jurisdiction may take cognizance of all questions of law affecting the legal title that may arise in any proceedings, between such tenants in common, joint tenants, coparceners and lien creditors. (Code 1887, § 2562; 1897-8, p. 488; 1902-3-4, p. 835.)

Revisors' Note.—The latter part of this section formerly authorized the court of equity to "take cognizance of all questions of law affecting the legal title that may arise in any proceedings, as well between

Digitized by Google

tenants in common, joint tenants, and co-parceners as others." The language now is "between SUCH tenants in common, joint tenants, co-parceners and LIEN CREDITORS." It had been suggested that the former language might in some cases deprive third persons of their constitutional right of trial by jury, hence the change.

Constitutionality.—This section was held not to be in conflict with article 1, chapter 13, Const. 1869, providing for trial by jury. Pillow v. S. W. Imp. Co., 92 Va. 144, 23 S. E. 32, 53 Am. St. Rep. 804.

General rule as to partition—How varied.—In the partition of real estate each owner is entitled to have in severalty a part equal to his interest in the whole subject, if this is practicable, with a due regard to the interest of all concerned. But if such partition cannot be made without impairing the portions of some others, the property may be divided into shares of unequal values, and the inequality may be corrected by a charge of money on the more valuable in favor of the less valuable portion or by other means recognized in the law of partition. Cox v. McMullin, 14 Grat. 82; Custis v. Snead, 12 Grat. 260; Howery v. Helms, 20 Grat. 1, 8; 2 Min. (4th Ed.) 491.

Jurisdiction of courts of equity.—Since the passage of this act the application is in no sense addressed to the discretion of the court, but may be made as a matter of right. Grove v. Grove, 100 Va. 556, 42 S. E. 312; Wiseley v. Findlay, 3 Rand. 361, 15 Am. Dec. 712; Castleman v. Veitch, 3 Rand. 598; Straughan v. Wright, 4 Rand. 493. This section gives courts of equity authority to pass upon all questions of law affecting the legal title that may arise in the proceeding (Fry v. Payne, 82 Va. 759, 1 S. E. 197; Currin v. Spraull, 10 Grat. 145; Bradley v. Zehmer, 82 Va. 685; Davis v. Tebbs, 81 Va. 600; 2 Min. [4th Ed.] 485); changing the rule laid down in Stuart's Heirs v. Coalter, 4 Rand. 74, 15 Am. Dec. 731, Straughan v. Wright, 4 Rand. 493, that a court of equity could not decide on the simple question of the title to land. The language of the present section differs from that of the section as it read before the revision. The Code of 1887 provided that a court of equity "may take cognizance of all questions of law affecting the legal title that may arise in any proceeding." The same words were used in the amendment of 1897-8, p. 488. The language of the amendment of 1902-3-4, p. 835, was as indicated in the revisors' note above.

In order to give the court jurisdiction of a question of law affecting the legal title, the question must arise as an incident to a partition and must be such as to require decision before the partition can be satisfactorily made as between the persons at whose instance or in whose behalf the partition is being made. Bailey v. Johnson, 118 Va. 505, 88 S. E. 62.

This clause is applicable only to questions affecting the legal title to the subject of partition, and not to matters of general indebtedness between the parties. Adkins v. Adkins, 117 Va. 445, 85 S. E. 490.

An independent hostile claim going to the whole property involved, and denying in toto and ab initio the title of the parties claiming the joint ownership of the land, cannot be set up and adjudicated in a partition suit brought by the latter. Bailey v. Johnson, 118 Va. 505, 88 S. E. 62.

In the enactment of this section in its present form the Legislature intended to broaden and extend the jurisdiction of the courts in partition suits, and in the exercise of that jurisdiction the courts may set aside a deed to one of the parties of a part of the land to be divided, either because the grantor had no power to make the deed, or because of his mental incapacity. Seefried v. Clarke, 113 Va. 365, 74 S. E. 204.

Under this section no limitations are placed upon courts of equity in the matter of procedure, and they are free to adopt such method as may be best suited to meet the exigencies of the particular case. Any instrumentality that the court may call to its assistance, whether it be a master in chancery, or a special board of commissioners, is advisory merely. The question must at last be left to the determination of the

Digitized by Google

court upon the law and the evidence. Phillips v. Dulaney, 114 Va. 681, 77 S. E. 449.

Under a former statute it was decided that partition may not be by bill only, but evidence may be heard in court upon motion or petition to sell. Also that infants need not be summoned and on coming of age have no day in court. Parker v. McCoy, 10 Grat. 594.

Equity will do complete justice.—It is especially true in suits of partition that equity, having acquired jurisdiction by this section, will retain it and do complete justice between the parties, enforcing, if necessary, legal rights and applying legal remedies to accomplish that end. Laurel Creek Coal & Coke Co. v. Browning, 99 Va. 535, 39 S. E. 156; Pillow v. S. W. V. Imp. Co., 92 Va. 144, 23 S. E. 32, 53 Am. St. Rep. 804; Fry v. Payne, 82 Va. 759, 1 S. E. 197; Bradley v. Zehmer, 82 Va. 685; Davis v. Tebbs, 81 Va. 600; Hinton v. Bland's Adm'r, 81 Va. 588, 593.

Adverse claim of defendant does not take case out of statute.—While a suit for partition cannot be made a substitute for an action of ejectment, yet if the defendant in such suit claims under one who was a joint owner with the complainant or those under whom he claims the suit may be maintained, and all questions of law arising in the case may be settled by the court; and the fact that a defendant to the suit in possession of the land asserts an adverse claim, and denies the right of the claimants to partition, does not take the case out of the purview of this section. Dillard v. Jefferies, 118 Va. 81, 86 S. E. 844; Pillow v. S. W. V. Imp. Co., 92 Va. 144, 148, 23 S. E. 32, 53 Am. St. Rep. 804; Currin v. Spraull, 10 Grat. 147, 148; Davis v. Tebbs, 81 Va. 600; Bradley v. Zehmer, 82 Va. 685; Fry v. Payne, 82 Va. 759, 1 S. E. 197; 2 Min (4th Ed.) 485.

If such jurisdiction is upheld by the court in the partition suit, its decree, even if erroneous, cannot be collaterally assailed in another suit. Morgan v. Haley, 107 Va. 331, 58 S. E. 564. Beattie v. Wilkinson (C. C.), 36 Fed. 646.

Persons who may file bill.—Since the act of 1897-8, p. 488, amending this section a lien creditor or any owner of undivided estate in real estate may compel partition, thus settling a query raised in 2 Va. Law Reg. 423; Price v. Crozier, 101 Va. 644, 44 S. E. 890.

Tenant for life.—A tenant for life in one undivided moiety of property may maintain a suit against those who own the estate in remainder of that moiety, whether they are in esse or not, and the fee simple owners of the other moiety, and compel partition of the property, and, if not susceptible of partition in kind, may have a sale and division of the proceeds. Carneal v. Lynch, 91 Va. 114, 20 S. E. 959, 50 Am. St. Rep. 819.

The fact that one owns a life estate in the whole of a tract and the remainder in fee in only one-half thereof does not bar his right to maintain a suit for partition of the land. Lucy v. Kelly, 117 Va. 318, 84 S. E. 661.

Guardian.—A guardian of infants may maintain a suit for partition of real estate held jointly by the defendants and other adult parties. Zirkle v. McCue, 26 Grat. 517; 1 Min. (4th Ed.) 470; 2 Min. (4th Ed.) 491. See, also, section 5335.

Tenant by curtesy.—A tenant by curtesy of lands who purchases the reversionary interest of the three heirs may sustain a suit for partition. Otley v. McAlpine's Heirs, 2 Grat. 340, and note in Va. Rep. Anno.

Holder of entire legal title to land.—A party, holding the legal title to the whole of a tract of land in an undivided two-thirds of which others own the complete equitable estate with the right to call for the legal title, may under this section, file a bill against such others for a partition of the whole. Hagan v. Taylor, 110 Va. 9, 65 S. E. 487.

Partition of lands governed by lex loci rei sitae.—The courts of this State have no authority to make or order a partition of lands lying in another State; but if it has jurisdiction of the parties it may, in cases of contract, trust, and fraud, act indirectly upon the land by a direct per-

Digitized by Google

sonal decree against the parties. Pillow v. S. W. V. Imp. Co., 92 Va. 144, 23 S. E. 32, 53 Am. St. Rep. 804, 1 Va. Law Reg. 663, 674; Wimer v. Wimer, 82 Va. 890, 5 S. E. 536, 3 Am. St. Rep. 126; Poindexter v. Burwell, 82 Va. 507; 4 Min. (3d Ed.) 1450. Quære, does this principle authorize the court of this State to make sale by its own agent or officers of land in another State. See 1 Va. Law Reg. 674.

Liens on undivided shares.—Where some of the co-tenants have sold their undivided interest in lands, and reserved liens for the unpaid purchase money, the existence of these liens on the undivided shares does not per se prevent the division of the common property among the owners. The liens will be considered as attaching to the parcels under the partition in severalty. Wright v. Wright, 76 Va. 857.

A bill may be filed by one tenant in common against another for the purpose of having partition of the property held in common, and to subject the interest of the defendant to a deed of trust thereon for the benefit of the complainant. Price v. Crozier, 101 Va. 644, 44 S. E. 890.

Partition of infants' lands.—Where the same parties are entitled to lands derived from the father, and also to lands derived from the mother, and some or all of them are infants, if these lands are blended in the division it must appear to the court that the interest of the parties in general will be promoted by this mode of partition, to enable the court to protect the right of infants. Custis v. Snead, 12 Grat. 260.

In a partition suit the rights of infants and adults are governed by like principles. Lucy v. Kelly, 117 Va. 318, 84 S. E. 661.

As to guardian filing bill, see supra, "Persons who may file bill."

Widow should be a party to suit for partition of husband's lands if entitled to dower.—Where the widow of the person who dies seised of the lands of which partition is sought is alive and entitled to dower, she should be a party to the suit, and her dower should be assigned to her, and partition made of the residue, and it is error to make partition of the land subject to her right of dower in her absence. Custis v. Snead, 12 Grat. 260.

One tenant occupying exclusively—Measure of his accountability.—Where one tenant in common occupies and uses the common property to the exclusion of his co-tenants, or occupies and uses more of the common property than his just share or proportion, the best measure of his accountability to his co-tenants is their shares or proportions of a fair rent of the property so occupied and used by him. Early v. Friend, 16 Grat. 21, 78 Am. Dec. 649.

It may be proper to resort to an account of issues, profits, etc., as a mode of adjustment between the tenants in common. Ruffners v. Lewis's Ex'rs, 7 Leigh 720, 30 Am. Dec. 513; Graham v. Pierce, 19 Grat. 28, 39, 100 Am. Dec. 658.

Decree.—In decreeing a partition in favor of a plaintiff claiming by equitable title, the court ought not to direct that the holders of the legal title stand seised of the plaintiff's part to his use, but that they convey the same by deed to him and his heirs. Christian's Devisee v. Christian, 6 Munf. 534.

As to decree of partition being binding and impossible to be attacked collaterally, except for fraud or surprise, see note to Frazier v. Frazier, 26 Grat. 500, Va. Rep. Anno.; 2 Min. (4th Ed.) 492.

Generally.—The assignment to a widow, at her instance, by a court of general jurisdiction, of land of her husband as a homestead is conclusive upon her and those claiming under her that the land so assigned was the property of her husband and not of herself, and her holding of the homestead thereafter was in privity with and in subordination to the title of her husband, and upon her death the land descended to his heirs as coparceners, who are entitled to partition thereof. Arendall v. Arendall, 119 Va. 1, 89 S. E. 87.

Partition of lands may be by deed (section 5141) or by decree (section 5282).

For a case in which partition was refused on the ground that it

Digitized by Google

would defeat a trust, see Schroeder v. Woodward, 116 Va. 506, 82 S. E. 192.

The fact that land is under lease for a term of years is no objection to a partition thereof in this State. Lucy v. Kelly, 117 Va. 318, 84 S. E. 661.

For note of case upon necessity of notice in partition proceedings, see 10 Va. Law Reg. 940.

On partition generally, see Barton, C. P. (2d Ed.) 213-215; 2 Min. (4th Ed.) 482-494, 501, 510; 4 Min. (3d Ed.) 1461, 1465.

Cited but not construed in Bing v. Burrus, 106 Va. 478, 56 S. E. 222. Litz v. Rowe, 117 Va. 752, 86 S. E. 155.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 79, section 1.

See Gregory's Forms Nos. 143, 337, 338.

Sec. 5280. When shares of two or more laid off together.—Any two or more of the parties, if they so elect, may have their shares laid off together when partition can be conveniently made in that way. (Code 1887, § 2563.)

This section does not forbid the assignment of the shares of two co-tenants together, but gives "any two or more of the parties, if they so elect," the right to "have their shares laid off together, when partition can be conveniently made in that way." Phillips v. Dulaney, 114 Va. 681, 77 S. E. 449.

Cited but not construed, Jackson v. Jackson, 110 Va. 393, 66 S. E. 721.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 79, section 2.

See Gregory's Forms Nos. 143, 337, 338.

Sec. 5281. When partition cannot be made, there may be allotment or sale; proceedings in case of sale; how proceeds distributed or invested; effect of sale on right of dower.—When partition cannot be conveniently made, the entire subject may be allotted to any party who will accept it, and pay therefor to the other parties such sums of money as their interest therein may entitle them to; or in any case now pending or hereafter brought, in which partition cannot be conveniently made, if the interest of those who are entitled to the subject, or its proceeds, will be promoted by a sale of the entire subject, or allotment of part and sale of the residue, the court, notwithstanding any of those entitled may be an infant or insane person, may order such sale, or an allotment of a part thereof to anyone or more of the parties who will accept it and pay therefor to the other parties such sums of money as their interest therein may entitle them to, and a sale of the residue, and make distribution of the proceeds of sale, according to the respective rights of those entitled, taking care, when there are creditors of any deceased person who was a tenant in common, joint tenant, or coparcener, to have the proceeds of such deceased person's part applied according to the rights of such creditors. And when there are liens by judgment or otherwise on the interest of any party, the court may, on the petition of any person holding a lien, ascertain the liens, and apply the dividend of such party in the proceeds of sale to the discharge thereof, so

Digitized by Google

far as the same may be necessary. The court making an order for sale shall, when the dividend of a party exceeds five hundred dollars, if such party be an infant or insane, order the same to be invested as the proceeds of a sale under chapter two hundred and seventeen are required to be invested. If such dividend does not exceed five hundred dollars, the same shall be paid to the guardian of such infant or committee of such insane person, the court being first satisfied that such guardian or committee has given bond in sufficient penalty and with sureties sufficient for the security of the same; but if the interest of any person be held in trust, the dividend of such person, whether greater or less than five hundred dollars, shall be paid to the trustee, upon his giving bond as trustee, with sufficient surety, to be held by him upon the same trusts as the interest of such person in the land was held. A sale of land so made by order of the court shall operate to bar the contingent right of dower of the wife in the share of her husband in the land so sold, and to bar the right of curtesy of the husband in the share of his wife in the land so sold, whether said wife in the first instance or the husband in the second instance, be made party to the suit or not. (Code 1887, § 2564; 1899-00, p. 880; 1916, p. 67.)

Revisors' Note.—The first sentence of this section alters the rule announced in Jackson v. Jackson, 110 Va. 893, 66 S. E. 721. The third sentence increases the amount therein mentioned from three hundred dollars to five hundred dollars, and corresponding changes are made in the fourth sentence.

Assignment in severalty—What necessary to change the rule.—Upon a bill for partition of land, as a general rule the share of each partner should be assigned to him in severalty. And if, from the condition of the subject or the parties, it is proper to pursue a different course, the facts justifying a departure from the rule should, at least where infants are concerned, be disclosed by the report or otherwise appear. Custis v. Snead, 12 Grat. 260.

When sale may be decreed.—In suit for partition the court has no authority to order a sale of the land unless it is made to appear by an inquiry before a commissioner, or otherwise, that partition cannot be made in some of the modes prescribed by sections 5280 and 5281; but a party who promoted the suit, and at whose instance the decree was made, will not be allowed to raise the objection for the first time in the appellate court. Howery v. Helms, 20 Grat. 1, note Va. Rep. Anno.; Beckham v. Duncan, 1 Va. Dec. 669, 5 S. E. 690; Cunningham v. Johnson, 116 Va. 610, 20 Va. L. R. 552 and note, 82 S. E. 690.

It must appear that partition in kind cannot be conveniently made and that interest of parties will be promoted by a sale; but not necessary that it shall so appear from a report of a commissioner, nor by depositions of witnesses: it is left to the discretion of the court, and is sufficient if facts appearing in the record reasonably warrant the decree of sale. Stevens v. McCormick, 90 Va. 735, 736, 19 S. E. 742; Zircle v. McCue, 26 Grat. 532.

In Cunningham v. Johnson, 116 Va. 610, 20 Va. L. R. 552 and note, 82 S. E. 690, there was no evidence before the court upon which to base a decree of sale, and the probative value of the commissioner's report was discredited by the circumstances under which it was made.

The fact that the parties owned another tract of land in another county, and it did not appear that partition in kind of the two tracts

Digitized by Google

could not be made, is not ground for setting aside the sale provided for by this section, the parties not wishing to sell this other tract. Frazier v. Frazier, 26 Grat. 500; Zirkle v. McCue, Id. 517.

Dispute as to title or interest.—When there is no dispute as to the title or the interest of any party to the dispute, it is not necessary that the shares of each of the parties should be ascertained before ordering the sale. Lucy v. Kelly, 117 Va. 318, 84 S. E. 661. But it is error to decree sale until interest of all parties is ascertained when there is such dispute. Stevens v. McCormick, 90 Va. 735, 19 S. E. 742.

Allotment of part and sale of the residue.—Under the words of this section authorizing "allotment of part and sale of the residue," the part allotted must (in the absence of consent of parties), be divided into equal parts as near as possible among all of those entitled to share therein, and the proceeds of the residue divided according to the respective rights of the parties. It is error to allot in kind to some and sell the shares of others for distribution in the absence of such consent. Jackson v. Jackson, 110 Va. 393, 66 S. E. 721. But see present section and revisors' note.

In a suit for partition by one who owns one-half of the land in fee and a life estate in the other half, it is not error to allot to her part of the land and compensate her in money out of the proceeds of the sale of the residue for inequality resulting to her in the partition. Lucy v. Kelly, 117 Va. 318, 84 S. E. 661.

Where commissioners in partition assign one tract of land to party, and fix a value on another tract and ascertain how much thereof shall be paid to the party receiving the other tract for owelty of partition, and the tract valued sells for a less sum than that fixed by the commissioners, the sum to be paid for owelty of partition should be fixed with reference to the price brought at the sale thereof and not to the valuation ascertained by the commissioners. Lucy v. Kelly, 117 Va. 318, 84 S. E. 661.

The allotment or sale when partition cannot be made was unknown to the common law. 2 Min. (4th Ed.) 489.

Improvement by tenant in common.—Where a son, who was joint and equal owner with his mother in a tract of land, with her consent took possession of a part of the land and improved it and the mother afterwards dies leaving other children, the land should be divided into two parts, giving the son the part he had improved, though the other half cannot be divided in kind among the children. Dennis v. Dennis, 116 Va. 619, 82 S. E. 696.

Dower and Curtesy.—On subject of a sale of land under this section operating to bar the contingent right of dower of the wife in the share of her husband in the land so sold, whether she be a party to the suit or not, see Lee v. Lindell, 22 Mo. 202, 64 Am. Dec. 262; Weaver v. Gregg, 6 Ohio St. 547, 67 Am. Dec. 355; Scribner on Dower, 328, 340; Washburn on Real Property (4th Ed.) 191, 199.

The provision contained in the last sentence of this section, barring "contingent right of dower," etc., was added by the revisers of 1887. The revisers were of opinion that judicial sale would operate to bar contingent right of dower whether she was party to suit or not, but it was deemed best that the bar should be express. See Burks' Address, 2 Barton L. Pr. (2d Ed.), 1386.

The provision as to curtesy was inserted by the amendment of 1916 (Acts 1916, p. 67).

Generally.—The decision reached in Hinton v. Bland's Adm'r, 81 Va. 588, 593, that a court of equity could by its decree adjust all the equitable rights of parties interested in the estate to be divided, and therefore could order an account to be taken to ascertain the liens thereon, has been embodied in this section.

Creditors of the parties interested are not proper parties to the suit for partition. Stevens v. McCormick, 90 Va. 735, 19 S. E. 742.

Decree for sale of land in partition suit, though interlocutory, is appealable. Stevens v. McCormick, 90 Va. 735, 19 S. E. 742.

Digitized by Google

For the weight to be given to the report of the commissioners, see Lucy v. Kelly, 117 Va. 318, 84 S. E. 661.

For editorial comment, see 20 Va. L. R. 552, 15 Va. L. Reg. 725.

On section generally, see 2 Min. (4th Ed.) 490, 501; 4 Min. (3d Ed.) 1463.

As to homesteads in land partitioned, see section 6534.

As to proceeds of sale belonging to infants and insane persons, see section 5347; in other cases, section 5283.

See Gregory's Forms Nos. 143, 337, 338.

Sec. 5282. Decree of partition to vest legal title.—A decree heretofore or hereafter made, confirming any partition or allotment in a suit for partition, shall vest in the respective co-owners, between or to whom the partition or allotment is made, the title to their shares under the partition or allotment, in like manner and to the same extent, as if the said decree ordered such title to be conveyed to them and the conveyance was made accordingly. (Code 1887, § 2565.)

Revisors' Note.—The word, "co-owners," found in line three of the text is used in lieu of "parties." The object of this change is to meet the difficulty suggested by the case of Wright v. Johnson, 108 Va. 855, 62 S. E. 948. It is said [illegible] t case (speaking of the allotment of the wife's share to the husb[illegible] that if it was the intention of the Legislature by section 2565 (of the former Code) to deprive the wife of her inheritance where her share of the land had been assigned to the husband, the act to that extent was invalid. It is believed that the change pointed out meets the suggested difficulty.

The purpose of this section was to do away with the necessity for conveyances between the parties or by a commissioner of the court in partition suits in order to invest the several co-owners with the legal title to the land, allotted to each in the partition suits. Prior to the enactment of this section, the assignment of the wife's land to the husband in the partition suit did not deprive her of her inheritance, and if it was the intention of the Legislature to do so by this act, then to that extent it is invalid because in excess of legislative power. Wright v. Johnson, 108 Va. 855, 62 S. E. 948. See revisors' note above.

This section changes the rule laid down in Bolling v. Teel, 76 Va. 487, 490. See, also, 2 Min. (4th Ed.) 491, 493; section 6296 and Acts 1918, p. 444. See, also, 4 Min. (3d Ed.) 1462. Discussed, 13 Va. Law J. 153.

As to how partition of land is to be recorded and indexed, see section 5216.

See Burks' Address 2 Barton Law Pr. (2d Ed.) 1386.

See Gregory's Forms Nos. 143, 337, 338.

Sec. 5283. When proceeds of sale deemed personal estate.—The proceeds of any sale made under section fifty-two hundred and eighty-one shall, except as provided in section fifty-three hundred and forty-seven, be deemed personal estate from the time of the confirmation of such sale by the court. (Code 1887, § 2566.)

Before the enactment of this section it was held that the party entitled to the proceeds of the sale for partition could designate whether he would hold them as personalty or as realty. Turner v. Dawson, 80 Va. 841. But changed by this section. See 13 Va. Law J. 154. See, also section 5347. See 4 Min. (3d Ed.) 1463.

In Hurt v. Jones, 75 Va. 341, the query was raised whether the share of a married woman in the proceeds of realty sold or divided would pass to her heirs at law. In 1883, before the passage of this section, it was

Digitized by Google

held that a married woman's share in the proceeds of sale for partition when she had not made an election in regard thereto was realty. Turner v. Dawson, 80 Va. 841. As the law now stands such share is personal estate. See above section and section 5347.

See Gregory's Forms No. 348.

Sec. 5284. Shares of unknown parties.—If the name or share of any person interested in the subject of the partition be unknown, so much as is known in relation thereto shall be stated in the bill. (Code 1887, § 2567.)

Sec. 5285. Effect of partition or sale on lessee's rights.—Any person who, before the partition or sale, was lessee of any of the lands divided or sold, shall hold the same of him to whom such land is allotted or sold on the same terms on which by his lease he held it before the partition. (Code 1887, § 2568.)

This section applies when the lessee claims under a valid lease against all of the joint owners, and not to a case where only two of the tenants in common undertook to lease a particular portion of the joint property. Such lease is not binding upon the other tenants in common. Phillips v. Dulaney, 114 Va. 681, 77 S. E. 449.

See notes to section 5279; 4 Min. (3rd Ed.) 1463.

Sec. 5286. Partition of goods, etc., by sale, if necessary.—When an equal division of goods or chattels cannot be made in kind among those entitled, a court of equity may direct the sale of the same, and the distribution of the proceeds according to the rights of the parties. (Code 1887, § 2569.)

Revisors' Note.—For "An act to provide for the sale or partition of personal property of greater value than twenty dollars where it is owned by two or more persons jointly who cannot agree upon a sale or division of the same," see Acts 1918, p. 468.

It was held that when in dividing slaves it could not be conveniently done without separating infant children from their mother, compensation might be made in money. Fitzhugh v. Foote, 3 Call 13.

Tenants in common of personal estate cannot have partition at common law, and therefore a court of equity is the proper tribunal to decree a partition of it. Smith v. Smith, 4 Rand. 95; 2 Min. (4th Ed.) 492.

It seems that the terms "good and chattels" mean visible, tangible, personal property only, and that they do not include choses in action. Bank v. Holland, 99 Va. 495, 505, 39 S. E. 126, 55 L. R. A. 155, 86 Am. St. Rep. 898. See notes to section 5142.

Sec. 5287. Working coal and other mines near land of another without his consent, prohibited.—No owner or tenant of any land containing coal, sulphur, or other minerals, within this Commonwealth, shall open or sink, dig, excavate, or work in, any mine or shaft on such land within five feet of the line dividing said land from that of another person, without the consent, in writing, of every person interested in or having title to such adjoining lands in possession, reversion, or remainder, or of the guardian of any such person as may be an infant. If any person violate this section he shall forfeit five hundred dollars to the party injured, or, to any one whose consent is required, but not obtained. (Code 1887, § 2570.)

Revisors' Note.—Formerly, the forfeiture was to anyone who might

Digitized by Google

sue for the same; now it is restricted "to the party injured, or, to anyone whose consent is required, but not obtained."

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 79, section 7.

Cited but not construed in Crane's Nest Co. v. Va. Iron Co., 105 Va. 785, 54 S. E. 884.

Sec. 5288. Owner to permit survey of mine.—The owner, tenant, or occupant of any land on which a coal or other mine is opened and worked, or his agent, shall permit any person interested in or having title to any land co-terminous with that in which such mine is, to have ingress and egress with surveyors and assistants to explore and survey such mine at his own expense, and not oftener than once a month, for the purpose of ascertaining whether or not the preceding section has been violated. Every owner, tenant, occupant, or agent, who shall refuse such permission, exploration, or survey, shall forfeit twenty dollars for each refusal to the person so refused. (Code 1887, § 2571.)

Sec. 5289. How entry for such purpose compelled.—Any justice of the county, in which such mine is, before whom complaint of such refusal is made, may issue a summons to such owner, tenant, occupant, or agent, to answer such complaint. On the return of the summons executed, and proof that the complainant has right of entry, and that it has been refused without sufficient cause, the justice shall designate an early and convenient time for such entry to be made, and issue his warrant, commanding the sheriff of the county to attend and prevent obstructions and impediments to such entry, exploration, and survey. The costs of such summons, and a fee of three dollars to the sheriff executing the warrant, shall be paid by the person whose refusal caused the complaint. But if the justice dismiss the complaint, the costs shall be paid by the party making it. (Code 1887, § 2572.)

Sec. 5290. How adjoining fishing shores defined.—On the application of any proprietor or occupant of a fishing shore, the circuit court of the county in which such fishing shore is (on proof that notice thereof has been given to the proprietor or occupant of each adjoining shore), may appoint three commissioners to designate the ebb and flood hauls of the said adjoining fishing shores, and report their proceedings to court, and the court may order such compensation, as it may think proper, to be paid to the commissioners out of the county levy. (Code 1887, § 2573.)

Sec. 5291. Penalty for disturbing them.—After their report is confirmed by the court, if any person lay out a seine from either shore so as to interfere with the haul of the adjoining shore, as so designated, he shall be deemed guilty of a misdemeanor and fined not exceeding two hundred and fifty dollars. (Code 1887, § 2574.)

Revisors' Note.—Formerly, the penalty was a forfeiture of two hundred and fifty dollars; now, a violation of the section is a misdemeanor punishable by a fine of not exceeding two hundred and fifty dollars.

Digitized by Google

Sec. 5292. Arrest of non-resident offenders.—If the person so offending be not a resident of this State, any justice, on complaint to him on oath, shall issue his warrant to bring such offender before him or some other justice, who may, after hearing evidence, require him to enter into a recognizance to appear at the next term of the circuit court of the county where the offense was committed, to answer an indictment therefor. (Code 1887, § 2575.)

Sec. 5293. Proceedings to acquire right to drain land through lands of others.—Any person desiring to drain his lands through the lands of others may apply to the circuit court of the county or corporation court of the city in which the whole or a part of the last mentioned lands lie, for the appointment of commissioners to ascertain and report upon the propriety of granting said application and the damages that may be sustained by the party or parties through whose lands the said drain is proposed to be run; of which application notice shall be given to the proprietors of the lands through which such drain is to be run, in the manner prescribed by section forty-three hundred and sixty-five. (Code 1887, § 2576.)

Statutes of the general character of this and the three following sections have been in force in many of the States for a long period of years, and their constitutionality is too well settled to admit of serious doubt. The statute does not undertake to designate the particular circumstances under which the right of drainage shall be granted. There may be individual cases of such mere private purpose as not to be within the legitimate scope of the statute. The statute evidently contemplates that cases in which the right of drainage may be granted shall depend upon the facts of each case, leaving it to the court to determine whether it is proper to grant the right. If, therefore, on writ of error, neither the evidence nor the facts be certified, the appellate court will presume that a proper case was made out, if indeed the constitutional question can be considered at all in such a case when raised for the first time on appeal. Hodges v. Richmond Cedar Works, 120 Va. 492, 91 S. E. 644.

In a proceeding under sections 5293 to 5296, the commissioners reported, and the court approved, a different location for the drain from that asked for in the original petition of the applicant. This was held not to be error, there being nothing in the statute to indicate a purpose to confine an applicant to the mode of drainage originally contemplated or proposed by him, if he is willing to accept another which the commissioners and the court deem proper. The new or modified mode then becomes the "mode proposed by the applicant" within the meaning of the law. Hodges v. Richmond Cedar Works, 120 Va. 492, 91 S. E. 644.

See, also, chapter 73 of this Code.

Sec. 5294. Damages to be ascertained by commissioners; what notice to be given.—If the court, on hearing the matter, thinks it proper, it shall issue its order appointing five commissioners, who shall be freeholders (any three of whom may act), who shall, on being served with a copy of said order, go upon said land, and after being duly sworn, ascertain and report what damages, if any, may be sustained by the party or parties through whose lands the drain is to be run; but said commissioners, before proceeding to execute said order, shall give to the parties interested, and to

Digitized by Google

the tenants in possession, at least ten days' notice of the time appointed by them for the execution of the same in the manner prescribed by the preceding section. (Code 1887, § 2577.)

Sec. 5295. Mode of draining to be described.—The said commissioners shall also inquire and report whether the mode of draining his land proposed by the applicant be proper, and shall describe the same specifically. (Code 1887, § 2578.)

Sec. 5296. Payment of damages and costs a pre-requisite to right to drain.—If the leave prayed for be granted by the court, it shall be made a matter of record, and the applicant shall, before he proceeds therein, pay or secure to the satisfaction of the parties entitled thereto, the compensation, if any, ascertained by said commissioners, and all the costs of the proceeding, including the sum of two dollars per day to each of said commissioners for each day that they may be engaged in executing the order aforesaid, and shall make and keep open such cut, drain, or culvert as he is allowed to make, at his own expense. (Code 1887, § 2579.)

Sec. 5297. Court may allow owners of lands desiring to drain same to construct culverts, etc., under mill canals.—This chapter shall be so construed as to authorize the court therein named to allow owners of lands desirous of draining the same, the right to construct trunks or culverts under the beds of mill canals in cases where the same may be necessary, subject to the same regulations and provisions as are prescribed herein in regard to the draining of lands through the lands of others: Provided, that the said trunks or culverts shall be so located and arranged as not to obstruct or interfere with the passage of the water through such canals. (Code 1887, § 2580.)

Digitized by Google

TITLE 48.

Minors and their Masters and Guardians.

Ch. 215. Masters and apprentices.
216. Guardians and wards.

CHAPTER 215.

Masters and Apprentices.

Sec.
5298. How minors are bound out.
5299. When and how bound out, etc., by overseer of poor.
5300. How placed in asylum or school.
5301. Term of apprenticeship; authority of employer.
5302. What writing of apprenticeship to specify; what master to teach apprentice.
5303. Payment by master for services of apprentice.
5304. When and where writing of apprenticeship, etc., filed.
5305. How apprentice transferred to new master; form of writing of apprenticeship.
5306. How money due from master to be paid.
5307. How, for the last year.
5308. How recovered.
5309. Complaint of master or apprentice against each other; how tried, etc.
5310. Residence of apprentice; how changed; effect of change without leave of the court.
5311. What court may hear complaint, where minor was bound beyond the State.
5312. Apprentices, who desert, liable for damages.
5313. Penalty for harboring or enticing apprentices.

Sec. 5298. How minors are bound out.—Any minor may be bound as an apprentice by his guardian, or if none, by his father, or if neither father nor guardian, by his mother, with the consent entered of record of the circuit or corporation court of the county or city in which the minor resides; or without such consent, if the minor, being fourteen years of age, agree in writing to be so bound. (Code 1887, § 2581.)

For case construing former statute, see Brewer v. Harris, 5 Grat. 285.

No appeal lay from an order of a county or corporation court for binding out an apprentice or for rescinding his indentures; but it was said that a writ of certiorari lay from the general court to bring up the record and correct the proceedings. Cooper v. Saunders, 1 Hen. & M. 413.

Before this section was passed it was held that the father could not bind his infant child apprentice by indentures to which the child was not a party. Such indentures were void. Pierce v. Massenburg, 4 Leigh 493, 26 Am. Dec. 333. See 1 Min. (4th Ed.) 200, 201.

On subject of apprentices generally, and for analysis of this chapter, see 1 Min. (4th Ed), 199-207.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 81, section 1.

Digitized by Google

Sec. 5299. When and how bound out, etc., by overseer of poor.—Any overseer of the poor of a county or city, if allowed by an order of the circuit court of such county, or the circuit or corporation court of such city, may place in any such incorporated institution, or bind out as an apprentice, any minor who has become chargeable to such county or city, or is likely to become so chargeable. (Code 1887, § 2583.)

Revisors' Note.—This and other sections of this chapter now conform to the present court system. The words, "any minor who has become chargeable to such county or city, or is likely to become so chargeable," are used in lieu of "any minor who is found begging in such county or corporation, or is likely to become chargeable thereto."

Even if the covenants were with the overseer only, if the binding were in pursuance of the statute, the suit on the indentures should be by the apprentice, and not by the overseer. Poindexter v. Wilton, 3 Munf. 183; Brewer v. Harris, 5 Grat. 285; 1 Min. (4th Ed.) 201.

But if the binding were not according to statute, the suit at common law had to be in the name of the overseer. Bullock v. Sebrell, 6 Leigh 560; 1 Min. (4th Ed.) 202.

See section 5143; 1 Min. (4th Ed.) 202.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 81, section 2.

Sec. 5300. How placed in asylum or school.—By the same authority and under the same limitations, any minor may be placed for such time as may be agreed on in writing, in any incorporated association, asylum, or school, instituted for the support and education of destitute children, which shall thereupon be entitled to the custody of such minor for such time, and may bind him an apprentice until the expiration of that time. (Code 1887, § 2582.)

Sec. 5301. Term of apprenticeship; authority of employer.—The term of every such apprenticeship shall be until the apprentice attains the age of twenty-one years, if a boy, or eighteen years, if a girl; but whenever a minor is held to service or labor of any kind for a period not less than one month, the employer may exercise the same authority, control, and discipline over the said minor as are now exercised by a master over an apprentice, unless it shall be otherwise agreed in the contract for the employment of said minor. (Code 1887, § 2584.)

Sec. 5302. What writing of apprenticeship to specify; what master to teach apprentice.—The writing by which any minor is bound an apprentice, shall specify his age, and what art, trade, or business he is to be taught. The master, whether it is expressly provided therein or not, shall be bound to teach the same and shall be bound to teach him reading, writing, and common arithmetic, including the rule of three. (Code 1887, § 2585.)

As to term of contract of apprenticeship, see 1 Min. (4th Ed.) 202.

Sec. 5303. Payment by master for services of apprentice.—When a court makes an order allowing a minor to be bound as an apprentice, it shall inquire and direct whether the master, besides maintaining the apprentice and so teaching him, shall pay anything

Digitized by Google

for his services, and if anything, how much, and for which year or years; the writing by which the minor is bound, shall bind the master to pay what may be so directed. For such payment, bond shall be taken by the overseers binding such minor, if the court require it. (Code 1887, § 2586.)

Sec. 5304. When and where writing of apprenticeship, etc., filed.—The writing by which any minor is bound, and any bond taken from the master, shall, within six months from the date thereof, be filed in the clerk's office of the circuit or corporation court of the county or city in which the same may be executed. Unless so filed, the master shall not be entitled to the services of the apprentice. (Code 1887, § 2587.)

The word "month" in this section means a calendar month. Brewer v. Harris, 5 Grat. 285. See section 5, subdivision 7.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 81, section 6.

Sec. 5305. How apprentice transferred to new master; form of writing of apprenticeship.—Such writing may, with the approbation of the said court, and on such terms as the court may prescribe, be transferred by the master, or within three months after his death, by his personal representative. The assignee thereof shall succeed to the master's rights and obligations for the future, and shall give bond if required by the court. Such writing may be in the following form or to the same effect:

"This indenture witnesseth, that it is mutually agreed between ..... and ..... that ....., aged ..... years, shall be taken and held as an apprentice for the term of..... ..... years by the said .....; and the said..... contracts and covenants with the said ..... to faithfully and carefully instruct the said ..... in all the handicraft of a .....; and the said ..... further contracts and covenants that the said.....shall be allowed as compensation, in consideration of his services for the first year, at the rate of..... .... per week (or per year); for the second year, at the rate of ..... per week (or per year); for the third year, at the rate of ..... per week (or per year); for the fourth year, at the rate of ..... per week (or per year); for the fifth year, at the rate of ..... per week (or per year); and at the expiration of his term of apprenticeship, ... Witness our hands and seals, this the ..... day of .....

....., [L. S.]

....., [L. S.]

State of Virginia, ... of ....., to-wit:

Executed before me, a notary public (or justice of the peace), in

Digitized by Google

and for the ..... and State aforesaid, this the ..... day of ....., Anno Domini .....

.....,

(Notary public or justice of the peace.)"

(Code 1887, § 2588.)

Sec. 5306. How money due from master to be paid.—The money which the master is to pay for any year except the last, shall, at the end of the year for which it is payable, be paid to the father of the minor, or the mother, or part to each, as the court may direct; or it may be reserved, to be paid to the apprentice at the end of his term, with interest. Such directions may be changed from time to time, on the motion of the overseers of the poor, or of the father, mother, or apprentice, on proof of notice of such motion having been given to the adverse party. (Code 1887, § 2589.)

Sec. 5307. How, for the last year.—The money, which the master is to pay for the last year, shall be paid at the end thereof to the apprentice. (Code 1887, § 2590.)

Sec. 5308. How recovered.—Any money to be paid under either of the two preceding sections may be recovered from those liable therefor on the motion of the person entitled thereto, or by action. Any such motion may be in that court in the office whereof the writing or bond of the master is filed. (Code 1887, § 2591.)

Sec. 5309. Complaint of master or apprentice against each other; how tried, etc.—Such court, during the term of apprenticeship, may receive the complaint of such apprentice, or any person in his behalf, against the master, for undeserved or excessive correction, want of instruction, insufficient allowance of food, raiment, or lodging, or non-payment of what was directed to be paid; or the complaint of a master against his apprentice for desertion or other misconduct; and after reasonable notice of the complaint to the party against whom it is made, may determine the same in a summary way, making such order as the case may require. (Code 1887, § 2592.)

Sec. 5310. Residence of apprentice; how changed; effect of change without leave of the court.—No apprentice shall reside out of that county or corporation in the office whereof the writing whereby such apprentice is bound is required to be filed, without the leave of the circuit or corporation court of such county or city. Whenever such leave is given, a copy of the said writing shall be forthwith filed in the office of the circuit or corporation court of that county or city wherein the residence is to be; and thereafter that court may hear and determine any complaint against the said master or apprentice as might have been done by the court giving such leave before the same was given. If without such leave an apprentice be removed by his master, or with his master's knowledge, out of the first mentioned county or corporation, and remain thereout more than one

Digitized by Google

month, the obligation of the apprentice to serve such master shall be only during the pleasure of the apprentice. (Code 1887, § 2593.)

As to master taking apprentice out of county, see Cooper v. Saunders, 1 Hen. & M. 412.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 81, section 12.

Sec. 5311. What court may hear complaint, where minor was bound beyond the State.—If any apprentice, who was bound as such beyond the limits of this State, be brought or come within the same, the circuit or corporation court of the county or city in which he may be, may hear and determine in a summary way any complaint of him or his master, and make such order in the matter as may be right. (Code 1887, § 2594.)

Sec. 5312. Apprentices, who desert, liable for damages.—If an apprentice, bound in this State, desert the service of his master, he shall be liable to the master, notwithstanding his infancy, for all damages sustained by such desertion. (Code 1887, § 2595.)

Sec. 5313. Penalty for harboring or enticing apprentices.—If any person knowingly employ, conceal, or harbor any such apprentice, he shall pay such master three dollars for each day he shall so employ, conceal, or harbor the apprentice, in addition to the damage sustained by the master, and the court or justice, rendering judgment for such offense, may require the person offending to enter into a recognizance to keep the peace and be of good behavior. If any person entice, or, without the consent of the master, take or carry away such apprentice, he shall be fined twenty dollars, to the use of the Commonwealth; and the possession of such apprentice, or his being permitted to remain on the premises, with a knowledge that he is such apprentice, shall be prima facie evidence that the offender knowingly enticed, took, or carried him away. (Code 1887, § 2596.)

Revisors' Note.—The words "prima facie evidence" found in lines three and two from the bottom of the text, are used in lieu of "conclusive evidence."

CHAPTER 216.

Guardians and Wards.*

Sec.		Sec.	
5314.	Testamentary guardians.		judge liable if bond not
5315.	When their appointment void.		given, and with good security.
5316.	What courts may appoint guardians.	5319.	When court may appoint curator; his bond; powers and duties.
5317.	How appointment made.		
5318.	Guardians to give bond;	5320.	Custody and care of wards

*For monographic note on Guardian and Ward, see Barnum v. Frost's Adm'r, 17 Grat. 398, Va. Rep. Anno.

Digitized by Google

Sec.
and their estates; their education and custody of their persons; termination and settlement of trust of guardians.
5321. Disbursements by guardians; in what cases disbursements beyond income allowed.
5322. Sale of personal estate to pay excess allowed beyond income.
5323. When guardian to pay compound interest on annual balances.
5324. May recover compound interest for ward.
5325. Time within which guardian allowed to invest funds.
5326. Powers of chancery courts over guardians; when they may order sale of real estate of wards for their maintenance and education; mode of proceeding.
5327. Where husband and wife live in state of separation, court may award custody of minor child to mother.
5328. Where child in custody of father, court may make order for access of mother to child.
5329. Notice to be given of application by mother; court may afterwards modify or annul order.
5330. Provisions governing said proceedings.
5331. How infants may sue.
5332. Approval of compromises on behalf of infants in suits to which they are parties.
5333. To legalize the adoption of minor children by adult persons.

Sec. 5314. Testamentary guardians.—Every father may by his last will and testament appoint a guardian for the estate of his child born or to be born and for such time during its infancy as he shall direct. Every mother may in like manner by her last will and testament appoint a guardian for the estate of her infant child: Provided such infant has no other duly qualified guardian, and such guardian shall have the custody and control of the estate of said infant. Upon the qualification of a guardian appointed by the mother under the provisions of this section the powers of any guardian of her child appointed otherwise than by the father shall thereupon cease and determine. (Code 1887, § 2597; 1891-2, p. 431.)

Revisors' Note.—As revised, this section is expressly limited to the guardianship of estates. It was sometimes contended, under the section as it stood before the revision, that the section gave the father the power to take the custody of the infant child away from the mother. Such a construction ignored section 2603 of the Code of 1887 (5320 of this Code). When the two were read together it was fairly clear that it was never intended to give the father the power to appoint a testamentary guardian of the person of his infant child to be preferred to the mother.

A provision in a will for the education of the testator's son under the direction of the executors does not constitute such executors testamentary guardians. Kevan v. Waller, 11 Leigh 414, 36 Am. Dec. 391.

Cited in Taliaferro v. Day, 82 Va. 87.

For notes on Guardian and Ward, see Barnum v. Frost's Adm'r, 17 Grat. 398, Va. Rep. Anno.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 82, section 1.

Sec. 5315. When their appointment void.—If any person so appointed, shall renounce the trust, or fail to appear in the court in

Digitized by Google

which the said will is proved, within six months after the probate thereof, and declare his acceptance of the trust, and give bond as hereinafter provided, such appointment shall be void. (Code 1887, § 2598.)

Sec. 5316. What courts may appoint guardians.—The circuit court of any county or the circuit or corporation court of any city, except the city of Richmond, or judge thereof in vacation, in which any minor resides, or, if he be a resident out of the State, in which he has any estate, may appoint a guardian for him, unless he have a guardian appointed as aforesaid by his father. In the city of Richmond the Chancery Court of said city and judge thereof shall have such power. (Code 1887, § 2599; 1902-3-4, p. 880; 1904, p. 306.)

This section is not to be construed as taking away the jurisdiction of the courts in chancery to make such appointment. Durrett v. Davis 24 Grat. 302.

As to adoption of infants, see section 5333.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 82, section 3. See Gregory's Forms 286-7.

The following form is in use in the Chancery Court of the City of Richmond:

Memorandum of Facts to be Furnished by Counsel for Person Moving for appointment of a GUARDIAN.

Date, ...19....

1. Full names of infants, with ages .....
2. Place of residence and color of infants .....
3. Names of both parents, and whether living or deceased.....
4. Full name and residence of Guardian nominated .....
5. Name of person making motion and grounds of being entitled to make it .....
6. Value of infant's personal estate, ...$.....
7. Value of infant's real estate, ...$.....
8. Total value of real and personal estate .....$.....
9. Annual net rental value of real estate .....$.....
10. Full name of surety offered .....
11. Bond of Guardian (to be fixed by Court).....$.....

Signature of Counsel.

Sec. 5317. How appointment made.—If the minor is under the age of fourteen years, the court or judge may nominate and appoint his guardian; if he is above that age, he may, in the presence of the court or judge, or in writing, acknowledged before any officer qualified to take acknowledgments, nominate his own guardian, who, if approved by the court or judge, shall be appointed accordingly; and if the guardian nominated by such minor shall not

Digitized by Google

be appointed by the court or judge, or if the minor reside without the State, or if, after being summoned by the court or judge, he shall neglect to nominate a suitable person, the court or judge may nominate and appoint the guardian in the same manner as if the minor was under the age of fourteen years. (Code 1887, § 2600; 1897-8, p. 933; 1902-3-4, p. 880; 1904, p. 306.)

The mere fact that an infant has arrived at the age of fourteen years does not, of itself, give him the right to have removed his guardian regularly appointed by court, and to have another appointed of his own nomination. Ham v. Ham, 15 Grat. 74.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 82, section 4.

See Gregory's Forms Nos. 286, 287.

Sec. 5318. Guardians to give bond; judge liable if bond not given, and with good security.—Every guardian, unless, in the case of a testamentary guardian, the will otherwise directs and the court or judge in such case deems it unnecessary for the safety of the ward, shall give bond with good security, to be approved by the court or judge by which he is appointed or in which he accepts the trust in such penalty as shall be prescribed by the court or judge. If any court or judge omit to require such a bond, the judge so in default shall be liable to the ward for any damages he may sustain thereby. (Code 1887, § 2601; 1902-3-4, p. 880; 1904, p. 306.)

Revisors' Note.—The words "with good security" found in line four of the text are new, as are also the words "or judge" found in line five of the text.

For an act authorizing courts, in their discretion, where the amount coming into the hands of personal representatives or guardians does not exceed one hundred dollars, to permit such fiduciaries to qualify by giving bond without surety, and providing that on estates of decedents of one hundred dollars or less in value, there shall be no tax or court cost upon the qualification of a personal representative, see Acts 1918, p. 469.

A bond given by a guardian is not vitiated by the mere fact that the bond itself does not recite the appointment of the guardian. Call v. Ruffin, 1 Call 333.

The taking of a guardian's bond is not a ministerial, but a judicial, duty, and a duty imposed upon the court. It is the function of the court alone to pass upon the sufficiency of security given. The clerk's part in such proceeding is directory merely. He has no discretion. Page v. Taylor, 2 Munf. 492.

Under Code 1819, p. 406, chapter 108, section 5, it was held that judges were not liable for damages for error in judgment, but only for willful misconduct or culpable negligence. Austin v. Richardson, 1 Grat. 310.

Cited in Barnum v. Frost's Adm'r, 17 Grat. 422.

Form of declaration in debt on guardian's bond, 4 Min. (3d Ed.) p. 1662.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 82, section 5.

See Gregory's Forms Nos. 23, 286, 287.

Sec. 5319. When court may appoint curator; his bond; powers and duties.—Until a guardian shall have given bond, or while there is no guardian, the court or judge may, from time to time, appoint a curator, who shall give bond as aforesaid, and during the con-

Digitized by Google

tinuance of his trust have all the powers and perform all the duties of a guardian, and be responsible in the same way. (Code 1887, § 2602; 1902-3-4, p. 881; 1904, p. 306.)

As to curators for estates of decedents, see section 5248.

Sec. 5320. Custody and care of wards and their estate; their education and custody of their persons; termination and settlement of trust of guardians.—Every guardian who is appointed as aforesaid, and gives bond when it is required, shall have the custody of his ward, and the possession, care, and management of his estate, real and personal, and out of the proceeds of such estate shall provide for his maintenance and education. But the father of the minor, if living, and in case of his death, the mother, while she remains unmarried, shall, if fit for the trust, be entitled to the custody of the person of the minor, and to the care of his education. If either the father or the mother of an unmarried infant be dead or unable or refuse to take its custody, or has abandoned his or her family, the other shall be entitled to the custody, services and earnings of such infant. Unless the guardian shall sooner die, be removed, or resign his trust, he shall continue in office until the minor, being a male, shall attain the age of twenty-one years, or being a female, shall attain that age, or a receiver be appointed under section fifty-one hundred and thirty-six to hold her property for her, or in the case of a testamentary guardianship, until the termination of the period limited therefor. At the expiration of his trust, he shall deliver and pay all the estate and money in his hands, or with which he is chargeable, to the person entitled to receive the same. (Code 1887, § 2603.)

Revisors' Note.—An act was passed by the General Assembly at its session of 1916 (Acts 1916, p. 723) relating to the custody, services and earnings of minor children. The second sentence of that act is substantially the third sentence of the revised section above, and the residue of the act has been omitted and thereby repealed. The words, "or a receiver be appointed under section fifty-one hundred and thirty-six to hold her property for her," found in the fourth sentence of the text, are used in lieu of the words "or marry."

The first sentence of the act of 1916 was omitted because likely to produce controversies over the wages of infants, which could hardly have been the intention of the act, and the third sentence was omitted as unnecessary, because the courts are guided by a consideration for the welfare of the child, and have acted according to this rule for quite a while. See Taylor v. Taylor, 103 Va. 750, 50 S. E. 273, and numerous other cases.

Custody of infants.—Where a person, entitled to the custody of an infant, is claiming to recover it, the court will exercise its discretion as to what will be best for the infant, having due regard to the legal rights of the claimant. A parent may transfer to another the custody of his child, and the court will not renounce that custody an illegal restraint which is held under fair agreement, and is not injurious to the child. Coffee v. Black, 82 Va. 567.

The father being dead, the mother is entitled to the custody of the child as of right, and she does not lose this right by a second marriage. But where she is seeking by habeas corpus to have the child placed in

Digitized by Google

her custody, the court may exercise its discretion, and determine whether, under all the circumstances, it is best for the infant that he should be assigned to the custody of the mother. Armstrong v. Stone, 9 Grat. 102.

As a general rule the father is entitled to the custody and control of his infant child. But the court has discretion in this matter, and will act with an eye to the best interest of the infant. Merritt v. Swimley, 82 Va. 433, 3 Am. St. Rep. 115.

Control of property.—Guardians have no right to convert the personalty of their wards into realty without the previous sanction of a court of chancery. Boisseau v. Boisseau, 79 Va. 73, 52 Am. Rep. 616.

The guardian of an infant husband had the right, as guardian, to reduce into possession the wife's choses in action for the husband. Ware v. Ware's Adm'r, 28 Grat. 670.

The power which a guardian has to sell his ward's personal estate is similar to that an executor has to sell his testator's. Where bank stock stands in the guardian's name the guardian has the right to sell and transfer the stock, and the bank has no right to prevent him from having the stock properly transferred on their books. Bank of Va. v. Craig, 6 Leigh 399.

Testamentary guardian has a legal interest, and is entitled to possession of the ward's land during the guardianship. Truss v. Old, 6 Rand. 556, 18 Am. Dec. 748.

A guardian may lease the ward's land during infancy, if the guardianship so long continue, and may reserve the rent to the infant or himself. In either case payment to guardian would be good. Ross v. Gill, 1 Wash. 87.

As a general rule a guardian has the legal title of the ward's personal estate. An executor transfers a certain bond to a guardian as a part of the ward's estate. The ward's interest in the bond is subject to the guardian's control. The guardian may sue for the bond at law in the name of the executor (who transferred it to him), or he may sell and transfer it. Hunter v. Lawrence's Adm'r, 11 Grat. 111, 62 Am. Dec. 640.

See section 5314 for appointment of testamentary guardians.

Personal liability of guardian.—A guardian is not personally responsible for the support and education of his ward, unless he consents to become bound for them. The fact that a guardian has placed his ward with a third person to be supported and educated does not relieve the ward's estate, although the guardian may have undertaken to pay the ward's expenses. Barnum v. Frost's Adm'r, 17 Grat. 398.

A guardian is entitled to compensation for the support of his wards, although he promised some friends he would not make any charge against them, and although he kept no accounts against them. Armstrong's Heirs v. Walkup, 9 Grat. 372. A guardian should keep separate accounts for his several wards. Id.

Termination.—With the appointment of a second guardian, the guardianship of a first guardian ceases, and with it his liability to pay and receive moneys generally on account of his ward. Walker v. Walker, 2 Wash. 195.

Upon the coming of age or marriage of the ward or the death of the guardian, the guardianship terminates. Armstrong's Heirs v. Walkup, 12 Grat. 608. As to marriage, see above section and revisors' note.

As to resignation of guardians, see section 5419.

Marriage of ward.—After the marriage of a female ward, the guardian continues in possession of her land as agent, and reaps the crop of wheat. The ward then dies, and the guardian sells and delivers the wheat as the husband's property, and takes receipts for it in the husband's name, who, with the guardian's consent, agrees on the price with the purchaser. Held, the wheat was the property of the husband, and the purchaser is liable to him, and not to the guardian, for the price. Guerrant v. Hocker, 7 Leigh 366.

See section 5136, as to property of married female infant.

Digitized by Google

Settlement of accounts.—See notes to section 5326.

Generally.—For W. Va. decisions on similar statute, see Justis' Annotations, chapter 82, section 7.

See Gregory's Forms No. 23.

Sec. 5321. Disbursements by guardians; in what cases disbursements beyond income allowed.—No disbursements shall be allowed to any guardian, where the deed or will under which the estate is derived does not authorize it, beyond the annual income of the ward's estate, until the court before which the accounts of the guardian may be settled shall authorize the same, and such authority shall not be given except where the court shall be satisfied that such expenditure would be judicious and proper.

Any guardian who may desire to spend more than the annual income of his ward's estate for any purpose, shall file a petition in the court wherein his accounts may be settled, setting forth the reasons why it is necessary to make such expenditure, to which petition his ward or wards shall be defendants. The court shall appoint a guardian ad litem to represent the infants, and proceedings on said petition shall otherwise conform in all respects to a bill in chancery, except that the petition may be filed in court upon five days' notice to said infant, and evidence may be taken orally. No attorney's fee shall be taxed in the costs, nor shall there be any writ tax upon said petition. The clerk shall receive a fee of one dollar for all services rendered thereon, to be paid by the guardian out of said estate. The notice required to be served under this section may be served by any person other than the guardian. (Code 1887, § 2604.)

Revisors' Note.—This section is largely new, and is intended to protect the estates of wards to a greater extent than was the case under the former law. It is provided that no guardian shall expend any of the corpus of an estate without first obtaining the consent of the court before which his accounts may be settled. The section prescribes the procedure necessary to obtain this consent. In consequence of the changes made in this section, the latter part of the following section as it stood before the revision has been omitted.

At common law under no circumstances were guardians allowed any expenditures over the income of their wards unless leave of court was first obtained. 1 Min. (4th Ed.) 443; 2 Barton C. Pr. (2d Ed.) 705.

A guardian is to be allowed his disbursements on account of the ward, although they exceed the income of the estate actually in the guardian's hands, provided they do not exceed the income of the ward's whole estate in the hands both of the guardian and of the administrator of the ward's father. Foreman v. Murray, 7 Leigh 412.

Rule of the section as it then stood applied in Hooper v. Royster, 1 Munf. 119; Jackson's Heirs v. Jackson's Adm'r, 1 Grat. 143; Barton v. Bowen, 27 Grat. 849; Cogbill v. Boyd, 77 Va. 455; Sedgwick's Curator v. Taylor, 84 Va. 823, 6 S. E. 226.

Merchant furnishing goods to guardian for ward is not bound to see that the expenditure is proper. Broadus v. Rosson, 3 Leigh 12.

The interest of the ward requires that his guardian should have power to sell his personal estate. But in any exercise of this authority the guardian must, at his peril, act with proper discretion in reference to the ward's interest. Hunter v. Lawrence's Adm'r, 11 Grat. 111, 62 Am. Dec. 640. But see present section and revisors' note.

Digitized by Google

The guardian may be allowed compensation out of the principal of the ward's personal estate for improvements of ward's real estate where they were plainly beneficial to the ward. Jackson's Heirs v. Jackson's Adm'r, 1 Grat. 143. But see present section and revisors' note.

Excess of income becomes principal for the ensuing year. Bennett v. Claiborne, 23 Grat. 374; 2 Barton C. Pr. (2d Ed.) 707.

Former section cited but not construed, Hess v. Hess, 108 Va. 483, 62 S. E. 273.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 82, section 8.

Sec. 5322. Sale of personal estate to pay excess allowed beyond income.—When any such disbursements shall be so allowed, the court shall, if necessary, order the sale of such portion of the personal estate of said ward as may be necessary to pay the balance of such expenditures over and above the income of his estate. (Code 1887, § 2605.)

Revisors' Note.—See revisors' note to the preceding section.

For cases construing former statutes, see Myers v. Wade, 6 Rand. 444; Hess v. Hess, 108 Va. 483, 62 S. E. 273; cases cited, 1 Min. (4th Ed.) 473.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 82, section 9.

Sec. 5323. When guardian to pay compound interest on annual balances.—If any balance, whether of profits received or estimated, or of interest or principal, be due by any guardian, or other person acting as guardian, at the end of any year, which ought to be invested or loaned out within a reasonable time for the benefit of the ward, and the same remain in the hands of such guardian or other person, he shall be charged with interest thereon from the end of the year in which such balance arose, and so on toties quoties during the continuance of the trust. (Code 1887, § 2606.)

The rules of the statute applied in Garrett v. Carr, 1 Rob. 196; Cunningham v. Cunningham, 4 Grat. 43; Jennings v. Jennings, 22 Grat. 313.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 82, section 10.

Sec. 5324. May recover compound interest for ward.—Any person acting as guardian shall have the right to demand and recover of any obligor in any bond or the maker of any other instrument in writing payable to him as guardian, and held by him for the benefit of his ward, the principal sum due, and interest thereon compounded annually, semi-annually, or otherwise periodically, as may be stipulated for in such bond or writing. (Code 1887, § 2607.)

Revisors' Note.—Formerly this section applied to obligors in bonds only, but apparently gave the guardian the right to recover compound interest where not stipulated for in the writing. The revised section embraces bonds and other instruments in writing, and allows compound interest to be recovered according to the stipulation of the parties.

Sec. 5325. Time within which guardian allowed to invest funds.—Whenever a guardian shall collect any principal or interest belonging to his ward, he shall have sixty days to invest or loan the

Digitized by Google

same, and shall not be charged with interest thereon until the expiration of said time, unless he shall have made the investment or loan previous thereto, in which case, he shall be charged with interest from the time the investment or loan is made. (Code 1887, § 2608.)

Revisors' Note.—This section increases the maximum time limit from thirty days to sixty days.

Guardians were formerly allowed six months in which to make investment. Hooper v. Royster, 1 Munf. 119; Armstrong's Heirs v. Walkup, 12 Grat. 608.

A guardian who receives the money of his wards, and does not invest it, but retains it in his own hands, is to be charged interest thereon from the date of its receipt, and not from the end of the thirty (now sixty) days allowed by the statute to the guardian for making investments. Snavely v. Harkrader, 29 Grat. 113.

A guardian who has not made investment but has used funds for his own use and has not settled his account is not to be allowed compensation. Jennings v. Jennings, 22 Grat. 313.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 82, section 12.

Sec. 5326. Powers of chancery courts over guardians; when they may order sale of real estate of wards for their maintenance and education; mode of proceeding.—The circuit and corporation courts in chancery may hear and determine all matters between guardians and their wards, require settlements of the guardianship accounts, remove any guardian for neglect or breach of trust, and appoint another in his stead, and make any order for the custody and tuition of an infant and the management, preservation and investment of his estate; and when it shall be made to appear to the satisfaction of a circuit or corporation court, in chancery, on a bill filed for the purpose by the guardian, that the proper maintenance and education, or other interests of an infant, require that the proceeds of his real estate, beyond the annual income thereof, should be applied to the use of said infant, it shall be lawful for the court to order the sale of his real estate, or such part thereof as may be necessary for the purpose, and, from time to time, make such decrees and orders as may be proper to secure the due application of the proceeds; and to the extent that the proceeds may be so applied they shall be deemed personal estate, but no further. Every bill filed under this section and the proceedings thereon shall conform to the provisions of chapter two hundred and seventeen, so far as those provisions relate to the sale of the real estate of an infant. (Code 1887, § 2609.)

Jurisdiction.—Guardian is liable in a court in this State for funds recovered from sale of real estate in another State and brought into this State. Rinker v. Streit, 33 Grat. 663.

A court of equity has jurisdiction of all claims against a ward's estate. Barnum v. Frost's Adm'r, 17 Grat. 398.

The general rule is that a guardian cannot be sued as such out of the jurisdiction in which he qualified. But if a non-resident guardian invokes the aid of a domestic court, he is bound by the decrees made in the proceeding instituted by him, and if found within the jurisdiction of

Digitized by Google

said court he may be proceeded against therein to enforce such decrees. Clendenning v. Conrad, 91 Va. 410, 21 S. E. 818.

A court of equity has not authority under its general jurisdiction as guardian of infants to sell their real estate whenever it is for the advantage of the infant to do so. Faulkner v. Davis, 18 Grat. 651, 98 Am. Dec. 698.

Power of removal.—The discretion vested in the courts in regard to the appointment and removal of guardians is a large one, and a guardian is properly removed where his actions savor of negligence and of lack of regard for the best interest of his ward. Snavely v. Harkrader, 29 Grat. 112.

Practice.—In a case where there are mutual accounts, a reference to a commissioner of the court should precede the decree. Bland v. Wyatt, 1 Hen. & M. 543.

The record in a former suit is admissible evidence to establish the amount of indebtedness of the guardian in a suit to settle his accounts. Morrison's Ex'r v. Householder's Adm'r, 79 Va. 627; Roberts v. Colvin, 3 Grat. 358; Hooper v. Royster, 1 Munf. 119.

An infant may by his next friend call the acting guardian or any preceding guardian to account by a bill in chancery. But the bill must be in his own name by his next friend. Lemon v. Hansbarger, 6 Grat. 301. See, also, notes to section 5321.

Accounts of guardians.—Cases concerning the settlement of, Tabb v. Boyd, 4 Call 453; Foreman v. Murray, 7 Leigh 412; Cunningham v. Cunningham, 4 Grat. 43; Evans v. Pearce, 15 Grat. 513, 78 Am. Dec. 635; Lincoln's Adm'rs v. Stern, 23 Grat. 816; Barton v. Bowen, 27 Grat. 849; Smith v. Blackwell, 31 Grat. 291; Dobyns v. Rawley, 76 Va. 537; Stigler's Ex'x v. Stigler, 77 Va. 163; Peale's Adm'r v. Thurmond, Id. 753; Elliott's Adm'r v. Howell, 78 Va. 297; Thurston's Adm'r v. Sinclair, 79 Va. 101.

Where there are several wards, separate accounts should be kept. Armstrong's Heirs v. Walkup, 9 Grat. 372.

Accounts as guardian should be kept separate from those as executor. Hannah's Adm'r v. Boyd, 25 Grat. 692.

Previous consent of court is necessary where guardian would apply any part of his ward's principal to his education or support. If the ward's expenses for necessaries exceeds his annual income until he becomes old enough to render service, and if when he arrives at that age his services are equal to his support, the surplus of the expenditure during the former period ought to be set off against the income of his estate during the latter period, until he arrives at the age of twenty-one. Myers v. Wade, 6 Rand. 444.

It is the duty of a guardian, whose power as such is revoked, to account to his wards, or to his successor as guardian, if there be one, for their estate, including evidences of claims which may have come to his hands. Sage v. Hammonds, 27 Grat. 651.

Credits allowed guardian.—A guardian is entitled to credit for material for necessary repairs to ward's houses, even though he may not be able to designate the particular houses to which the repairs were applied. Newton v. Poole, 12 Leigh 116.

A guardian, although he has said he does not intend to charge his wards board, may yet charge them for the same and for clothing, although the wards were required to work as children are required to work. Armstrong's Heirs v. Walkup, 12 Grat. 608; 2 Barton C. Pr. (2d Ed.) 708.

If guardian is the father he will not be allowed for their board unless he is unable to provide for them. Griffith v. Bird, 22 Grat. 73.

Settlement of accounts as soon as ward becomes of age, especially before he is in possession of his estate, are viewed by a court of equity with a watchful and jealous eye. Baylor v. Fulkerson's Ex'rs. 96 Va. 265, 31 S. E. 63. See, also, Shackelford v. Newbill, 2 Pat. & H. 232; Waller v. Armistead's Adm'rs, 2 Leigh 11, 21 Am. Dec. 594.

Digitized by Google

Long and unexplained acquiescence in a settlement between guardian and ward is an effectual bar to proceedings to impeach it. Baylor v. Fulkerson's Ex'rs, 96 Va. 265, 31 S. E. 63.

Where a compromise of a suit to settle a deceased guardian's accounts has been ratified by a decree of court, and acquiesced in for eleven years, it will not be set aside except upon the clearest proof of fraud, misrepresentation, concealment, or mutual mistake. Epes v. Williams' Adm'r, 2 Va. Dec. 485, 27 S. E. 427.

Where a guardian leases his ward's property to himself at a certain rental, and settles with her after age, such acquiescence on the ward's part bars her from setting up a claim for twice as great a rental on the ground that the actual profits were twice as great. Paxton v. Gamewell, 82 Va. 706, 1 S. E. 92.

Misconduct of guardian.—Cases concerning, Walker v. Walker, 2 Wash. 195; Brown v. Brown's Adm'x, Id. 151; Bank of Va. v. Craig, 6 Leigh 399; Broadus v. Rosson, 3 Leigh 12; Hunter v. Lawrence's Adm'r, 11 Grat. 111, 62 Am. Dec. 640; Ergenbright v. Ammon's Adm'r, 26 Grat. 490; Crawford v. Shover, 29 Grat. 69; Snavely v. Harkrader, Id. 112; Asberry's Adm'r v. Asberry's Adm'r, 33 Grat. 463; Dobyns v. Rawley, 76 Va. 537; Burwell v. Burwell's Guardian, 78 Va. 574; Elliott's Adm'r v. Howell, Id. 297.

Use of corpus of real estate will in no case be ratified.—Authority to apply the proceeds of the sale of infant's real estate to maintenance and education must be given by the court in advance. Whitehead v. Bradley, 87 Va. 676, 13 S. E. 195; Rinker v. Streit, 33 Grat. 663; Gayle v. Hayes' Adm'r, 79 Va. 542; Harkrader v. Bonham, 88 Va. 247, 16 S. E. 159. See, also, section 5321.

Generally.—The statutes in relation to the sale of infant's lands are remedial in their nature, and should be construed liberally. Faulkner v. Davis, 18 Grat. 651, 98 Am. Dec. 698.

Sale of infant's land for reinvestment, section 5335.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 82, section 13.

Sec. 5327. Where husband and wife live in state of separation, court may award custody of minor child to mother.—When any husband and wife shall live in a state of separation, without being divorced, and shall have a minor child or children of the marriage, the circuit court of the county, or the circuit or corporation court of the corporation, in which such child or children may be, or the judge thereof in vacation, may, in the discretion of such court or judge, upon the petition of the mother, award to her the custody and control of such child or children for such time, under such regulations and restrictions, and with such provisions and directions, as the case may require, and will best promote the welfare of such child or children; and such court or judge, in the enforcement of its orders, may direct its officer to take possession of such child or children and dispose of them as it may direct. (Code 1887, § 2610.)

The father is the natural guardian of his infant children, and has paramount right to their custody, but the right to the custody of his children is not like the right of property, an absolute and unconditional right. In controversies between parents over the custody of their infant children, the paramount consideration is the welfare of the children, and wide discretion rests with the court as to what is best for their welfare. Taylor v. Taylor, 103 Va. 750, 50 S. E. 273.

The father is the legal custodian of the minor children, and they will not be taken from his custody without the strongest reasons there-

Digitized by Google

for; and this right is not affected by the voluntary separation of the parties. Latham v. Latham, 30 Grat. 307.

As to custody of children in case of divorce, see section 5111.

Sec. 5328. Where child in custody of father, court may make order for access of mother to child.—Such court, or judge thereof in vacation, upon the petition of the mother of such minor child or children, being in the sole custody of the father, or of any one by his authority, or of any guardian of such child or children, the father being dead, may make an order or orders for the access of the mother to such minor child or children, at such times, and subject to such regulations and restrictions, as may be just and proper. (Code 1887, § 2611.)

Where a wife's application for divorce had been refused, and she was the chief obstacle in the way of a reconciliation, and the husband was entitled to the custody of the child, the court refused to compel him to have the child at certain places and certain times to gratify the wishes and feelings of the mother. Latham v. Latham, 30 Grat. 307.

Sec. 5329. Notice to be given of application by mother; court may afterwards modify or annul order.—No such order or orders, touching the custody of such child or children, or the access of the mother thereto, shall be made, except upon reasonable notice to the father, or other person having the custody of such child or children; and, at any time after making such order or orders, the court or judge thereof in vacation, may, for good cause shown, vary, modify, or annul the same. (Code 1887, § 2612.)

Sec. 5330. Provisions governing said proceedings.—The provisions of sections fifty-eight hundred and fifty-four, fifty-eight hundred and fifty-five and fifty-eight hundred and fifty-six, shall apply to any proceedings had or orders made under the three preceding sections. (Code 1887, § 2613.)

Sec. 5331. How infants may sue.—Any minor entitled to sue may do so by his next friend. (Code 1887, § 2614.)

Infant plaintiff.—A minor entitled to bring an action should do so in his own name, by his guardian or next friend, and error in this respect was formerly fatal, even after the general verdict for the plaintiff. Stewart v. Crabbin's Guardian, 6 Munf. 280.

A guardian is not authorized to file a bill in his own name to obtain possession of his ward's estate, but must file it in the name of the ward, by his next friend. Lemon v. Hansbarger, 6 Grat. 301; Sillings v. Bumgardner, 9 Grat. 273.

A man who is made a "next friend" to an infant, without his knowledge or consent, was not disqualified from being a witness. Burwell v. Corbin, 1 Rand. 131, 10 Am. Dec. 494.

See Lile's Notes on 1 Min., p. 105.

Infant defendant.—In a suit against an infant, it is not sufficient to make the infant a party defendant merely "by his guardian." The party defendant must appear to be the infant by his guardian ad litem. Brown v. McRea's Ex'rs, 4 Munf. 439. See section 6098.

Generally.—Where Christian names of infants were omitted it was held no error. Where the infant's name is joined with his mother it is sufficient, without saying that he sues by his next friend. Wilson and wife v. Smith, 22 Grat. 493.

Cited but not construed in Langston v. Bassette, 104 Va. 47, 51 S. E. 218.

Digitized by Google

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 82, section 14.

Sec. 5332. Approval of compromises on behalf of infants in suits to which they are parties.—In any action or suit wherein an infant, idiot or lunatic is a party, the court in which the same is pending shall have the power to approve and confirm a compromise of the matters in controversy on behalf of such infant, idiot or lunatic, if said compromise shall be deemed to be to the interest of the infant, idiot or lunatic; and any order or decree approving and confirming any such compromise shall be binding upon such infant, idiot or lunatic, except that the same may be set aside for fraud; and any such infant shall not be allowed to attack and set aside any such order or decree, unless he shall proceed so to do within six months after coming of age. (1908, p. 551.)

Sec. 5333. To legalize the adoption of minor children by adult persons.—A resident of this State who is not married, or a husband and wife (residents of this State) jointly, may petition the circuit court of the county, or the circuit or corporation court of the city in which they reside, for leave to adopt a minor child not theirs by birth, who is a resident of this State, and for a change of the name of such child; but a written consent must be given to such adoption by the child if of the age of fourteen years and by each of his or her living parents who is not hopelessly insane or habitually intemperate or has not abandoned such child; or if there are no such parents or if the parents are unknown or have abandoned such child or if they are hopelessly insane or habitually intemperate, then by the legal guardian; or if there be no such guardian, then by a discreet and suitable person appointed by the court to act in the proceedings as the next friend of such child; but if such parents or guardian join in said petition it shall be deemed such consent in writing.

When the foregoing provisions are complied with if the court is satisfied of the ability of the petitioner to bring up and educate the child properly, having reference to the degree and condition of the child's parents and the fitness and propriety of such adoption, it shall make an order setting forth the facts and declaring that from that date such child, to all legal intents and purposes, is the child of the petitioner and that its name is thereby changed.

The natural parents shall, by such order, be divested of all legal rights and obligations in respect to the child and the child be free from all legal obligations of obedience and maintenance in respect to them; such child shall be, to all intents and purposes, the child and heir at law of the person so adopting him or her, entitled to all the rights and privileges and subject to all the obligations of a child of such person begotten in lawful wedlock; but on the decease of such person and the subsequent decease of such adopted child

Digitized by Google

without issue the property of such adopting parent still undisposed of shall descend to his or her next of kin and not to the next of kin of such adopted child. At any time after the order of the court permitting such adoption and change of name, the parent or parents of such minor child, or the child itself, if twenty-one years of age, and if not twenty-one years of age, then by its next friend, or the adopting parent or parents, may petition the court which entered such order of adoption to vacate the same and terminate the adoption and restore the former name. And the court shall hear evidence for and against such petition, and if from such evidence it appears that a termination of such adoption and restoration of name is manifestly right and proper, and especially if it be for the best interests of the child, the court shall vacate said order of adoption and change of name, and thereupon such child shall be restored to the identical position and name it held before such order of adoption. But before the court acts upon such petition, ten days' notice in writing shall be given to the person or persons who had been permitted to adopt said child; and if said petition be filed by the next friend of said child, or by its parent or parents, and said child be over fourteen years of age, the court shall require said child to appear before it and ascertain its wishes in the matter, though the court need not be controlled thereby. And the court shall see that all the property rights of such child, as well as of the person or persons adopting it, are protected, and may make such order as may be proper in the premises so that no injustice may be done (1893-4, p. 75; 1910, p. 466.)

Revisors' Note.—Under this section as revised, all of the parties must be residents of this State. Provision is made for annulling the adoption BY THE ADOPTING PARENT OR PARENTS, as well as in the other cases mentioned in the act. On the petition the court is to hear evidence both for and against the same, "and if from such evidence it appears that a termination of such adoption and restoration of name is manifestly right and proper, and especially if it be for the best interests of the child, the court shall vacate said order of adoption," etc.

As to the effect of this section upon section 5242, concerning pretermitted children, and upon section 5259, concerning probate of will, see Bell v. Jones (Corporation Court of Lynchburg), 9 Va. Law Reg. 1070.

A decree construing a will to be valid is not in favor of an infant adopted son of testatrix, who would, if the will was invalid, take the whole estate, and failure to appoint a guardian ad litem in such case is a reversible error. Langston v. Bassette, 104 Va. 47, 51 S. E. 218.

Under Act 1901-2, p. 126, section 8, the Children's Home Society of Virginia is declared to be the legal guardian of all children committed to its care, and as such may give its consent to adoption. No other consent is necessary.

A parent may transfer to another the custody of his child, and the court will not declare that custody an illegal restraint, which is held under fair agreement, and is not injurious to the child. Coffee v. Black, 82 Va. 567.

See note on Adoption, 39 Am. St. Rep. 210.

For note upon inheritance by and through adopted children, see 18 Va. L. Reg. 715.

See Gregory's Forms Nos. 247, 391, 658.

Digitized by Google

TITLE 49.

Leasing and Selling Lands of Persons Under Disabilities.

CHAPTER 217.

Leasing the Lands of Infants or Insane Persons, and the Sale of Their Lands or Those Held for the Benefit of Others.

Sec.
5334. How leases on behalf of persons under disability may be made.
5335. By whom bill may be filed for sale of lands of such persons, or lands held in trust; what to state; how verified; who to be made defendants.
5336. To prevent the abatement of suits brought under the preceding section, and to revive those which have abated.
5337. Guardian ad litem to be appointed.
5338. To validate sales of certain infants' lands.
5339. How depositions to be taken.
5340. When and for what decree for sale, lease, encumbrance or exchange may be made; court to ascertain value before encumbrance is made and secure excess to trustee; rents and profits to be first applied.
5341. Who not to be a purchaser, nor interested with lessee.
5342. How proceeds of sale or income to be secured and applied; when same may be paid over.
5343. To authorize courts to pay money to infants entitled thereto or to their parents, in certain cases, without the intervention of a guardian.
5344. Wife of insane or infant husband may convey her own estate or release her dower in lands so sold.
5345. Same right in proceeds of sale to be secured to her or compensation made.
5346. How right of dower of insane wife and curtesy of insane husband may be passed; same rights in purchase money to be secured to her or to him, or compensation made.
5347. What proceeds of sale to pass as real estate.

Sec. 5334. How leases on behalf of persons under disability may be made.—Where an infant or insane person is entitled to or bound to renew any lease, any person on behalf of such infant or insane person, or any person interested, may apply by petition or motion in a summary way to the circuit court of the county or circuit or corporation court of the corporation in which the land leased, or some part thereof, may lie, and by the order of the said court any person appointed by it may, from time to time, surrender or accept a surrender of such lease, or take or make a new lease of the same prem-

Digitized by Google

ises for such term and with such provisions as the court shall direct. Such reasonable sums as may be incurred to renew any such lease shall, with interest thereon, be paid out of the profits of the leasehold premises, and be a charge thereon till such payment. (Code 1887, § 2615; 1899-00, p. 770.)

Revisors' Note.—The words "on behalf of such infant or insane person," found in lines two and three of the text, are used in lieu of "on his own or her behalf." A reference to this section in the Code of 1849, chapter 128, section 1, p. 535, makes it clear that this is what was meant.

By the amendment of 1899-00, p. 770 this section of the Code of 1887 was changed so as to eliminate married women. For other legislation as to the property rights of married women, see 6 Va. Law Reg. 52, and chapter 207 of the Code.

The statutes of this State recognize the inviolability of trust estates from lease or sale unless the interests of the cestuis que trustent will be promoted thereby, and unless "the rights of no person will be violated." Schroeder v. Woodward, 116 Va. 506, 82 S. E. 192.

As to section generally, see Barton, C. Pr. (2d Ed.) 587; 1 Min. (4th Ed.) 769; 4 Min. (3d Ed.) 1369.

Discussed, 10 Va. Law J. 7, 129.

Sec. 5335. By whom bill may be filed for sale of lands of such persons, or lands held in trust; what to state; how verified; who to be made defendants.—If the guardian of any infant, or the committee of any insane person, or the trustee or trustees of any estate, whether he or they be interested with others or not, think that the interest of the infant, insane person, or of those for whom the estate is held will be promoted by a sale of his or their estate, in whole or in part; or

By an exchange of his or their real estate for other real estate; or

By encumbering such real estate for the purpose of borrowing money to be used to erect buildings or other improvements on the same; or

If such guardian, committee, trustee or trustees, person or persons interested in any estate in trust, think that the interest of such infant, insane person, or persons for whom such estate is held will be promoted by the sale of the timber, coal, oil, gas, and minerals on or in his real estate; or

By a lease of such real estate, or any part thereof, for a term of years; or

By a lease of the coal, oil, gas and minerals thereof, or of any or either of them,

Such guardian, committee, trustee or trustees, or beneficiary or beneficiaries, whether the estate of the infant, insane person, or of any of the persons interested, be absolute or limited, and whether there be or be not limited thereon any other estate, vested or contingent, and whether the guardian, committee, trustee or trustees, or the infant or insane person, or any of the persons interested, reside in this State or not, may, for the purpose of obtaining such

Digitized by Google

sale, exchange, or encumbrance, or making such lease, file a bill in equity in the circuit court of the county or the circuit or corporation court of the corporation in which the estate proposed to be sold, exchanged, encumbered, or leased, or some part thereof, may be, stating plainly all the estate, real or personal, belonging to such infant or insane person, or so held in trust, and all the facts calculated to show the propriety of the sale, exchange, encumbrance, or lease.

The bill shall be verified by the oath of the plaintiff, and the infant or insane person, or the beneficiary or beneficiaries in such trust, and the trustee or trustees (when not plaintiff or plaintiffs), and all others interested, shall be made defendants; and also, where there are one or more infant or insane defendants, all those who would be their heirs or distributees if all of such infant or insane defendants were dead. (Code 1887, § 2616; 1887-8, pp. 239, 503; 1901-2, p. 594; 1902-3-4, p. 842.)

Revisors' Note.—The phraseology of this section has been considerably changed with no intention to change the sense. The change in the language of the last paragraph is to settle a disputed interpretation thereof. See 11 Va. L. Reg. 57, 223, and 247. It would seem that the infant should have some adult next of kin to represent his interest.

Statute Remedial—Substantial compliance with procedure.—This section is highly remedial, and must receive a liberal construction to enhance the remedy. Rhea v. Shields, 103 Va. 309, 10 Va. Law Reg. 786, 49 S. E. 70; Faulkner v. Davis, 18 Grat. 651, 98 Am. Dec. 698; Vaughan v. Jones, 23 Grat. 456; Garland v. Loving, 1 Rand. 396; 4 Min. (3d Ed.) 1367; Barton, C. Pr. (2d. Ed.) 589.

The rule requiring liberal construction of statutes for the sale of lands of persons under disability, has reference rather to subjects to be sold than to the procedure. The statutes as to procedure must be substantially complied with. Coleman v. Va. Stave Co., 112 Va. 61, 70 S. E. 545.

If a suit for the sale of lands of an insane person be brought under this section then the requirements of the other sections of this chapter must be substantially complied with. Wheeler v. Thomas, 116 Va. 259, 81 S. E. 51.

This chapter is not substantially complied with when it is not averred what other lands the infants own and no proof is adduced as to the propriety of sale. Ex parte affidavits are no evidence as to the propriety of sale. Coleman v. Va. Stave Co., 112 Va. 61, 70 S. E 545.

This chapter corresponds to chapter 117 of the Code of 1887, and it was held under that chapter that if its provisions were not substantially complied with, a decree directing the sale of the infants' lands was utterly void and of no effect. Furthermore, that section 3425 of the Code of 1887 (corresponding to section 6306 of this Code) gave no protection to a purchaser who had bought land under a void decree, although the sale was made more than six months from the date of the decree. Brenham v. Smith, 120 Va. 30, 90 S. E. 657. For a material change in section 6306 made by the present revision, see that section and revisors' note.

For case conforming with the requirements of the statute, see Palmer v. Garland's Committee, 81 Va. 444. For circumstances justifying private sales, see Id., and Hess v. Rader, 26 Grat. 749.

For decree rendered upon "a substantial, if not a literal, compliance with the statute," see Payne v. Morriss, 1 Va. Dec. 665, 5 S. E. 568.

For proceedings irregular under this section, see Brown v. Putney, 90 Va. 447, 18 S. E. 883.

Jurisdiction of equity courts.—The doctrine in this State is well

Digitized by Google

settled that courts of equity have no inherent power, as guardians of infants, to sell their real estate for the purpose of reinvestment: the obvious purpose of the statute under which these proceedings are had, is to invest those courts with that jurisdiction in respect to estates of all persons under disability. Rhea v. Shields, 103 Va. 305, 49 S. E. 70, 10 Va. Law Reg. 793, note. They have no general authority. Coleman v. Va. Stave Co., 112 Va. 61, 70 S. E. 545; see, also, Faulkner v. Davis, 18 Grat. 651, 98 Am. Dec. 698; Pierce's Adm'r v. Trigg's Heirs, 10 Leigh 406; 4 Min. (3d Ed.) 1364; Barton, C. Pr. (2d Ed.) 589. For history of the statute giving this jurisdiction to the courts of equity, see Faulkner v. Davis, 18 Grat. 664 et seq., 98 Am. Dec. 698.

Under this section, where the court acquires jurisdiction both of the parties and of the subject matter of litigation, its decree, although erroneous, is conclusive until reversed or set aside. Rhea v. Shields, 103 Va. 365, 10 Va. Law Reg. 786, 793, and note, 49 S. E. 70.

Parties.—In case of sale of ward's real estate, the bill must be filed by the guardian, and cannot be filed by the wards through their next friend. Snavely v. Harkraker, 29 Grat. 129.

When a father and mother hold lands in trust for their infant children, a bill filed against the infants in the names of the father and mother in their own right, and as trustees for such infants, is sufficient compliance with the statute as to parties. Lancaster v. Barton, 92 Va. 615, 24 S. E. 251.

The fact that the infants were plaintiffs with their mother instead of being made defendants is no objection to the proceeding in the suit for a sale of the land. Quesenberry v. Barbour, 31 Grat. 491.

A suit under this section cannot be brought by the next friend of an insane person, but must be brought by his committee. Wheeler v. Thomas, 116 Va. 259, 81 S. E. 51.

A guardian may file a bill for the sale of the real estate of his infant children, held by himself for life and by his children in remainder. Cooper v. Hepburn, 15 Grat. 551. See, also, Barton, C. Pr. (2d Ed.) 589.

As to representation of parties, see, also, Faulkner v. Davis, 18 Grat. 651, footnote, Va. Rep. Anno.; 98 Am. Dec. 698; also 2 Min. (4th Ed.) 238; also Cooper v. Hepburn, 15 Grat. 551; 4 Min. (3d Ed.) 1359.

Pleadings.—The sale of infant's lands must be made in a suit brought under this section, and not in a suit brought to remove guardian and other purposes. Snavely v. Harkrader, 29 Grat. 112.

As to effect of failure to aver suit brought as guardian, see Cooper v. Hepburn, 15 Grat. 551; Zirkle v. McCue, 26 Grat. 517, 525.

Where a female infant defendant has answered by her guardian ad litem and in proper person, failure to proceed against her in her own proper person after her majority, or against her husband as codefendant after her marriage, will not necessarily be error. Lancaster v. Barton, 92 Va. 615, 24 S. E. 251. See section 5336.

Affidavit.—The better practice is for the certificate to show on its face that the bill was sworn to by the plaintiffs; but where the affidavit to the bill merely recited "sworn to before me," and it was proved by evidence aliunde that the bill was signed by the plaintiffs and duly sworn to by each before the officer making his certificate, that was a sufficient compliance with the statute. Lancaster v. Barton, 92 Va. 615, 24 S. E. 251.

The bill may be sworn to any time before the sale of the land is ordered. Durrett v. Davis, 24 Grat. 302.

The decree recites that cause was heard upon answer of guardian ad litem. It will be presumed to have been sworn to. Durrett v. Davis, 24 Grat. 302.

Propriety of making sale.—The inquiry is (1) whether the sale is for the benefit of the infants; (2) whether the right of other parties will be violated; (3) whether the sale is prohibited by the will or other instrument creating the estate in the infants. Garland v. Loving, 1 Rand. 400; Talley v. Starke's Adm'x, 6 Grat. 339; Faulkner v. Davis, 18 Grat. 661, 98 Am. Dec. 698; Palmer v. Garland's Committee, 81 Va. 444; Lan-

Digitized by Google

caster v. Barton, 92 Va. 615, 24 S. E. 251; 4 Min. (3d Ed.) 1367; 2 Min. (4th Ed.) 422.

In suit brought under this statute, a conditional sale made before the suit was brought may be approved and confirmed by the court, as well as a sale directed, but in either case it must be clearly shown as a condition precedent to such confirmation or order of sale independently of any admissions in the answers that the interests of the infants, etc., will be promoted thereby. Smith v. White, 107 Va. 616, 59 S. E. 480.

The propriety of making a sale under this section cannot be determined by ex parte affidavits. Smith v. White, 107 Va. 616, 59 S. E. 480.

The commissioner; his report.—The report of the commissioner, to whom a case has been referred to take evidence and report upon the propriety of a sale of infant's land, is not one which section 6186 requires to lie ten days before being acted upon. Lancaster v. Barton, 92 Va. 615, 24 S. E. 251.

Same person may act as commissioner to take accounts in suit and as guardian ad litem of the infant. Durrett v. Davis, 24 Grat. 302.

Right to show cause against decree.—The right of an infant to show cause against a decree which affects his interests after he arrives at age must be limited to causes existing at the rendition of the decree, and not such as arose afterwards. Lancaster v. Barton, 92 Va. 623, 24 S. E. 251; Walker's Ex'r v. Page, 21 Grat. 636; Durrett v. Davis, 24 Grat. 302; Zirkle v. McCue, 26 Grat. 517.

Estoppel of infant.—Where the name of an infant defendant was signed to the answer in her absence by her mother, and was never sworn to by said infant defendant, but she knew of the suit, and became of age six months after suit was brought and sixteen months before the sale, and made no objection thereto, she is estopped from objecting to the sale as against bona fide purchasers. Lancaster v. Barton, 92 Va. 625, 24 S. E. 251. See, also, Cooper v. Hepburn, 15 Grat. 551; Barton, C. Pr. (2d Ed.) 590.

Although proceedings instituted under this section are irregular, yet where the minors, after reaching majority, file amended pleadings requesting the sale of the property, they are equitably estopped from objecting to the validity of the sale. Rhea v. Shields, 103 Va. 305, 49 S. E. 70, 10 Va. Law Reg. 786, 793 and note.

Bona fide purchasers protected by section 6306.—Section 6306, in regard to judicial sales applies to sales of lands of infants made in suits brought under this section. Lancaster v, Barton, 92 Va. 615, 626, 24 S. E. 251; Cooper v. Hepburn, 15 Grat. 551; Dixon v. McCue's Adm'x, 21 Grat. 373, 380; Quesenberry v. Barbour, 31 Grat. 491, 500; Garland v. Pamplin, 32 Grat. 305, 320; also note on Judicial Sales, Walker's Ex'r v. Page, 21 Grat. 636. Va. Rep. Anno. As to purchasers under void decrees, see note of Brenham v. Smith, found in the first subdivision of these notes. The present revision makes an important change in section 6306, as to which see that section and revisors' note.

What interest may be sold.—Under the act of 1852-53, p. 49 (from which this section in main was taken), and the previous acts, courts of equity had authority to sell the land in which infants had an interest, whether in possession or remainder, vested or contingent, if the proper parties could be brought before the courts. Faulkner v. Davis, 18 Grat. 651, 98 Am. Dec. 698.

Construction of will not necessary.—This section does not require as a prerequisite that the will under which the lands are held shall be construed before a sale is ordered. Lancaster v. Barton, 92 Va. 615, 24 S. E. 251.

Notwithstanding the direction of testator in his will that he wishes his property to be kept together till his youngest child becomes of age, a court of equity may under this section direct a sale of the real estate, if it is for the benefit of the infant children and those who are of age consent. Talley v. Starke's Adm'x, 6 Grat. 340; Faulkner v. Davis, 18 Grat. 672, 98 Am. Dec. 698. See Barton, C. Pr. (2d Ed.) 589, 590.

Digitized by Google

Trustee incompetent—Court may execute trust.—Where the trustee, in consequence of his intemperate habits, or for other reasons, is incompetent to execute the trust, it is eminently proper for the court to do so through its commissioner. Payne v. Morriss, 1 Va. Dec. 665, 5 S. E. 568; Faulkner v. Davis, 18 Grat. 651, 98 Am. Dec. 698.

Generally.—Neither this section nor any section of this chapter authorizes the sale of infant's real estate, or any part of it, for his maintenance and education. Rinker v. Streit, 33 Grat. 663, 667. For such authorization, see section 5326.

In a suit in equity, brought under this section for the sale of lands of persons under disability, it is the practice to sell or exchange the absolute estate, in place of which the proceeds of sale, or the subject in which they are invested, or for which the property is exchanegd, are held upon the same trusts and subject to the same limitations as the original. Rhea v. Shields, 103 Va. 305, 49 S. E. 70, 10 Va. Law Reg. 793, note.

Infants cannot consent to a sale of land, and the guardian cannot consent for them. Daingerfield v. Smith, 83 Va. 81, 1 S. E. 509.

For a case to sell infant's land and commute a widow's dower which could not be sustained under sections 2436a of Pollard's Code (1904), 5326 of this Code or this section, see Coleman v. Va. Stave Co., 112 Va. 61, 70 S. E. 545.

On the subject of sale of lands of persons under disability, see Barton, C. Pr. (2d Ed.) pp. 587, 591; 4 Min. (3d Ed.) 1364-1368; Lile's Notes to 1 Min. 98.

As to sale of estate of a married woman, who is an infant, see section 5137.

As to sale of contingent and other estates, see section 5161.

As to sale for partition, see section 5281.

As to sale for maintenance, see section 5326.

As to sale of lunatic's lands, see sections 1055, 5344.

As to sale of infant's homestead, see section 6542.

For monographic note on Infants, see Caperton v. Gregory, 11 Grat. 505, Va. Rep. Ann.

See notes to preceding section.

Cited but not construed in Richardson v. Jones, 106 Va. 540, 56 S. E. 343.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 83, section 2.

See Gregory's Forms, Nos. 144, 145, 203, 204, 205, 336.

Sec. 5336. To prevent the abatement of suits brought under th preceding section, and to revive those which have abated.—No suit heretofore or hereafter instituted under the preceding section shall abate by reason of the death of the infant, insane person, or other persons beneficially interested, after a lease, sale, or encumbrance has been made in pursuance of a decree in such suit, but the same shall be continued in the name of the original plaintiff until final decree, the court causing such new parties to be made as may appear necessary or proper by reason of the death of such decedent.

Any suit heretofore instituted under the preceding section which has abated by the death or marriage of the ward, may be revived by motion before the court in which the said suit was pending at the time of the abatement, or before the judge of said court in vacation, upon reasonable notice to all parties interested. The said motion may be made by any person who was a party to the said suit, or the purchaser, lessee or mortgagee of any estate sold, leased or encumbered under decrees in such suit prior to said abatement, and

Digitized by Google

when made by a woman who marries while a minor and who is a minor at the time of said motion the said motion shall be made by her next friend. And if the said court or judge thereof in vacation think it proper that said suit should be revived, an order shall be entered reviving the same, and the said cause shall proceed in the name of the original plaintiff until final decree as if said death or marriage had not taken place.

Nothing contained in this section shall be construed to authorize a decree for the sale, lease or encumbrance of such estate to be entered, or a sale of such estate made, after the death of an infant or insane person in whose interest the suit was brought. (1891-2, p. 551.)

Revisors' Note.—This section now applies to all suits under section 5335, and is not restricted as formerly to suits by guardians and by them only where the suit was for A SALE. Marriage does not now abate a suit (section 6166), hence as to FUTURE abatements this provision appearing in the act has been omitted; but it has not been eliminated as to past abatements, because some of the courts may have directed such abatement.

Sec. 5337. Guardian ad litem to be appointed.—To every infant or insane defendant there shall be appointed a guardian ad litem, who, as well as the infant (if over fourteen years of age), shall answer the bill on oath in proper person. But if such infant over fourteen years of age shall be beyond the limits of the Commonwealth, or is insane or confined in any reformatory or prison, no answer shall be required from him in proper person. (Code 1887, § 2618; 1904, p. 117.)

A guardian ad litem for the infants may be appointed at rules. Talley v. Starke's Adm'x, 6 Grat. 339.

The failure of guardian ad litem to file answer is ground for setting aside decree for sale of infants' land. Ewing's Adm'r v. Ferguson's Adm'r, 33 Grat. 548.

See Lancaster v. Barton, 92 Va. 615, 24 S. E. 251, cited in notes to section 5335, under "Pleadings."

Where infant is over fourteen, three answers are necessary. (1) The infant's, (2) guardian's, and (3) the infant's by guardian, under the general rules of chancery practice.

Discussed, 10 Va. Law J. 129. See notes to section 5335.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 83, section 3.

See Gregory's Forms Nos. 145, 204, 205, 336.

Sec. 5338. To validate sales of certain infants' lands.—No deed acquired by a bona fide purchaser under a suit brought prior to February third, nineteen hundred, for the sale of any interest in real estate owned by an infant under fourteen years of age, shall be deemed invalid because the guardian ad litem failed to file both an answer in proper person and an answer for the infant by his guardian ad litem, if it appears that a guardian ad litem for such infant was duly appointed, and that he filed either of said answers, and that the interests of the infant in other respects were fully protected by his guardian ad litem, and the proceedings were

Digitized by Google

fairly and honestly conducted without suspicion of any attempt to injure or defraud such infant. (1899-00, p. 275.)

Revisors' Note.—See, also Acts 1918, chapter 241, p. 424.

Sec. 5339. How depositions to be taken.—No deposition shall be read in any suit against any infant or insane party, whether brought under this chapter or not, unless it be taken in the presence of the guardian ad litem, or upon interrogatories agreed on by him. (Code 1887, § 2619.)

Revisors' Note.—Sections 2435 and 2619 of the Code of 1887 are identical in language, and were construed in Moore v. Triplett, 2 Va. Dec. 238, 23 S. E. 69. The present Code omits and repeals the former section and enlarges the meaning of the latter so as to make it applicable to ALL suits against infant or insane parties, WHETHER BROUGHT UNDER THIS CHAPTER OR NOT. This is a decided change in the law, but the revisors deemed it advisable

Prior to the present revision it was held that this section did not apply to ordinary suits where infants are parties. Moore v. Triplett, 2 Va. Dec. 238, 23 S. E. 69.

This section not complied with in Brown v. Putney, 90 Va. 454, 18 S. E. 883.

See notes to Section 5335.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 83, section 4.

Sec. 5340. When and for what decree for sale, lease, encumbrance or exchange may be made; court to ascertain value before encumbrance is made and secure excess to trustee; rents and profits to be first applied.—If it be clearly shown, independently of any admissions in the answers, that the interests of the infant, insane person, or beneficiaries in the trust, as the case may be, will be promoted, and the court is of opinion that the rights of no person will be violated thereby, it may decree a sale of said estate, or of any part thereof; or, if it be real estate, an exchange of the whole or any part thereof, for other real estate, or a sale or exchange of timber, coal, oil, gas, and minerals thereof, or any or either of them, or a lease of such real estate, or of any part thereof, or a lease of the coal, oil, gas, and minerals thereof, or of any or either of them, for such term of years as the court may deem proper, taking for the purchase money, in case of a sale on credit, ample security; and if the sale be of real estate, retaining a lien thereon; or the court may decree that the real estate may be encumbered for the purpose of borrowing money to be used to erect buildings or other improvements on said real estate upon such terms and conditions as may appear proper.

In case of a lease on such real estate, or a lease of the coal, oil, gas, and minerals thereof, or of any or either of them, the contract of lease proposed to be executed by such guardian, committee, trustee or trustees shall, before being executed, be submitted to and approved by said circuit or corporation court.

If a decree is sought to encumber real estate by borrowing money to be used in erecting buildings or other improvements on same,

Digitized by Google

the court shall first ascertain the present cash value of the real estate so sought to be encumbered, and so provide in its decree that, in event of a sale to pay off the amount of money borrowed, said value so ascertained (without interest) shall be preserved and paid over to the trustee or trustees, guardian, or committee, or to such person or persons as may at the time of the sale be authorized to receive it, and the surplus, or so much thereof as may be necessary, after paying costs of sale, and the said value of the real estate so ascertained, shall be applied to the payment of the lien so created; and in all cases where such property is encumbered as herein provided for, the rents and profits arising from the improvements placed on such real estate shall first be applied to the payment of the interest accruing upon the money so borrowed; and in event the life tenant shall fail to pay such accruing interest, the court may take charge of such property and sell or rent the same, as to it may appear proper.

Any exchange of lands decreed or ordered by court prior to March fifth, eighteen hundred and eighty-eight, shall be as valid as if such exchange had been so decreed or ordered after said date. (Code 1887, § 2620; 1887-8, pp. 240, 504; 1901-2, p. 594; 1902-3-4, p. 843.)

The act of 1887-8, p. 504, amending this section, did not validate such exchanges as were made contrary to law. Brown v. Putney, 90 Va. 454, 18 S. E. 883.

When the sale is not prohibited by the will or other instrument creating the estate in the person under disability, the inquiry is (1) whether the sale is for the benefit of the infants; (2) whether the rights of any person will be violated. Garland v. Loving, 1 Rand. 400; Talley v. Starke's Adm'x, 6 Grat. 339; Faulkner v. Davis, 18 Grat. 661, 98 Am. Dec. 698; Palmer v. Garland's Committee, 81 Va. 444. Court may confirm sale already made. Id., 81 Va. 444.

Cited but not construed, Shirkey v. Kirby, 110 Va. 455, 66 S. E. 40; Schroeder v. Woodward, 116 Va. 506, 82 S. E. 192.

See notes to section 5335; also Barton, C. Pr. (2d Ed.) 588; Gregory's Forms Nos. 145, 336.

Sec. 5341. Who not to be a purchaser, nor interested with lessee. —At such sale neither the guardian, guardian ad litem, committee, trustee, nor lessee under any such lease, shall be a purchaser directly or indirectly. (Code 1887, § 2621; 1902-3-4, p. 844.)

This section was enacted for the benefit and protection of the persons under disability, and not of their guardians and committees; and there may be cases in which a purchase made by a guardian or other fiduciary of the land of his ward or beneficiary, sold under this chapter, ought to be sustained, and this case is an example thereof. Redd v. Jones, 30 Grat. 123; 1 Min. (4th Ed.) 470; Barton, C. Pr. (2d Ed.) 590, 591.

Sale of land to a guardian, committee, or other fiduciary is not void, but voidable, and cannot be impeached collaterally, and is valid till reversed. Cline's Heirs v. Catron, 22 Grat. 378; Spilman v. Johnson, 27 Grat. 33, 41. And after land has been purchased by guardian, etc., and by him sold to third person, cannot be impeached under the statute, unless it be shown that the third party had notice that guardian, etc., was purchaser. Carter v. Allan, 21 Grat. 244, 247.

Digitized by Google

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 83, section 6.

Sec. 5342. How proceeds of sale or income to be secured and applied; when same may be paid over.—The proceeds of sale, or rents, income, or royalties, arising from such sale or lease shall be invested under the direction of the court for the use and benefit of the persons entitled to the estate; and in case of a trust estate subject to the uses, limitations, and conditions, contained in the writing creating the trust. The court shall take ample security for all investments made under this section, and from time to time require additional security, if necessary, and make any proper order for the faithful application and safe investment of the fund, and for the management and preservation of any properties or securities in which the same may be invested, and for the protection of the rights of all persons interested therein whether such rights be vested or contingent; but nothing herein contained shall prevent the court having charge of any of such funds from applying at any time all or any portion thereof to the proper needs and requirements of any such ward, or insane person; and after any such ward shall have arrived at the age of twenty-one years, or such insane person shall have been restored to sanity, the court may order that the entire amount of such funds, or any part thereof, be paid over to him, regardless of such needs and requirements. (Code 1887, § 2622; 1902-3-4, p. 844.)

This section changes the rule in Talley v. Starke's Adm'x, 6 Grat. 339, in reference to the guardian giving security.

Cited but not construed in Pope v. Prince's Adm'r., 105 Va. 209, 52 S. E. 1009.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 83, section 7.

Sec. 5343. To authorize courts to pay money to infants entitled thereto, or to their parents, in certain cases, without the intervention of a guardian.—Whenever it shall appear to a court having control of a fund or supervision of its administration, whether a suit be pending therefor or not, that an infant is entitled to a fund arising from the sale of lands for a division or otherwise, or as distributee of any estate, and the amount to which said infant is entitled is less than five hundred dollars, it shall be lawful for the said court, without the intervention of a guardian, upon its being made to appear to said court that the said infant is of sufficient age and discretion to use said fund judiciously, to cause said fund to be paid directly to said infant; and in any case in which said infant is of such tender years, or is otherwise incapable or incompetent to handle said fund, it shall be lawful for the court, in its discretion, to cause said fund to be paid to one of the parents of said infant for the education, maintenance, and support of said infant; or in the event that there is no living parent capable of handling said fund, to cause said fund to be applied to the main-

Digitized by Google

tenance and support of said infant by other means. (1901-2, p. 812; 1908, p. 45.)

Revisors' Note.—This section enlarges the scope of the act of 1908 (Acts 1908, p. 45) from which it is taken. Under that act it was necessary for a suit to be pending, and the amount was fixed at less than THREE hundred dollars. Under the revised section the pendency of a suit is not necessary, and the amount has been increased from three hundred to five hundred dollars.

Sec. 5344. Wife of insane or infant husband may convey her own estate or release her dower in lands so sold.—When a decree or order is made under this chapter, or under chapter forty-six, for the sale of real estate of an insane or infant husband, his wife, if of the age of twenty-one years, may, if she thinks fit, join in the conveyance, and thereby release her right of dower, or sell and convey all her estate and interest in the granted premises in like manner as she might have done by a conveyance thereof, made jointly with the husband if he had been under no legal disability. (Code 1887, § 2623.)

See 2 Min. (4th Ed.) 929; 4 Min. (3d Ed.) 1367.

Sec. 5345. Same right in proceeds of sale to be secured to her or compensation made.—In case of any such release by the wife of her right of dower, or of any such conveyance of her own estate, the proceeds of the sale shall be so disposed of under the order of the court directing the sale as to secure to her the same right, use, and benefit of and in the principal sum and the income thereof that she would have had of and in the real estate and the income thereof, if it had not been sold; or if she prefer it, she may receive or have secured to her out of the said proceeds, such sum in gross, as in the opinion of the court may be sufficient to compensate her for her interest in the said real estate. (Code 1887, § 2624.)

See 2 Min. (4th Ed.) 929; 4 Min. (3d Ed.) 1367.

Sec. 5346. How right of dower of insane wife and curtesy of insane husband may be passed; same rights in purchase money to be secured to her or to him, or compensation made.—If the husband of an insane wife wish to sell real estate and to have her right of dower therein released to the purchaser, or if the wife of an insane husband wish to sell real estate and have his right of curtesy therein released to the purchaser, he or she, as the case may be, may petition for the purpose the circuit court of the county or circuit or corporation court of the corporation in which such estate, or some part thereof, is, to which petition such insane person and his or her committee, if there be one, shall be made parties defendant, and the court shall appoint a guardian ad litem to such insane defendant, who, as well as such committee, if there be one, shall answer the petition on oath; and if it appear to the court to be proper, an order may be made for the execution of such a release by a commissioner to be appointed by the court for that purpose, which release shall be effectual to pass her said right of dower or

Digitized by Google

his right of curtesy, as the case may be, to the purchaser. But the court shall make such order as in its opinion may be proper to secure to the insane wife or husband, as the case may be, the same interest in the purchase money and the income thereof that she or he would have had in the real estate and income thereof if it had not been sold, or, at the discretion of the court, to secure to her or to him, as the case may be, out of the purchase money, such sum in gross as in the court's opinion may be sufficient to compensate her for right of dower or him for right of curtesy. (Code 1887, § 2625; 1895-6, p. 620; 1902-3-4, p. 845.)

The husband of an insane wife cannot, by proceeding on an ex parte petition, deprive his wife of her contingent right of dower in his real estate. The proceeding under this section must be inter partes, the wife must be made a party thereto, and, after notice, have an opportunity of being heard, or else the proceeding is void. Hess v. Gale, 93 Va. 467, 25 S. E. 533. See 2 Min. (4th Ed.) 929; also 4 Min. (3d Ed.) 1367.

Sec. 5347. What proceeds of sale to pass as real estate.—What may be received under chapter two hundred and fourteen and therein required to be invested, or under this chapter, for the real estate of an infant or insane person, sold or divided, or so much thereof as may remain at his or her death intestate, shall, if he or she continue until death incapable, from any cause, of making a will, pass to those who would have been entitled to the land if it had not been sold or divided. (Code 1887, § 2626.)

Revisors' Note.—Formerly this section contained the words, "or married woman." These words have been stricken out.

Section 12, chapter 128, Code 1849, from which this section comes, and section 21, chapter 108, p. 410, Rev. Code 1819, were not intended to repeal that provision of the statute of distributions which gave the wife's personal estate at her death to her husband, but were designed to give the proceeds the impress of real estate, subject to precisely the same rights and interests, present or future, vested or contingent, to which the estate was subject at the time of the sale. Therefore, where the guardian of an infant female under a decree of court sold her land, and she married, gave birth to a child, and died while still an infant, the child surviving her only a few hours, the proceeds of her real estate descended as real estate to her child, subject to the life estate in her husband, and upon the death of the child it passed as real estate to the heirs of the child on the part of the mother. Vaughan v. Jones, 23 Grat. 444, 454, 455; section 5272.

See section 5283 and notes.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 83, section 11.

Digitized by Google

TITLE 50.

Transferring to Persons in Another State Effects in This.

CHAPTER 218.

Transfer of Property in This State Belonging to Decedents, Wards, Insane Persons, or Beneficiaries in Another State or Country.

Sec.
5348. How foreign personal representative of person, who was domiciled out of this State at time of death, may have transferred certain stocks or certificates of debts.
5349. How, when it is not known to officer or agent that there is a resident personal representative.
5350. How property of non-resident infant or insane person transferred to foreign guardian or committee.
5351. How proceeds of sale of real estate of non-resident infant, insane person, or cestui que trust, invested by court, transferred to foreign guardian, committee, or trustee.
5352. What notice and evidence required in case of estate of ward or insane person before order of transfer is made.
5353. How personal estate in hands of resident trustee, belonging to non-resident beneficiaries, transferred to non-resident trustee.
5354. What notice and evidence required before transfer is made.
5355. Court may sell property of such ward, insane person, or cestui que trust, and transfer proceeds of sale.
5356. Discharge of resident guardian, committee or trustee, from liability.

Sec. 5348. How foreign personal representative of person, who was domiciled out of this State at time of death, may have transferred certain stocks or certificates of debts.—A certificate of debt of this State, or of a corporation created by it, or stock in such corporation, or in any national bank having its principal office in the State, standing on the books of the State or corporation in the name of a person who was domiciled at his death out of this State, and has no personal representative qualified as such within the same, may, by his personal representative qualified according to the laws of his domicil, be transferred as follows: Such representative may give notice, by publication once a week for

Digitized by Google

two months in a newspaper published in the State or country in which he qualified, and in two newspapers published at the seat of the government of this State, that he will move the circuit court of the county, or circuit or corporation court of the city, in which the said books of the State or corporation are kept, to direct a transfer of such certificate or stock, and upon his producing to the said court evidence of such notice having been so published, and evidence also that he is the personal representative according to the laws of the domicil, the said court, after the expiration of two months from the last publication of such notice, may, on such motion, without any bill or other pleading, make an order that, upon the original certificate of such debt or stock being filed with the proper officer of the State or corporation, the same shall be transferred as may be directed by the said representative; and by virtue of such order a valid transfer thereof may be made on the books of the State or such corporation by the said representative, in person or by attorney, unless before such transfer be actually made, a notice, in writing, forbidding the same, be served on such officer, in which last mentioned case the transfer shall only be made as would have been lawful if this section had not been enacted. (Code 1887, § 2627; 1912, p. 564.)

Sec. 5349. How, when it is not known to officer or agent that there is a resident personal representative.—The stock or certificates of debt of this State, and of any corporation created by it, standing in the name of a decedent domiciled at the time of his death out of this State, and who is not known by the officer or agent charged with the duty of transferring such stock or certificates, to have a personal representative qualified as such within the same, may be transferred by the executor or administrator of such decedent qualified according to the laws of the domicil. (Code 1887, § 2628.)

Sec. 5350. How property of non-resident infant or insane person transferred to foreign guardian or committee.—When any infant or insane person, entitled to property or money in this State, resides out of it, a petition to remove such property or money to the domicile of such infant or insane person may be filed by his guardian or his committee lawfully appointed and qualified in the State or country of his residence, in the circuit court of the county, or the circuit or corporation court or some other court of the city having chancery jurisdiction, in which the property or money, or some part thereof, is. To this petition the infant or insane person, and the guardian of such infant and the committee of such insane person appointed in this State, if there be one, shall be made parties defendant, and the court shall appoint a guardian ad litem to such infant or insane defendant, who, as well as the committee, if there be one, shall answer the petition on oath. Upon a hearing of the

Digitized by Google

case on its merits, the court may order the guardian or committee in this State, if there be one, to pay and deliver to such foreign guardian or committee, or his agent or attorney, all personal property and money in his hands belonging to said infant or insane person, and authorize such foreign guardian or committee to sue for, recover, and receive all money or personal property which belongs to the infant or insane person, including the accruing rents of his real estate, in like manner as if he were appointed a guardian or committee of such infant or insane person in this State, and remove the same to the State or country in which said foreign guardian or committee was appointed and qualified. (Code 1887, § 2629; 1902-3-4, p. 591; 1906, p. 194.)

Revisors' Note.—This section was rewritten mainly to improve the language. The act amending section 2629 of the Code of 1887, however, did not state that the guardian of the infant appointed in this State should be made a defendant, although it did provide that the committee of the insane person should be. The present section requires such guardian to be made a defendant.

The ex parte application (no longer ex parte under amendment of 1902-4, p. 591) of a foreign guardian under sections 5350 and 5351, for the removal of the effects of his ward out of the State, is a separate and distinct proceeding from a suit by a creditor to administer the assets of the estate of the ward's deceased ancestor. Clendehning v. Conrad, 91 Va. 410, 21 S. E. 818.

Cited, but not construed, in Taliaferro v. Day, 82 Va. 88.

See notes to section 5352, note 10 Va. L. Reg. 827.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 85, section 3.

Sec. 5351. How proceeds of sale of real estate of non-resident infant, insane person, or cestui que trust, invested by court, transferred to foreign guardian, committee, or trustee.—When the proceeds of sale of the real estate of an infant, insane person, or cestui que trust, under the laws now in force, are invested, or required to be invested under the direction of a court, and such infant, insane person, or cestui que trust reside out of this State, on the petition of a guardian, committee, or trustee lawfully appointed or qualified in the State or country of the residence of such infant, insane person, or cestui que trust, the court under whose direction such proceeds are so invested, or required to be invested, may, with the consent of the persons residing in this State, who would be the heirs of such infant, insane person, or cestui que trust, if he were dead, order the said proceeds to be paid and delivered to such foreign guardian, committee, or trustee, or his agent or attorney, and removed by him to the State or country in which he was appointed and qualified, but the court may refuse to grant the prayer of the petitioner whenever, in its judgment, the removal of the trust subject will defeat or conflict with the provisions of the deed, will, or other instrument creating the trust. (Code 1887, § 2630.)

Revisors' Note.—The last sentence of this section as it stood before the revision has been omitted, and the words "as is mentioned in

Digitized by Google

the two preceding sections" have been inserted in line two of section 5352, thus making statutory the decision in Snavely v. Harkrader, 29 Grat. 112, 130. In this way the confusion referred to in 10 Va. Law Reg. 827 is eliminated.

See notes to sections 5350 and 5352.

Sec. 5352. What notice and evidence required in case of estate of ward or insane person before order of transfer is made.—No such order as is mentioned in the two preceding sections shall be made until notice of the application shall have been published once a week for four successive weeks in a newspaper published in the county or city in which the petition is filed, or if there be none, then in an adjoining county, nor until it shall be shown by authentic documentary evidence that such foreign guardian or committee has, where he qualified, given bond with surety, sufficient to insure his accountability for the whole amount of the ward's or insane person's estate in his hands or which will probably be received by him as such guardian or committee, nor until the court shall be satisfied that the removal of such money or property from this State will not impair the rights or be prejudicial to the interests, either of the ward or insane person, or of any other person. (Code 1887, § 2631.)

Revisors' Note.—See revisors' note to the preceding section. The provision as to what newspaper is to be used for the publication is new.

The provisions of this section are mandatory, and must be complied with before any money or other personal property belonging to a non-resident defendant can be paid over to a foreign guardian. Snavely v. Harkrader, 29 Grat. 112, 130.

The object of the notice required by this section is to enable parties to be affected by such removal to appear to protect their interests, and prevent it, where such removal would impair their rights or prejudice their interests. Clendenning v. Conrad, 91 Va. 417, 21 S. E. 818.

Therefore one whose rights would be prejudiced has the right to come into the proceeding and make defense against the removal of the fund, and this may be done before the term of the court ends, even after the order for removal has been made. Clendenning v. Conrad, 91 Va. 418, 21 S. E. 818.

Before foreign guardian can remove the homestead held after death of the householder for benefit of minor children (section 6536), he must see to it that the principal has been so secured that the creditors will get the benefit of it after the youngest of his wards has attained the age of twenty-one years or until the further order of the court. Clendenning v. Conrad, 91 Va. 418, 21 S. E. 818.

The foreign guardian is not authorized by the order for removal to remove the fund till after the term ends. And if he does so, and returns to this State, he can be held responsible in the courts of this State. Clendenning v. Conrad, 91 Va. 418, 21 S. E. 818.

It is too late to make objection for the first time in the Court of Appeals to the legality of the appointment and qualification of foreign fiduciary. Coltrane v. Worrell, 30 Grat. 434, 448, 449.

Under section 6180, providing for a publication "once a week for four successive weeks" it was decided that at least twenty-eight days should elapse between the first publication and the day upon which the act was to be done and that under section 5 this latter day must be excluded. Dillard v. Krise, 86 Va. 410; 10 S. E. 430.

The words "no such order" referred to the two preceding sections.

Digitized by Google

Snavely v. Harkrader, 29 Grat. 112. The present section makes statutory this construction. See revisors' note to section 5351.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 84, section 5.

Sec. 5353. How personal estate in hands of resident trustee, belonging to non-resident beneficiaries, transferred to non-resident trustee.—When any personal estate in this State is vested in a trustee resident therein, and those having the beneficial interest in the said estate are non-residents of this State, the circuit court of the county, or circuit or corporation court of the corporation, in which the said trustee resides, may, on a petition or bill in equity, filed for that purpose, order him or his personal representative to pay, transfer, and deliver the said estate, or any part of it, to a non-resident trustee appointed by some court of record in the State in which the said beneficiaries reside. (Code 1887, § 2632.)

Where a trust deed provides that a married woman shall have the interest of a fund, and so much as shall be necessary for the support, and if she die in the lifetime of her husband she may dispose of the fund by will, and if she survive him it shall be hers absolutely, she may, if living in a foreign State, have the fund removed thereto and vested in a trustee therein on the same trusts. Coltrane v. Worrell, 30 Grat. 434. See notes to sections 5350, 5352.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 84, section 6.

Sec. 5354. What notice and evidence required before transfer is made.—No such order as is mentioned in the preceding section shall be made, until notice of the application shall have been given to all persons interested in such trust estate, nor until the court shall be satisfied by authentic documentary evidence that the non-resident trustee, appointed as aforesaid, has given bond, with sufficient surety, for the faithful execution of the trust, nor until it is satisfied that the payment and removal of such estate out of the State will not prejudice the right of any person interested or to become interested therein. (Code 1887, § 2633.)

It is too late to object in appellate court that foreign trustee was not legally appointed. Coltrane v. Worrell, 30 Grat. 434, 448.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 84, section 7.

Sec. 5355. Court may sell property of such ward, insane person, or cestui que trust, and transfer proceeds of sale.—If, in any proceeding under section fifty-three hundred and fifty or fifty-three hundred and fifty-three, it shall appear to the court to be proper, it may order the property, or any part of it, to be sold, and the proceeds to be paid to the foreign guardian or committee or non-resident trustee. (Code 1887, § 2634.)

Sec. 5356. Discharge of resident guardian, committee or trustee, from liability.—When any guardian or committee, trustee or other person in this State, shall pay over, transfer, or deliver any estate in his hands or vested in him, under any order or decree made in pursuance of this chapter, he shall be discharged from all responsibility therefor. (Code 1887, § 2635.)

Digitized by Google

TITLE 51.

Personal Representatives; Sale of Real Estate of Decedents, and Application of Assets; Fiduciaries Generally.

Ch. 219. Personal representatives; their powers and duties as to personal assets.
220. Duties of personal representatives as to real estate, and the liability of such estate for decedent's debts.
221. Further security from fiduciaries, the settlement of their accounts and payment of what they owe.

CHAPTER 219.

Personal Representatives; Their Powers and Duties as to Personal Assets.*

Sec.
5357. What an executor may do before qualification.
5358. When and to whom administration, with the will annexed, may be granted.
5359. Oath of executor or such administrator.
5360. What clerk or court to appoint administrator of an estate; who to be preferred.
5361. Persons presumed to be dead; administration not to be granted by a clerk.
5362. Persons presumed to be dead; administration before court; notice of application.
5363. Hearing application; evidence receivable; further publication.
5364. Grant of administration; effect.
5365. Distribution of estate; refunding bond; investment.
5366. Revocation of administration; effect on previous acts; title of purchasers, widow, heirs, and next of kin.
5367. After revocation, substitution of supposed decedent in pending actions; reopening of judgments against former administrator; effect of judgments after substitution.
5368. Costs, by whom payable.
5369. Oath and bond of administrator; when grant to cease.
5370. Penalty of bond of executor or administrator.
5371. When security not to be required.
5372. Executor of executor to have no authority over estate of first testator; administration thereof granted by court.
5373. On marriage of female personal representative her authority is not extinguished.
5374. When estate of decedent committed to sheriff or sergeant; no bond required of officer; when court may revoke order and allow another to qualify; payment of State tax on administration.

*For monographic note on Executors and Administrators, see Rosser v. Depriest, 5 Grat. 6, Va. Rep. Anno., 50 Am. Dec. 94.

Digitized by Google

Sec.
5375. Letters of administration in due form unnecessary; how made out when required.
5376. Appraisement of estate of decedent; to be signed and returned to commissioner of accounts; to be recorded by clerk, and date of its return entered by commissioner; its effect as evidence; pay of appraisers.
5377. Duty of every personal representative; debt of executor not extinguished by his appointment; how representative, whose powers have ceased, may pay or deliver assets of decedent to administrator de bonis non; effect thereof.
5378. Authority to an executor or administrator of a deceased person to execute on behalf of such deceased person a deed to real estate sold by such deceased person during his lifetime under a written contract.
5379. Personal representatives to furnish the ages and addresses of heirs; affidavit; clerk to record list; cost of recording; list as evidence; commissions of personal representatives.
Sec.
5380. What estate not to be sold.
5381. What goods personal representative to sell; when and how.
5382. When to sell the other goods.
5383. Estate for another's life, assets.
5384. Suits upon debts of decedent, for and against.
5385. For goods carried away, waste, or damage to estate of or by decedent.
5386. Against representative of executor in his own wrong or of rightful executor.
5387. When administrator de bonis non may have scire facias.
5388. When suit may be brought on bond of personal representative.
5389. Representative and sureties not chargeable beyond assets; how they may plead in actions against them.
5390. Order in which debts of decedent to be paid.
5391. Creditors to be paid in order of their classification; those of a class to be paid ratably when not enough to pay them in full; when representative not liable for paying debt of inferior dignity.
5392. Lien acquired in lifetime of decedent not affected.

Sec. 5357. What an executor may do before qualification.—No person appointed by a will executor thereof shall have the powers of executor until he qualifies as such by taking an oath and giving bond in the court in which or before the clerk by whom the will or an authenticated copy thereof is admitted to record, except that he may provide for the burial of the testator, pay reasonable funeral expenses, and preserve the estate from waste. (Code 1887 § 2636; 1902-3-4, p. 593.)

The provisions of Code 1819, sections 21, 23, p. 379, chapter 104 were construed so as to mean that a sale by an executor named who had not qualified and died before qualifying was void as against an executor who afterwards qualified. Monroe v. James, 4 Munf. 194. The law was amended to its present form to conform to the judicial construction in said case. Gibson v. Beckham, 16 Grat. 323, 324.

See 3 Min. (2d Ed.) 566, as to doctrine at common law changed by this section; also, 2 Min. (4th Ed.) 1032; 4 Min. (3d Ed.) 709. Where two out of three nominated executors qualify and sell and convey real estate to the purchasers, who pay the purchase money in full, and after the sale the third qualifies and consents to the sale by sharing the com-

Digitized by Google

missions, the title of the purchaser is valid, at least in equity. Mills v. Mills' Ex'rs, 28 Grat. 442, 491, and section 5393.

As to appointment of executor by implication from terms used in a will, see Fleming v. Bolling, 3 Call 75.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 85, section 1.

See Gregory's Forms No. 276.

Sec. 5358. When and to whom administration, with the will annexed, may be granted.—If there be no executor appointed by the will, or if all the executors therein named refuse the executorship, or fail, when required to give such bond, which shall amount to such refusal, or having qualified die, resign or are removed from office, the said court, or clerk, may grant administration, with the will annexed, to the person who would have been entitled to administration if there had been no will, upon his taking such oath and giving such bond. (Code 1887, § 2637; 1902-3-4, p. 594.)

Revisors' Note.—The words "or having qualified, die, resign or are removed from office" are new.

Renunciation by the executor may be presumed from the fact of executor's failing to qualify, and joining another (who had qualified as administrator) in a sale of land directed by the will to be sold, such joining being not in his character as executor, but as heir of the testator. Burnley's Adm'r v. Duke, 1 Rand. 108. See, also, Thornton v. Winston, 4 Leigh 152.

The failure of the record of the court of probate to state that the executors named in the will had renounced does not make the grant of administration absolutely void, and in a suit in equity by devisees against the administrator with the will annexed the court will presume the grant of administration to be regular, unless the regularity be drawn into question by the pleadings. Thompson v. Meek, 7 Leigh 419.

If the grant of administration with the will annexed be alleged to be irregular upon the ground that the executor had not renounced, the fact of such renunciation may be established by parol evidence. Thompson v. Meek, 7 Leigh 419.

Where a will was probated, and, after refusal of executors to qualify and the relinquishment of the widow of her right to administer, administration c. t. a. was granted to one who gives bond with sureties, the fact that six years later a codicil revoking a legacy was admitted to probate did not make the administration void, and the administrator and his sureties are liable. Gibson v. Beckham, 16 Grat. 321. See 3 Min. (2d Ed.) 565, 567, 569.

See note of Smith v. Lurty, cited under section 5360.

As to who is entitled to administration if there is no will see section 5360.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 85, section 2.

See Gregory's Forms No. 284.

Sec. 5359. Oath of executor or such administrator.—The oath of an executor, or of an administrator with the will annexed, shall be that the writing admitted to record contains the true last will of the deceased, so far as he knows or believes, and that he will faithfully perform the duties of his office to the best of his judgment; such oath may be taken on behalf of a corporation by its president, vice-president, secretary, treasurer, or trust officer. (Code 1887, § 2638; 1914, p. 30.)

Digitized by Google

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 85, section 3.

See Gregory's Forms Nos. 276, 284.

Sec. 5360. What clerk or court to appoint administrator of an estate; who to be preferred.—In the case of a person dying intestate, the jurisdiction to hear and determine the right of administration of his estate shall be in the same court or before the same clerk who would have jurisdiction as to the probate of his will, if there was a will. Administration shall be granted to the distributees who apply therefor, preferring first the husband or wife, and then such of the others entitled to distribution as the court or clerk shall see fit. But any of the said distributees may at any time waive their right to qualify in favor of any other person to be designated by them. If no distributees apply for administration within thirty days from the death of the intestate, the court or clerk may grant administration to one or more of the creditors, or to any other person. (Code 1887, § 2639; 1902-3-4, p. 594.)

What court to appoint administrator of intestate.—The circuit court of Henrico county had jurisdiction to grant administration on a claim against the Commonwealth. Com. v. Hudgin, 2 Leigh 248.

When administration of decedent's estate has been duly granted by any court of competent jurisdiction, the same court, upon the death of the administrator, has sole jurisdiction to grant administration de bonis non. Ex parte Lyons, 2 Leigh 761.

When two successive applications are made to a county court for administration and rejected, appeals taken to the circuit court, and both judgments affirmed, upon appeal to the Court of Appeals on the second case the court cannot reverse the first judgment and administration. Cottom v. Cottom, 4 Rand. 192.

Effect of court's judgment.—A judgment of a court of probate is a judgment in rem; it binds not only the immediate parties to the proceeding, but all other persons and all courts. Coalter's Ex'r v. Bryan, 1 Grat. 18, and note section 5247, where cases are collected. In regard to grants of administration, the judgment of a court of general jurisdiction over the subject is conclusive until it is avoided, or expires by its own limitation, and this although the facts of the particular case were not such as to give the court jurisdiction over that case. Fisher v. Bassett, 9 Leigh 119, 33 Am. Dec. 227; Burnley's Representatives v. Duke, 2 Rob. 102; Ballow v. Hudson, 13 Grat. 681; Andrews v. Avory, 14 Grat. 229, note Va. Rep. Anno.; 73 Am. Dec. 355; Gibson v. Beckham, 16 Grat. 321, and cases cited, and note, Va. Rep. Anno. Thus ex parte Barker, 2 Leigh 719, is overruled. See Schultz v. Schultz, 10 Grat 378, 60 Am. Dec. 335; also 2 Min. (4th Ed.) 1042; 4 Min. (3d Ed.) 103, 110, 112; and notes to section 5247.

Who to be preferred as administrator.—Where the personal property of the wife is settled by a deed executed before the marriage, and duly recorded, that upon her dying intestate in her husband's lifetime the trustee is to convey the same to her legal heirs, her nearest blood relation is, in such event, entitled to the administration of her estate in preference to her husband. Bray v. Dudgeon, 6 Munf. 132.

After the death of intestate's children and widow, the brother of the widow is entitled to administration in preference to the intestate's brother. Cutchin v. Wilkinson, 1 Call 3.

In a contest between a distributee and a widow, who has elected to take under the will of her husband personal property given to her, the distributee is entitled to administration. Thornton v. Winston, 4 Leigh 152.

As between a distributee and a creditor asking for administration,

Digitized by Google

the court has no discretion to choose between them, but must prefer the distributee. Haxall v. Lee, 2 Leigh 267.

If no distributee apply for administration, a creditor has no preference over any other person in an application therefor, but every case must depend upon its own circumstances. McCandlish v. Hopkins, 6 Call 208.

An executrix declines to qualify, and agrees that administration c. t. a. be granted to her daughter, reserving her right to qualify after her daughter's death. This renunciation is absolute and irrevocable, and she has not any preferable right to the administration de bonis non with the will annexed. Thornton v. Winston, 4 Leigh 152.

The word "distributees" as used in this section means those who would be entitled under the Statute of Distributions to the personal estate of the decedent if he had died intestate, and does not embrace legatees and devisees. But distributees who recognize the preferable right of the widow to qualify, if the court deems her a proper person to qualify, will not, therefore, waive their right to qualify or designate who shall in event the court denies the applicattion of the widow to qualify. Smith v. Lurty, 107 Va. 548, 59 S. E. 403.

This section does not confer upon widow the absolute right to qualify as administratrix on her husband's estate or to designate the person to be appointed. Smith v. Lurty, 107 Va. 548, 59 S. E. 403.

If devisees and legatees would have been distributees had the testator died intestate, by the terms of the statute they are entitled to apply for administration themselves and consequently may, "at any time waive their right to qualify in favor of any other person to be designated by them." Tompkins v. Poff, 120 Va. 162, 90 S. E. 630, 2 Va. L. Reg. N. S. 837, and note.

Under this section and section 5358, when read together, a distributee who applies for administration and is appointed and qualifies can only be removed for cause; and the same principle applies to an appointee in whose favor a distributee waives his right to qualify. By substitution such person is clothed with all the rights of the distributee and occupies the same plane. When, therefore, the appointment, either of a distributee or of some other person designated by him, has been made and the appointee has qualified, the power of the court or clerk is exhausted, and no further appointment can be made until a vacancy occurs in the office in some way recognized by law. Tompkins v. Poff, 120 Va. 162, 90 S. E. 630, 2 Va. L. Reg. N. S. 837, and note; 2 Va. L. Reg. N. S. 696.

The construction set out in the preceding paragraph does not unduly discriminate between distributees of the same class. The statute contemplates a possible preference in favor of suitable distributees in the order in which they apply for appointment; and to the diligent in this instance, as in others, the maxim, "Prior in time, prior in right," applies. Tompkins v. Poff, 120 Va. 162, 90 S. E. 630, 2 Va. L. Reg. 827, and note.

This section deals with two classes of persons who are eligible to appointment as administrators: (1) Distributees who apply therefor or any other person in whose favor any of the said distributees at any time waive their right to qualify; and (2) one or more of the creditors or any other person after the expiration of thirty days from the death of the intestate. The provision of section 5369, which allows a distributee, upon notice, to displace "a creditor or other person than a distributee," applies only to persons included in class (2) above and not to those enumerated in class (1). Tompkins v. Poff, 120 Va. 162, 90 S. E. 630, 2 Va. L. Reg. N. S. 837, and note.

Generally.—For jurisdiction as to probate of wills, see section 5247 and section following. As to committing estate to sheriff, etc., see section 5374.

See 3 Min. (2d Ed.) 570.

Curator may be appointed until administration is granted. Section 5248.

Digitized by Google

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 85, section 4.

See Gregory's Forms Nos. 280, 281, 282, 283, 284, 285.

Sec. 5361. Persons presumed to be dead; administration not to be granted by a clerk.—Administration upon the estate of a person presumed to be dead on account of absence from the Commonwealth for seven years or more shall not in any case be granted by a clerk. (1908, p. 536, § 1.)

Revisors' Note.—This and the seven following sections are taken from the same act (Acts 1908, p. 536), with various changes in phraseology and some changes in meaning. Instead of providing that the cases shall be transferred to the court, as was done by section 1 of the act, section 5361 simply prohibits clerks from having jurisdiction in such cases. Section 5362 extends the jurisdiction to the judge in vacation as well as to the court in term. This change is made throughout the sections. From section 5363 there has been omitted the part of the act authorizing the admission of certain evidence. By chapter 261 of this Code the disabilities have been removed, hence the retention of that part of the act was unnecessary. Section 5365 provides for an investment of the funds instead of directing them to be put at interest. Under section 5366 reasonable notice must be given to the parties interested before a revocation can be had. That section also distinctly validates the title of bona fide purchasers.

See section 6239 for presumption of death at the end of seven years' absence from the State.

Sec. 5362. Persons presumed to be dead; administration before court; notice of application.—Whenever letters of administration on the estate of any person supposed to be dead on account of absence for seven years or more from the place of his last domicile in this State shall be applied for, the court, or the judge thereof in vacation, if satisfied that the applicant would be entitled thereto were the supposed decedent in fact dead, shall cause to be advertised in a newspaper published in the county or city once a week for four successive weeks the fact of said application, together with notice that on a certain day, which shall be at least two weeks after said advertisement, the court or judge will hear evidence concerning the alleged absence of the supposed decedent, and the circumstances and duration thereof. (Id.)

For a case under the former law see Selden's Ex'r v. Kennedy, 104 Va. 826, 52 S. E. 635, 11 Va. L. Reg. 986, and note.

Sec. 5363. Hearing application; evidence receivable; further publication.—At the hearing, which may be either in term time or vacation, the court or judge shall hear such legal evidence as will then be offered for the purpose of ascertaining whether or not the presumption of death has been established, and if satisfied that the legal presumption of death is made out, the court or judge shall so order, and shall forthwith cause notice thereof to be inserted for two successive weeks in a newspaper published in the county or city and also, when practicable, in a newspaper published at or near the place beyond the Commonwealth where the supposed de-

Digitized by Google

cedent had his residence when last heard from. Such notice shall require the supposed decedent, if alive, or any person for him, to produce to the court or the judge thereof in vacation, within twelve weeks from the date of its last insertion ,satisfactory evidence of his continuance in life. If there be not in the county or city a newspaper in which the publication required by this and the preceding section may be made, the same may be published in some newspaper in an adjacent county or city. (Id., § 2, 3.)

Sec. 5364. Grant of administration; effect.—If within the said period of twelve weeks evidence satisfactory to the court or judge of the continuance in life of the supposed decedent shall not be forthcoming, the court or judge shall issue letters of administration to the party entitled thereto, and the said letters, until revoked, and all acts done in pursuance thereof, and in reliance thereupon, shall be as valid as if the supposed decedent were really dead. (Id., § 4.)

Sec. 5365. Distribution of estate; refunding bond; investment.—Before any distribution of the proceeds of the estate of such supposed decedent shall be made, the persons entitled to receive the same shall give a refunding bond with surety to be approved by the court or judge, in such form as the court or judge shall direct, and with condition that if the supposed decedent shall in fact be alive at that time, they will respectively refund the amounts received by each on demand, with interest thereon; but if the person or persons entitled to receive the same is or are unable to give the security aforesaid, then the money shall be invested under an order of the court or judge in such manner as the said court or judge may approve, which investment may be changed from time to time as to the court or judge may seem proper. The interest arising from such investment shall be paid annually to the person or persons appearing to be entitled thereto, and such investment shall continue until security is given, as aforesaid, or the court or judge, on application, shall order it to be paid to the person or persons appearing to be entitled to it. (Id., § 5.)

Sec. 5366. Revocation of administration; effect on previous acts; title of purchasers, widow, heirs, and next to kin.—The court, or the judge thereof in vacation, after reasonable notice to the parties interested, may revoke said letters at any time on due and satisfactory evidence that the supposed decedent is in fact alive. After such revocation all the powers of the administrator shall cease, but all receipts or disbursements of assets and other acts previously done by him, and the title of bona fide purchasers to property under sales made by him, shall remain as valid as if said letters were unrevoked, and the administrator shall settle the account of the administration down to the time of such revocation, and shall transfer all assets remaining in his hands to the owner thereof who had been

Digitized by Google

presumed to be dead, or to his duly authorized agent or attorney. But nothing in this section shall validate the title of any person to any money, or property received as widow, next of kin, or heir of such supposed decedent, but the same may be recovered from them in like manner as if no such administration had been granted. (Id.)

Sec. 5367. After revocation, substitution of supposed decedent in pending actions; reopening of judgments against former administrator; effect of judgments after substitution.—After revocation of the letters, the person erroneously supposed to be dead may, on suggestion filed of record of the proper fact, be substituted as plaintiff in all actions brought by the administrator, whether prosecuted to judgment or otherwise. He may, in all actions previously brought against his administrator, be substituted as defendant, on proper suggestion filed by himself, or of the plaintiff therein, but shall not be compelled to go to trial in less than three months from the time of such suggestion filed. Judgments recovered against the administrator, before revocation as aforesaid of the letters, may be opened, on application by the supposed decedent made within three months from the said revocation, and supported by affidavit, denying specifically, on the knowledge of the affiant, the cause of the action, in whole or in part, or specifically alleging the existence of facts which would be a valid defense; but, if within said three months, such application shall not be made, or being made, the facts exhibited shall be adjudged an insufficient defense, the judgment shall be conclusive to all intents, saving the defendant's right to have it reviewed, as in other cases, by certiorari, appeal, or writ of error. After the substitution of the supposed decedent as defendant in any judgment, as aforesaid, it shall become a lien upon his real estate in the county or city, and shall so continue as other judgments, unless and until it shall be set aside by the court below, or reversed in the Supreme Court of Appeals. (Id., § 6.)

Sec. 5368. Costs, by whom payable.—The costs attending the issue of such letters or their revocation, shall be paid out of the estate of the supposed decedent; and costs arising upon an application for letters which shall not be granted, shall be paid by the applicant. (Id., § 7.)

Sec. 5369. Oath and bond of administrator; when grant to cease.—Before any grant of administration, as of the estate of an intestate, the person to whom it is granted shall, in the court or before the clerk granting it, give bond and take an oath that the deceased has left no will, so far as he knows, and that he will faithfully perform the duties of his office to the best of his judgment. Such oath may be taken on behalf of a corporation by its president, a vice-president, secretary, treasurer, or trust officer. If a will of the decedent be afterwards admitted to record, or if, after adminis-

Digitized by Google

tration is granted to a creditor or other person than a distributee, any distributee who shall not have before refused shall apply for administration, there may be a grant of probate or administration, after reasonable notice to such creditor or other person, in like manner as if the former grant had not been made; and the said former grant shall thereupon cease. (Code 1887, § 2640; 1902-3-4, p. 594; 1914, p. 30.)

See notes of Tompkins v. Poff under section 5360.
See 2 Min. (4th Ed.) 1034; 3 Min. (2d Ed.) 556, 574.
For W. Va. decisions on similar statute see Justis' Annotations, chapter 85, section 5.
See Gregory's Forms Nos. 280, 281, 282.

Sec. 5370. Penalty of bond of executor or administrator.—Every bond of an executor or administrator shall be in a penalty equal, at the least, to the full value of the personal estate of the deceased to be administered; and where there is a will, which authorizes the executor or administrator to sell real estate, or receive the rents and profits thereof, the bond shall be in a penalty equal, at the least, to the full value, both of the said personal estate and of such real estate, or rents and profits, as the case may be. (Code 1887, § 2641.)

Revisors' Note.—The words, "or rents and profits, as the case may be," found at the end of this section, are new. The penalty of the bond ought not to cover the value of the real estate if the executor is only to receive the rents and profits.

Amount of security—Discretion of court.—The intention of this section is that the court granting administration on an estate should have a discretion in regard to the amount of security, and the general practice of requiring the security in double the estimated value of the estate is a proper exercise of that discretion. Atkinson v. Christian, 3 Grat. 448.

Executors now liable for land payments.—Under 1 Rev. Code, p. 379, chapter 104, section 21, the securities of the executor were bound by their bond for due administration of the personal assets only. Jones v. Hobson, 2 Rand. 483; Burnett v. Harwell, 3 Leigh 89. As the law was then, they could not have been held liable for land payments collected by the executor, but now they are liable therefor. Reherd v. Long, 77 Va. 839, 845.

The official bond of an executrix only binding the obligors for the due administration of the personal estate, the sureties are to no extent responsible for the rents and profits of the real estate. Hutcherson v. Pigg, 8 Grat. 220.

Executors take land as trustees.—Acting under the will, the executors take land, not as executors, but only as trustees; but when it is subjected to their control, it must be included in their official bonds and in the inventory or appraisement. Section 5376. As trustees they are liable only for their respective receipts. Boyd's Ex'rs v. Boyd's Heirs, 3 Grat. 114.

Bond presumed to be correct unless evidence to the contrary.—In the absence of evidence directly to the contrary, it must be presumed that the official bond of the executor and his sureties was in the usual form, with a condition "for the faithful discharge of the duties of his trust." Reherd v. Long, 77 Va. 839, 845.

Effect of incorrect form of bond.—A bond taken from an administrator de bonis non cum testamento annexo, in the form of a bond for administration de bonis non, was held void for all purposes in Morrow's Adm'r v. Peyton's Adm'r, 8 Leigh 54. But this decision is criticised and overruled in Gibson v. Beckham, 16 Grat. 321.

Digitized by Google

Where the court or officer has authority to take a bond, and makes a mistake by omitting some condition prescribed, or inserting a condition not authorized or illegal, unless the statute by express words or necessary implication makes it wholly void the bond is not void; the good shall not be vitiated by the bad, and the bond may be sued on, so far as the conditions are good, as a statutory bond. And where the court has cognizance of the subject matter, and takes a bond which on its face is valid, but contains a recital of facts necessary to its validity, the obligors shall be estopped from denying the truth of the recitals. Gibson v. Beckham, 16 Grat. 321, 334, and cases cited; also note thereto, Va. Rep. Anno.

Coexecutors joining in the same executorial bond are sureties for each other. Boyd's Ex'rs v. Boyd's Heirs, 3 Grat. 113. See, also, as to coadministrators, Morrow's Adm'r v. Peyton's Adm'r, 8 Leigh 54; Cox v. Thomas' Adm'x, 9 Grat. 319; Caskie's Ex'rs v. Harrison, 76 Va. 93, and note to Boyd's Ex'rs v. Boyd's Heirs, supra, Va. Rep. Anno.; Yates' Adm'r v. Wilson, 86 Va. 625, 10 S. E. 976.

All sureties should be made parties.—All the sureties in the official bond of an executrix should be parties to a suit by legatees for distribution, or a sufficient reason should be shown for failing to make them parties, before a decree is made against one of them. Hutcherson v. Pigg 8 Grat. 220.

Generally.—See 3 Min. (2d Ed.) 574; 4 Min. (3d Ed.) 1581; also section 279.

See, also, section 286, and notes.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 85, section 6.

See Gregory's Forms Nos. 280, 281, 282.

Sec. 5371. When security not to be required.—Where the will directs that an executor shall not give security, the court or clerk shall not require it of him, unless on the application of any person interested, or from its or his own knowledge, it or he thinks security ought to be required. (Code 1887, § 2642; 1902-3-4, p. 594.)

Revisors' Note.—For an act authorizing courts, in their discretion where the amount coming into the hands of personal representatives or guardians does not exceed one hundred dollars, to permit such fiduciaries to qualify by giving bond without surety, and providing that on estates of decedents of one hundred dollars or less in value, there shall be no tax or court cost upon the qualification of a personal representative, see Acts 1918, p. 469.

Under this section courts of probate may exercise wide discretion in requiring security of executors where the will directs that none shall be given, and the exercise of this discretion should not be disturbed except in case of plain abuse. It may be required on application of any person interested or by the court on its own motion. Schnurman v. Biddle, 105 Va. 702, 64 S. E. 977.

When an executor, who has been permitted to qualify without security, brings a suit in chancery to reduce into possession the funds of his testator, the court may, in its discretion, require security before it will lend its aid. Bryce v. Stevenson, 2 Rand. 438.

Where a testator appointed his wife and son executrix and executor of his will, directing that they should be allowed to qualify without giving security, and afterwards by codicil appointed a third person executor with them, the third person is not entitled to qualify without giving security. Fairfax v. Fairfax's Ex'r, 7 Grat. 36. Quaere, if parol testimony is admissible in such case to show intention of testator. Id.

To the judgment of a county court refusing to permit a person named as executor in a will to qualify without giving security, an appeal would formerly lay as a matter of right to the circuit court. Fairfax v. Fairfax's Ex'r, 7 Grat. 36.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 85, section 7.

See Gregory's Forms Nos. 529, 530, 532.

Digitized by Google

Sec. 5372. Executor of executor to have no authority over estate of first testator; administration thereof granted by court.—The executor of an executor shall have no authority as such to administer the estate of the first testator, but on the death, resignation or removal of the sole surviving executor of any last will, administration of the estate of the first testator, not already administered, may be granted, with the will annexed, to such person as the court shall think fit to appoint. (Code 1887, § 2643.)

Revisors' Note.—The words "resignation or removal" are new.
See 3 Min. (2d Ed.) 570, 579.
For W. Va. decisions on similar statute see Justis' Annotations, chapter 85, section 8.

Sec. 5373. On marriage of female personal representative her authority is not extinguished.—Where an unmarried woman who is a personal representative, either alone or jointly with another, shall marry, her husband shall not be a personal representative in her right, but the marriage shall not operate as an extinguishment of her authority. Whenever such female personal representative shall marry, the court in which or before whose clerk she qualified shall, on the motion of any surety on her bond as such, and may on the motion of any other person interested, or when it shall seem proper to such court, revoke her powers and authority, and thereafter the other personal representative, if there be any, may proceed in discharging the trust as if she were dead, and, if there be no other personal representative, administration de bonis non (with the will annexed, if there be a will) may be granted by the court. (Code 1887, § 2644; 1891-2, p. 333; 1902-3-4, p. 594.)

Sec. 5374. When estate of decedent committed to sheriff or sergeant; no bond required of officer; when court may revoke order and allow another to qualify; payment of State tax on administration.—If at any time two months elapse without there being an executor or administrator of the estate of a decedent (except during a contest about the decedent's will or during the infancy or absence of the executor), the court, or in vacation the clerk thereof, in which or by whose clerk the will was admtited to record, or which has jurisdiction to grant administration on the decedent's estate, shall, on the motion of any person, order the sheriff of the county or city, or the sergeant of the city, if there be no sheriff thereof, to take into his possession the estate of such decedent and administer the same; whereupon such sheriff or sergeant, without taking any other oath of office or giving any other bond or security than he may have before taken or given, shall be the administrator, or administrator de bonis non, of the decedent, with his will annexed, if there be a will, and shall be thenceforward entitled to all the rights and bound to perform all the duties of such administrator. The court may, however, at any time afterwards, on reasonable notice to such sheriff or sergeant, revoke such order made by it or its

Digitized by Google

clerk, and allow any other person to qualify as executor or administrator. When an estate is committed to the sheriff or sergeant on the motion of a creditor or other person, the State tax due for such administration shall be paid by the party upon whose motion the estate was committed, and the same shall be repaid to him by the sheriff or sergeant out of the first funds received by him from such estate. (Code 1887, § 2645; 1902-3-4, pp. 78, 595.)

Revisors' Note.—The last sentence is new, but is the substance of Acts 1902-3-4, p. 78.

If the county court commits an estate to the sheriff for administration before the expiration of the statutory period (now two months) from the death of the testator or intestate, the act is not void, but voidable. Hutcheson v. Priddy, 12 Grat. 85.

The sheriff stands on the footing of any other administrator, subject only to the power reserved to the court to revoke the order committing the estate to him, and allow some other person to qualify as executor or administrator. Every right and every duty pertaining to any other administrator is thus devolved upon him; therefore the court cannot grant the administration to a distributee without notice to the sheriff of the application. Hutcheson v. Priddy, 12 Grat. 85.

The sheriff into whose hands the administration of the estate has been put must proceed with the administration till it is completed although his official term may have ended, and he and his sureties are liable for acts done by himself or deputy before or after the expiration of his office in administering the estates. Tunstall's Adm'r v. Withers 86 Va. 892, 11 S. E. 565; Dabney's Adm'r v. Smith's Legatees, 5 Leigh 13; Douglass' Ex'r v. Stumps, Id. 392; Tyler v. Nelson's Adm'x, 14 Grat. 214; Mosby's Adm'r v. Mosby's Adm'r, 9 Grat. 601; Hudson v. Burwell's Adm'r, 1 Va. Dec. 364; Cocke vs. Harrison, 3 Rand. 494; 3 Min. (2d Ed.) 571.

The sheriff may administer such estate by deputy, and as well after as before the expiration of his office. Mosby's Adm'r v. Mosby's Adm'r 9 Grat. 584, 601; Dabney's Adm'r v. Smith's Legatees, 5 Leigh 13; Douglass' Ex'r v. Stumps, Id. 392; Hudson v. Burwell's Adm'r, 1 Va. Dec. 364.

Where the will vested in the executors an interest and a trust, and it was their duty to take possession of the land and to account for the rents and profits, and, after the death of one executor and the removal of the other, administration c. t. a. was committed to the sheriff, he was authorized under this statute to execute the power and trust, and is therefore bound to account for the rents and profits. Mosby's Adm'r v. Mosby's Adm'r, 9 Grat. 584.

It is not imperative on the court to grant administration to a distributee after estate has been committed to the sheriff, but there is a legal discretion in the court. Hutcheson v. Priddy, 12 Grat. 35.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 85, section 10.

See Gregory's Forms Nos. 283, 285.

Sec. 5375. Letters of administration in due form unnecessary; how made out when required.—A copy of the order whereby certificate is granted to any personal representative for obtaining probate or letters of administration, shall be as effectual as the probate or letters made out in due form. Nevertheless, the clerk of the court by which such order is made, shall, when required by any personal representative, make out such probate or letters in due form. The same, when so made out, shall be signed by the clerk, sealed with the seal of the court, and certified by the judge, to be attested in due form. (Code 1887, § 2646.)

Digitized by Google

Revisors' Note.—A change has been made in the last sentence of this section in order to make it conform to section 6205, which is a copy of the federal statute on that subject.

The certificate of probate or of administration, granted by a court of this State and attested by the clerk, will enable the executor or administrator to act, and may be given in evidence in any court of this Commonwealth. Dickinson v. McCraw, 4 Rand. 158.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 85, section 11.

See Gregory's Forms Nos. 276, 280, 281, 282, 284.

Sec. 5376. Appraisement of estate of decedent; to be signed and returned to commissioner of accounts; to be recorded by clerk, and date of its return entered by commissioner; its effect as evidence; pay of appraisers.—Every court or clerk by whose order any person is authorized to act as a personal representative shall, except where a testator directs his estate not to be appraised, or, though he so directs, if the court or clerk deems it proper, appoint three or more appraisers in every county or corporation in which there may be any goods or chattels of the deceased, or in case of a will in which there may be any real estate which the personal representative is authorized to sell, or of which he is authorized to receive the rents and profits. After taking an oath for the purpose, they shall appraise such goods or chattels as may be produced to them, and also the said real estate. The appraisers shall receive each, for their attendance, one dollar per day. The appraisement shall be signed by them and returned to the commissioner of accounts of such court, who shall inspect the same, see that it is in proper form, and, within ten days after it is received and approved by him, deliver it to the clerk of such court, who shall record the same, with the certificate of approval. The date of return of an appraisement shall be entered by the said commissioner in his record book. Every such appraisement shall be prima facie evidence of the value of the estate embraced therein, and that it came to the hands of the personal representative. (Code 1887, § 2647; 1902-3-4, p. 595.)

Carr's Ex'r v. Anderson, 2 Hen. & M. 361, and Parks' Adm'r v. Rucker, 5 Leigh 149, construing the old statute, 1 Rev. Code 1849, p. 386, have been overruled by the last clause of this section; and whilst under the old law the appraisement was, without signature of personal representative, prima facie evidence of the value only (Rogers' Adm'x v. Chandler's Adm'x, 3 Munf. 65), it is now also prima facie evidence that the estate came into the hands of the personal representative. Barton, L. Pr. (2d Ed.) 624; 3 Min. (2d Ed.) 576, 635; 2 Barton, C. Pr. (2d Ed.) 713. As to inventory of the estate, see section 5403.

Discussed, 7 Va. Law J. 257.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 85, section 12.

See Gregory's Forms Nos. 276, 280, 281, 282, 283, 284, 285.

Sec. 5377. Duty of every personal representative; debt of executor not extinguished by his appointment; how representative, whose powers have ceased, may pay or deliver assets of decedent to administrator de bonis non; effect thereof.—It shall be the duty of every personal representative to administer, well and truly, the whole personal estate of his decedent. The appointment of a debtor as

Digitized by Google

executor shall not extinguish the debt. When the powers of a per sonal representative have ceased and there be an administrator de bonis non of the decedent's estate, it shall be lawful, with the con sent of the court in which or before whose clerk the administrator de bonis non qualified, for the personal representative to pay and deliver to such administrator de bonis non the assets of the de cedent, whether converted or not, for which such former persona representative is responsible; but such consent shall not be given unless the administrator de bonis non shall have given, or shall give, a bond sufficient to cover the additional assets, so to be paid or delivered to him. The administrator de bonis non shall administer the same as assets received in due course of administration, and his receipt therefor shall be a voucher in the settlement of the accounts of the former personal representative, and shall exempt such per sonal representative from all liability for said assets so lawfully paid over and delivered. But this section shall not be construed as exempting such former personal representative and his sureties from liability for any breach of duty with respect to such assets committed by him before they were so paid over and delivered by him as aforesaid; nor as authorizing a suit by the administrator de bonis non against such personal representative or his estate to compel the payment and delivery to him of such assets of the de cedent as were converted by said representative. (Code 1887, § 2648.)

Statute of limitations—New promise by personal representative.—The personal representative must so administer the estate as to protect it against all stale demands; for, in the eyes of the law, these do not constitute valid charges against the estate to be administered. Therefore the personal representative, when sued at law or in equity, must plead the statute of limitations as to all claims barred at the time of action brought. Nor where the debt was barred in the lifetime of the testator or intestate can the personal representative make a promise which will take the case out of the statute; though he may, when the debt is just and about to be barred after the death of the testator or intestate make a promise to pay which will prevent the operation of the statute. Smith v. Pattie, 81 Va. 654; Trimyer v. Pollard, 5 Grat. 460; Bell v. Crawford, 8 Grat. 110; Bishop v. Harrison's Adm'r, 2 Leigh 537.

Exoneration of real estate.—It is the duty of an executor or administrator to apply the assets of the estate not necessary for the payment of debts to the exoneration of the real estate of his testator or intestate which may be under mortgage. Dandridge v. Minge, 4 Rand. 397; but see Frasier v. Littleton's Ex'rs, 100 Va. 9, 40 S. E. 108. See generally note, Carrington v. Didier, 8 Grat. 266, Va. Rep. Anno.

Debt of executor not extinguished.—The provision that the appointment of a debtor as executor shall not extinguish the debt changes the rule of common law. Utterback's Adm'r v. Cooper, 28 Grat. 233, note Va. Rep. Anno.; 3 Min. (2 Ed.) 212, 601; Barton, C. Pr. (2d Ed.) 715.

What assets administrator d. b. n. is entitled to.—Before Acts 1883 p. 643, amending this section as it stood in Code 1873, p. 940, the administrator de bonis non was entitled only to those assets which had not been converted. Wernick v. McMurdo, 5 Rand. 51; Tyler v. Nelson's Adm'x, 14 Grat. 223; Clarke v. Wells' Adm'r, 6 Grat. 475; Georgia H. I. Co. v. Kinnier's Adm'x, 28 Grat. 88; Hinton v. Bland's Adm'r, 81 Va. 595; Morris' Adm'r v. Morris' Adm'r, 4 Grat. 293. But now, with the con

Digitized by Google

sent of the court in which he qualified, the administrator d. b. n. is entitled to the assets of the decedent, whether converted or not.

Who may sue personal representative of administrator.—The administrator d. b. n. cannot sue the personal representative of a former executor or administrator for assets converted or wasted; such suit may be brought directly by creditors, legatees, or distributees. Wernick v. McMurdo, 5 Rand. 57; Hinton v. Bland's Adm'r, 81 Va. 595; Cheatham v. Friend, 9 Leigh 580; Dodson v. Simpson, 2 Rand. 294.

When receiver may be appointed.—When the estate has been committed to the sheriff as administrator d. b. n., and unadministered assets are insufficient to pay debts, and, in order to pay same, that fund must be drawn upon to some unknown extent, it is proper not to pay that fund at once to distributees, but to appoint receiver to hold same for protection of sureties, creditors, and distributees, since administrator d. b. n. cannot sue his predecessor for assets wasted or converted. Harman v. McMullin, 85 Va. 187, 7 S. E. 349; Wernick v. McMurdo, 5 Rand. 51; Hinton v. Bland' Adm'r, 81 Va. 595.

Generally.—As to transferring securities to successor, see section 5432.

For W. Va. decisions on similar statute see Justs' Annotations, chapter 85, section 13.

Sec. 5378. Authority to an executor or administrator of a deceased person to execute on behalf of such deceased person a deed to real estate sold by such deceased person during his lifetime under a written contract.—When any deceased person shall have bona fide sold any land and shall have given a written contract to the purchaser to convey the same, and the written contract has been duly recorded in the county or corporation wherein the land is situated. his executor or administrator may, upon the payment of the price, or the balance thereof remaining unpaid, and a full compliance with the conditions of the written contract, execute a deed to the purchaser conveying such real estate as shall be specified in the said written contract, and such deed shall convey the title as fully as if it had been executed by the deceased obligor. (1910, p. 288.)

Sec. 5379. Personal representatives to furnish the ages and addresses of heirs; affidavit; clerk to record list; cost of recording; list as evidence; commissions of personal representatives.—Every personal representative of an intestate shall, at the time of his qualification, furnish the court or clerk granting the administration a list of the names, and as far as possible the ages and addresses, of the heirs of his decedent, accompanied by his affidavit that he has made diligent inquiry as to such names, ages and addresses, and that he believes such list to be true and correct, which list it shall be the duty of the clerk to record in the deed book and index in the name of the decedent as grantor and the heirs as grantees. Such list so made and recorded shall be prima facie evidence of facts therein stated. The cost of recording such list shall be deemed a part of the cost of administration, and be paid out of the estate of the intestate. Such personal representative shall not receive any compensation for his services until such list is filed and recorded, unless he files an affidavit before the commissioner of accounts that said heirs are unknown to him, and that after diligent inquiry he

Digitized by Google

has been unable to ascertain their names, ages, or addresses, the case may be. (1912, p. 453; 1916, p. 507.)

Revisors' Note.—This section is the substance of the act of 191 (Acts 1912, p. 453). The act of 1916 (Acts 1916, p. 507) amended th former act in several particulars, the most material of which was the e tension of the act so as to embrace the personal representatives of decedents, testate and intestate. The revised section is restricted to th scope of the act of 1912, and applies to personal representatives of inte tates only. No necessity was seen for the extension.

For discussion of act of 1912, chapter 185, similar to this sectio see 1 Va. L. R. N. S. 477.

Sec. 5380. What estate not to be sold.—Unless it be necessary fo the payment of funeral expenses, charges of administration debts, the personal representative shall not sell estate which th will directs not to be sold. (Code 1887, § 2650.)

See Burks' Pleading and Practice, p. 632.

Sec. 5381. What goods personal representative to sell; when an how.—Of the goods not mentioned in the preceding section, th personal representative shall, subject to the provisions of chapte two hundred and seventy-four, sell, as soon as convenient, at pul lic auction, such as are likely to be impaired in value by keepin giving a reasonable credit (except for small sums), and taking bon with good security. (Code 1887, § 2651.)

As to liability of personal representative for selling property, as th law was previous to the statute, see Lawrason v. Davenport, 2 Call 95.

In determining which of the goods should be sold as liable to be in paired in value, some latitude must be allowed the executor, and his co duct, appearing to be fair and probably proceeding from a good intentio ought to be sanctioned by a court of equity. McCall v. Peachy's Adm 3 Munf. 288; 3 Min. (2d Ed.) 636.

If he omits to take security, the executor or administrator is himse liable, however solvent may be the purchaser, nor is the purchaser's par ner in business a security sufficient to exonerate the executor or admini trator. Miller v. Holcombe's Ex'r, 9 Grat. 665; Southall's Adm'r v. Ta lor, 14 Grat. 269; 3 Min. (2d Ed.) 578.

Cited, but not construed, in Gregory v. Parker, 87 Va. 455, 12 S. 801.

For W. Va. decisions on similar statute see Justis' Annotations, cha ter 85, section 16.

Sec. 5382. When to sell the other goods.—If the goods so sold b not sufficient to pay the funeral expenses, charges of administratio debts and legacies, the personal representative shall sell so muc of the other goods and chattels as may be necessary to pay th same, having regard to the privilege of specific legacies, and to th provisions of chapter two hundred and seventy-four. (Code 188 § 2652.)

The plain interpretation of this section is that the personal estate of deceased person is the natural and primary fund for the payment of deb and legacies, and as a general rule must be first exhausted before the re estate can be made liable; and the personal estate will not be exonerate by a charge on the real estate, unless there be express words of a pla intent in the will to make such exoneration. New's Ex'x v. Bass, 92 V 383, 389, 23 S. E. 747; Elliott v. Carter, 9 Grat. 549.

It is, under ordinary circumstances, the duty of the personal repr sentative not to sell, but collect debts due the estate; but where the is no collusion or fraud, and whether it be necessary for the payme

Digitized by Google

of debts or not, a sale required by the best interests of the estate, or one made by the personal representative in the exercise of his best judgment and in the honest belief that the interests of the estate require it, will be approved when these facts clearly appear. Trevelyan's Adm'r v. Lofft, 83 Va. 152, 1 S. E. 901; Knight v. Yarborough, 4 Rand. 566; Pinckard v. Woods, 8 Grat. 140; Elliott v. Carter, 9 Grat. 541; Watkins v. Stewart, 78 Va. 111; Wayland v. Crank's Ex'r, 79 Va. 602. See, also, note on Executors and Administrators, 5 Grat. 9, Va. Rep. Anno.

Under a similar statute in regard to the sale of slaves, it was held the sale of a slave specifically bequeathed and sold by an executor at public auction cannot be impeached by the purchaser, whether justified by a deficiency of the personal estate or not. Sale v. Roy, 2 Hen. & M. 69. Also it was held that if an executor sold the slaves of his testator when there were no debts to render such sale necessary, and bought them himself, the sale might be set aside at the instance of any person interested. Anderson v. Fox, Id. 245. See, also, on general subject of purchase of trust subject by fiduciary, Bailey's Adm'x v. Robinson, 1 Grat. 4, note Va. Rep. Anno., 42 Am. Dec. 540.

Cited, but not construed, in Gregory v. Parker, 87 Va. 451, 12 S. E. 801.

Discussed, 7 Va. Law J. 65.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 85, section 17.

Sec. 5383. Estate for another's life, assets.—Any estate for the life of another shall go to the personal representative of the party entitled to the estate, and be assets in his hands, and be applied and distributed as the personal estate of such party. (Code 1887, § 2653.)

See 2 Min. (4th Ed.) 561, 769

For W. Va. decisions on similar statute see Justis' Annotations, chapter 85, section 18.

Sec. 5384. Suits upon debts of decedent, for and against.—A personal representative may sue or be sued upon any judgment for or against, or any contract of or with, his decedent. (Code 1887, § 2654.)

Breach of Promise.—In Grubbs v. Sult, 32 Grat. 203, 34 Am. Rep. 765, it was held that "an action for breach of promise of marriage will not lie against the personal representative of the promisor either at common law or under this section," since the wrong is in the nature of a personal injury. See, also, Burton v. Mill, 78 Va. 482; Lee's Adm'r v. Hill, 87 Va. 499, 12 S. E. 1052, 24 Am. St. Rep. 666; 1 Min. (4th Ed.) 278; Lile's Notes, 63; section 5818, and notes. It was suggested that the rule might be otherwise where special damages to estate of plaintiff were alleged and proved. It would seem that Mumpower v. Bristol, 94 Va. 737, 27 S. E. 581, settles this question in the negative. See 3 Va. Law Reg. 439, and notes to section 5385.

Claims arising after decedent's death.—A personal representative cannot be sued as such for services rendered or goods furnished to his testator's or intestate's estate since his death. Fitzhugh's Ex'r v. Fitzhugh, 11 Grat. 300, 62 Am. Dec. 653. Daingerfield v. Smith and others, 83 Va. 81, 1 S. E. 509. It seems that an action will not lie against the personal representative as such for funeral expenses of his testator or intestate. Fitzhugh's Ex'r v. Fitzhugh, 11 Grat. 300, 62 Am. Dec. 653.

Tort.—In Virginia, except as authorized by its own statutes, no action of tort can be maintained by or against the executor or administrator of the person by or to whom the wrong was done. Quoting Harris v. Crenshaw, 3 Rand. 14; Martin v. Baltimore & O. R. Co., 151 U. S. 673, 14 Sup. Ct. 533, 38 L. Ed. 311.

Insurance.—The administratrix may maintain an action on a policy of fire insurance taken out for the benefit of the insurer and his legal representatives. Georgia Home Ins. Co. v. Kinnier's Adm'x, 28 Grat. 88.

Digitized by Google

See, also, 6 Va. Law Reg. 583, and Virginia Fire & Marine Ins. Co. v. Thomas, 90 Va. 663, 19 S. E. 454, as to whether this is true of fire policy taken out for benefit of insurer merely.

Covenants of warranty.—An action of covenant by the vendee of a slave upon a covenant of warranty binding the vendor and his heirs (not naming executors) will lie against the executors. Lee v. Cooke, 1 Wash. 306.

An action of covenant respecting real estate will lie against executors though not expressly bound. Harrison v. Sampson, 2 Wash. 155.

Foreign executor coming into the State bringing assets with him may be sued here, but otherwise he cannot sue or be sued here under authority of a foreign court of probate. Fugate v. Moore, 86 Va. 1045, 11 S. E. 1063.

See Barton, L. Pr. (2d Ed.) 112; 4 Min. (3d Ed.) 614, 976, 1468, and notes to section 5385.

See Burks' Pleading and Practice, p. 630.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 85, section 19.

See Gregory's Forms No. 21.

Sec. 5385. For goods carried away, waste, or damage to estate of or by decedent.—An action of trespass, or trespass on the case, may be maintained by or against a personal representative for the taking or carrying away any goods, or for the waste or destruction of or damage to, any estate of or by his decedent. (Code 1887, § 2655.)

Statute remedial.—This is a remedial statute, and should be liberally construed. Lee's Adm'r v. Hill, 87 Va. 503, 12 S. E. 1052, 24 Am. St. Rep. 666.

The effect of this section is to make all actions for wrong to property revivable for or against representative. Actions for wrong to person die with person, except under section 5786. Anderson v. Hygeia Hotel Co., 92 Va. 687, 24 S. E. 269. See, also, section 5790.

"Estate" is here used in the most comprehensive sense. Lee's Adm'r v. Hill, 87 Va. 503, 12 S. E. 1052, 24 Am. St. Rep. 666.

Rule for determining whether action survives.—In determining whether a cause of action survives to or against the personal representative, the real nature of the injury or claim ought to be regarded, and not the form of the remedy by which it is sought to be redressed or enforced. Lee's Adm'r v. Hill, 87 Va. 497, 12 S. E. 1052, 24 Am. St. Rep. 666.

The damages allowed to be recovered by or against a personal representative by this section are direct damages to property, and not those which are merely consequent upon a wrongful act to the person only. Mumpower v. Bristol, 94 Va. 737, 27 S. E. 581, 3 Va. Law Reg. 439, note.

Illustrative Cases.—At common law, assumpsit for breach of contract, and, under this section, trespass on the case for wrongful discharge of a servant, may, when defendant dies pending the action, be revived against the personal representative. Lee's Adm'r v. Hill, 87 Va. 497, 12 S. E. 1052, 24 Am. St. Rep. 666.

Under this section trover may be sustained against a personal representative as such, though the goods never came into his hands. Ferrill v. Brewis' Adm'r, 25 Grat. 765.

An action for maliciously and without probable cause suing out an injunction against a plaintiff whereby the operation of his mill was suspended will not survive. Mumpower v. Bristol, 94 Va. 737, 27 S. E. 581, 3 Va. Law Reg. 439.

The term "goods" as used in this section is broad enough to include money, and an action may be maintained for money illegally collected by decedent as collector of internal revenue. Patton v. Brady, 184 U. S. 608, 22 Sup. Ct. 493, 46 L. Ed. 713.

Generally.—See Barton, L. Pr. (2d Ed.) 112; 1 Min. (4th Ed.) 392, 475; references to 4 Min. under section 5384.

See note Martin v. Baltimore, 151 U. S. 695, 14 Sup. Ct. 533, 38 L. Ed. 311; section 5818, and notes.

Digitized by Google

Cited but not construed, Beavers v. Putnam, 110 Va. 713, 67 S. E. 3; Winston v. Gordon, 115 Va. 899, 80 S. E. 756.

For an article on "Abatement and Survival of Actions for Fraud," e 2 Va. L. Reg. N. S. 659.

For W. Va. decisions on similar statute see Justis' Annotations, chap- 85, section 20.

Sec. 5386. Against representative of executor in his own wrong or rightful executor.—A suit may be maintained against the personal presentative of an executor in his own wrong, or the personal presentative of a rightful executor or administrator by whom any aste may have been committed. (Code 1887, § 2656.)

See Barton, L. Pr. (2d Ed.) 112; section 5818, and notes.

For W. Va. decisions on similar statute see Justis' Annotations, chap- 85, section 21.

Sec. 5387. When administrator de bonis non may have scire facias. Where a suit is pending, or a judgment or decree has been ren- ered in this State in favor of a personal representative, upon a ntract made or for a cause of action which accrued in the life- me of the decedent, the administrator de bonis non of such de- edent may sue forth a scire facias to have execution upon such dgment or decree, or to revive and prosecute to judgment or de- ee the suit so pending, if the personal representative who brought could have maintained the same. (Code 1887, § 2657.)

Previous to the statute it was held that an administrator de bonis n may maintain an action of debt on a judgment obtained by the exe- tor. Dykes v. Woodhouse's Adm'r, 3 Rand. 287; Allen v. Cunningham, Leigh 399; 3 Min. (2d Ed.) 572.

See section 6168.

For W. Va. decisions on similar statute see Justis' Annotations, chap- r 85, section 22.

See Gregory's Forms No. 445.

Sec. 5388. When suit may be brought on bond of personal repre- ntative.—Where an execution on a personal judgment or decree gainst a personal representative is returned without being satis- ed, there may be forthwith brought and prosecuted an action gainst the obligors in any bond given by such personal represent- tive for the faithful discharge of his duties. (Code 1887, § 2658.)

Revisors' Note.—The only change made in this section is the inser- on of the word "personal" in line one. Some changes were also made section 5389. The changes in the two sections read together were be- eved to be material, but need not be discussed as, upon further con- deration and discussion, the revisors have become satisfied that this d the following section as they stood in the Code of 1887 were of such ng standing and had operated so well in practice that they should not be sturbed, and that the Legislature should be asked to restore them.

The statutory requirements are: (1) To obtain judgment for the ebt, (2) sue out execution, and (3) have it returned "not satisfied." hen, an action for a devastavit upon the bond of the personal represen- tive against him and his sureties may be instituted. Bush v. Beale, 1 rat. 229; Kent's Adm'r v. Cloyd's Adm'r, 30 Grat. 555, 559; Cookus v. eyton's Ex'r, 1 Grat. 451; Barton, L. Pr. (2d Ed.) 168.

For former requirements, see Burnett v. Harwell, 3 Leigh 89, 96; urdivant's Adm'r v. Raines' Ex'r, 1 Leigh 481; Gardner's Adm'r v. Vidal, Rand. 106.

The suit is brought in the name of the Commonwealth at the re- tion of the claimant, but the relator must be the party having the legal ght. Thus, where a judgment against an executor was obtained by an

Digitized by Google

administrator, and the administrator died and administration de bo non was granted, the action was maintained at the relation of the a ministrator de bonis non without scire facias or action of debt on t judgment. Allen v. Cunningham, 3 Leigh 395; Barton, L. Pr. (2d Ed 166.

A return of "no unadministered or unincumbered effects found" e titles plaintiff to an action on the administrator's bond. Allen v. Cunnin ham, 3 Leigh 395. See, also, Barton, L. Pr. (2d Ed.) 168.

1 Rev. Code, p. 390, chapter 104, section 63, from which this se tion came, applied in terms only to execution on judgments. In Bush Beale, 1 Grat. 229, it was held to apply also to execution on decrees, a this is now embodied in the statute.

For the law as it was previous to the enactment of the origin statute in 1814, see Braxton v. Winslow, 1 Wash. 31, and cases in no Va. Rep. Anno.; also Barton, L. Pr. (2d Ed.) 168.

For history of this section, see Allen v. Cunningham, 3 Leigh 39 399; Anderson v. Hygeia Hotel Co., 92 Va. 688, 689, 24 S. E. 269.

For W. Va. decisions on similar statute see Justis' Annotations, cha ter 85, section 23.

See Gregory's Forms Nos. 22, 24.

Sec. 5389. Representative and sureties not chargeable beyond a sets; how they may plead in actions against them.—No personal re resentative, or any surety of his, shall be chargeable beyond th assets of the decedent, by reason of any omission or mistake i pleading or false pleading of such representative, and in any actio on the bond of a personal representative, the judgment against hi shall be prima facie evidence against his sureties, but such sureti may plead any pleas, and offer any evidence which would be admi sible in an action against the personal representative suggesting devastavit. (Code 1887, § 2659.)

Revisors' Note.—See revisors' note to preceding section.

As to what pleadings were allowed before statute in an action again personal representative suggesting a devastavit, see Eppes' Adm'rs Smith, 4 Munf. 466; Pendleton's Adm'rs v. Stuart, 6 Munf. 377; Miller Ex'rs v. Rice, 1 Rand. 438; Craddock v. Turner's Adm'x, 6 Leigh 11 Clements v. Powell's Adm'rs, 9 Leigh 1.

Form of declaration in debt on a judgment (or decree) against a executor suggesting a devastavit, 4 Min. (3d Ed.), p. 1648.

Form of declaration on official bond of executor suggesting a deva tavit, 4 Min. (3d Ed.), p. 1649. See Gregory's Forms No. 24.

For W. Va. decisions on similar statute see Justis' Annotation chapter 85, section 24.

Cited but not construed in Selden v. Kennedy, 104 Va. 826, 52 S. E 635.

See Burks' Pleading and Practice, p. 631.

Sec. 5390. Order in which debts of decedent to be paid.—Whe the assets of the decedent in the hands of his personal represent tive, after the payment of funeral expenses and charges of admi istration, are not sufficient for the satisfaction of all demand against him, they shall be applied:

First. To the claims of physicians, not exceeding fifty dollars, fo services rendered during the last illness of the decedent; and ac counts of druggists, not exceeding the same amount, for article furnished during the same period; and claims of professional nurse or other person rendering service as nurse to the decedent, at hi request or the request of some member of his immediate family

Digitized by Google

t exceeding the same amount, for services rendered during the me period; and accounts of hospitals and sanitariums, not exeding the same amount, for articles furnished and services renred during the same period.

Second. To debts due the United States.

Third. To debts due this State.

Fourth. To taxes and levies assessed upon the decedent previous his death.

Fifth. To debts due as trustee for persons under disabilities, as ceiver or commissioner under decree of court of this State, as perıal representative, guardian or committee, where the qualification ıs in this State.

Sixth. To all other demands, except those in the next class; and Seventh. To voluntary obligations. (Code 1887, § 2660; 1895-6, 289; 1902-3-4, p. 673.)

Revisors' Note.—Formerly this section put debts due the United tes and this State in the same class. The revised section gives priority debts due the United States.

Taxes.—Where the owner of real estate dies subsequent to February . the taxes for that year become a preferred charge against his estate. ıcheloe v. Gibson, 115 Va. 119, 78 S. E. 603.

The State has no priority under subsection 4 on decedent's estate taxes collected by him as a tax collector of the State and not acunted for. Spillman v. Payne, 84 Va. 435, 4 S. E. 749. But where ney collected for tax bills placed in their hands by tax collector was d over by his deputies to his administrator as "the State's money." was held that the doctrine of "earmarking" applied, and that the adnistrator properly paid that money to the State in preference to the ditors of the tax collector. Spillman v. Payne, 84 Va. 435, 4 S. E. 749. ıce the decision in this case the section has been amended. See what is w subsection 3.

Counsel fees.—An executor or administrator ought to be credited in administration account for fees paid to counsel, notwithstanding those s were more than the law allowed. Lindsay v. Howerton, 2 Hen. & 9

Subsection 5—*Trustees.*—The term "trustee" is here used in the reicted sense of "express trustee," as distinguished from trustees, in a neral sense, by construction or implication of law. Debts arising out of nstructive and implied trusts are not included in the statute. Brown v. mbert's Adm'r, 33 Grat. 256, 267; Price's Ex'r v. Harrison's Ex'r, 31 at 114.

Where one, acting as trustee de facto, becomes indebted to the fidury estate. and afterwards regularly became by appointment trustee de re, the debt aforesaid is entitled to priority, under subsection 5, as a uciary one. Brown v. Lambert's Adm'r, 33 Grat. 256, 268.

Partner's separate assets.—Where deceased partner's separate assets e insufficient to pay all his debts, those due by him in a fiduciary pacity are to be paid before anything is applied to payment of partnerip debts. Robinson v. Allen, 85 Va. 721, 730, 8 S. E. 835.

Guardian and ward.—The wards of a guardian de son tort are not enled under this section to any priority over the general creditors of such ardian in the administration of his personal estate after his death. The nguage of the section cannot be extended by construction. Watts v. ewberry, 107 Va. 233, 57 S. E. 657.

A guardian having no authority to receive proceeds of sale of infant's nds is not liable so as to render his debt to infant a preferred debt of e guardian's estate of the fifth class. His liability is merely as a conructive trust, and the statute does not contemplate a preference in favor

Digitized by Google

of constructive trustees. Pope v. Prince's Adm'r, 105 Va. 209, 52 S. 1009.

A bond given by a guardian to his ward on his becoming of age t debt due by guardian in his fiduciary capacity did not destroy the fiducia character of the debt, and it remains fiduciary till satisfied. Smith Blackwell, 31 Grat. 291, 299.

Commissioners for sale.—Where two persons were appointed to s real estate of an infant, with power in either to act, but only one ga bond and acted under the order of court, making sale and reporting sa to court, and the decree ratifying sale and directing collection of pu chase money was made, and upon such collection he turned over a lar portion of the proceeds to the other party, the latter was not liable as co missioner of the court for the funds turned over to him so as to con under the fifth class. Pope v. Prince's Adm'r, 105 Va. 209, 52 S. E. 100

Law prospective.—Act of 1870, amending the former law by inse ing in the third (now fifth) class "debts of trustee for persons under d abilities," was only prospective in its operation. Price's Ex'r v. Harrison Ex'r, 31 Grat. 114; 2 Barton, C. Pr. (2d Ed.) 772.

Payment out of order.—Voluntary payment by administrator out intestate's assets of debts of inferior class in preference to debts of high class, when there is a deficiency of assets, does not entitle him to have t creditors so paid preferred. The case has no analogy to the case of executor paying legacies before paying debts. Findlay v. Trigg's Adm 83 Va. 539, 3 S. E. 142.

Payment of one debt in excess of its share is a devastavit, for whi another creditor may be reimbursed. McCormick's Ex'rs v. Wright Ex'rs, 79 Va. 524; 2 Barton, C. Pr. (2d. Ed.) 772.

Order of payment.—For the order in which assets of decedent shou be applied for payment of his debts, see, further, Elliott v. Carter, Grat. 541, and note Va. Rep. Anno.; Barton, C. Pr. (2d Ed.) 772.

As to order of payment of debts at common law changed by th statute, see 3 Min. (2d Ed.) 154, 580; Nimmo's Ex'r v. Com., 4 Hen. & 57, 4 Am. Dec. 488; Mayo v. Bentley, 4 Call 528.

Wills must conform to this section, and cannot prescribe a differe order in which the personalty shall be applied in the payment of a d cedent's debts. Deering & Co. v. Kerfoot's Ex'r, 89 Va. 491, 494, 16 S. 671. But as to real estate, see section 5395, and notes.

It is beyond the power of a testator, by a direction in his will, effect the order prescribed by this section in which personalty shall applied in the payment of his debts. Deering v. Kerfoot, 89 Va. 491, S. E. 671.

Generally.—"Voluntary obligations," as used in seventh subdivisio is supposed to mean gifts under seal.

On statute generally, see Barton, C. Pr. (2d Ed.) 719-722; Burk Pl. & Pr., pp. 34, 629, 631, 632. Note, Shores v. Wares, 1 Rob. 1 (botto paging, 33), Va. Rep. Anno.

Discussed, 5 Va. Law J. 407.

Cited 16 Va. Law Reg. 328. See notes to section 5395.

For W. Va. decisions on similar statute see Justis' Annotations, cha ter 85, section 25.

See Gregory's Forms No. 187.

Sec. 5391. Creditors to be paid in order of their classification those of a class to be paid ratably when not enough to pay them f full; when representative not liable for paying debt of inferior dig nity.—No payment shall be made to creditors of any one class unt all those of the preceding class or classes shall be fully paid; an when the assets are not sufficient to pay all the creditors of any on class, the creditors of such class shall be paid ratably; but a persona representative who, after twelve months from his qualification, pay a debt of his decedent, shall not thereby be personally liable for an debt or demand against the decedent of equal or superior dignity

Digitized by Google

whether it be of record or not, unless before such payment he shall have notice of such debt or demand. (Code 1887, § 2661.)

This section changes doctrine of the common law, and overrules Mayo v. Bentley, 4 Call 528, 538; Nimmo's Ex'r v. Com., 4 Hen. & M. 57, 4 Am. Dec. 488. See 5 Va. Law Reg. 877; Burks' Address, appended to Barton, L. Pr. (2d Ed.) 3 Min. (2d Ed.) 413, 582, 583; Burks' Pl. & Pr., pp. 34, 631, 632.

Cited, but not construed, in Trevillian's Ex'rs v. Guerrant's Ex'rs, 31 Grat. 532.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 85, section 26.

Sec. 5392. Lien acquired in lifetime of decedent not affected.—Nothing contained in the two preceding sections shall affect any lien acquired in the lifetime of the decedent. (Code 1887, § 2662.)

As to effect of debtor's death on lien of fieri facias, see Trevillian's Ex'rs v. Guerrant's Ex'rs, 31 Grat. 525, note Va. Rep. Anno.

Section construed by Corporation Court of Danville in Wood v. Wood's Adm'r, 5 Va. Law Reg. 395, where it is said that liens acquired in the lifetime of a decedent, whether upon real or personal property, are paramount to all other claims whatsoever attaching thereon after his death.

See note to section 5390.

CHAPTER 220.

Duties of Personal Representatives as to Real Estate, and the Liability of Such Estate for Decedent's Debts.

Sec.
5393. Executors, and administrators with will annexed, to sell real estate devised to be sold, and receive proceeds, and also certain rents.
5394. To pay over proceeds and rents to persons entitled.
5395. Real estate of decedent to be assets for payment of debts in same order as personal estate.
5396. How such assets administered.
5397. When heir or devisee liable for value of real estate; when purchasers not liable.
5398. Heir or devisee liable in equity, and not at law; effect of judgment against personal representative as evidence.
5399. When suit in equity not to be brought to enforce claim of less than twenty dollars.
5400. Lien acquired in lifetime of decedent not affected.

Sec. 5393. Executors, and administrators with will annexed, to sell real estate devised to be sold, and receive proceeds, and also certain rents.—Real estate, devised to be sold, shall, if no person other than the executors be appointed for the purpose, be sold and conveyed, and rents and profits of any real estate which executors are authorized by the will to receive, shall be received by the executors who qualify, or the survivor of them. If none qualify, or those qualifying die, resign, or are removed before the trust is executed or completed, the administrator, with the will annexed, shall sell or convey the lands so devised to be sold, and receive the

Digitized by Google

proceeds of sale, or the rents and profits aforesaid, as an executor might have done. (Code 1887, § 2663.)

Revisors' Note.—The word "resign" in line six of the text is new.

Object of this section was to prevent the necessity of resorting to a court of equity for the appointment of a trustee, by devolving the execution of the power upon the executors, thus disregarding the distinction between a naked power and a power coupled with an interest. Elys v. Wynne, 22 Grat. 224, 230; Brown v. Armistead, 6 Rand. 597.

Section does not operate as a conveyance of the estate or any interest therein to the executors, but merely to give them power to make any sale of real estate which the will directs to be sold without empowering any particular person to make the sale. Elys v. Wynne, 22 Grat. 224, 230.

Sales by Executors.—At common law a sale was not effectual, unless made by the whole number of executors named to and for the same. This was remedied by 21 Hen. VIII, chapter 4, from which the present statute comes. The act of 1785, chapter 61, embraced virtually the first part of the present section. In 1794 was added the second part, and thus the law has remained with slight changes to this time. See Brown v. Armistead, 6 Rand. 596.

Under Act 1785, chapter 61, a testator having directed his four executors (three of whom qualified) to sell his real and personal estate for payment of debts, a sale by two of the acting executors was valid, and the third was presumed to have renounced his right to administer as at date of sale in question. Nelson v. Carrington, 4 Munf. 332, 6 Am. Dec. 519.

If a written agreement of sale be signed by the purchaser and one of two acting executors, the other may, by acts in pais, even though not in writing, manifest his assent to the sale. Nelson v. Carrington, 4 Munf. 332, 6 Am. Dec. 519.

Two out of three nominated executors qualify, and sell and convey real estate to the purchasers, who pay up the purchase money in full. Afterwards the third qualifies, and consents to the sale by sharing the commissions. Held, that the title of the purchaser is valid, at least in equity. Mills v. Mills' Ex'rs, 28 Grat. 442, 490; also section 5357.

When widow renounces provision of her husband's will, and dower is assigned her, the executor has no power to sell during widow's life and widowhood, even a part of the land devised to be sold after wife's death or marriage. Jackson v. Ligon, 3 Leigh 161; Raper v. Sanders, 21 Grat. 70.

An executor selling land of testator, by virtue of power given by the will, is not bound to convey with general warranty. Grantland v. Joy, 5 Munf. 295.

Sales by administrators.—Where executors are directed by will to sell lands, and they renounce executorship, an administrator with will annexed may sell under authority given by 1 Rev. Code, p. 388, section 52 (virtually same as this section), although the will directs the executor to sell, provided the said land will sell for as much as, in their judgment, will be equal to its value. Brown v. Armistead, 6 Rand. 594, 596.

Testator directed his land to be sold for the best price that could be got, as was directed by letter of attorney to J. H. of same date with will. Held, that the administrator with the will annexed has power to sell land under this section. Broadus v. Rosson, 3 Leigh 12.

Where one dies leaving a will and the executor fails to qualify, and another is appointed administrator only on his estate without "the will annexed," such administrator does not succeed to the power of the executor with respect to the real estate to be sold, and the validity of such appointment for any purpose may well be doubted. Coles v. Jamerson, 112 Va. 311, 71 S. E. 618.

Generally.—After directing that a portion of his estate be sold for payment of his debts, testator directs that a part of another tract of land be sold for that purpose. Held, that his intention was to sell all of the latter if necessary to pay the debt after the first had been exhausted. Thompson v. Meek, 7 Leigh 419.

Digitized by Google

For construction of a power to divide an estate, see Carrington's Ex'rs v. Belt, 6 Munf. 374.

For cases under former statutes, see Johnston v. Thompson, 5 Call 348; Deneale v. Morgan's Ex'rs, Id. 407; Geddy v. Butler, 3 Munf. 345.

See 2 Min. (4th Ed.) 819, 820; 3 Min. (2d Ed.) 567, 569.

Discussed, 2 Va. Law J. 513, 643.

See Report of Revisors 1849, p. 674. For article on Liability of Purchasers of Real Estate from Executors and Trustees, see 2 Va. Law J. 513, 643.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 86, section 1.

Sec. 5394. To pay over proceeds and rents to persons entitled.—It shall be one of the duties of an executor or administrator, by virtue of his office, and as such embraced by his official bond, faithfully to pay the rents and profits or proceeds of sale of real estate which may lawfully come to his hands, or to the hands of any person for him, to such persons as are entitled thereto. (Code 1887, § 2664.)

Under 1 Rev. Code, chapter 104, section 21, the sureties were not responsible for the proceeds of land sold by an executor under a power in the testator's will. Burnett v. Harwell, 3 Leigh 89; Jones v. Hobson, 2 Rand. 483. But now he is chargeable with the real estate in his character of executor as much as he is with the personalty. Smith's Ex'r v. Smith, 17 Grat. 277; section 5370 and notes.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 86, section 2.

Sec. 5395. Real estate of decedent to be assets for payment of debts in same order as personal estate.—All real estate of any person who may hereafter die, as to which he may die intestate, or which, though he die testate, shall not by his will be charged with or devised subject to the payment of his debts, or which may remain after satisfying the debts with which it may be so charged or subject to which it may be so devised, shall be assets for the payment of the decedent's debts and all lawful demands against his estate, in the order in which the personal estate of a decedent is directed to be applied. (Code 1887, § 2665.)

Proper order to marshal assets to pay debts.—(1) Personal estate at large not exempted by the terms of the will or necessary implication.

(2) Real estate or any interest therein expressly set apart by will for payment of debts.

(3) Real estate descended to the heir.

(4) Property, real or personal, expressly charged with the payment of debts, and then subject to such charge, specifically devised or bequeathed.

(5) General pecuniary legacies (ratably).

(6) Specific legacies (ratably).

(7) Real estate devised. Elliott v. Carter, 9 Grat. 541, 548; 3 Min. (2d Ed.) 594.

The object of this section.—The object of the statute was to do away with the distinction between simple contract debts (for which at common law the lands were not liable), and debts of record and of specialty binding the heirs expressly, and to make the real as well as the personal estate of a decedent liable for the liquidation of all his debts. Frasier v. Littleton's Ex'rs, 100 Va. 9, 11, 40 S. E. 108; 2 Min. (4th Ed.) 86. But it was not intended thereby to disarrange the order of liability of the assets of a decedent's estate. Frasier v. Littleton's Ex'rs, 100 Va. 12, 40 S. E. 108; McCandlish v. Keen, 13 Grat. 615, 630; Peirce v. Graham, 85 Va. 227, 235, 7 S. E. 189. Therefore, this section does not give a devisee of en-

Digitized by Google

cumbered lands (which belong in fourth class, supra) a right of contribution from devisees of unencumbered lands (which belong in seventh class, supra). Frasier v. Littleton's Ex'rs, 100 Va. 9, 40 S. E. 108.

Real estate is made assets for the payment of debts (when it is not made equitable assets by will), and is liable like other assets in the hands of an executor or administrator, whenever it or its proceeds come to his hands by terms of the will, whether under a power coupled with an interest or under a mere power. Smith's Ex'r v. Smith, 17 Grat. 268, 277.

Personal estate primary fund for payment of debts.—As between real and personal estate of persons deceased, the personal estate in the hands of the executor or administrator is the primary fund for the payment of debts of every description contracted by the testator or intestate. Pleasants v. Flood's Adm'r, 89 Va. 103, 15 S. E. 504; Scott's Ex'x v. Ashlin, 86 Va. 581, 587, 10 S. E. 751; Ryan's Adm'r v. McLeod, 32 Grat. 375; Alexander v. Byrd, 85 Va. 690, 700, 8 S. E. 577. And the personal property will not be exonerated by a charge on the real estate, unless there be express words or a plain intent in the will to make such exoneration. New's Ex'x v. Bass, 92 Va. 389, 23 S. E. 747; Elliott v. Carter, 9 Grat. 549; Barton, C. Pr. (2d Ed.) 772, and note to section 5382.

If the creditor proceeds against the real estate descended or devised, the heir or devisee who has sustained the loss shall be allowed to stand in the place of the specialty creditor, to reimburse himself out of the personal estate in the hands of the executor or administrator, provided creditors or parties having more favored claims than the heir or devisee are not prejudiced. Pleasants v. Flood's Adm'r, 89 Va. 103, 15 S. E. 504.

Land in which the widow is entitled to dower being sold by the executor under a charge for the payment of debts, he should be credited for the amount paid the widow in satisfaction of her dower interest. Meeks' Adm'r v. Thompson, 8 Grat. 134, 56 Am. Dec. 134.

When real estate may be subjected.—If debts are unduly paid out of their order, or the personalty exhausted, whether by devastavit or distribution, the real estate in the hands of the heirs (not of the widow) may be subjected. Scott's Ex'x v. Ashlin, 86 Va. 581, 587, 10 S. E. 751; Alexander v. Byrd, 85 Va. 690, 8 S. E. 577; Lewis v. Overby's Adm'r, 31 Grat. 601; Ryan's Adm'r v. McLeod, 32 Grat. 367; Davis v. Newman, 2 Rob. 667, 40 Am. Dec. 764; Pugh v. Russell, 27 Grat. 789.

But when the charge of the debt is primarily and principally upon real estate, and the personal security of covenant is only collateral, the real estate is the primary fund to be looked to, as between the heirs and distributees. Pleasants v. Flood's Adm'r, 89 Va. 96, 103, 15 S. E. 504.

The whole of the real estate of which the decedent died possessed is liable for his debts, and if one of the heirs or devisees has aliened or wasted his part of the estate, and is insolvent, the others must contribute ratably to make up the deficiency according to the value of the lands descended. Lewis v. Overby's Adm'r, 31 Grat. 601; Hopkirk v. Dennis, 2 Munf. 326; Ryan's Adm'r v. McLeod, 32 Grat. 375.

There can be no sale of real estate until there has been an account of personal property, debts and liens. New's Ex'x v. Bass, 92 Va. 383, 23 S. E. 747.

Testator may prefer creditors out of realty, but not out of personalty.—This section recognized the common law right of the ancestor to indicate the charges he wishes to make upon the land for such of his debts as he may prefer; but it does not alter or enlarge the common law liability of the personalty of a decedent as the primary fund for the payment of his debts, nor does it give to a testator the right to prefer his creditors out of his personal assets, as it does in the case of realty. Deering & Co. v. Kerfoot' Ex'r, 89 Va. 491, 16 S. E. 671. See 2 Min. (4th Ed.) 1048; Barton, C. Pr. (2d Ed.) 1048.

When real and personal property are both charged with payment of debts they must contribute ratably.—Though personal property is applicable to the payment of debts before real property, when neither species is expressly charged by the terms of the will, yet when both are equally and expressly charged they stand on the same footing, and each must

Digitized by Google

contribute its ratable share to the common burden. Elliott v. Carter, 9 Grat. 541, 583; Murphy's Adm'r v. Carter, 23 Grat. 489.

General creditors can subject only equity of redemption in mortgaged lands.—This section does not apply to the estate of the debtor which he has previously conveyed to another, nor that on which he has created a lien for the payment of a particular debt (except subject to such charge). In the latter case the creditors coming in under this section must take the subject in the same plight in which the debtor left it. McCandlish v. Keen, 13 Grat. 615, 631. See section 5194 and revisors' note.

Therefore general creditors coming in after death of decedent cannot displace creditors claiming under a deed of trust, nor can they subject anything beyond the equity of redemption. McCandlish v. Keen, 13 Grat. 632.

This section does not change the rule that where a part of a tract of land, subject to a mortgage or other charge, is conveyed, the residue is primarily liable for the whole debt, and where there are successive conveyances, at different times, the land is liable in the inverse order of conveyances. Miller v. Holland, 84 Va. 652, 654, 5 S. E. 701.

Power of executor over real estate not increased.—This section does not give an executor power over, interest in, or right concerning the real estate, where the will gave him no power in regard thereto. Therefore an executor with no power over the realty under the will cannot maintain a suit against the heirs to sell the realty to pay debts; nor can he as next friend to the infant heirs, uniting the widow, compel the creditors to have the realty sold to pay debts. Peirce v. Graham, 85 Va. 227, 7 S. E. 189; Litterall v. Jackson, 80 Va. 604.

Judgment against executors does not bind heirs—Rule not changed.—It was the rule, not altered by this section, that a judgment against a personal reresentative did not bind, and was not evidence against the heirs. Brewis v. Lawson, 76 Va. 41, citing Mason's Devisees v. Peter's Adm'rs, 1 Munf. 437; Foster v. Crenshaw's Ex'rs, 3 Munf. 520; Chamberlayne v. Temple, 2 Rand. 384, 396, 14 Am. Dec. 786; Street's Heirs v. Street, 11 Leigh, 498, 508; Robertson v. Wright, 17 Grat. 534, 540. See, also, Watts v. Taylor's Adm'r, 80 Va. 627; Daingerfield v. Smith, 83 Va. 81, 1 S. E. 599; Pannill's Adm'r v. Calloway's Committee, 78 Va. 387. But see section 5398, providing that such judgment or decree shall be prima facie evidence of such claim against the heir or devisee. See, also, Barton, C. Pr. (2d Ed.) 919, note.

Payment by executor—Reimbursement from real estate.—Executor having exhausted the personal estate in payment of debts, and being largely in advance to the estate for payment of debts which bound the heirs, in entitled to stand in the place of the creditors whose debts he has paid, and charge the real estate. And the real estate in the hands of the devisees is liable in proportion to its value at the death of the testator. Gaw v. Huffman, 12 Grat. 628.

Debts a charge upon the whole estate.—Directing by will the payment of all just debts charges the whole estate, which charge is not released by a subsequent selection of particular parts to be sold for that purpose. Trent v. Trent's Ex'x, Gilmer 174, 9 Am. Dec. 594; Thompson v. Meek, 7 Leigh 429. But in Leavell v. Smith's Ex'rs, 99 Va. 379, 38 S. E. 204, it is said: "The language, 'It is my will and desire that all my just debts and funeral expenses be paid,' did not thereby charge the debts on the real estate." See Gaw v. Huffman, 12 Grat. 628; also Clarke v. Buck, 1 Leigh 490; Downman v. Rust, 6 Rand. 587.

Generally.—Creditors do not have to see to it that the personal representative does not waste any of the assets liable for debts. Scott's Ex'x v. Ashlin, 86 Va. 581, 588, 10 S. E. 751; Ryan's Adm'r v. McLeod, 32 Grat. 375.

In Gayle v. Hayes' Adm'r it is said that this section does not apply to real estate of infants. 79 Va. 542.

History of this statute, Alexander v. Byrd, 85 Va. 700, 8 S. E. 577; 3 Min. (2d Ed.) 393, 394.

Statute followed in Burwell's Adm'rs v. Fauber, 21 Grat. 446, 455.

See Barton, C. Pr. (2d Ed.) 1084; 2 Min. (4th Ed.) 523, 837, 1048;

Digitized by Google

3 Min. (2d Ed.) 154, 584; Burks' Pl. & Pr., p. 34; 17 Va. L. Reg. 450 notes to section 5390.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 86, section 3.

Sec. 5396. How such assets administered.—Such assets, so far as they may be in the hands of the personal representative of the decedent, may be administered by the court in the office whereof there is or may be filed, under chapter two hundred and twenty one, a report of the accounts of such representative, and of the debts and demands against the decedent's estate, or they may, in any case, be administered by a court of equity. (Code 1887, § 2666.)

If any one of the heirs apprehends loss by reason of the alienation or insolvency of a co-heir, he can bring suit to have the estate administered under a court of equity, or he may require a proper report of the debts and liabilities to be filed by the personal representative in the proper court. Therefore, the duty is not imposed upon the creditor of instituting inquiries as to the sufficiency of the personal estate to pay the debts. Ryan v. McLeod, 32 Grat. 375.

Until a suit is brought to charge lands descended or devised with the payment of debts, the heir or devisee is entitled to the rents and profits without being accountable therefor to creditors (Blow v. Maynard, 2 Leigh 29); and an executor receiving rents was held bound to account for them to the heirs and devisees (Hobson v. Yancey, 2 Grat. 77; Barton, C. Pr. [2d Ed.] 1085).

As to jurisdiction of a court of equity to enforce a lien of a judgment, and when it may decree a sale of realty, see section 6472, and Blow v. Maynard, 2 Leigh 29, and note Va. Rep. Anno.; Tennant's Heirs v. Pattons, 6 Leigh 196; Price v. Planters Nat. Bank, 92 Va. 481, 23 S. E. 887, 32 L. R. A. 214.

Under statute against fraudulent devises from which this chapter comes, an action of debt lay on an executor's bond for a creditor claiming a debt from the executor's estate, arising from a breach of the condition by the executor in his lifetime, against the executor's devisees, to have satisfaction out of the lands devised. Manns v. Flinn's Adm'r, 10 Leigh 93.

See 2 Min. (4th Ed.) 837, 1048; 3 Min. (2d Ed.) 419, 584.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 86, section 4.

Sec. 5397. When heir or devisee liable for value of real estate; when purchasers not liable.—Any heir or devisee who shall sell and convey any real estate, which by this chapter is made assets, shall be liable to those entitled to be paid out of the said assets, for the value thereof, with interest; in such case, the estate conveyed shall not be liable if the conveyance was bona fide, and at the time of such conveyance no suit shall have been commenced for the administration of the said assets nor any reports have been filed as aforesaid of the debts and demands of those entitled. But no alienation of such estate, made by an heir or devisee, within one year after the death of the testator or intestate, shall be valid against creditors of such testator or intestate, although no such suit shall have been commenced or report of debts and demands filed within said year. (Code 1887, § 2667.)

The object and effect of this section are twofold: (1) To protect the creditor or other person to be paid out of the real estate declared to be assets, by making the heir or devisee personally liable for the value, with

Digitized by Google

nterest, of such estate when sold and conveyed by him; (2) to protect a ona fide purchaser of such estate under a conveyance made before the urchase of such estate under a conveyance made before the commence- nent of a suit for the administration of the assets or the filing of any such eport as is described. Easley v. Barksdale, 75 Va. 274, 281.

This section and section 6469 must be construed together; they re- uire a lis pendens to be docketed to affect a purchaser without notice f the pending suit. Easley v. Barksdale, 75 Va. 274.

For case of purchaser taking land with constructive notice of charge y will upon it, see Burwell's Adm'rs v. Faubar, 21 Grat. 446, 455.

See 2 Min. (4th Ed.) 838, 1048; 3 Min. (2d Ed.) 393, 394.

See sections 5259, 5263.

For W. Va. decisions on similar statute see Justis' Annotations, chap- er 86, section 5.

Sec. 5398. Heir or devisee liable in equity, and not at law; ef- fect of judgment against personal representative as evidence.—An heir or devisee may be sued in equity by any creditor to whom a claim is due for which the estate descended or devised is liable, or for which the said heir or devisee is liable in respect to such estate; and he shall not be liable to an action at law for any matter for which there may be redress by such suit in equity. And any judgment or decree for such claim hereafter rendered against the personal representative of the decedent shall be prima facie evi- dence of the said claim against the heir or devisee in such suit in equity. (Code 1887, § 2668.)

A bill alleging that the surviving executor had regularly settled his accounts, which showed that there were no assets in his hands, and that none would come into his hands to pay indebtedness of testator, and pray- ng an account of the fee simple and annual rental value of the real estate n the hands of the devisees, etc., states a case for the jurisdiction of a court of equity. Leavell v. Smith's Ex'rs, 99 Va. 374, 377, 38 S. E. 202.

The latter part of this section, making a judgment or decree against he personal representative prima facie evidence against the heir or de- isee of the decedent, applies only to judgments or decrees rendered since he enactment of the section, February 19, 1884. Staples' Ex'rs v. Staples, 35 Va. 76, 7 S. E. 199; and overrules Mason's Devisees v. Peter's Adm'rs, 1 Munf. 437; Foster v. Crenshaw's Ex'rs, 3 Munf. 520; Chamberlayne v. Temple, 2 Rand. 384, 396, 14 Am. Dec. 786; Street's Heirs v. Street, 11 Leigh 498, 508; Robertson v. Wright, 17 Grat. 534, 540; Drewis v. Law- son, 76 Va. 36; Watts v. Taylor's Adm'r, 80 Va. 627; Daingerfield v. Smith, 83 Va. 81, 1 S. E. 599; and rule stated in 2 Min. (4th Ed.) 428. See 2 Barton, C. Pr. (2d Ed.) 1084.

On section generally, see 2 Min. (4th Ed.) 428, 1048; 3 Min. (2d Ed.) 393, 584; Barton, L. Pr. (2d Ed.) 537; Barton, C. Pr. (2d Ed.) 1084.

For W. Va. decisions on similar statute see Justis' Annotations, chap- er 86, section 6.

Sec. 5399. When suit in equity not to be brought to enforce claim of less than twenty dollars.—No suit in equity shall be brought for the recovery or enforcement of any such claim, the principal whereof does not exceed twenty dollars, unless the person liable or whose estate is liable, being a resident of this State, shall have been notified, at least thirty days before the suit was brought, that such suit would be brought, if the amount of the claim was not paid within said time. (Code 1887, § 2669.)

Revisors' Note.—This section decreases the notice from sixty days to thirty days.

See section 6473, as to enforcement of liens under $20.

Digitized by Google

Sec. 5400. Lien acquired in lifetime of decedent not affected.—This chapter shall not affect any lien, by judgment or otherwise, acquired in the lifetime of the decedent. (Code 1887, § 2670.)

Section construed by Corporation Court of Danville in Wood v. Wood's Adm'r, 5 Va. Law Reg. 395, where it is said that liens acquired in the lifetime of a decedent, whether upon real or personal property, are paramount to all other claims whatsoever attaching thereon after his death.

See 2 Barton, C. Pr. (2d Ed.) 1086; also section 5395, and notes.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 86, section 11.

CHAPTER 221.

Further Security from Fiduciaries; the Settlement of Their Accounts and Payment of What They Owe.

Sec.
5401. Commissioners of accounts, their appointment and duties; "record of fiduciaries," what to be entered therein; duty of clerks; penalty on commissioners and clerks for failure of duty.
5402. Appointment of assistant commissioners of accounts; their duties and powers.
5403. When, and of what, inventories to be returned to commissioners; how compelled; their duty to examine inventories and deliver them for recordation.
5404. When and by whom accounts of sales returned to them; their duty; penalty on trustees for failure.
5405. Recordation of inventories and accounts of sales.
5406. Liability of fiduciaries, agents, and attorneys, for debts lost by negligence or failure to make defense.
5407. How judgment may be entered against personal representative; when costs to be paid out of his own estate.
5408. When fiduciaries to exhibit their accounts before commissioners for settlement; what entry to be made by commissioners in their books.
5409. When fiduciaries to forfeit their commissions, etc.
5410. How compelled to exhibit their accounts for settlement.
5411. Accounts of a fiduciary settled in a chancery cause to be certified to clerk of court in which he qualified; fees allowed clerk, and how paid.
5412. How record books furnished to commissioners and paid for; to be delivered to successors.
5413. When fiduciaries personally liable for costs.
5414. Fees of commissioners of accounts; not to be paid unless sworn to.
5415. When court may require another commissioner to settle accounts of a fiduciary; what he shall certify to commissioner of accounts; receipts to be given fiduciaries for vouchers; effect thereof as evidence.
5416. Commissioners to examine and report on official bonds of fiduciaries.
5417. When court may require fiduciary to give new bond, or revoke his authority.
5418. May appoint new fiduciary when authority of former one is revoked.

Digitized by Google

Sec.
5419. Resignation by fiduciary of his trust.
5420. Proceedings for receiving proof of debts by commissioners.
5421. Report of debts, when and how made.
5422. How claims filed before commissioners; time within which statutes of limitation not to run.
5423. How and when commissioners to post list of fiduciaries, whose accounts are before them for settlement; no account to be completed until this is done.
5424. For what time settlements to be; what may be insisted on or objected to before commissioners.
5425. Expenses and commissions allowed fiduciaries.
5426. Accounts, etc., to be reported.
5427. Where filed; what to be done with vouchers.
5428. Court to examine reports and to correct any errors; when confirmed to be recorded; vouchers, etc., to be returned to parties.
5429. Effect of confirmation.
5430. Court may order money in hands of fiduciary to be invested, etc.
5431. Executors and other fiduciaries may invest in Virginia three per centum bonds issued by virtue of an act approved February fourteenth, eighteen hundred and eighty-two.
5432. How securities transferred to successor.
5433. Court may order payment of amounts due from certain fiduciaries to persons entitled.
5434. When report of accounts of personal representative, and of debts of decedent, confirmed, court to order payment of debts.
5435. How sum reserved for dividend on contingent claim to be paid, when it is established.
5436. How assets applied at subsequent dividends.
5437. When distribution to be made of estate of decedent; refunding bonds to be given; where recorded.
5438. When fiduciaries are protected by refunding bonds.
5439. Proceedings by legatees or distributees to compel creditors to show cause against distribution of estate; their liability to refund in such case.
5440. How fiduciaries may compromise liabilities due to or from them; how trustee or receiver of resident joint stock company may compromise claims due to it; liability of other persons on contracts so compromised not thereby impaired; effect of compromise on right of contribution.

Sec. 5401. Commissioners of accounts, their appointment and duties; "record of fiduciaries," what to be entered therein; duty of clerks; penalty on commissioners and clerks for failure of duty.—The judge of each court having jurisdiction of the probate of wills and granting administrations on estates of decedents shall appoint a commissioner of accounts, who shall be removable at pleasure and who shall have a general supervision of all fiduciaries admitted to qualify in said court or before the clerk thereof and make all ex parte settlements of their accounts. The said commissioner shall obtain from the clerk of his court within twenty days after each term thereof a list of the fiduciaries authorized to act as such un-

Digitized by Google

der orders entered at the said term and examine as to each fidu ciary whether he has given such bond as the law requires, and i it appear that he has given no bond or that his bond is defective shall make report thereof to his court at its next term. He shal enter in separate columns in a book to be kept by him and called the "record of fiduciaries"—first, the name of every such fidu ciary; second, the name of the decedent for whose estate he is the representative; third, the name of the living person for whom he is guardian, curator, or committee; fourth, the penalty of his bond; fifth, the names of his sureties; sixth, the date of the order conferring his authority; seventh, the date of any order revoking his authority; eighth, the date of the return of every inventory of the estate; ninth, the date of each settlement of the accounts of such fiduciary; and shall index the said book in the name of the decedent or person represented by such fiduciary. The clerk of the court shall certify to the said commissioner within twenty days after each term of the court the revocation of the authority of every such fiduciary. Any commissioner failing to make such entry or any clerk failing to certify such revocation for ten days after the time herein prescribed shall for every such failure for feit twenty dollars. (Code 1887, § 2671; 1897-8, p. 740.)

This chapter is full, ample, and complete and guards and protect every interest as fully as could be done by a formal suit in chancery. Car ter v. Skilman, 108 Va. 204, 60 S. E. 775.

See 2 Barton, C. Pr. (2d Ed.) 708; 1 Min. (4th Ed.) 482-485; 4 Min (3d Ed.) 1477.

Sec. 5402. Appointment of assistant commissioners of accounts their duties and powers.—The judge of each court in this State having jurisdiction of the probate of wills and granting administrations on estates of decedents may, either in term or in vacation appoint, in addition to the commissioner of accounts, an assistant commissioner of accounts, who shall perform all the duties and exercise all of the powers required of the commissioner of accounts in all cases in which the commissioner of accounts from any cause is so situated that he cannot perform the duties of his office, or in which the commissioner of accounts is of opinion it is improper for him to act. An assistant commissioner of accounts making a settlement of a fiduciary account under the provisions of this section shall, within thirty days, report the fact and date of such settlement to the commissioner of accounts, who shall make an entry of the same in his record books. (1889-90, p. 47; 1899-00 p. 590; 1912, p. 13.)

Sec. 5403. When, and of what, inventories to be returned to commissioners; how compelled; their duty to examine inventories and deliver them for recordation.—Every personal representative, guardian, curator, or committee, shall, within four months after the date of the order conferring his authority, return to the said commissioner, in proper form, an inventory of all the personal and rea

Digitized by Google

estate which has come to his possession or knowledge, or which is under his management or subject to his authority in his fiduciary character; and shall, within four months after any other such estate shall come to his possession or knowledge, return to the said commissioner a further inventory thereof. If he fail to make the return herein first mentioned, the commissioner shall issue, through the sheriff or other proper officer, a summons to such fiduciary, requiring him to make such return; and if said return be not made within thirty days after the date of service of the summons, the commissioner shall report the fact to his court at the next succeeding term thereof. The court shall immediately thereupon order a summons to the fiduciary, requiring him to appear at the following term; and upon his appearing unless excused for sufficient reason, he shall be fined by the court in a sum not less than fifty nor more than five hundred dollars. And if the said fiduciary still fail to make such return within such time as the court may prescribe, he shall be deemed guilty of contempt of court, and be dealt with accordingly. The said commissioner shall inspect all inventories returned to him by fiduciaries, see that they are in proper form, and, within ten days after they are respectively received and approved by him, deliver them to the clerk of the court, to be recorded as required by law. An appraisement made, according to chapter two hundred and nineteen, shall be considered such an inventory as is required in this section, if it be signed by the personal representative. (Code 1887, § 2673.)

See 2 Barton, C. Pr. (2d Ed.) 708, 738; 1 Min. (4th Ed.) 482-485, 93; 4 Min. (3d Ed.) 1477, 1481.

Discussed, 7 Va. Law J. 257.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 87, section 2.

Sec. 5404. When and by whom accounts of sales returned to them; their duty; penalty on trustees for failure.—Every such fiduciary shall, within four months after selling any property as such, return to the said commissioner an account of such sale; and when sale is made under any deed of trust, otherwise than under a decree, there shall, within four months after the sale, be returned by the trustees to the commissioner of accounts of the court wherein said deed may have been first recorded, an inventory of the property sold and an account of sale. The commissioner shall inspect the same, see that it is made out in proper form, and deliver it to the clerk, to be recorded as herein directed in regard to inventories. Any trustee failing to comply with this section shall forfeit his commission on such sales, unless these commissions shall be allowed by the court. (Code 1887, § 2674; 1897-8, p. 983; 1916, p. 510.)

Revisors' Note.—This section is taken from Acts 1897-8, p. 983, without change. The amendment of 1916 (Acts 1916, p. 510), is covered by the last sentence of section 5408.

This section is subject to the proviso at the end of section 5408.

Digitized by Google

See 2 Barton, C. Pr. (2d Ed.) 708, 738; 1 Min. (4th Ed.) 482-485 4 Min. (3d Ed.) 1477, 1481.

Cited but not construed in Joel Bailey Davis Co. v. Augustus, 10 Va. 856, 54 S. E. 985.

For W. Va. decisions on similar statute see Justis' Annotations, chap ter 87, section 3.

Sec. 5405. Recordation of inventories and accounts of sales.— Every inventory and account of sales returned under the two pre ceding sections shall be recorded by the clerk in what is known a will books, and indexed as required by section thirty-three hun dred and ninety-two. (Code 1887, § 2675.)

Revisors' Note.—The latter part of this section specifying the boo and requiring indexing is new.

See 2 Barton, C. Pr. (2d Ed.) 708, 738; 1 Min. (4th Ed.) 482-485 4 Min. (3d Ed.) 1477.

For W. Va. decisions on similar statute see Justis' Annotations, chap ter 87, section 4.

Sec. 5406. Liability of fiduciaries, agents, and attorneys, for debt lost by negligence or failure to make defense.—If any fiduciary men tioned before in this chapter, or any agent or attorney at law, shal by his negligence or improper conduct, lose any debt or othe money, he shall be charged with the principal of what is so lost and interest thereon, in like manner as if he had received suc principal. And if any personal representative, guardian, curator or committee shall pay any debt the recovery of which could b prevented by reason of illegality of consideration, lapse of time, o otherwise, knowing the facts by which the same could be so pre vented, no credit shall be allowed him therefor. (Code 1887, 2676.)

General rule as to liability of fiduciaries, &c.—Courts of equity wi not hold fiduciaries, agents or trustees liable for losses in managing trust, where they acted in good faith, in the exercise of reasonable di cretion, and as they would probably have done in their own matter Lovett v. Thomas' Adm'r, 81 Va. 245; McCall v. Peachy's Adm'r, 3 Mun 288; Watkins v. Stewart, 78 Va. 111; Elliott v. Carter, 9 Grat. 541; Dav v. Harman, 21 Grat. 194; Lingle v. Cook's Adm'rs, 32 Grat. 262, 269 Douglass v. Stephenson's Ex'r, 75 Va. 747; Myers' Ex'r v. Zetelle, 21 Gra 733, and note Va. Rep. Anno., where all the Virginia cases are collected Davis v. Harman, 21 Grat. 194, note, Va. Rep. Anno.; Bernard v. Maur 20 Grat. 434; Williams' Adm'rs v. Skinker, 25 Grat. 507; Pidgeon Williams, 21 Gratmis-1; Hale v. Wall, 22 Grat. 424; 4 Min. (3d Ed. 1481.

When fiduciaries not responsible.—Compromise of a doubtful clai by personal representative is no devastavit, and he cannot be held r sponsible. Turpin v. Chesterfield Coal & Iron Min. Co., 82 Va. 74. B see section 5440, as to necessity of ratification by court of equity. Se also, 1 Min. (4th Ed.) 477, and cases there cited.

A personal representative is not bound to sue for the recovery of debt due the estate, where it is apparent that the debtor is unable pay it. Mitchell's Adm'r v. Trotter, 7 Grat. 136; Lovett v. Thomas' Adm' 81 Va. 258.

Where the loss of the debt was incurred from the extraordinary d preciation in value of the property covered by the deed of trust, rath than for any culpable neglect on the part of the executor, the execut should not be held responsible. Nelson's Ex'r v. Page, 7 Grat. 160.

When fiduciaries are responsible.—A personal representative who h entrusted a due bill of his intestate to an attorney for collection will held personally liable for the debt if, after hearing that the attorney h

Digitized by Google

let the note run out of date, he fails to bring suit while the attorney is solvent. Mills' Adm'r v. Talley's Adm'r, 83 Va. 361, 5 S. E. 368.

The executor ought not to be allowed a credit for paying a gambling debt of testator. Carter's Ex'rs v. Cutting, 5 Munf. 223.

Interest on debts lost.—Before this section was enacted (Code 1849, chapter 132, section 6) fiduciaries were not liable for interest on debts lost by their negligence or misconduct. Roots v. Stone, 2 Leigh 650; Chapman's Adm'rs v. Shepherd's Adm'r, 24 Grat. 377, 382; Stearns v. Mason, Id. 494; Barton, C. Pr. (2d Ed.) 715, 716; 3 Min. (2d Ed.) 338; 1 Min. (4th Ed.) 476.

Statutes of limitation—When fiduciary must plead.—It is the duty of personal representative, etc., to interpose the bar of the statute of limitations to every claim not asserted within the statutory period. Smith v. Pattie, 81 Va. 654, 663; Tunstall v. Pollard, 11 Leigh 1; Trimyer v. Pollard, 5 Grat. 460; Bell v. Crawford, 8 Grat. 110; 4 Min. (3d Ed.) 1482. This is for the protection of the other creditors, or of legatees or distributees of the decedent. Tunstall v. Pollard's Adm'r, 11 Leigh 1. See, also, 1 Min. (4th Ed.) 477.

Not only is it the duty of the personal representative to make this defense in equity as well as at law, but he or any person interested may do so, where an account has been ordered or taken for administering the assets in equity, by an exception to the report of the commissioner. Smith v. Pattie, 81 Va. 654, 665.

This section does not require a personal representative, etc., to plead the statute of limitations to a claim apparently barred, where he knows facts making statute inapplicable. Radford v. Fowlkes, 85 Va. 820, 8 S. E. 817.

New promise by personal representative.—When the claim was barred in the lifetime of the testator or intestate, no promise of the personal representative can revive the claim so as to take it out of the statute. Smith v. Pattie, supra.

But the personal representative may, where the debt is known to be just and is about to be barred after death of the testator or intestate, make a promise to pay, which will prevent the operation of the statute. Smith v. Pattie, 81 Va. 665; Bishop v. Harrison's Adm'r, 2 Leigh 537.

Statute applied.—Joint obligor whose liability has ceased cannot be compelled to contribute to reimburse co-obligor who has paid the debt. Turner's Adm'r v. Thom, 89 Va. 745, 17 S. E. 323. On the statute generally, see Barton, C. Pr. (2d Ed.) 712, 721, 746, 868.

As to jurisdiction of equity in fiduciary matters, see Zetelle v. Myers, 19 Grat. 62; Simmons v. Simmons' Adm'r, 33 Grat. 456; Huff v. Thrash, 75 Va. 548; Coffman v. Sangsten, 21 Grat. 263; Thornton v. Thornton, 31 Grat. 212.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 87, section 5.

Sec. 5407. How judgment may be entered against personal representative; when costs to be paid out of his own estate.—A judgment or decree against any person, as the personal representative of a decedent, or committee of a convict or an insane person, for a debt due from such decedent, convict, or insane person, may, without taking an account of the transactions of such representative or committee, be entered to be paid out of the personal estate of such decedent, convict, or insane person in, or which shall come to, the hands of the representative or committee to be administered. When the court enters of record, that if he had prudently discharged his duty, the suit or motion would not have been brought or made, the judgment or decree, so far as it is for costs, shall be entered to be paid out of his own estate. (Code 1887, § 2677.)

As to suit on bond of personal representatives, see section 5388.

See Burks' Pleading and Practice, pp. 72, 630.

Digitized by Google

Sec. 5408. When fiduciaries to exhibit their accounts before commissioners for settlement; what entry to be made by commissioners in their books.—A statement of all money which any personal representative, guardian, curator, or committee shall have received, or become chargeable with or have disbursed, within one year from the date of the order conferring his authority, or within any succeeding years, together with the vouchers for such disbursements, shall, within six months after the end of every such year, be exhibited by him before the commissioner of accounts of the court wherein the order conferring his authority was made, and a statement of all the money which any trustee, acting under a trust created since the first day of July, eighteen hundred and fifty, shall have received or become chargeable with, or have disbursed within a year from the date of such trust, or within any succeeding year, together with the vouchers for such disbursements, shall within six months after the end of every such year be laid by him before the commissioner of accounts of the court wherein the instrument creating the trust was first recorded; and the said commissioner shall state, settle, and report to the court an account of the transactions of any such fiduciary, as provided by law. If any such fiduciary fail to make such exhibit, as herein required, the commissioner and the court shall proceed against him in like manner, and the court shall impose the same penalty, unless such fiduciary is excused for sufficient reason, as is herein provided in cases where fiduciaries fail to return inventories of their respective estates. The commissioner shall enter in his record book, in a separate column, the date of each settlement of fiduciary accounts made by him. This section and section fifty-four hundred and four are subject to the proviso that if after a deed of trust is given on land lying in a county, and before a sale thereunder said land is taken within the limits of an incorporated city, the returns of the trustee and settlement of his accounts shall be before the commissioner of accounts of such city. (Code 1887, § 2678; 1916, p. 511.)

Revisors' Note.—The words "within six months after the end of every such year" appearing in lines thirteen and fourteen of the text are new. The last sentence is new and covers the amendment of 1916 (Acts 1916, p. 511). See revisors' note to section 5404.

Where a settlement has been made, but, by mistake, not before a commissioner of proper court, and the whole matter is gone into in a subsequent proceeding, the executor may be allowed compensation. Moorman v. Crockett, 90 Va. 185, 197, 17 S. E. 875.

Personal representative is chargeable with sums actually collected, and not with estimates made by him as to what may be collected on claims due the estate. Fauber's Adm'rs v. Gentry's Adm'r, 89 Va. 312, 15 S. E. 899.

When intestate in her lifetime, by deed of gift, disposed of her entire personal property so that there was nothing to go or that did go at her death into the hands of her administrator, a bill against him for an accounting should be dismissed. Perdue's Adm'r v. Dillon, 89 Va. 182, 15 S. E. 385.

The rule that where a party relies on an account furnished by the

Digitized by Google

other party, and claims the benefit of credits, he is bound to take all together, and admit the debts also, unless he can surcharge and falsify it by proofs, is not applicable to an executor's account, nor to any other case where there is a trust or confidence. Robertson v. Archer, 5 Rand. 319.

This chapter is complete and protects every interest as amply as a formal suit in chancery. Carter v. Skilman, 168 Va. 204, 60 S. E. 775.

Cited but not construed in Joel Bailey Davis Co. v. Augustus, 105 Va. 856, 54 S. E. 985.

As to failure of fiduciary to comply with this section, see notes to section 5409.

See Barton, C. Pr. (2d Ed.) 708; 1 Min. (4th Ed.) 482, 485; 3 Min. (2d Ed.) 633, 634; 4 Min. (3d Ed.) 1478, 1479.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 87, section 6.

See Gregory's Forms No. 23.

Sec. 5409. When fiduciaries to forfeit their commissions, etc.—If any such fiduciary wholly fail to lay before such commissioner a statement of receipts for any year, within six months after its expiration, and though a statement be laid before the commissioner, yet if such fiduciary be found chargeable for that year with any money, not embraced in the said statement, he shall have no compensation for his services during said year, nor commission on such money, unless allowed by the court. This section shall not apply to a case in which, within six months after the end of any year, such fiduciary shall have given to the parties entitled to the money received in such year, a statement of the said money, and actually settled therefor with them; nor to a case in which, within the said six months after the end of any year, a fiduciary shall have laid a statement of his receipts within such year before a commissioner in chancery, who may, in a pending suit, have been ordered to settle his account. (Code 1887, § 2679.)

Former rule—Absolute forfeiture.—Previous to enactment of 1867, no discretion was given the court to allow commissions to fiduciaries failing to file statement of receipts in prescribed time. Robertson v. Gillenwaters, 85 Va. 119; Strother v. Hull, 23 Grat. 670; Moses v. Hart's Adm'r, 25 Grat. 795; Crigler's Committee v. Alexander's Adm'r, 33 Grat. 678; Wood's Ex'r v. Garnett, 6 Leigh 271; Boyd's Ex'rs v. Boyd's Heirs, 3 Grat. 115; Morris' Adm'r v. Morris' Adm'r, 4 Grat. 293; Frazier v. Frazier, 77 Va. 796; 3 Min. (2d Ed.) 634; 4 Min. (3d Ed.) 1479, 1480.

Present rule—Court has discretion.—But by the present statute commissions in such case are not absolutely forfeited, but may be allowed in the discretion of the court. Brent's Adm'r v. Clevinger, 78 Va. 12; Trevelyan's Adm'r v. Lofft, 83 Va. 148, 1 S. E. 901; Barton, C. Pr. (2d Ed.) 764.

The right of a fiduciary to compensation is not a vested one, but is derived from statutes; therefore the requirements of the statutes are mandatory. The loss of compensation as a consequence of failure to comply with these statutes is the only effectual mode of enforcing them. Wood's Ex'r v. Garnett, 6 Leigh 276; Crigler's Committee v. Alexander's Ex'r, 33 Grat. 674. Compensation ought in no case to be allowed a delinquent fiduciary, except where he gives such a reasonable excuse for his failure to comply with the law that to refuse to comply would be inequitable. This will depend upon the circumstances of each particular case. Trevelyan's Adm'r v. Lofft, 83 Va. 141, 1 S. E. 901; Brent's

Digitized by Google

Adm'r v. Clevinger, 78 Va. 12; Lovett v. Thomas' Adm'r, 81 Va. 245; Ward v. Funsten, 86 Va. 369, 10 S. E. 415; 3 Min. (2d Ed.) 633. See, also, Davidson v. Pope, 82 Va. 747, 750, 1 S. E. 117; Strother v. Hull, 23 Grat. 652.

When fiduciary does not forfeit commissions—Reasonable excuse.—Where, in pending suit, the estate is being settled by the court, the fiduciary does not forfeit his commissions for failure to comply with this section. Fauber's Adm'rs v. Gentry's Adm'r, 89 Va. 312, 15 S. E. 899.

Where personal representative yearly laid his accounts before commissioner of accounts, the failure of the latter to audit, state, and report them cannot cause the latter to lose his commissions. Lovett v. Thomas' Adm'r, 81 Va. 245.

Prevention by the Civil War was a reasonable excuse. Brent's Adm'r v. Clevinger, 78 Va. 12; Moses v. Hart's Adm'r, 25 Grat. 795.

Where a settlement has been made, but by mistake not before a commissioner of proper court, and the whole matter is gone into in a subsequent proceeding, the executor may be allowed compensation. Moorman v. Crockett, 90 Va. 197, 17 S. E. 875.

A fiduciary who failed to make annual settlements or any statement to the beneficiaries, as required by this section and section 5408, and whose only excuse was that he did not deem it necessary, as he had annually paid the interest, is not entitled to commissions, and his right to future commissions will depend upon his future conduct. Ward v. Funsten, 86 Va. 369, 10 S. E. 415.

Generally.—A fiduciary who fails to settle his account as required by this section and who offers no sufficient excuse for his failure so to do forfeits his commission under this section. Crismond v. Jones, 117 Va. 34, 83 S. E. 1045.

Cited but not construed in Carter v. Skilman, 108 Va. 204, 60 S. E. 775.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 87, section 7.

Sec. 5410. How compelled to exhibit their accounts for settlement.—When any such fiduciary shall have so failed to lay before such commissioner a statement of his receipts for any year, a commissioner before whom the said statement might have been laid, shall, upon request made to him, within ten years from the commencement of such year, by any person who is interested as creditor, legatee, distributee, surety of such fiduciary, or otherwise, or who appears as next friend of an infant so interested, issue a summons, directed to the sheriff or other officer of any county or corporation, requiring him to summon such fiduciary to lay before the commissioner a statement of his receipts and disbursements, accompanied by his vouchers, for such year, and for the time which may have since elapsed. If the same be not, within one month after the service of such summons, laid before the commissioner who issued it, he shall, on being requested so to do, report the fact to the court which, or the clerk of which, appointed him; and said court shall take such measures to compel the performance by the fiduciary of his duty as could be taken if an express order of the court had been disobeyed. (Code 1887, § 2680.)

Cited but not construed. Carter v. Skilman, 108 Va. 204, 60 S. E. 775.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 87, section 8.

Sec. 5411. Accounts of a fiduciary settled in a chancery cause to

Digitized by Google

be certified to clerk of court in which he qualified; fees allowed clerk, and how paid.—When the account of any fiduciary is settled in a chancery cause, it shall be the duty of the clerk of the court in which said cause is, as soon as may be after a final decree therein, to certify to the clerk of the court wherein the fiduciary qualified, a copy of such account so far as the same has been confirmed, with a memorandum at the foot thereof stating the style of the suit and the date of such final decree. The account and memorandum so certified shall be recorded by the clerk to whom it is certified, in the book in which accounts of fiduciaries are required to be recorded under section fifty-four hundred and twenty-eight, and if in a proceeding subsequent to such final decree, by appeal or otherwise, the account shall be reformed or altered, a copy of such reformed or altered account shall in like manner be certified and recorded, together with a memorandum stating the style of the suit and the date of the decree of confirmation. When the clerk of the court in which the cause may be, is also clerk of the court in which or before whom the fiduciary qualified, he shall make the memoranda and recordations required by this section, and shall for such purpose use the original papers. For making any copy under this section, the clerk shall be entitled to the fees prescribed in like cases, and for recording such account of the fiduciary he shall be entitled to the fees allowed for recording accounts settled ex parte; the fees for copying and recording to be paid as the court, in which the cause may be, or the judge thereof, shall direct. (Code 1887, § 2681.)

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 87, section 7.

Sec. 5412. How record books furnished to commissioners and paid for; to be delivered to successors.—The clerk of each court shall furnish to the commissioner of accounts of said court a suitable record book and other such books as may from time to time be needed, which shall be paid for as other books used for public records; and whenever a commissioner shall cease to act as such, the said books shall be delivered to his successor. (Code 1887, § 2682.)

Sec. 5413. When fiduciaries personally liable for costs.—The costs of all proceedings against fiduciaries failing, without good cause, to make the returns and exhibits required, shall be paid by them personally, and they shall receive no allowance for the same in the settlement of their accounts. (Code 1887, § 2683.)

Sec. 5414. Fees of commissioners of accounts; not to be paid unless sworn to.—The fees of commissioners of accounts for the special duties hereinbefore imposed upon them shall be the same as are now allowed by law to commissioners in chancery, and the said commissioners of accounts shall, in all cases, return with their accounts affidavits subscribed by them as to the time they were occupied in settling said accounts. And unless and until such affidavits are re-

Digitized by Google

turned, the said commissioners of accounts shall not be entitled to any compensation for their services. (Code 1887, § 2684.)

Sec. 5415. When court may require another commissioner to settle accounts of a fiduciary; what he shall certify to commissioner of accounts; receipts to be given fiduciaries for vouchers; effect thereof as evidence.—On motion of any fiduciary having charge of an estate, or of any person interested therein, the court, or the judge thereof in vacation, may require any one of its commissioners in chancery to settle the accounts of such fiduciary; and, whenever a court deems it proper, it may require any one or more of its commissioners in chancery to settle the accounts of any of the fiduciaries mentioned in the preceding sections of this chapter. A commissioner making a settlement under such order of a court shall, within thirty days, report the fact and date of such settlement to the commissioner of accounts, who shall make an entry of the same in his record book. Any commissioner having before him the accounts of a fiduciary for settlement shall, on request, execute and deliver to such fiduciary a receipt for all vouchers filed with him, which receipt, if said vouchers be afterwards lost or destroyed, shall, in any suit or proceeding against such fiduciary, be evidence of the delivery to such commissioner of the vouchers therein mentioned. (Code 1887, § 2685.)

Sec. 5416. Commissioners to examine and report on official bonds of fiduciaries.—When any personal representative, guardian, curator, or committee, except a sheriff or other officer, shall have laid the statement required by section fifty-four hundred and eight before a commissioner, he shall examine whether said fiduciary has given such bond as the law requires, and whether it is in a penalty, and with sureties sufficient. Any commissioner of the court in which the order was made conferring on said fiduciary his authority, shall, at any time before such statement is laid before a commissioner, upon the application of any person who is interested or appears as next friend of an infant interested, after reasonable notice to such fiduciary, examine into any of the said matters, or inquire whether security ought to be required of a fiduciary who may have been allowed to qualify without giving it, or whether, by reason of the incapacity, misconduct, or removal of any fiduciary from this State, or for any other cause, it is improper to permit the estate of the decedent, ward, or other person, to remain under his control. The result of every such examination and inquiry shall be reported by the commissioner to the court by which he is appointed. (Code 1887, § 2686.)

Cited but not construed in Hurt v. Bristol, 104 Va. 213, 51 S. E. 223; Carter v. Skilman, 108 Va. 204, 60 S. E. 775.

Sec. 5417. When court may require fiduciary to give new bond, or revoke his authority.—The court under whose order or under the order of whose clerk any such fiduciary derives his authority, on the

Digitized by Google

application of any surety or his personal representative, shall, or when it appears proper, on such report of the clerk or a commissioner, or on evidence adduced before it by any party interested, may, at any time, whether such fiduciary shall or shall not have before given bond, or whether he shall have given one with or without sureties, order him to give before such court a new bond in a reasonable time to be prescribed by it, in such penalty, and with or without sureties, as may appear to it to be proper, and may, if such order be not complied with, or whenever from any cause it appears proper, revoke and annul his powers; but no such order shall be made unless reasonable notice appear to have been given to such fiduciary by the commissioner who made such report, or by the surety or his representative making the application aforesaid, or by the service of a rule or otherwise; and no such order or revocation shall invalidate any previous act of such fiduciary. (Code 1887, § 2687.)

History of section.—Under the law at the time of the revision of 1849, a new bond of certain fiduciaries, when executed, related back to the time of the qualification of the fiduciary, bound the sureties in the new bond from that time, and discharged the sureties in the former bond, except in pending suits on the former bond, in which case the securities in that bond were indemnified in the new bond. The bond provided in this section has no relation back, and the sureties in the former bond are not discharged from any liabilities incurred thereunder before the execution of the new bond. See Burks' Address, Barton L. Pr. (2d Ed.), p. 1397.

Effect of new bond.—Where a new bond is given, the sureties in the old bond are discharged from future liability. If an additional bond be given, the old sureties remain liable for past defaults, while as to the future both sets of sureties become jointly liable. 8 Va. Law Reg. 511. See section 281, and notes. Cases construing former statute, Lingle v. Cook's Adm'rs, 32 Grat. 262, 274; Greenesville Justices v. Williamson, 12 Leigh 93.

Where a guardian, who has given one bond, with sureties, afterwards of his own motion gives another, the latter bond relates back to his appointment as guardian, and the sureties in the first bond are discharged. Sayers v. Cassell, 23 Grat. 525. (Decided in 1873.)

The sureties on the first bond cannot escape if, when they plead the new bond, the counter plea of nul tiel record is sustained. Greenesville Justices v. Williamson, 12 Leigh 93. See Burks' Address, Barton, L. Pr. (2d Ed.) 1396.

Power to remove fiduciaries.—As to the power of court to remove executors from offices and circumstances justifying such action, see Reynolds v. Zink, 27 Grat. 29; Snavely v. Harkrader, 29 Grat. 112, 128.

Appellate court will interfere only where manifest injustice has been done, or it is plain that proper case has not been made out, for exercising such power. Id.

Revocation of appointment of guardian void under former statute, at least as to persons dealing with guardian as such, without notice thereof, because revocation was made without any summons to guardian to answer being served on him and without any appearance by him. Bank of Virginia v. Craig, 6 Leigh 399.

Generally.—If, after removal of guardian, he collects money due the ward, he and his surety are accountable therefor, and if the payment be made in good faith by one ignorant of the aforesaid removal. Sage v. Hammonds, 27 Grat. 651. See 4 Min. (3d Ed.) 1478.

Ample provision is made whereby any person interested in the estate

Digitized by Google

of a lunatic may for cause shown, have his committee removed, his a counts corrected, his expenditures restrained, and such relief grant as will assure the proper fulfillment by the committee of the duties his office. Lake v. Hope, 116 Va. 687, 82 S. E. 738.

Discussed, 9 Va. Law J. 1.

For W. Va. decisions on similar statute, see Justis' Annotation chapter 87, section 10.

Cited but not construed in Hurt v. Bristol, 104 Va. 213, 51 S. 223.

Sec. 5418. May appoint new fiduciary when authority of form one is revoked.—At or after the date of any order revoking and a nulling the powers of any fiduciary, the court in which he qualifie shall exercise such jurisdiction, either by appointing an admini trator de bonis non, or a new guardian, or otherwise, as it cou have exercised if the said fiduciary had died at that date. (Co 1887, § 2688.)

Sec. 5419. Resignation by fiduciary of his trust.—Any person representative, guardian, or committee (except a sheriff or oth officer to whom an estate has been committed) may be allowed b the court in which, or before the clerk of which, he qualified, when he qualified in a county court or in a corporation or hustin court which has been or may be abolished, by the circuit court f such county or corporation, to resign his trust after his accoun as such fiduciary have been stated and settled in the mode pr scribed by law; but such resignation shall not invalidate any a done or affect any liability incurred by him while holding su trust. (Code 1887, § 2689; 1904, p. 272.)

Sec. 5420. Proceedings for receiving proof of debts by commi sioners.—Any commissioner who has for settlement the accounts a personal representative of a decedent shall, when requested so do by such representative, or any creditor, legatee, or distribut of the decedent, appoint a time and place for receiving proof debts or demands against the said decedent or his estate, and twen days before the said time post a notice of such time and place the front door of the court house of the court of the county or ci wherein such fiduciary qualified, and also at two or more publ places in the neighborhood of the place where the account is to taken. (Code 1887, § 2690; 1904, p. 116.)

Revisors' Note.—Posting of four weeks, beginning on the first d of a term of a circuit or corporation court was formerly required. Th period has been reduced to twenty days, and the posting need not beg on the first day of a term.

Cited but not construed in Carter v. Skilman, 108 Va. 204, 60 S. 775.

Sec. 5421. Report of debts, when and how made.—The commi sioner may adjourn from time to time for receiving such proof, a shall, within one year from the time first appointed for receivi such proof, make out an account of all such debts or demands may appear to him to be sufficiently proved, stating separately tho of each class. (Code 1887, § 2691.)

Digitized by Google

Cited but not construed in Carter v. Skilman, 108 Va. 204, 60 S. E. 5.

Sec. 5422. How claims filed before commissioners; time within ich statutes of limitation not to run.—Any person, having any h debt or demand and desiring to prove the same, shall file his im or a written statement thereof before the commissioner, who ll endorse thereon the date of the filing, and sign the endorse-nt in his official character; and the time that elapses between h filing and the termination of the proceedings commenced un- section fifty-four hundred and twenty, shall not be computed as art of the time within which, under any statute or rule of law, nay be necessary, in order to prevent a bar of the claim, to bring action or institute any proceeding for the recovery or enforce-nt of such claim. (Code 1887, § 2692.)

Cited but not construed in Carter v. Skilman, 108 Va. 204, 60 S. E.

Sec. 5423. How and when commissioners to post list of fiduci-es, whose accounts are before them for settlement; no account to completed until this is done.—Every commissioner shall, on the t day of any circuit or corporation court of his county or cor-ration, or on the first Monday in any month, in any county, post the front door of the courthouse of such circuit or corporation rt a list of the fiduciaries whose accounts are before him for set-ment, stating the names of such fiduciaries, the nature of their counts, whether as personal representative, guardian, curator, nmittee, or trustee, and the name of their decedents, or of the rsons for whom they are guardians, curators, or committees, or der whose deed or other instrument of trust they are acting. No count of any fiduciary shall be completed by any commissioner til it shall have been mentioned in such list, for ten days after ing so mentioned. (Code 1887, § 2693; 1904, p. 115.)

The provisions of this section apply to the report, regular or spe-l, mentioned in section 5430; and consequently the court cannot, der section 5430, make an order lending out or investing the money erein referred to until the commissioner has posted the notice as herein uired. Whitehead's Adm'r v. Whitehead, 23 Grat. 376.

Cited but not construed in Carter v. Skilman, 108 Va. 204, 60 S. E. 5.

Sec. 5424. For what time settlements to be; what may be insisted or objected to before commissioners.—When a commissioner has fore him for settlement the account of a fiduciary for any year, there be any time prior to such year for which the fiduciary has t settled, the settlement shall be also for such time. Any person ho is interested, or appears as next friend for another interested any such account, may, before the commissioner, insist upon or ject to anything which could be insisted upon or objected to by im, or for such other, if the commissioner were acting under an rder of a court of chancery for the settlement thereof, made in a it to which he or such other was a party. (Code 1887, § 2694.)

Digitized by Google

Sec. 5425. Expenses and commissions allowed fiduciaries.—Th commissioner, in stating and settling the account, shall allow th fiduciary any reasonable expenses incurred by him as such; an also, except in cases in which it is otherwise provided, a reasonabl compensation, in the form of a commission (on receipts), or othe wise. (Code 1887, § 2695.)

Reasonable expenses.—Expense of recovering a runaway negro money paid for hire of slave to make crop on decedent's estate, proceed of which are credited to the estate, are reasonable expenses. Nimmo Com., 4 Hen. & M. 57. Also counsel fees, though greater than allowe by law. Lindsay v. Howerton, 2 Hen. & M. 9. Also moneys paid an advanced for clothes, schooling, and other necessary expenses, an these should be allowed out of principal of ward's estate, if it appea such disbursements were unavoidable without culpable neglect on part o guardian; otherwise such allowance ought to be made out of profit only. Hooper v. Royster, 1 Munf. 119. See section 5321 and revisors note. Also clerk hire, renting counting room, postage, etc. Hipkins Bernard, 4 Munf. 83; Farneyhough's Ex'rs v. Dickerson, 2 Rob. 582 Guardian should be credited for repairs to ward's houses, though unabl to say to which particular houses repairs were made. Newton v. Poole 12 Leigh 112, 140. See 4 Min. (3d Ed.) 1483.

These "reasonable expenses" have preference to claims of creditors Nimmo v. Com., 4 Hen. & M. 57.

Where vouchers are wanting, an article ought to be allowed o oath of defendant, if it be of such nature that the expense probably mus have been incurred, or that, perhaps, a voucher for it could not hav been procured, e. g., mourning for widow, midwife fees, carpenter's fee McCall v. Peachy's Adm'r, 3 Munf. 289; Newton v. Poole, 12 Leigh 140 Beverley v. Miller, 6 Munf. 99; 4 Min. (3d Ed.) 1485.

Commissions to fiduciaries.—The amount of commissions to be a lowed to a personal representative is not fixed by law, and though per cent. on receipts (not disbursements) is generally allowed, yet thi allowance may be increased, and the court of probate is the most com petent tribunal to make the allowance. Appellate court will be dis inclined to disturb the allowance, especially after long acquiescenc therein by distributees of estate. Boyd's Sureties v. Oglesby, 23 Gra 675; Whitehead v. Whitehead, 85 Va. 878, 9 S. E. 10; Lovett v. Thoma Adm'r, 81 Va. 256; Waddy's Ex'r v. Hawkins' Adm'r, 4 Leigh 458; Min. (3d Ed.) 1487. Seven and a half per cent. on receipts and dis bursements allowed, the real and personal estate both having bee managed by the executor. Fitzgerald v. Jones, 1 Munf. 150. See, also Triplett's Ex'rs v. Jameson, 2 Munf. 242. Ten per cent. allowed on re ceipts where debts were small and debtors dispersed. Cavendish Fleming, 3 Munf. 198; McCall v. Peachey, 3 Munf. 288. See, also, 4 Mi (3d Ed.) 1487, 1488.

Commissions are not to be allowed to the fiduciary upon the valu of property belonging to the estate, and finally turned over to him i kind, unless when it was perishable, or was such property as the fidu ciary might properly have sold, or bonds which he might have collecte but did not, and with consent of cestui que trust paid over to him i kind as so much money. And if the fiduciary appear to have con verted the property of cestui que trust into money with a view to com missions, when there is no sufficient reason therefor, commissions will b denied to him. Gregory v. Parker, 87 Va. 455, 12 S. E. 801; Bank of Vir ginia v. Craig, 6 Leigh 437; Farneyhough's Ex'rs v. Dickerson, 2 Rob 582; Claycomb's Legatees v. Claycomb's Ex'r, 10 Grat. 589; Gran berry's Ex'r v. Granberry, 1 Wash. 249, 1 Am. Dec. 455; 4 Min. (3d Ed. 1488.

Thus, on United States bond held by fiduciary, and from which th interest was collected, the fiduciary is entitled to 5 per cent. commissio on the interest and no more. Gregory v. Parker, 87 Va. 451, 12 S. E. 80

Digitized by Google

nd where slaves are turned over, the executor is not entitled to a commission on the appraised value; but the rule is otherwise as to grain nd other perishable property which by law the executor is entitled to ell. Claycomb's Legatees v. Claycomb's Ex'r, 10 Grat. 589.

On bonds due the estate, passed by executor to the legatees and oluntarily received by the latter, the executor is entitled to commission n the amount of such bonds. Farneyhough's Ex'rs v. Dickerson, 2 Rob. 82. Likewise on bonds or other debts turned into mortgages, which atter were delivered to legatees; also on sales of crops; on money found n the house and disbursed for use of family or invested in bank stock. lipkins v. Bernard, 4 Munf. 83.

An executor is not entitled to commission on the amount of debt due rom him to the testator. Farneyhough's Ex'rs v. Dickerson, 2 Rob. 82; Carter's Ex'r v. Cutting, 5 Munf. 227; 4 Min. (3d Ed.) 1488. Nor s he entitled to commissions but once on the same fund. McCall v. 'eachy's Adm'r, 3 Munf. 297.

A personal representative who pays off a debt secured on stocks, s entitled to the usual commission on the full value of the stock, and s not restricted to a commission on the net value after deducting the ebt secured. Allen v. Virginia Trust Co., 116 Va. 319, 82 S. E. 104.

An executor is generally entitled to a commission of five per cent. n receipts which may be reduced or increased under peculiar circumtances, and this allowance extends to stocks and bonds distributed in ind. Allen v. Virginia Trust Co., 116 Va. 319, 82 S. E. 104.

When a testator fixes the compensation for an executor or trustee nder his will, and the executor or trustee named therein accepts the ppointment, he is entitled to as much and is limited to as little, as the estator has fixed. In cases where the language of the testator is susceptible of more than one construction, the question becomes one of interetation which the courts must settle by ascertaining the probable intention and understanding of the parties. Where no compensation at ll is named in the will, the rule is that the allowance shall be reasonble, being usually five per cent. on receipts, subject to increase or reuction of this rate under peculiar circumstances. Williams v. Bond, 20 Va. 678, 91 S. E. 627.

The executor is entitled to the usual commission, though a legatee nder the will. Granberry's Ex'r v. Granberry, 1 Wash. 246, 1 Am. Dec. 455. But see Jones v. Williams, 2 Call 102; 4 Min. (3d Ed.) 1489.

Commissions have priority over all debts due from decedent. Nimmo's Ex'r v. Com., 4 Hen. & M. 57, 4 Am. Dec. 488.

As to when commissions are forfeited, see section 5409, and notes hereto, 1 Min. (4th Ed.) 490.

As to application of above rules to guardian and ward, see 1 Min. 4th Ed.) 488-492.

See section 5321 and notes.

Interest on Funds in Fiduciaries' Hands—Generally.—Interest is ot affected by the absence abroad of the creditor, nor by the nonxistence of the person entitled to the money, nor, as is presumed, by is hostile alienage. Sharpe's Ex'r v. Rockwood, 78 Va. 24; Burwell's Ex'rs v. Anderson, 3 Leigh 348; Anderson v. Burwell's Ex'rs, 6 Grat. 05; Bourne's Ex'r v. Mechan, 1 Grat. 292; 4 Min. (3d Ed.) 1493.

At the close of an administration account, the interest due from an dministrator is not to bear interest. Morris' Adm'r v. Morris' Adm'r, Grat. 294. But after decree disposing of the fund interest is to be harged from date of decree upon whole fund, principal and interest, lready accrued. Chapman's Adm'rs v. Shepherd's Adm'r, 24 Grat. 377.

When an executor takes bonds for purchases made at a sale of testaor's personal property, he will be charged with interest thereon only rom the end of the year that the bonds fall due. Rosser v. Depriest, 5 Grat. 6, 50 Am. Dec. 94.

As to interest being charged on debt lost by improper conduct of iduciary, see section 5406 and notes; also 4 Min. (3d Ed.) 1491.

Mode of charging interest.—(1) As to mode of charging interest where

Digitized by Google

fiduciary is guardian, see section 5323 and notes; 1 Min. (4th Ed.) 48 499, 500. (2) Where fiduciary is committee of insane person. Crigler Committee v. Alexander's Ex'r, 33 Grat. 674.

Annual balance—Interest thereon.—The propriety of charging exec tor interest on annual balances in his hands depends upon the circun stances of each case. Wood's Ex'r v. Garnett, 6 Leigh 271; Burwell Ex'rs v. Anderson, 3 Leigh 348; Granberry's Ex'r v. Granberry, 1 Was 246. He ought not to be charged interest on small annual balance where he was not in default in not paying them over to legatees, ar never applied the money to his own use. Wood's Ex'r v. Garnett, 6 Leig 271.

Executor should be allowed interest on balances due him on a ministration account. Jones v. Williams, 2 Call 102, and note Va. Re Anno.

The executor should not be charged with compound, but only wit simple, interest upon the yearly balances left over in his hands, unle testator directed that those balances be invested in interest bearin securities. Lovett v. Thomas' Adm'r, 81 Va. 245; Crigler's Commi tee v. Alexander's Ex'r, 33 Grat. 674; Garnett v. Carr, 1 Rob. 196.

But when the beneficiaries are minors, and accumulation for the benefit is the ruling intention of the will, compound interest will b charged, whether the fiduciary be an executor or guardian. Strother Hull, 23 Grat. 663; Garnett v. Carr, 1 Rob. 196; Id., 3 Leigh 407 Handly v. Snodgrass, 9 Leigh 484, note Va. Rep. Anno.

Where the account wrongly charges interest upon interest, yet, it is obvious that, had the account been properly settled, the balanc against the executor would exceed the sum reported to be due, the d cree will not be reversed at the instance of the debtor. Handly Snodgrass, 9 Leigh 484, 490; Carter's Ex'rs v. Cutting, 5 Munf. 238 Burnley's Adm'r v. Duke, 1 Rand. 108.

Interest on annual balances should not be carried into account of su ceeding years.—Though interest ought to be charged on the annu balances, such interest ought not, as in the case of debtors, to be carrie to the account of the succeeding years, in order to deduct the same fro the payments made in such succeeding years (Granberry v. Granberry, Wash. 249); nor to convert it into principal, and make it bear intere (Sheppard's Ex'r v. Starke, 3 Munf. 29).

Fiduciary keeping fund considered a borrower.—If fiduciary pro erly invest funds, he will be liable for interest which he actually r ceived or ought to have received; but if he keeps funds he is presume to have used them, and to have made interest, and therefore he is treate like a borrower. Sharpe's Ex'r v. Rockwood, 78 Va. 24, 35; Templeton Fauntleroy, 3 Rand. 434; Burwell's Ex'rs v. Anderson, 3 Leigh 34 Anderson v. Burwell's Ex'rs, 6 Grat. 405; Bourne's Ex'rs v. Mechan, Grat. 292; Leake's Ex'r v. Leake, 75 Va. 800; Crickard's Ex'r Crickard's Legatees, 25 Grat. 410; 4 Min. (3d Ed.) 1492.

Estimated profits—Interest on.—Interest will be allowed on estimat hires or profits, whether actually received or not, if it was the duty fiduciary to have received them (Cross Curatrix v. Cross' Legatee 4 Grat. 257; Rosser v. Depriest, 5 Grat. 6, 50 Am. Dec. 94; Dabney Cottrell's Adm'x, 9 Grat. 582); thus changing the rule expressed Whitehorn v. Hines, 1 Munf. 557; Dillard v. Tomlinson, Id. 183; Baird Bland, 5 Munf. 492; Roper v. Wren, 6 Leigh 38; 4 Min. (3d Ed.) 149

Settlement prevented by failure of legatees.—Where the failure to bri the executor to settlement proceeded from neglect of the residua legatees, without any wilful default on his part, interest ought not be charged on the balance due from him to the estate except from th date of the decree; neither in such case ought interest to be allowed hi on payments to the legatees before the decree, though made in bon which carried interest. Fitzgerald v. Jones, 1 Munf. 150.

Trustees in Trust Deed.—Where a fiduciary is a trustee in a dee of trust, as to disbursements, commissions, and interest, see section 516 and notes, and Lomax v. Pendleton, 3 Call 538; Beverleys v. Miller, Munf. 99; Coltrane v. Worrell, 30 Grat. 434; Cogbill v. Boyd, 79 Va.

Digitized by Google

W. Va. Decisions.—For W. Va. decisions on similar statute, see stis' Annotations, chapter 87, section 17. See, also, 9 Va. L. Reg. 15, d note.

Sec. 5426. Accounts, etc., to be reported.—Every account stated ıder this chapter shall be reported, with any matters specially ated deemed pertinent by the commissioner, or which may be re-ıired by any person interested to be so stated. (Code 1887, § 96.)

See Gregory's Forms Nos. 335, 336.

Sec. 5427. Where filed; what to be done with vouchers.—The ɔmmissioner shall file the report in the office of the court by which e is appointed, as soon as practicable after its completion, and ıall, with his report, return such of the vouchers or evidence be-ɔre him as any person interested may desire him to return, or as e may deem proper. (Code 1887, § 2697.)

Cited but not construed in Carter v. Skilman, 108 Va. 204, 60 S. E. 75.

Sec. 5428. Court to examine reports and correct any errors; when ɔnfirmed to be recorded; vouchers, etc., to be returned to parties.—he court, after one month from the time the report may have een filed in its office, shall examine the same, with such exceptions ıereto as may be filed, at any time before such examination. It ıall correct any errors which shall appear on the exceptions, and ny appearing on the face of the account, whether excepted to or ɔt; and to this end may commit the report to the same or another ɔmmissioner, as often as it sees cause; or it may cause a jury to e empaneled to inquire into any matter which, in its opinion, should e ascertained in that way; or it may confirm the report in a whole r in a qualified manner, and shall certify in the order that it has ıade a personal examination of said reports, whether excepted to r not. The clerk shall record every report which may be so con-rmed, and at the foot of it, the order of confirmation, in what is nown as will books, and index the same according to the provisions f section thirty-three hundred and ninety-four.

Any vouchers or other evidence remaining with the commissioner t the time of such confirmation, and not wanting for any further ıatter of inquiry before him, shall be returned by him to the party ho filed the same. (Code 1887, § 2698; 1904, p. 268.)

Revisors' Note.—This section is taken from section 2698 of the ɔde of 1887 without the amendment of 1904 (Acts 1904, p. 268). That mendment provided that the account should lie in the clerk's office irty days for exceptions, and should stand confirmed at the expiration f that period if not excepted to. It made it the duty of the court or ıdge to examine only such accounts as to which exceptions were filed. he revisors were of opinion that this amendment deprived estates of the rotection to which they are justly entitled. Settlements which are not xcepted to are often the most objectionable. The revised section goes ven further than the section as it stood before the amendment in that t requires the court TO CERTIFY IN THE ORDER THAT IT HAS

Digitized by Google

MADE A PERSONAL EXAMINATION of the reports, whether excepte to or not. It will be observed that the reports are to be recorded i the will books and indexed according to section 3304.

Exception to commissioner's report of accounts settled by hin should specify with reasonable certainty the grounds of the exception But an exception which points out the particulars in which the commis sioner has failed to obey the order under which he is acting, or whic shows wherein the account is settled on a wrong principle. is suffi ciently specific. Robinett's Adm'r v. Robinett's Heirs, 92 Va. 124, 2 S. E. 856, citing Crockett v. Sexton, 29 Grat. 46; Simmons v. Simmons Adm'r, 33 Grat. 451; Morrison's Ex'r v. Householder's Adm'r, 79 Va 627; Ashby v. Bell's Adm'r, 80 Va. 811; Cralle v. Cralle, 84 Va. 201 6 S. E. 12. See, also, White's Ex'rs v. Johnson, 2 Munf. 285; Cookus v Peyton's Ex'r, 1 Grat. 432.

Ex parte settlements by a master commissioner of the account of a fiduciary shall be taken as correct except so far as the same is falsi fied, and the onus is upon the plaintiff to show that it is not correct When such settlement is made inter partes and is duly returned an confirmed, it cannot be disturbed except for errors upon its face and afte discovered evidence. Radford v. Fowlkes, 85 Va. 820, 8 S. E. 817. Se revisors' note above.

For W. Va. decisions on similar statute, see Justis' Annotations chapter 87, section 21.

See note of Owens v. Owens under section 5429.

Cited but not construed in Carter v. Skilman, 108 Va. 204, 60 S. E 775.

Sec. 5429. Effect of confirmation.—The report, to the extent t which it may be so confirmed, shall be taken to be correct, excep so far as the same may, in a suit, in proper time, be surcharged o falsified. (Code 1887, § 2699.)

Statute declaratory.—This section, enacted first in 1849, is simpl declaratory of the pre-existing rule. Leavell v. Smith's Ex'rs, 99 Va 374, 377, 38 S. E. 202. Rule followed in Anderson v. Fox, 2 Hen. & M 245 (opinion of Judge Tucker); Atwell's Adm'rs v. Milton, 4 Hen. & M 253; Wall's Ex'rs v. Gressom's Distributees, 4 Munf. 110; Wyllie v Venable's Ex'r, Id., 369; Shearman v. Christian, 9 Leigh 571; Wimbis v. Rawlins' Ex'r, 76 Va. 48; Robinett's Adm'r v. Robinett's Heirs, 9 Va. 124, 22 S. E. 856; and cases below.

Audited accounts prima facie evidence.—Though great and nume ous errors appear in the accounts settled by commissioner's report, an even though the executor appear to have taken an unfair advantag and though he never returned to the court and did not exhibit to th creditors any inventory and appraisement of the estate, the audited a counts are to be taken as prima facie evidence, and to be corrected onl so far as they are surcharged and falsified. The audited account res upon the supposed integrity of an impartial tribunal. Newton v. Pool 12 Leigh 112; Leake's Ex'r v. Leake, 75 Va. 792; Carter v. Edmond 80 Va. 61; Green's Adm'r v. Thompson, 84 Va. 392, 5 S. E. 507; Rad ford v. Fowlkes, 85 Va. 820, 841, 8 S. E. 817; Owens v. Owens, 10 Va. 432, 63 S. E. 990.

An ex parte settlement, confirmed by the court, cannot be ove turned by showing that before the account was settled the administrato paid his individual debts by checks drawn by him as administrator o his decedent's estate. It will not be inferred that he has misappropriate the funds belonging to the estate. McIntyre v. Wright, 113 Va. 29 74 S. E. 172.

No appeal from order confirming settlement—Bill to surcharge o falsify.—This section negatives the idea of an appeal from the orde confirming the ex parte settlement and clearly points out the remedy t be pursued by a party who thinks himself aggrieved by an ex parte settl ment of a fiduciary account. The remedy is by bill to surcharge an

Digitized by Google

lsify the ex parte settlement. Owens v. Owens, 109 Va. 432, 63 E. 990.

This section forms no barrier to a bill in equity specifying errors, hether of law or fact, in the settlement. Interested parties may ırcharge such a settled account by specifying items for which credit ıould be given, but which are omitted, or may falsify by pointing out ıarges improperly made. Not only the duty of specifying errors, but so the onus probandi, devolves on the party complaining. Peale v. ickle, 9 Grat. 445; Corbin v. Mills' Ex'rs, 19 Grat. 438.

Upon a bill to surcharge and falsify an executor's account, though aintiff is held to specification of items of surcharge and falsification, et he may always show that the account is erroneous upon its face, and, ithout controverting the items themselves, show that they have been) arranged as to produce results injurious to him. Garrett v. Carr, Leigh 407; Radford v. Fowlkes, 85 Va. 820, 8 S. E. 817.

A bill which states no ground of fraud, accident or mistake, but erely seeks to correct an error which it alleges the commissioner of ccounts made in his settlement, is not sufficient to entitle the com-ainant to reopen the settlement by bill in equity. Johnson v. Com., 17 Va. 506, 85 S. E. 566.

When executor or administrator substituted to rights of creditor.—he faith and credit to which the settled ex parte accounts of a personal presentative are entitled does not extend to items therein that are ot properly executorial, and hence not to payments to creditors over and eyond the personal estate. Therefore, if an executor or administrator, fter exhausting the assets which properly come into his hands, pays debts the decedent out of his own estate, he can only claim to be sub-ituted to the rights of the creditor, and must prove his demand by ie same kind of evidence that would be demanded of the original credi-or. Leavell v. Smith's Ex'rs, 99 Va. 374, 38 S. E. 202; Street's Heirs Street, 11 Leigh 498, 7 Va. Law Reg. 195.

Modifications, etc., of rule of section.—The inconvenience of the ule in this section has given rise to a few modifications and exceptions, hen necessary to attain the justice of the case. Thus, where the settle-ents are erroneous upon their face, or do not profess to be final or to mbrace all the transactions of the executors, the court will have the ccounts reformed by the commissioner. Chapman's Adm'rs v. Shep-erd's Adm'r, 24 Grat. 377, 390; Shugart's Adm'r v. Thompson's Adm'r, 0 Leigh 443, note Va. Rep. Anno.

Impeachment of reports—When not allowed.—Commissioners' re-orts not excepted to cannot be impeached before an appellate court in elation to matters which may be affected by extraneous testimony. eters v. Neville's Trustee, 26 Grat. 549; Cole's Committee v. Cole's dm'r, 28 Grat. 365; Simmons v. Simmons' Adm'r, 33 Grat. 451; Rad-ord v. Fowlkes, 85 Va. 820, 8 S. E. 817. See note to section 5428.

Generally.—This section applies to merits of the accounts of a com-ittee of a lunatic. Carter v. Edmonds, 80 Va. 58.

This chapter is complete and protects every interest as amply as a ormal suit in chancery. Carter v. Skilman, 108 Va. 204, 60 S. E. 775.

As to limitation of suit against fiduciaries, see section 5811. See otes to this section, also to section 5428.

For W. Va. decisions on similar statute, see Justis' Annotations, hapter 87, section 22.

Sec. 5430. Court may order money in hands of fiduciary to be invested, etc.—When it appears by a report made as aforesaid or a pecial report of the commissioner, that money is in the hands of ny fiduciary, the court, in the clerk's office of which said report is led, may order the same to be invested or loaned out, or make uch other order respecting the same as may seem to it proper. Code 1887, § 2700; 1904, p. 268.)

Digitized by Google

The provisions of section 5423 apply to the report, regular special, mentioned in this section; consequently the court cannot und this section make an order lending out or investing the money here referred to until the commissioner has posted the notice as required section 5423. Whitehead's Adm'r v. Whitehead, 23 Grat. 376.

This section only applies to such fiduciaries as represent the cou and has no application to funds in the hands of a committee of a lunat Hurt v. City of Bristol, 104 Va. 213, 51 S. E. 223.

Cited but not construed in Carter v. Skilman, 108 Va. 204, 60 S. 775.

For W. Va. decisions on similar statute, see Justis' Annotatio chapter 87, section 23.

Sec. 5431. Executors and other fiduciaries may invest in Virgin three per centum bonds issued by virtue of an act approved Febr ary fourteenth, eighteen hundred and eighty-two.—Executors, a ministrators, trustees and other fiduciaries may invest the fun held by them in a fiduciary capacity in the following securiti which are and shall be considered lawful investments:

In the bonds issued under the act approved February fourteent eighteen hundred and eighty-two, commonly known as the Riddl berger bonds, and in what are commonly called century bonds this State;

In the stock or bonds or interest-bearing notes or obligations the United States or those for which the faith of the United Stat is pledged to provide for the payment of the principal and intere including the bonds of the District of Columbia;

In the bonds of any county, city or town in Virginia, provid the amount of the bonds of such county, city or town, includi the issue in which such investment is made does not exceed eighte per centum of the assessed value of the real estate in the count city or town subject to taxation as shown by the last preceding a sessment for taxes, and provided the said bonds are the direct o ligation of the county, city or town issuing the same, and for whi the faith and credit of the issuing county, city or town is pledge

In bonds and negotiable notes secured by first mortgage or fi deed of trust on unencumbered real estate in the State of Virgini not to exceed eighty per centum of the assessed value of said re estate and improvements. Before any loan is made upon re estate the lender shall be furnished with a satisfactory abstract title, certificate of title or title insurance policy and a fire insu ance policy in an old line company with loss if any made payab to the trustee as his interest may appear. (1897-8, p. 280; 191 p. 809.)

Revisors' Note.—The act from which this section was taken w amended twice at the session of 1918. See Acts 1918, pp. 271, 4 See, also, section 2595.

Sec. 5432. How securities transferred to successor.—When a securities for money loaned or invested shall be standing in t name of any fiduciary who shall have died, resigned or whose pow shall have been revoked, and such fiduciary or his personal repr

Digitized by Google

ıtative shall not have transferred such securities to his successor, e court in which such fiduciary shall have qualified, upon the petiən of such successor, or of any other person interested, may rect such securities to be transferred to such successor, or a reiver of the said court or otherwise, and may direct the dividends, terest, or proceeds of the said securities to be received or paid in ch manner as the said court shall think proper. (Code 1887, § 01.)

Sec. 5433. Court may order payment of amounts due from certain luciaries to persons entitled.—When a report of the accounts of y guardian, curator, committee, or trustee aforesaid, shall be conmed, either in whole or in a qualified manner, the court, in the erk's office of which said report is filed, may order payment of hat shall appear due on such accounts to such persons as would entitled to recover the same by suit in equity. (Code 1887, § 02; 1904, p. 268.)

Cited but not construed in Carter v. Skilman, 108 Va. 204, 60 S. E. 5.

Sec. 5434. When report of accounts of personal representative, id of debts of decedent, confirmed, court to order payment of ebts.—When a report of the accounts of any personal representave, and of the debts and demands against the decedent's estate all be confirmed as aforesaid, the court shall order to be applied the payment of such debts and demands so much of the estate in e hands of such representative, and to such creditors as shall apear proper, reserving, where it seems to the court reasonable to so, to meet a claim of a surety for the decedent, or any other ontingent claim against the estate, the proof of which has to be eferred, or to meet any other claim not finally passed upon, such m as it may deem sufficient to pay it or a proportion thereof equal what is ordered to be paid to other creditors of the same class, ould the payment of it or such proportion afterwards appear roper. (Code 1887, § 2703; 1904, p. 268.)

Cited but not construed in Carter v. Skilman, 108 Va. 204, 60 S. E. 75.

Sec. 5435. How sum reserved for dividend on contingent claim to e paid, when it is established.—Upon any such claim being allowed ubsequent to any dividend, there shall be ordered to be paid out of ne estate remaining in the hands of the representative or under the ontrol of the court (without regarding any debt of superior dignity or which there may have been no such reservation), the amount f such claim, or a proportion thereof, equal to what shall have een paid to other creditors of the same class, if there be enough emaining to pay the same, or such proportion, but the former divilend shall not be disturbed. (Code 1887, § 2704.)

Sec. 5436. How assets applied at subsequent dividends.—When, t the time of any dividend, the whole assets are not distributed, or

Digitized by Google

when further assets afterwards come to the hands of the perso representative, if, after paying such proportion as is mentioned the two preceding sections, or any claim allowed subsequent to su dividend, there remain a surplus, it shall be divided among all creditors who shall have proved debts and demands against the cedent's estate, in the order and proportions in which they may entitled. (Code 1887, § 2705.)

Sec. 5437. When distribution to be made of estate of decede refunding bonds to be given; where recorded.—A personal repres tative shall not be compelled to pay any legacy given by the w or make distribution of the estate of his decedent, until after a y from the date of the order conferring authority on the first exe tor or administrator of such decedent; and, except where it is oth wise specially provided, he shall not then be compelled to make su payment or distribution until the legatee or distributee shall gi him a bond, executed by himself or some other person, with su cient surety, with condition to refund a due proportion of a debts or demands which may afterwards appear against the cedent, and of the costs attending their recovery. Such bond sh be filed and recorded in the clerk's office of the court which m have decreed such payment or distribution, or in which the counts of such representative may be recorded. (Code 1887, 2706.)

A general legacy payable in no special manner, where the will silent as to the time of payment and as to when interest is to begin run, is not payable until one year after the executor's qualification, a does not bear interest until payable. Moorman v. Crockett, 90 Va. 1 196, 17 S. E. 875.

Personal representatives, who without taking proper refundi bonds pay legacies or bequests or distribute personalty before the de shall have been paid, are guilty of devastavit, and they and their secu ties are liable to unpaid creditors. Edmunds' Adm'r v. Scott, 78 V 720; Lewis v. Overby's Adm'r, 31 Grat. 601; Crookus v. Peyton's Ex 1 Grat. 431; Morrison v. Lavell, 81 Va. 519, 522; Kippen v. Carr's Ex 4 Munf. 119.

The intention to waive the refunding bond must be clear. It w not be inferred from a mere assent to the legacy, because the execu may be willing to assent to a legacy and aver to hold it for the ben of the legatee, and still not willing to part with the possession of it wi out a refunding bond. Nelson's Adm'r v. Cornwell, 11 Grat. 724; Whi head's Adm'r v. Coleman's Ex'rs, 31 Grat. 784, 788.

No action can be maintained at law for a legacy against execu without an express promise to pay. No admission of assets or m acknowledgment will be sufficient; for without such promise the execu has a right to require a refunding bond, which a court of law can compel the creditor to give or the executor to receive. Kayser v. Dish 9 Leigh 357.

This chapter is complete and protects all interests as completely a formal suit in chancery. Carter v. Skilman, 108 Va. 204, 60 S. E. 7

For form of refunding bond and sufficient assignment of breac thereof, see Moss v. Moss' Adm'r, 4 Hen. & M. 293.

For W. Va. decisions on similar statute, see Justis' Annotatio chapter 87, section 29.

Sec. 5438. When fiduciaries are protected by refunding bonds

Digitized by Google

any personal representative pay any legacy given by the will or istribute any of the estate of his decedent, and there be filed in the id clerk's office a proper refunding bond for what is so paid or istributed, with security therein sufficient at the time of taking it, ch personal representative shall not, on account of what is so aid or distributed, be personally liable for any debt or demand gainst the decedent, whether it be of record or not, unless, within ne year from his qualification or before such payment or distri- ution, he shall have had notice of such debt or demand; but if any reditor of the decedent thereafter establish his debt or demand by dgment or decree therefor, or by its being allowed in a commis- oner's report which is confirmed, a suit may be maintained on such funding bond, in the name of the obligee, or his personal repre- ntative, for the benefit of such creditor, and a recovery shall be ad thereon to the same extent that would have been had if the id obligee or his personal representative had satisfied such debt or emand. (Code 1887, § 2707.)

Cited but not construed in Carter v. Skilman, 108 Va. 204, 60 S. E. 75.

See notes to section 5437.

For W. Va. decisions on similar statute, see Justis' Annotations, apter 87, section 30.

Sec. 5439. Proceedings by legatees or distributees to compel creditors to show cause against distribution of estate; their liability to refund in such case.—When a report of the accounts of any personal epresentative and of the debts and demands against his decedent's tate shall have been filed in the office of a court, whether under is chapter or in a suit in chancery, the said court or the judge ereof in vacation, after one year from the qualification of such ersonal representative, may, on the motion of a legatee or dis- ibutee of his decedent, make an order for the creditors of such ecedent to show cause on some day to be named in the order gainst the payment and delivery of the estate of the decedent to s legatees or distributees; a copy of which order shall be pub- shed once a week for four successive weeks in one or more news- apers, as the court may direct. On or after the day named in the rder, the court in term, or the judge in vacation, may order the ayment and delivery to the legatees or distributees of the whole or part of the money and other estate not before distributed, with or ithout a refunding bond, as it may prescribe; but every legatee distributee to whom any such payment or delivery is made, and s representatives, may, in a suit brought against him within five ears afterwards, be adjudged to refund a due proportion of any ebts or demands appearing against the decedent, and the costs at- nding their recovery. (Code 1887, § 2708; 1904, p. 273.)

Revisors' Note.—The words, "or the judge thereof in vacation" appearing in lines four and five of the text, are new.

An administrator, who has acted in good faith and complied with very requirement of the statute and, in obedience to an order of the

Digitized by Google

court of his appointment has handed over the funds in his hands to on whom the court has adjudged to be the sole distributee of the estat will be protected against the demands of those who come in after sever years, claiming to be entitled to share in the distribution of the estat While this chapter does not expressly mention distributees, the leg effect of compliance therewith is to give protection as fully as if th statute had so declared in express terms. This chapter is complete an protects every interest as amply as a formal suit in chancery. Carter Skilman, 108 Va. 204, 60 S. E. 775.

See Gregory's Forms No. 372.

Sec. 5440. How fiduciaries may compromise liabilities due to from them; how trustee or receiver of resident joint stock compan may compromise claims due to it; liability of other persons on co tracts so compromised not thereby impaired; effect of compromise right of contribution.—It shall be lawful for any fiduciary to com pound and compromise any liability due to or from him, provide that said compounding and compromise be ratified and approved b a court of equity of competent jurisdiction, all parties in intere being before said court by proper process. When said compoundin and compromise shall have been so ratified and approved, it sha be binding on all parties in interest before said court. And in an suit now pending or hereafter brought in a court of equity of com petent jurisdiction, against a joint stock company, for the purpos of obtaining payment of its debts and administering its assets, an trustee or mortgagee of such company charged with the duty collecting its assets, or any receiver appointed therefor, may, wit the sanction of such court, compound and compromise any claim demand on the part of such company, of whatever nature or cha acter, against any person or persons whatever, and may compoun and compromise any and all questions touching such demand claim, with power in such fiduciary to take any needful security an to give complete discharges in respect of any liability to such com pany; but such compounding and compromise shall not be vali unless and until there shall be had and filed, in said court, the con sent in writing of a majority in number and value of the creditors such company, whose claims, under a general order of court fo proof of debts, have been reported by a commissioner and approve by the court. Any compounding and compromise made under th section with any person claimed to be indebted or liable to such com pany shall not be held to impair the liability of any other perso arising out of the same contract, except that, when the contract liability is joint, the amount received shall be credited in full of th share of the party released. Nothing herein contained shall affe the right of indemnity or of contribution among the parties. (Co 1887, § 2709.)

Revisors' Note.—The words, "chartered by the laws of this State formerly appearing in line nine of the text, after "company," have bee stricken out.

As to fiduciaries submitting to arbitration, see section 6163.

As to compromise for injuries causing death, see section 5789.

Digitized by Google

TITLE 52.

Suits for Land, and Waste.

Ch. 222. Right of entry.
223. Summary remedy for unlawful entry or detainer.
224. Action of ejectment.
225. Allowance for improvements.
226. Waste.

CHAPTER 222.

Right of Entry.

Sec.
5441. Wife's right of entry not to be barred by judgment, in husband's lifetime, by default of collusion; when she may, in his lifetime, defend her right.
5442. Nor shall her right of entry be affected by his acts only.
5443. Default or surrender of tenant for life not to prejudice remainderman, etc.
5444. Right of entry not affected by descent cast.

Sec. 5441. Wife's right of entry not to be barred by judgment, in husband's lifetime, by default or collusion; when she may, in his lifetime, defend her right.—A woman shall not be barred of her right of entry into land by a judgment in her husband's lifetime by default or collusion, but after his death may prosecute the same by any proper suit; or, in the lifetime of the husband, if he will not appear, or, against his wife's consent, will render the wife's lands during the coverture in a suit against the husband and wife for lands which are her inheritance, the wife may come at any time before judgment, and defend her right. (Code 1887, § 2712.)

Sec. 5442. Nor shall her right of entry be affected by his acts only.—No conveyance or other act suffered or done by the husband only, of any land which is the inheritance of his wife, shall be or make any discontinuance thereof, or be prejudicial to the wife or her heirs, or to any having right or title to the same by her death, but they may respectively enter into such land, according to their right and title therein, as if no such act had been done. (Code 1887, § 2713.)

The husband of a woman, who held the legal title, obtained by fraud the equitable title to the land, and after his wife's death sold the land as his own. In ejectment by the heirs of the wife against the purchaser, the

Digitized by Google

heirs prevailed, being owners of the legal title. McClenahan v. Hannah, 4 Munf. 499.

If the consent of the wife to the parting of her interest appears to have been obtained by threats or other influence from the husband, her heirs at law may have the land so conveyed reconveyed at their suit. Countz v. Seiger, 1 Call 190.

The wife's right of entry is independent of the husband's, and survives after his has been barred by limitation. See note to Collins v. Riley, 104 U. S. 322, 26 L. Ed. 752, cited under 5805.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 88, section 2.

Sec. 5443. Default or surrender of tenant for life not to prejudice remainderman, etc.—If any tenant for life of land make default, or surrender, the heirs, or those entitled to the remainder, may, before judgment, be admitted to defend their right, or, after judgment, may assert their right without prejudice from such default or surrender. (Code 1887, § 2714.)

Sec. 5444. Right of entry not affected by descent cast.—The right of entry on or action for land shall not be tolled or defeated by descent cast. (Code 1887, § 2715.)

See Burks' Pleading and Practice, p. 193.

CHAPTER 223.

Summary Remedy for Unlawful Entry or Detainer.*

Sec.
5445. How person turned out or kept out of possession of land may recover it; when proceeding to be in court and when it may be before a justice.
5446. Service of summons; when and where returned; plea of defendant; how case tried; its precedence.
5447. Verdict and judgment; how summons issued by justice directed and served.
5448. How possession of premises in city or town, or in subdivision of suburban or other lands for residential purposes recovered from tenant or lessee whose rent is in default.
5449. Appeal from judgment of justice; how and when taken; how tried; what security required when appeal taken by defendant.
5450. Judgment not to bar action of trespass or ejectment.

Sec. 5445. How person turned out or kept out of possession of land may recover it; when proceeding to be in court and when it may be before a justice.—If any forcible or unlawful entry be made upon lands, or if, when the entry is lawful and peaceable, the tenant shall detain the possession of land after his right has expired, without the consent of him who is entitled to the possession, the

*For monographic note on Unlawful Detainer, see Dodson v. Culpeper, 23 Grat. 352, Va. Rep. Anno.

Digitized by Google

party so turned out of possession, no matter what right or title he had thereto, or the party against whom such possession is unlawfully detained, may, within three years only after such forcible or unlawful entry, or such unlawful detainer, sue out of the clerk's office of the circuit court of the county, or the circuit or corporation court of the city, in which the land, or some part thereof, is, a summons against the defendant to answer the complaint of the plaintiff that the defendant is in possession and unlawfully withholds from the plaintiff the premises in question. A declaration may be filed as in other actions at law, but if the premises be adequately described in the summons no such declaration shall be necessary. In any case where possession of any house, land, or tenement is unlawfully detained by the tenant, or some person claiming under him, the lease of such tenant being originally for a period not exceeding one year, or for the time such tenant is employed by the landlord as laborer, the landlord or other person entitled to the possession may present to any justice of the county, city, or town in which said premises are situated, a statement, under oath, of the facts which authorize the removal of the tenant or other person in possession (describing said premises); and thereupon the said justice shall issue his summons against the person or persons named in the said affidavit. (Code 1887, § 2716; 1889-90, p. 163; 1902-3-4, p. 675; 1904, p. 323.)

Revisors' Note.—The word "only" in line seven of the text is new. The limitation is of the right and not merely of the remedy. The purpose of this insertion is to make this fact clearer.

Formerly, in unlawful entry or detainer there was a writ but no declaration, and in ejectment there was a declaration but no writ. This state of the law led to confusion between the two actions, and it was often difficult to remember which required the writ but no declaration, and which the declaration but no writ. In order to simplify this, the revisors have provided that in unlawful entry or detainer "A declaration may be filed as in other actions at law, but if the premises be adequately described in the summons no such declaration shall be necessary" (Section 5445); and in the case of ejectment that "The action may be commenced by the issuance of a writ as in other actions at law, or by the service of a declaration" (section 5456). These changes permit the practitioner to select his manner of commencing either action.

Distinction between unlawful detainer and ejectment.—In the latter action title or the right of possession is always involved. The design of the former is to protect the actual possession, whether rightful or wrongful, and to afford summary redress and restoration. Forcible entry of owner is unlawful. Entry of strangers is unlawful, whether forcible or not. Judgment only restores the status quo, but settles nothing as to the title or right of possession. Davis v. Mayo, 82 Va. 97; Olinger v. Shepherd, 12 Grat. 462.

When and by whom action may be brought.—Mortgagee may maintain unlawful detainer to recover mortgaged property. Allen v. Gibson, 4 Rand. 468.

Vendor of land, though he has put vendee in possession, has legal title to land as long as the contract remains executory, and, unless provisions of section 5471 apply, may maintain action of unlawful entry and detainer, after making demand of possession, even though vendee may be entitled to specific performance of contract. Williamson v. Paxton, 18 Grat. 475.

Tenant in common may maintain this action without joining cotenant. Allen v. Gibson, 4 Rand. 468.

Digitized by Google

Where tenant holds possession after his right has expired, this action may be maintained, as in such case it determines only the right of possession, although it may turn altogether upon the validity of title under which defendant claims. Corbett v. Nutt, 18 Grat. 624.

Plaintiff having obtained an assignment of certain oyster beds for planting oysters for one year, and having paid tax and had bed staked off according to law, has such possession as will sustain action against party entering upon and holding said beds against him, nor is his right to recover affected by fact that the law under which such assignment was made to plaintiff was repealed after he paid tax, but before beds were staked off to him. Power v. Tazewell, 25 Grat. 786.

Where railroad company, having power to condemn, purchases right and interest of life tenant, they acquire only life estate, and remainderman, on termination of life estate, may recover the premises in this action. Hope v. Norfolk & W. R. Co., 79 Va. 283.

When action will not lie.—Where defendant in possession under written contract, by which plaintiff agrees to convey land with general warranty, has paid most of purchase money, and offers to pay residue upon the delivery of deed, which plaintiff is unable to make, and plaintiff demands possession, action of unlawful detainer will not lie. Rosenberger v. Bowen, 84 Va. 675, 5 S. E. 699.

Vendor cannot maintain this action against vendee, if subsequent to sale to vendee he has parted with all title to another. Dobson v. Culpeper, 23 Grat. 352.

Where entry was made before and possession held for longer than statutory period, action cannot be maintained. Kincheloe v. Tracewells, 11 Grat. 587.

What right or possession will support action.—Possession under claim of title, without regard to right of possession, is sufficient to maintain action against person unlawfully entering. Fore v. Campbell, 82 Va. 808, 1 S. E. 180; Olinger v. Shepherd, 12 Grat. 462.

Where city has long been in possession of water lots adjoining a street, and has exercised acts of dominion over them, it may, by virtue of such possession, maintain an action of unlawful entry and detainer against a person disturbing such possession under claim of title through a void grant. Norfolk City v. Cooke, 27 Grat. 430.

Possession, to maintain this action, need not be by occupancy or enclosure. Any possession sufficient to maintain trespass is enough. Actual bona fide possession of part under color of title to whole is such possession as will maintain action for whole, where it is not in adverse possession of another. Olinger v. Shepherd, 12 Grat. 462.

When defendants are estopped from denying title of landlord, it is not necessary, to the support of unlawful detainer by landlord's grantee, that such grantee should acquire any personal ownership by conveyance from landlord. Allen v. Paul, 24 Grat. 332.

Landlord and tenant.—A tenant cannot dispute the title of landlord. Emerick v. Tavener, 9 Grat. 220, 58 Am. Dec. 217. But a vendee may show that subsequent to sale to him the title of vendor had failed or been aliened. Dobson v. Culpeper, 23 Grat. 352.

The general rule that tenant cannot deny landlord's title is not varied by fact that he is in possession of land when he accepts lease; but where he has been induced to accept such lease by fraudulent misrepresentation of lessor, he is not estopped thereby. Alderson v. Miller, 15 Grat. 279; Locke v. Frasher's Adm'r, 79 Va. 409.

Neither tenant nor vendee of tenant will be permitted to introduce evidence of title to land embraced in the lease; nor can they introduce title papers to show that they had not possession of land embraced in lease. Emerick v. Tavener, 9 Grat. 220, 58 Am. Dec. 217.

Presumption of tenancy from year to year may be rebutted.—The presumption that a person holding over after expiration of tenancy is tenant from year to year may be repelled by evidence which shows that it is in some other capacity or for some other purpose. Williamson v. Paxton, 18 Grat. 475. See section 5517 and revisors' note.

Boundaries, etc.—Where tenant signs lease, recognizing the bound-

Digitized by Google

l description therein, neither he nor his vendee can deny that such es and description are proper, or that they were within them. v. Tavener, 9 Grat. 220, 58 Am. Dec. 217.

erse possession—Disclaimer, etc.—Defendant having been put session by plaintiffs or their grantors, and having acknowledged latter, cannot set up title or right adverse to plaintiffs without a disclaimer to hold of them, or that he bona fide abandoned pos- f premises, or asserted and claimed an adverse right thereto, with plaintiffs, for more than three years previous to the action. Paul, 24 Grat. 332.

dor and vendee.—Vendee is estopped from denying title of ven- such estoppel enures to the assignee or subsequent vendee of Dobson v. Culpepper, 23 Grat. 352.

dee of tenant becomes subject to all relations held by such tenant rd, and can set up adverse title only upon such terms as tenant or can he deny that he entered into possession under landlord's merick v. Tavener, 9 Grat. 220, 58 Am. Dec. 217.

dee of land for which he has no deed may, in action of unlawful against him by vendor, show that vendor, subsequent to sale to had conveyed land to another. Dobson v. Culpepper, 23 Grat.

provisions of section 20, chapter 135, Code 1873 (same as sec- 1), apply to unlawful entry and detainer. Dobson v. Culpepper, 352; Locke v. Frasher's Adm'r, 79 Va. 409.

ant from year to year, etc.—Where purchaser pays certain sum and agrees that if he fails to do certain act within the year that ment shall be rent for the year, and fails to do such act, and er after the year, though he pays rent during second year, that , of itself, constitute him a tenant from year to year so as to im to notice. Williamson v. Paxton, 18 Grat. 475.

complaint.—The only complaint necessary is that embodied in mons. Olinger v. Shepherd, 12 Grat. 462. See revisors' note

plaint must show that plaintiff is entitled to possession, and that t withholds it at date of institution of action. Kincheloe v. Trace- Grat. 587.

ere plaintiff, under chapter 115, section 2, p. 455, Code 1819, com- at defendant forcibly entered upon his lands, and proof shows as not "by strong hand or with multitude of people," complaint dismissed. Pauley v. Chapman, 2 Rob. 235.

eclaration may now be filed. See the section as amended by the evision.

ice.—A person claiming under a grant of fee from tenant is not to notice, nor is a tenant at sufferance, nor is tenant of tenant. v. Tavener, 9 Grat. 220, 58 Am. Dec. 217.

en demand of possession necessary.—Where vendor puts vendee sion of land, but without executing conveyance, and subsequently conveys to another, such subsequent grantee cannot maintain this ithout previous demand on prior grantee for possession. Pettit rd, 83 Va. 20, 1 S. E. 392.

in possession of land under contract of purchase cannot be ousted of unlawful detainer until his possession is lawfully determined. son v. Paxton, 18 Grat. 475; Locke v. Frasher's Adm'r, 79 Va. ut such possession may be determined by acceptance of lease. Frasher's Adm'r, 79 Va. 409.

ties.—Where tenant executes a lease by which he is in possession ndlord, and holds after expiration of term, during which period ys to and puts into possession of another a part of leased premises, disclaims landlord's title, landford may join such parties in one nd recover against each severally the portion held by him, but nt is responsible for whole property. Emerick v. Tavener, 9 Grat. Am. Dec. 217.

ere party, trustee for his wife, contracts to purchase land for her, ract is in his name, and he is put into possession, in action of

Digitized by Google

unlawful detainer to recover land, for failure to comply with terms of contract, wife is not a proper party. Williamson v. Paxton, 18 Grat. 475.

Generally.—Failure of plaintiff to prove that defendant had not unlawfully held possession three years or more before institution of suit bars recovery. Pettit v. Cowherd, 83 Va. 20, 1 S. E. 392.

A parol waiver of forfeiture provided for in written contract for purchase of lands cannot be pleaded in bar of recovery in this action. Williamson v. Paxton, 18 Grat. 475.

Defendant in this action may prove that a deed offered in evidence as his act was misread to him, but cannot prove that he misunderstood it, if properly read. Harrison v. Middleton, 11 Grat. 527.

Where action of unlawful detainer is heard on merits in court below, defendant cannot set up in Court of Appeals for first time the want of a plea. Bartley v. McKinney, 28 Grat. 750.

The only question in action of unlawful detainer is whether such entry has been made and possession taken, and how long before institution of suit. Kincheloe v. Tracewells, 11 Grat. 587.

The fact that a suit in equity is pending over cause of action asserted in proceeding hereunder does not bar this proceeding. Defendant should move in equity to make plaintiff elect. Williamson v. Paxton, 18 Grat. 475.

Discussed, 5 Va. Law J. 659; 4 Min. (3d Ed.) 558.

Form of summons in a suit for forcible entry, etc., 4 Min. (3d Ed.) p. 1634.

Cited but not construed, Consolvo v. Ferries Co., 112 Va. 311, 71 S. E. 634.

For discussion of the question of as to whether a summons in Unlawful Entry and Detainer issued by a justice may be removed to circuit or corporation court, see 14 Va. Law Reg. 810.

For W. Va. decisions on similar statute see Justis's Annotations, chapter 89, section 1.

Sec. 5446. Service of summons; when and where returned; plea of defendant; how case tried; its precedence.—The summons, when issued from the clerk's office of a court, may be returned and the case heard and determined at any term of said court. When issued by a justice it may be returned to and the case heard and determined by any justice of said county, city, or town; provided, the same be made returnable to some place within the magisterial district, city, or town in which the defendant resides. Such summons shall be served at least five days before the return day thereof. If the defendant appear and plead, his plea shall be "Not guilty." Upon this issue, or upon the return of the first or any subsequent summons "executed," the court or justice, as the case may be, shall try whether he unlawfully withholds the premises in controversy. When the summons is returnable to a court, a jury may be empanelled to try the case, upon the application of either party, at any time before the trial. Such cases shall have precedence over all other civil cases on the docket. (Code 1887, § 2717; 1902-3-4, p. 675.)

The quashing of the writ because of its having been served on but one of two defendants was error. The cause should have proceeded to trial as to the defendant served. Harman v. Odell, 6 Grat. 207.

See section 5465 as to evidence where action involves the location of reservations within exterior boundaries of grants or other conveyances.

See Burks' Pleading and Practice, pp. 189, 408, 577.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 89, section 2.

Digitized by Google

7. Verdict and judgment; how summons issued by justice nd served.—If it appear that the plaintiff was forcibly or turned out of possession, or that it was unlawfully de- m him, unless it also appear that the defendant has un- eld or detained the possession for three years before the ne summons, the verdict or judgment shall be for the or the said premises, or such part thereof as may be found een so held or detained. When part only of the premises for the plaintiff, the verdict or judgment shall describe o found. In such cases the verdict or judgment shall be laintiff. If the verdict be for the defendant as to the lgment shall be for him. The summons issued by a jus- be directed to the sheriff, sergeant, or any constable, and the same manner as the process issued from the court. 7, § 2718; 1902-3-4, p. 676.)

mpetent for counsel to release a part of the land found in the ich plainly does not belong to the plaintiff, and the court can ment accordingly. Bartley v. McKinney, 28 Grat. 750.

tes to section 5445. See, also, section 5124.

. Va. decisions on similar statute see Justis' Annotations, chap- ion 3.

8. How possession of premises in city or town, or in sub- f suburban or other lands for residential purposes recov- tenant or lessee whose rent is in default.—If any tenant of premises in a city or town, or in any subdivision of and other lands divided into building lots for residential or of premises anywhere used for residential purposes, or farming or agriculture, being in default in the pay- nt, shall so continue for five days after notice, in writing, possession of the premises or the payment of rent, such lessee shall thereby forfeit his right to the possession. In the possession of the defendant may, at the option of the or lessor, be deemed unlawful, and he may proceed to the same manner provided by this chapter. (Code 1887, 902-3-4, p. 676; 1910, p. 203.)

ule of the common law requiring demand on the part of the the amount of rent due, before he can exercise a stipulated -entry for breach of such a covenant, unless by special agree- not been changed by statute. Johnston v. Hargrove, 81 Va.

relief from forfeiture for non-payment of rent, see sections

9. Appeal from judgment of justice; how and when taken; ; what security required when appeal taken by defendant. eal shall lie from the judgment of a justice, in any pro- nder this chapter, to the circuit court of the county or cor- court of the corporation in which the premises are sit- he same manner and with like effect and upon like security s taken under chapter two hundred and fifty. The said all be taken within ten days and the security approved

Digitized by Google

by the justice from whose decision the appeal is taken; and wh
the appeal is taken by the defendant, he shall be required to gi
security also for all rent which has accrued upon said premises a
which may accrue thereon, but for not more than one year's re
in all, whether it shall have accrued before or may accrue after sa
appeal is taken, and also for all damages that shall have accrued
may accrue from the unlawful use and occupation of the premis
for a period not exceeding three months. Upon the trial of sa
appeal a jury may be empanelled to try the matter in controver
upon the application of either party. (Code 1887, § 2720; 1902-3
p. 676.)

See notes to section 6337.

Sec. 5450. Judgment not to bar action of trespass or ejectmen—No such judgment shall bar any action of trespass or ejectme
between the same parties, nor shall any such judgment or verdi
be conclusive, in any such future action, of the facts therein foun
(Code 1887, § 2721.)

The action of unlawful entry and detainer only serves to try the p
session and to place the parties in statu quo. It is no bar to any su
sequent action between the same parties on the same facts. It was
signed to protect the actual possession, whether rightful or wrongful, a
to afford summary redress and restitution. Davis v. Mayo, 82 Va. 97.

Judgments in unlawful entry and detainer do not bar ejectme
Keith, P., and Cardwell, J., concurring, in Douglas Land Co. v. Thay
113 Va. 239, 74 S. E. 215.

For W. Va. decisions on similar statute see Justis' Annotations, cha
ter 89, section 4.

CHAPTER 224.

Action of Ejectment.

Sec.
5451. Action of ejectment retained.
5452. When and by whom brought.
5453. Where brought.
5454. What interest and right plaintiff must have.
5455. Who shall be defendants; when and how landlord may defend.
5456. How action commenced.
5457. What is to be stated in the declaration.
5458. How premises described.
5459. Plaintiff to state how he claims.
5460. Declaration may contain several counts; how several parties may be named as plaintiffs.
5461. Notice to defendant; servi thereof.
5462. Judgment, etc., if he do n appear.
5463. Of the defense; what m be given in evidence on pl of not guilty.
5464. What proof by plaintiff sufficient.
5465. Evidence in actions of eje ment and unlawful ent or detainer involving t location of reservatio within the exterior bound ries of grants or other co veyances.
5466. When action by co-tenan etc., against co-tenan what plaintiff to prove.

Digitized by Google

rdict, when action against veral defendants.
hen there may be several dgments against defendnts.
ecovery of part of premes claimed.
hen possession of part not ossession of whole.
hen vendee, etc., entitled conveyance of legal title, endor cannot recover.
hen mortgagee or trustee ot to recover.
otice to be given of such efenses; right of defendnt to resort to equity not ffected.
hen jury finds for plainff, or, etc., how verdict to e.
ow, when any plaintiff has o right.
ow verdict to specify premes recovered.
ow, an undivided interest r share.
ow, estate of plaintiff.

Sec.
5479. Where right of plaintiff expires before trial, what judgment entered.
5480. How judgment for plaintiff entered; when suit is to recover dower, court may assign it.
5481. How claim of plaintiff for profits and damages assessed.
5482. When court to assess the damages.
5483. Defendant to give notice of claim for improvements.
5484. How allowed.
5485. Postponement of assessment and allowance.
5486. Judgment to be conclusive.
5487. Saving in favor of persons under disability.
5488. Recovery of mesne profits, etc., not affected.
5489. Writ of right, etc., abolished.
5490. How boundary line or lines of real estate may be ascertained and established; petition may be filed for that purpose.

451. Action of ejectment retained.—The action of ejectment ned, and may be brought as heretofore, subject to the prohereinafter contained. (Code 1887, § 2722.)

tory of statute—Note from page 557, Code 1849.—With little alteration, this important chapter has been adopted by the Legis- it was reported by the revisors. In the note which was apo it in their report, explaining their reason for reporting it, they his draft is taken substantially, as to its main feature, from part chapter 3, of the Revised Statutes of New York, volume 2, page e intend it as a substitute for the present remedy of ejectment, the writ of right as prescribed by act 1818, 1 R. C., chapter 118, 3, which have superseded the various writs at common law and te for the enforcement of right of possession and rights of propreal estate. In practice, although perhaps not abolished, all the ry and droitural actions, such as the writ of entry, writ of assize, s of formedon in descender, reverter, and remainder, have become The effect of this chapter, if adopted, will be to go one step furd supersede the writ of right; or, rather, by moulding into one nd comprehensive statute, all the substantial provisions of the law, with such improvements as may be found necessary to dis- justice from the nets of form, preserve all the benefits of the right and the action of ejectment, as well as of all other actions. ry and droitural." This the revisors supposed was done by this "adapting the action of ejectment to the trial of conflicting titles property, as well as to the recovery of the possession thereof, at e time that the remedy is stripped of those absurd fictions which retofore disfigured it." The material principles of the chapter n adopted, not only in New York, but in England (3 & 4 Will. IV. 26), and in Massachusetts (Rev. St. Mass., page 609, chapter 101).

Digitized by Google

Distinction between unlawful detainer and ejectment.—In the ter action title or the right of possession is always involved. The des of the former is to protect the actual possession, whether rightful wrongful, and to afford summary redress and restoration. Forcible en of owner is unlawful. Entry of strangers is unlawful, whether forci or not. Judgment only restores the status quo, but settles nothing as the title or right of possession. Davis v. Mayo, 82 Va. 97.

When ejectment is proper remedy.—Ejectment is proper rem where the party claiming title is out of possession. Louisville & N. Co. v. Taylor, 93 Va. 226, 24 S. E. 1013.

Where two parties claim adversely the same land under whate titles, and neither is in possession, ejectment is the proper remedy. bill in equity will not lie. Stearns v. Harman, 80 Va. 48. This c was decided before the act upon which section 6248 of the Code is ba was passed. See said section and notes.

Generally.—The practice of putting a party on terms is as applica to an action of ejectment as to any other action. Honaker v. Shrad 115 Va. 318, 79 S. E. 391.

When ejectment and when bill in equity proper remedies to rem cloud on title. Otey v. Stuart, 91 Va. 714, 22 S. E. 513. See also sect 6248 and cases cited in notes thereto.

For early cases on ejectment before passage of statute, see Moore Fitzwater, 2 Rand. 442; Ferguson v. Franklin, 6 Munf. 305; Hopkins Ward. 6 Munf. 38.

For discussion of this chapter see Judge Phlegar's Address, Rep of Va. Bar Asso., Vol. 18, p. 177.

For article on action of ejectment in Virginia, see 1 Va. Law R 172.

On the general subject of ejectment, see 4 Min. (4th Ed.) 714-7 Barton, L. Pr. (2d Ed.) 1100.

For monographic note on Ejectment, see Tapscott v. Cobbs, 11 G 172, Va. Rep. Anno.

Discussed, 2 Va. Law J. 192.

For evidence in ejectment see notes to section 5454.

For title upon which plaintiff may recover, see section 5454 and no

For W. Va. decisions on similar statute see Justis' Annotations, ch ter 90, section 1.

Sec. 5452. When and by whom brought.—It may also be broug in the same cases in which a writ of right might have been broug prior to the first day of July, eighteen hundred and fifty, and any person claiming real estate in fee or for life, or for yea either as heir, devisee, or purchaser, or otherwise. (Code 1887 2723.)

For early cases upon the subject before passage of the statute, Moody v. McKim, 5 Munf. 374; Bolling v. Petersburg, 3 Rand. 563; T lor's Devisees v. Rightmire, 8 Leigh 468; Middleton v. Johns, 4 Grat. 1

A party having an interest in or claim to land held adversely by other may sell and convey the same under section 5147, and his gran may maintain ejectment for it. Carrington v. Goddin, 13 Grat. 587.

If the plaintiff in ejectment would have been entitled at the time statute went into effect, to-wit, July 1, 1850, and at the time of the stitution of his suit, to recover in a writ of right, he is entitled to reco in a present action of ejectment. Mitchell v. Baratta, 17 Grat. 445.

For W. Va. decisions on similar statute see Justis' Annotations, ch ter 90, section 2.

See Gregory's Forms No. 14.

Sec. 5453. Where brought.—Every such action shall be broug in the circuit court of the county, or circuit or corporation court

Digitized by Google

oration, in which the real estate or some part thereof is. 87, § 2724.)

W. Va. decisions on similar statute see Justis' Annotations, chapction 3.

Gregory's Forms No. 14.

54. What interest and right plaintiff must have.—No per- bring such action unless he has, at the time of commenc- subsisting interest in the premises claimed and a right to he same, or to recover the possession thereof, or some share, or portion thereof. (Code 1887, § 2725.)

ntiff must recover on strength of own title.—In an action of the plaintiff must recover on the strength of his own title v. Jamerson, 115 Va. 250, 78 S. E. 571), and if it appear that the is in another, whether that other be the defendant, the Comh, or some third person, it is sufficient to defeat the plaintiff. v. Lawson, 91 Va. 226, 21 S. E. 347.

general rule, the plaintiff in an action must show a legal title f, and a present right to the possession under it at the time of e alleged in the declaration. Russell v. Allmond, 92 Va. 484, 23 But he cannot be prevented from recovery, though he aliened rty sued for since the institution of the suit. Right to the re- the commencement of the suit is all that is required by the Bolling v. Teel, 76 Va. 487.

e can be no recovery except in special instances, unless evidence at at the time the action was brought plaintiff was owner of legal ftwich v. Richmond, 100 Va. 164, 40 S. E. 651.

table title.—A tenant in common of an equitable estate cannot ejectment against his cotenants to recover his share. The plainectment must hold the legal title and cannot recover on an title. Dillard v. Jefferies, 118 Va. 81, 86 S. E. 844.

mities in defendant's title.—To recover land sued for in ejectood and sufficient title thereto must be shown in the plaintiff, who cover on the defect of title in the defendant in possession. McDaniel, 90 Va. 702, 19 S. E. 880.

nfirmity in defendant's title can supply defects of proof on the he plaintiff. Carter v. Wood, 103 Va. 69, 48 S. E. 553.

ession, Effect of.—A plaintiff in ejectment must, as a general ver on the strength of his own title and not on the weakness of dant, but if he is in actual possession he may, on the strength of ssion alone, recover of a mere trespasser who entered without n. Rhule v. S. A. L. Ry. Co., 102 Va. 343, 9 Va. Law Reg. 963, 46 S. E. 331.

rson in peaceable possession of land will be protected against all rue owner. Prior peaceable possession is sufficient to maintain against a stranger who has ousted such peaceable possessor. v. Cobbs, 11 Grat 172. For extensive note on ejectment, see ame, Va. Rep. Anno.

ession gives right against every man who cannot establish a title, the answer of party in possession, showing the real title in an- sufficient (except in the relationship of landlord and tenant, fendant is estopped from disputing landlord's title), although he pretend that he holds land with the consent or under authority al owners. McKinney v. Daniel, 90 Va. 702, 19 S. E. 880.

dence—*Generally.*—The plaintiff in an action of rejectment may e in himself, either by showing a grant from the crown or the wealth, and connecting himself therewith by a regular chain of y showing such a chain of facts as will warrant the jury in pre- grant. Sulphur Mines Co. v. Thompson, 93 Va. 293, 25 S. E.

ction of ejectment the plaintiff, in order to show that during a eriod he was claiming the lands in controversy, may show that a

Digitized by Google

tract of land answering generally description of land claimed was assess to, and taxes paid thereon, by himself or those under whom he clain Sulphur Mines Co. v. Thompson's Heirs, 93 Va. 293, 25 S. E. 232.

If plaintiff claims title under a lost or destroyed deed, proof of form existence, contents, and loss must be strong and conclusive before t court will permit a title to be established by parol evidence. Carter Wood, 103 Va. 69, 48 S. E. 553.

The deed or instrument which is relied on to give color of title mu seem to define specifically the boundaries of his claim. Ellicott v. Pea 10 Pet. 412; Blakey v. Morris, 89 Va. 720, 17 S. E. 126.

As to evidence in ejectment, see Carrington v. Goddin, 13 Grat. 58 Reusens v. Lawson, 91 Va. 226, 21 S. E. 347; Sulphur Mines Co. v. Thom son, 93 Va. 293, 25 S. E. 232.

For article on burden of proof in ejectment, see 1 Va. L. Reg. 48 note to Richmond v. Jones, 10 Va. L. Reg. 278.

Surveyor's book.—In a controversy concerning the location or t boundary of a tract of land patented by the Commonwealth, pursuant a survey, the calls and description of another survey made by same su veyor about the same time, or recently thereafter, of a coterminous neighboring tract, upon which last-mentioned survey the Commonweal issued a grant, whether to a party to the controversy or to a stranger, proper evidence upon such question of location or boundary, unless clea irrelevant, and if the calls of the survey on the surveyor's books do n correspond with those of the grant the books are not admissible in e dence. In case of doubt the true location of the survey may be shown evidence aliunde. Reusens v. Lawson, 91 Va. 226, 21 S. E. 347.

Former actions.—The record of another action of ejectment betwe other parties is not competent upon a question of boundaries or locati of land in controversy. Stinchcomb v. Marsh, 15 Grat. 202

Presumptions.—While, as a general rule, a plaintiff in ejectment mu show both legal title and right of possession in himself, yet in the absen of evidence to the contrary the law presumes that the right of possessi is incident to and follows the legal title. Casselman v. Bialas, 112 V 57, 70 S. E. 479.

If it appear that the title has been forfeited to the Commonwealth f nonpayment of taxes or other cause, and there is no evidence that it h been redeemed by the owner, or resold or regranted by the Commonweal the presumption is that the title is still outstanding in the Commonweal Reusens v. Lawson, 91 Va. 226, 21 S. E. 347.

What outstanding title necessary to defeat recovery.—An outstan ing title sufficient to defeat a recovery in an action of ejectment must a present, subsisting, and operative legal title, upon which the owner cou recover if asserting it by action. Reusens v. Lawson, 91 Va. 226, 21 S. 347.

When previous demand necessary.—Purchaser of land by parol ho ing possession is a tenant at will, and cannot be ejected by a grantor the vendor without previous demand of possession and a refusal to s render or other wrongful act by him. Jones v. Temple, 87 Va. 210, 12 E. 404, 24 Am. St. Rep. 649.

When heirs, and not executor, proper plaintiffs.—Testator left tr of land to his daughter, and if she should die without heir said land sho "return to my other heirs and be sold, and the money arising from sale to be equally divided among all my heirs." The daughter sold land and died without ever having had a child. In such case the he of the testator, and not his executor, are the proper parties to maint the ejectment. Elys v. Wnyne, 22 Grat. 224.

Extent of recovery.—The plaintiff can recover only that to which has legal title. He cannot recover the shares of his cotenant or parcener. If an ineffectual partition has been made, each joint ten is still seized of his individual share of the whole, and cannot reco more in an action of ejectment. Nye v. Lovitt, 92 Va. 710, 24 S. E. 3

For cases on the subject before the passage of the statute, see Bu v. Blunt, 1 Rand. 255; Taylor's Devisees v. Burnsides, 1 Grat. 189.

When ejectment does not lie.—Where plaintiff is owner and in p session of surface of land, and underlying minerals is claimed by anot

Digitized by Google

ed subordinate to plaintiff's, plaintiff cannot maintain ejectment, proceed in equity to remove cloud on title. Steinman v. Vicars, 95, 39 S. E. 227.

owner of land bought by another at a tax sale, the former being sion of the land, must file a bill in equity if he wishes to set aside ; he, being in possession, cannot bring ejectment. Caroll v. 8 Grat. 791.

action of ejectment does not lie to recover the mere use of un- l lands for an uncertain and indefinite period. King v. Norfolk & ., 99 Va. 625, 39 S. E. 701. For adverse criticism of same, see w Reg. 408.

erally.—Where the owner holds the legal title, but has not actual n, and another asserts an adverse claim to the land, but has not ossession of it, ejectment is the proper remedy. In such a case as not jurisdiction. Stearns v. Harman, 80 Va. 48. See section d notes.

ight to quarry limestone from a tract of land is such an interest nstitute a foundation for an action under this section. Reynolds 83 Va. 817, 3 S. E. 710, 5 Am. St. Rep. 317.

ere plaintiff and defendant in ejectment claim title under a com- ntor, it is unnecessary for the plaintiff to trace his title back of ntor. Carter v. Wood, 103 Va. 69, 48 S. E. 553.

W. Va. decisions on similar statute see Justis' Annotations, chap- section 4.

Gregory's Forms No. 14.

5445. Who shall be defendants; when and how landlord may —The person actually occupying the premises and any per- iming title thereto or claiming any interest therein adversely plaintiff may also, at the discretion of the plaintiff, be named ants in the declaration. If there be no person actually occu- he premises adversely to the plaintiff, then the action must inst some person exercising ownership thereon or claiming ereto or some interest therein at the commencement of suit. see be made defendant at the suit of a party claiming against e of his landlord such landlord may appear and be made a ant with or in place of his lessee. (Code 1887, §2726; 1895-6,)

is section should, of course, be numbered 5455, not 5445.

ction does not enable person in possession to maintain ejectment.— before nor since the amendment to this section—Acts 1895-6, p. is section in present form)—can plaintiff in possession of land n an action of ejectment therefor. The object of the action of nt is to try possessory title to corporeal hereditaments, and to re- he possession thereof. The effect of the amendment was simply it the plaintiff, in cases where the premises are occupied, in his on to join as defendants with the occupant any person claiming ereto, or interest therein adversely to the plaintiff. Steinman v. 99 Va. 595, 39 S. E. 227.

ssee and landlord.—The statute uses the word "landlord" as a cor- of the word "lessor." The word "lessee" used not so much to de- articular estate or interest as to express a relation—that of land- d tenant, a present holding under and in subordination to the another. Hanks v. Price, 32 Grat. 107.

ndlord not prejudiced by act of tenant.—The right of the land- come in and defend cannot be surrendered or prevented by any he tenant. Mitchell v. Baratta, 17 Grat. 445.

ndlord may come in and defend after question has been submitted ration, and a rule has been issued against the lessee why the award arbitration should not be entered as the judgment of the court. v. Price, 32 Grat. 107.

Digitized by Google

Under this section ejectment may properly be brought against persons who have made entries and surveys of any part of the land in controversy, and are setting up claims to it, though not in occupation of it at time suit is brought. Harvey v. Tyler, 2 Wall 328, 17 L. Ed. 871.

Action against husband, title in wife.—Where, at the time husband was sued in ejectment, he was in possession by the mere sufferance of his wife, who held the title and resided on the premises, but was not sued and the husband acquired a life estate in the land by the death of the wife after judgment and before execution, he is entitled, by reason of his wife's death, to have a judgment by default as to him opened and be allowed to defend. King v. Davis, 137 Fed. 222, 11 Va. Law Reg. 463.

Where a wife owning a separate estate, and living on it with her husband was not made a party with him to an ejectment suit by a third person, but her deed was not filed for record until long after judgment in favor of plaintiff, she is only entitled to have the judgment opened and be allowed to defend, and is not entitled to an order restraining the execution of the judgment against her. Id.

Generally.—Under this section a person who has had the land surveyed and regularly paid taxes on it, and claims to own it, may be made defendant, when no one is in actual occupation thereof. Lynchburg Cotton Mills v. Rives, 112 Va. 137, 70 S. E. 542.

Cited but not construed in Thompson v. Camper, 106 Va. 315, 55 S. E. 674; Mitchell v. Baratta, 17 Grat. 445.

See Burks' Pleading and Practice, pp. 195, 200.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 90, section 5.

See Gregory's Forms No. 14.

Sec. 5456. How action commenced.—The action may be commenced by the issuance of a writ as in other actions at law, or by the service of a declaration. In either case the name of the real claimant shall be inserted as plaintiff, and all the provisions of law concerning a lessor of a plaintiff shall apply to such plaintiff. (Code 1887, § 2727.)

Revisors' Note.—Before the revision the action of ejectment was commenced by the service of a declaration and notice; now it may be commenced as other actions at law, or as formerly. See revisors' note to section 5445.

For early cases on the subject before the passage of this statute, see Kinney v. Beverley, 1 Hen. & M. 531; Mooberry v. Marye, 2 Munf. 453; Medley v. Medley, 3 Munf. 191.

Applied in King v. Davis, 137 Fed. 198, 11 Va. Law Reg. 181.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 90, section 6.

See Gregory's Forms No. 14.

Sec. 5457. What is to be stated in the declaration.—It shall be sufficient for the plaintiff to aver in his declaration that on some day specified therein (and which shall be after his title accrued) he was possessed of the premises claimed, and being so possessed thereof the defendant afterwards, on some day to be stated, entered into such premises or exercised acts of ownership thereon or claimed title thereto or some interest therein, to his damage such sum as the plaintiff shall state. (Code 1887, § 2728; 1895-6, p. 514.)

Where a declaration describes land in controversy as lying north of a road, and the verdict is south of the road, and in other particulars the description is the same, such variance is immaterial, and the description in the declaration must be presumed to be a mistake. Been v. Hatcher 81 Va. 25, 59 Am. Rep. 645; Koiner v. Rankin's Heirs, 11 Grat. 420.

Where a vendor puts a vendee in possession of land under a contract

Digitized by Google

se, and vendee fails to pay purchase money, it is essential to the ng of an action of ejectment by such vendor that he demand pos- the vendee, or give him notice. Twyman v. Halwey, 24 Grat. m. Rep. 661.
early case on the subject before the passage of the statute, see Bidd, 3 Call 362.
n of declaration in ejectment, 4 Min. (3d Ed.) p. 1705.
t is a good declaration where tenants in common bring ejectment. Blakey, 89 Va. 767, 17 S. E. 228.
W. Va. decisions on similar statute see Justis' Annotations, chap- ction 7.
Gregory's Forms No. 14.

458. **How premises described.**—The premises claimed shall ibed in the declaration with convenient certainty, so that, h description, with the aid of information derived from the possession thereof may be delivered. (Code 1887, § 2729.)

sors' Note.—The words "with the aid of information derived plaintiff" are new, and make statutory the holding in Howdashell ng, 103 Va. 30, 48 S. E. 491.

t boundaries govern.—In question of boundary, natural objects , marked lines, and reputed boundaries, well established, are to red to the courses and distances of the calls of the grant. Reusens n, 91 Va. 226, 21 S. E. 347.
description of land, boundaries govern rather than quantity; and e intent appears to convey a certain tract, though the parties taken the points of the compass in making the description, the l reject so much of the description as is false, and consider the ription, which may be established by parol evidence. Hunter v. 3 Va. 24, 13 S. E. 305.

l evidence contradicting deed admissible to show real boundaries. evidence is admissible in an action of ejectment to prove that the on and boundaries in a deed are not the true boundaries of the nded to be conveyed. Elliott v. Horton, 28 Grat. 766.

n verdict not defective.—Where the premises are described in ration with convenient certainty, and the verdict is that the plain- titled in fee to the whole of the premises in the declaration de- uch verdict is not defective for uncertainty. Messick v. Thomas, 91, 6 S. E. 482.
n defendant at trial proves that he is in possession and claiming nly a part, verdict and judgment for the plaintiff for the whole med in the declaration is not erroneous, or, at least, there is no ereby the defendant is injured. Messick v. Thomas, 84 Va. 891, 82.

n verdict defective.—Where a declaration describes land to be a larger tract near certain creeks, which have no public notoriety, rdict does not describe the land with convenient certainty, it is . Hitchcox v. Rawson, 14 Grat. 526.
object of the description of lands is to so identify them as that iff, with aid of information from plaintiff, may give possession. necessary that sheriff should be able to tell from an inspection of rd of what lands he is to give possession. Howdashell v. Kren- 3 Va. 30, 48 S. E. 491. See revisors' note above.
erally.—The section applied in Rhule v. Seaboard Air Line Ry. Va. 343, 46 S. E. 331.
early cases on this subject before passage of the statute, see v. Fogg, 1 Call 485; Tuberville v. Long, 3 Hen. & M. 309; Lovell l, 2 Munf. 167; Urquhart v. Clarke, 2 Rand. 549.
W. Va. decisions on similar statute see Justis' Annotations, chap- ection 8.
Gregory's Forms No. 14.

5459. **Plaintiff to state how he claims.**—The plaintiff shall te whether he claims in fee or for his life, or the life of

Digitized by Google

another, or for years, specifying such lives or the duration of suc term, and when he claims an undivided share or interest, he sha state the same. (Code 1887, § 2730.)

Where a declaration alleges that on a day certain, before bringin the action, the plaintiffs were possessed, each in fee simple absolute, an undivided share or interest in the land, and the action is for the whol land so claimed, and not for any part or parcel thereof, the declaration sufficient under this section. Roach v. Blakey, 89 Va. 767, 17 S. E. 22

Joint tenant to prove his proportion or not entitled to recover whe suing alone. Marshall v. Palmer, 91 Va. 344, 21 S. E. 672.

See note "when ejectment will not lie" under section 5454; also not to section 5458.

For W. Va. decisions on similar statute see Justis' Annotations, cha ter 90, section 9.

See Gregory's Forms No. 14.

Sec. 5460. Declaration may contain several counts; how severa parties may be named as plaintiffs.—The declaration may contai several counts, and several parties may be named as plaintiffs join ly in one count and separately in others. (Code 1887, § 2731.)

Where several parties plaintiff were named as joint plaintiffs, th court allowed separation of them, and procedure further to be had b some jointly, and others separately. After such amendment, no new pr cess was required. Holmes v. Grabeel (C. C.), 81 Fed. 145.

For early case on the subject before passage of statute, see Ho kins v. Ward, 6 Munf. 38.

For W. Va. decisions on similar statute see Justis' Annotations, cha ter 90, section 10.

See Gregory's Forms No. 14.

Sec. 5461. Notice to defendant; service thereof.—If the actio be commenced by the service of a declaration, there shall be su joined thereto a notice in writing by the plaintiff or his attorne addressed to the defendant, and notifying him that the said declar tion will be filed on some specified rule day in the clerk's office the court in which the suit is to be prosecuted, or in court, on so named day in the then next term of said court. Such declaratio and notice shall be served in the same manner as other notice (Code 1887, § 2732.)

Revisors' Note.—This section conforms to the change made in secti 5456. If the action be commenced by the issuance of a writ as in oth actions at law, of course section 5461 would have no application.

It would seem that from the decision of Leas & McVitty v. Merrima 132 Fed. 510, an action may be instituted under this section in a Feder court in Virginia in accordance with the State practice, Rev. St. Sec. 9 (U. S. Comp. St. 1901, p. 683) which provides that all writs and process shall be under seal of the court, not applying, as such copy of declarati and notice is not "a process issuing from the court," and under the co formity act (Rev. St. Sec. 914 U. S. Comp St. 1901, p. 684), such practi may be allowed. Leas & McVitty v. Merriman, 132 Fed. 510.

As to how the action may now be commenced, see section 5456.

For W. Va. decisions on similar statute see Justis' Annotations, cha ter 90, section 11.

See Gregory's Forms No. 14.

Sec. 5462. Judgment, etc., if he do not appear.—When the decla ation is filed, with the proof of the service of notice thereof as afor said, the proceedings thereon shall conform to the provisions

Digitized by Google

ixty-one hundred and thirty-one, so far as they relate to
t law. (Code 1887, § 2733.)
section and section 6131 having dispensed with the necessity
to plead before entry of a default judgment in ejectment where
been no appearance, the fact that no such rule was served, as
by a court order, was not ground for vacation of a default judg-
g after the term at which it was rendered. King v. Davis, 137
11 Va. Law Reg. 178.

463. **Of the defense; what may be given in evidence on plea uilty.**—The defendant may demur to the declaration, as in actions, or plead thereto, or do both; but he shall plead eral issue only, which shall be, that the defendant is not unlawfully withholding the premises claimed by the plain- ie declaration. Upon such plea the defendant may give the atter in evidence, and the same proceedings shall be had, a plea of not guilty in the present action of ejectment, ex- herein otherwise provided; and he may also give in evi- ny matter which, if pleaded in the former writ of right, ar the action of the plaintiff. (Code 1887, § 2734.)
provision that a defendant shall plead the general issue in all
ers to pleas in bar of the action, and does not preclude a plea
ient; but defendant may waive his plea in abatement, and plead
the action. James River & Kanawha Co. v. Robinson, 16 Grat.

aper called a disclaimer, but actually in the nature of a special
uld be rejected under this section. Reynolds v. Cook, 83 Va.
E. 710.
demurrer to evidence of defendant, where he relies on the deed,
be inferred from the evidence that the taxes for which land
have been paid judgment should be for the plaintiff. Brown v.
v, 100 Va. 124, 40 S. E. 617.
well settled that equitable estoppel as defense to ejectment is not
ble in this State. Haney v. Breeden, 100 Va. 781, 42 S. E. 916.
section was intended to simplify the proceedings and should be
d as applying to those pleas in bar only which go to the merits
ise and not to pleas setting up legal estoppels, as a plea of res
Elk Garden Co. v. T. W. Thayer Co., 206 Fed. 212.
notes upon defense to ejectment, see annotation to Richmond v.
5 Va. Law Reg. 278.
W. Va. decisions on similar statute see Justis' Annotations, chap-
ection 13.

5464. **What proof by plaintiff is sufficient.**—The consent retofore used, is abolished. The plaintiff need not prove an entry on, or possession of, the premises demanded, or re- any profits thereof, nor any lease, entry, or ouster, except nafter provided. But it shall be sufficient for him to show to the possession of the premises, at the time of the com- ent of the suit. (Code 1887, § 2735.)
lowed in Nelson v. Triplett, 81 Va. 236.
early decisions before the passage of the statute, see Butts v.
Rand. 255; Bowling v. Petersburg, 3 Rand. 563; Moody v. Mc-
Munf. 374; Taylor's Devisees v. Burnside, 1 Grat. 165, 211.
ed in Virginia Coal & Iron Co. v. Keystone Coal & Iron Co., 101
45 S. E. 291.
W. Va. decisions on similar statute see Justis' Annotations, chap-
ection 14.

Digitized by Google

Sec. 5465. Evidence in actions of ejectment and unlawful ent or detainer involving the location of reservations within the exteri boundaries of grants or other conveyances.—On the trial of any a tion of ejectment, or unlawful entry or detainer, where it appea from the evidence that the land in dispute, or any portion thereof, embraced within the exterior boundaries of a grant or other co veyance under which the plaintiff claims his title, which grant other conveyance reserves one or more parcels of land within sa boundaries from the operation thereof, but without sufficient d scription of said reserved land on the face thereof, or by referen on the face thereof to other grants or conveyances of public recor containing such sufficient description, by courses and distance natural boundaries or land marks, or otherwise of such reserv land, as will enable the same to be readily and accurately locat by a competent surveyor, the plaintiff shall be entitled to recov so much of said land within said exterior lines, as does not appe by a preponderance of the evidence to be within the limits of a such reservation, and as he would otherwise be entitled to recov if such grant or other conveyance had contained no such reserv tion; but this section shall not apply where it shall appe from the evidence that the defendant is in possession of such r served land under claim of title thereto. (1902-3-4, p. 898.)

Duly authenticated copies of grants of land from the Commonweal which do not show that the original patents were sealed with the less seal of the Commonwealth may be received in evidence. Howdashell Krenning, 103 Va. 30, 48 S. E. 491.

In a case to which it applies the practical effect of this section is cast upon a defendant the burden of proving that the land in controver lies within the limits of the reservation. Sutherland v. Gent, 116 Va. 7 82 S. E. 713.

See note on "Evidence" under section 5454.

Sec. 5466. When action by co-tenants, etc., against co-tenan what plaintiff to prove.—If the action be by one or more tenan in common, joint tenants, or coparceners, against their co-tenan the plaintiff shall be bound to prove actual ouster or some other a amounting to total denial of the plaintiff's right as co-tenant. (Co 1887, § 2736.)

The possession of one co-tenant is presumed to be the possession all, yet if the defendants prove actual ouster of the others, or other a which amount to a notorious denial of the others' rights, and such p session continues for the statutory period of adverse possession, a plea the statute of limitations will be good. Stonestreet v. Doyle, 75 Va. 3 40 Am. Rep. 731.

A plaintiff in an action of ejectment cannot recover the share of co-tenant or coparcener. Nye v. Lovitt, 92 Va. 710, 24 S. E. 345.

The possession of one tenant in common, though exclusive, does n amount to a disseisin of the co-tenant, nor does the receipt of profits a the payment of taxes amount to an ouster of such co-tenant. Saunders Terry, 116 Va. 495, 82 S. E. 68.

For early cases before passage of statute, see Doe v. Hill, 10 Lei 457; Purcell v. Wilson, 4 Grat. 16.

Discussed, 5 Va. Law J. 73.

Digitized by Google

. Va. decisions on similar statute see Justis' Annotations, chapion 15.

7. **Verdict, when action against several defendants.**—If be against several defendants, and a joint possession of all , and the plaintiff be entitled to a verdict, it shall be l, whether they pleaded separately or jointly. (Code 37.)

irks' Pleading and Practice, p. 207.
. Va. decisions on similar statute see Justis' Annotations, chapion 16.

8. **When there may be several judgments against defend-**he action be against several defendants, and it appear on hat any of them occupy distinct parcels in severalty or d that other defendants possess other parcels in severalty the plaintiff may recover several judgments against them, rcels so held by one or more of the defendants, separately rs. (Code 1887, § 2738.)

action against two, holding different parts of land, the judge separate against each for the land in his possession, and joint ts. Elys v. Wynne, 22 Grat. 224.
rly cases before passage of the statute, see Camden v. Haskill, 2; Stuart's Heirs v. Coalter, 4 Rand. 74, 15 Am. Dec. 731.
. Va. decisions on similar statute see Justis' Annotations, chapion 17.

9. **Recovery of part of premises claimed.**—The plaintiff ver any specific or any undivided part or share of the though it be less than he claimed in the declaration. (Code 739.)

e a plaintiff claims the entire premises in a declaration and the s that he is only entitled to an undivided interest therein, a verch undivided interest is proper. Grizzle v. Davis, 119 Va. 567, 0.
ved in Callis v. Kemp, 11 Grat. 78.
. Va. decisions on similar statute see Justis' Annotations, chapion 18.
otes to section 5474.

70. **When possession of part not possession of whole.**—In ersy affecting real estate, possession of part shall not be as possession of the whole, when an actual adverse posn be proved. (Code 1887, § 2740.)

statute was not passed merely for the protection of squatters, have been intended to have embraced a case of the rightful of the rightful owner beyond and after the adverse claimant limits of the part in controversy. Taylor's Devisees v. Burrat. 165 (see note thereto on Adverse Possession, Va. Rep. tull v. Rich Patch Iron Co., 92 Va. 253, 23 S. E. 293.
e there are two patents, and one overlaps the other, possession d under the junior patent outside of the interlock does not such a possession of the land of the older patentee as will give e possession in junior patentee. Koiner v. Rankin's Heirs, 11 See, also, Overton's Heirs v. Dowisson, 1 Grat. 211, 42 Am.

who lives in a dwelling house on enclosed tract of land, and has outbuildings, fruit trees and garden thereon, cultivates a part nd grazes the whole, and whose dominion over the land is nod is recognized and respected by all the country-side, has adverse

Digitized by Google

possession of the whole tract. Roller v. Armentrout, 118 Va. 173, 86 S. E. 906.

Where a senior patentee settles upon any portion of his lands, claiming title to the whole, whether inside or outside of an interlock, before the junior patentee has settled upon any portion of the interlock, the senior patentee is in possession to the extent of his grant, and the subsequent entry of the junior patentee upon the interlock ousts the senior patentee only to the extent of the land actually in the occupancy of the junior patentee by residence, improvement, cultivation or other open, notorious and habitual acts of ownership. Fry v. Stowers, 98 Va. 417, 36 S. E. 482. See discussions, 3 Va. Law Reg. 763, 843; 4 Va. Law Reg. 1, 8, 127, 138, 557; 5 Va. Law Reg. 810; 6 Va. Law Reg. 1; Breeden v. Haney, 95 Va. 622, 29 S. E. 328.

For W. Va. decisions on similar statute see Justis' Annotations, chapter 90, section 19.

Sec. 5471. When vendee, etc., entitled to conveyance of legal title, vendor cannot recover.—A vendor, or any claiming under him, shall not, at law any more than in equity, recover against a vendee, or those claiming under him, lands sold by such vendor to such vendee, when there is a writing, stating the purchase and the terms thereof, signed by the vendor or his agent, and there has been such payment or performance of what was contracted to be paid or performed on the part of the vendee, as would in equity entitle him, or those claiming under him, to a conveyance of the legal title of such land from the vendor, or those claiming under him, without condition. (Code 1887, § 2741.)

Scope of section.—The equitable defence under this statute is limited to mortgages and deeds of trust where the mortgage money has been fully paid, or the trust completely performed, or to sales where the vendee has paid all the purchase money and performed everything incumbent on him, so as to entitle him to a specific execution of the contract in equity, and a conveyance of the legal title without any condition proper in equity to be imposed upon him. It must be a sale, and not the partnership in the acquisition of the land, and the terms of the contract must be plain. Davis v. Teays, 3 Grat. 283.

The statute was dictated, not by a general, but a restrictive, policy, and its scope will not be enlarged. Jennings v. Gravely, 92 Va. 377, 23 S. E. 763.

This section applies to unlawful detainer as well as ejectment. Locke v. Frasher's Adm'r, 79 Va. 409; Dobson v. Culpepper, 23 Grat. 352.

Equitable estoppel cannot be set up as a defense to an action of ejectment. Casselman v. Bialas, 112 Va. 57, 70 S. E. 479. It will be remembered, however, that by section 5473, the defendant's resort to equity, is not affected by this section.

A mere parol disclaimer—a mere parol equitable estoppel in pais—is not such a defence as can be taken advantage of under this section. Suttle v. Richmond, F. & P. R. Co., 76 Va. 284; Fry v. Stowers, 98 Va. 417, 36 S. E. 482. But a solemn admission in regard to a disputed question of boundary, or location of disputed corner, is entitled to same weight in ejectment as would be given to it by a jury in another case. Fry v. Stowers, 98 Va. 417, 36 S. E. 482.

In a case where the defendant sought to set up as an equitable defence the sale of land sued for under a decree of court, and such land had been fully paid for under such sale, but no deed had been made to the defendants, it was held that this was not a defence, within the meaning of this section. Jennings v. Gravely, 92 Va. 377, 23 S. E. 763.

Although defendant in ejectment may be clothed with perfect equitable title, it is no defence, as against a plaintiff holding legal title with immediate right of possession, unless defendant can bring himself within the terms of this section requiring him to vouch a contract in

Digitized by Google

ating the purchase and terms thereof, and signed by vendor or Jennings v. Gravely, 92 Va. 377, 23 S. E. 763.

nce, Production of writing.—The written contract itself must ed to a jury, and parol evidence of its contents is inadmissible, may have been lost or destroyed. Davis v. Teays, 3 Grat. 283. section does not admit of the construction that the writing must cases produced. It may be proved by the best evidence avail- nchfield Coal Corp., 223 Fed. 743, 1 Va. L. R. N. S. 632. The vis v. Teays, 3 Grat. 283 distinguished.

rol sale offered in evidence in order to connect the defendant mmon source of title is inadmissible. Hurley v. Charles, 110 S. E. 468.

is proper plaintiff.—In a case of sale of land without a convey- re the vendee fails to perform his part of the contract, and the en conveys to a third person, such third person is the proper ng ejectment, and the first vendee has no equitable defence under n, because he is not entitled to a conveyance. Dobson v. Cul- Grat. 352.

V. Va. decisions on similar statute see Justis' Annotations, chap- ction 20.

but not construed in Thompson v. Camper, 106 Va. 315, 55

Burks' Pleading and Practice, pp. 189, 202.

472. When mortgagee or trustee not to recover.—The pay- the whole sum, or the performance of the whole duty, or mplishment of the whole purpose, which any mortgage or rust may have been made to secure or effect, shall prevent tee, or his heirs, from recovering at law, by virtue of such e or deed of trust, property thereby conveyed, wherever ndant would in equity be entitled to a decree, re-vesting title in him, without condition. (Code 1887, § 2742.)

re a deed of trust on a wife's land has been satisfied and a re- reconveyance is made to the husband, the wife may maintain in her own name. Under this section the trustee could not ejectment in such case, and the husband who is cognizant of the ds on no higher ground. Lynchburg Cotton Mills v. Rives, 112 70 S. E. 542.

section is not only for the benefit of the owner of the equity of on, but of his grantee. Hale v. Horne, 21 Grat. 122.

early cases before the passage of the statute, see Faulkner's Brockenbrough, 4 Rand. 245; Davis v. Teays, 3 Grat. 282.

l but not construed in Thompson v. Camper, 106 Va. 315, 55

Burks' Pleading and Practice, pp. 189, 202.

W. Va. decisions on similar statute see Justis' Annotations, chap- ction 21.

473. Notice to be given of such defenses; right of defendant t to equity not affected.—A defendant shall not be allowed himself of the two preceding sections, unless notice in writ- uch defense shall have been given ten days before the trial. r he shall or shall not make or attempt such defense, he t be precluded from resorting to equity for any relief to e would have been entitled if the said sections had not been (Code 1887, § 2743.)

ant at will entitled to notice. Jones v. Temple, 87 Va. 210, 12

ed but not construed in Burnette v. Young, 107 Va. 184, 57 S. E. nnings v. Gravely, 92 Va. 377, 23 S. E. 763.

Digitized by Google

§ 5474

See Burks' Pleading and Practice, pp. 189, 202.

For W. Va. decisions on similar statute see Justis' Annotations, ter 90, section 22.

Sec. 5474. When jury finds for plaintiff or, etc., how verdict t—If the jury be of opinion for the plaintiffs, or any of them, verdict shall be for the plaintiffs, or such of them as appea have right to the possession of the premises, or any part the and against such of the defendants as were in possession thereo claimed title thereto at the commencement of the action. (1887, § 2744.)

Verdict for less than claimed.—Where the verdict in ejectme only for a part of the land sued for the boundaries of the part recov should be designated. The verdict must be certain in itself or ref some certain standard by which to ascertain the land found, othe it will be too uncertain to render judgment thereon. Steelman v. Laf 112 Va. 494, 71 S. E. 524.

Where the verdict is for plaintiff, and is for part only of land clai the boundaries of part recovered should be designated, otherwise it be too uncertain to sustain a judgment. Slocum v. Compton, 93 Va. 25 S. E. 3.

As to verdict for the recovery of part of the premises claimed section 5469 and notes.

For more than claimed.—If verdict for plaintiff finds more land he is entitled to recover, the court should put him on terms to releas cess or award new trial. Fry v. Stowers, 98 Va. 417, 36 S. E. 482. pare Shiflet v. Dowell, 90 Va. 745, 19 S. E. 848.

Undivided interest.—Where less land is recovered than is dema the boundaries of the land recovered should be designated. Yet, if a divided interest is recovered, it is impossible to set out the bounds but, the interest being certain, that is sufficient. Callis v. Kemp, 11 78.

Right to quarry.—Where the declaration charged that the defen unlawfully withheld the possession of a whole limestone tract, and evidence showed that the defendant claimed no other right than to qu and to remove limestone from the land, a verdict of not guilty is cont to the evidence. It should have been for the plaintiff, except as to right to quarry and remove limestone. Reynolds v. Cook, 83 Va. 3 S. E. 710, 5 Am. St. Rep. 317.

Generally.—Where, in action of ejectment, evidence is conflictin to boundary lines, verdict of jury fixing lines will not be disturbed u valid objection is shown thereto. Fry v. Stowers, 98 Va. 417, 36 482.

A verdict which describes land "as the remaining one-third of lands hereinbefore excepted, and claimed by said defendants," sufficie shows that defendants claimed title thereto to support a verdict under section. Collins v. Riley, 104 U. S. 322, 26 L. Ed. 752.

For discussion of the subject as to whether trustee in a satisfied of trust should be made a party to proceedings involving the land veyed in such deed, see Jones v. Tatum, 19 Grat. 720. See, also, S v. Richmond, F. & P. R. Co., 76 Va. 284, cited under a preceding sec

As to what part of verdict may be disregarded as surplusage, Garrard v. Henry, 6 Rand. 110.

See Burks' Pleading and Practice, p. 208.

For W. Va. decisions on similar statute see Justis' Annotations, c ter 90, section 23.

See Gregory's Forms No. 297.

Sec. 5475. How, when any plaintiff has no right.—Where plaintiff appears to have no such right, the verdict as to s plaintiff shall be for the defendants. (Code 1887, § 2745.)

For W. Va. decisions on similar statute, see Justis' Annotati chapter 90, section 24.

Digitized by Google

476. **How verdict to specify premises recovered.**—When of the plaintiff is proved to all the premises claimed, the ıall be for the premises generally as specified in the declara- if it be proved to only a part or share of the premises, the hall specify such part particularly as the same is proved, the same certainty of description as is required in the on. (Code 1887, § 2746.)

section is mandatory, and it is reversible error for a trial court judgment on a verdict that fails to comply with its require- Grizzle v. Davis, 119 Va. 567, 89 S. E. 870.

e verdict is for all land claimed the court has no power to set verdict unless plaintiff will accept verdict for part of land only. Dowell, 90 Va. 745, 19 S. E. 848. Disapproved in Fry v. 8 Va. 417, 36 S. E. 482.

arly cases on the subject before the passage of the statute, see v. Oneal, 1 Call 246; Clay v. White, 1 Munf. 162; Gregory v. Munf. 25; Norvell v. Camm, 2 Rand. 68; Callis v. Kemp, 11 Messick v. Thomas, 84 Va. 891, 6 S. E. 482.

but not construed, Douglas Land Co. v. Thayer, 113 Va. 239. 215.

ıotes to section 5474.

W. Va. decisions on similar statute, see Justis' Annotations, 0, section 25.

Gregory's Forms No. 297.

477. **How, an undivided interest or share.**—If the verdict ı undivided share or interest in the premises claimed, it cify the same, and if for an undivided share or interest of the premises, it shall specify such share or interest, and such part as before required. (Code 1887, § 2747.)

joint tenant cannot recover in an action of ejectment in his own ole plaintiff of himself and his co-tenants. He can only recover hich he has the title, and if this be an undivided interest he e what his proportion is, or else there must be a judgment for Marshall v. Palmer, 91 Va. 344, 21 S. E. 672, 50 Am. St.

ıotes to section 5474.

W. Va. decisions on similar statute, see Justis' Annotations, 0, section 26.

Gregory's Forms No. 297.

478. **How, estate of plaintiff.**—The verdict shall also speci- tate found in the plaintiff, whether it be in fee or for life, or whose life, or whether it be a term of years, and specify- uration of such term. (Code 1887, § 2748.)

ction of ejectment does not lie to recover the mere use of un- lands for an uncertain and indefinite period. King v. Norfolk Co., 99 Va. 625, 39 S. E. 701. See note criticising the same. Reg. 408.

W. Va. decisions on similar statute, see Justis' Annotations 0, section 27.

Gregory's Forms No. 297.

479. **Where right of plaintiff expires before trial, what entered.**—If the right or title of a plaintiff in ejectment ter the commencement of the suit, but before trial, the ver- l be according to the fact, and judgment shall be entered amages sustained from the withholding of the premises by

Digitized by Google

the defendant, and as to the premises claimed, the judgment be that the defendant go thereof without day. (Code 1887, § 2

See Bolling v. Teel, 76 Va. 487.

For W. Va. decisions on similar statute, see Justis' Annota chapter 90, section 28.

Sec. 5480. How judgment for plaintiff entered; when suit recover dower, court may assign it.—The judgment for the pla shall be, that he recover the possession of the premises, accordi the verdict of the jury, if there be a verdict, or if the judgme by default, or on demurrer, according to the description there the declaration. If the action be brought to recover dower, w has not been assigned before the commencement of such action court in which the judgment is rendered may have dower assi by commissioners appointed for that purpose. (Code 1887, § 2

Under section 6333, allowing error in judgment or decree, et be corrected in same court, etc., an amendment to a judgment fo plaintiffs in ejectment, so as to conform with the requirements of section and chapter, is not erroneous. Alvey v. Cahoon, 86 Va. 9 S. E. 994.

As to what variance was permitted between the verdict and the ment before the passage of the statute, see Camden v. Haskill, 3 462.

As to recovery of dower and damages, see section 5126.

See notes to section 6333; also to section 5481.

For W. Va. decisions on similar statute, see Justis' Annotat chapter 90, section 29.

See Gregory's Forms No. 306.

Sec. 5481. How claim of plaintiff for profits and damages asse —If the plaintiff file with his declaration a statement of the pr and other damages which he means to demand, and the jury in his favor, they shall, at the same time, unless the court o wise order, assess the damages for mesne profits of the land any period not exceeding five years previously to the comme ment of the suit until the verdict, and also the damages for destruction or waste of the buildings or other property du the same time for which the defendant is chargeable. (Code 1 § 2751.)

Where damages claimed—Claim for improvements.—If there claim by the plaintiff for mesne profits and damages for waste, and b defendant for improvements under section 5483, both claims mus passed upon by the same jury. Where statements are filed with declaration and plea, the jury sworn to try the issue in ejectment make all inquiries required at the same time they try the issue, o the court should so order, be made by the same jury after the ve on the title is recorded (under section 5485), or by a new jury t impaneled. If defendant claims for improvements on the land, plaintiff may at any time before a judgment is rendered, on the as ment of the value of the improvements, though after the jury w tried the issue or passed upon the defendant's claim for improvem has been discharged, require that the value of his estate in the prem without improvements, shall also be ascertained, and this inquiry be made by another jury. The value of the plaintiff's estate in premises, without improvements, is to be ascertained as at the time v the assessment of the value of the improvements was made. Good v. Myers, 16 Grat. 336.

Digitized by Google

amages claimed—Writ of inquiry.—Where no statement of
ejectment was filed, so as to require an inquiry either by the
ry, the court was authorized, at the term following the office
after default, or at any subsequent term, to enter judgment
iff recover possession of the land sued for and make such
ment final, without setting the cause for inquiry at the next
g v. Davis, 137 Fed. 198, 11 Va. Law Reg. 178, and note.
this section authorizes the filing of a statement of damages in
after the filing of the declaration, but before defendant's ap-
nd before trial, it was proper for the clerk, in entering con-
f the common order on default, to award a writ of inquiry.
statement of damages had been filed. Id.
tes to section 5482.
ally.—If a declaration in ejectment in a Federal court did not
value of the land, and no statement of damages accompanied
ation, an allegation that defendant withheld possession to
damage in the sum of $5,000 is demurrable for failure to show
nd is of greater value than $2,000, so as to confer Federal
. Elk Garden Co. v. Thayer (Circuit Court W. D. Va.), 179

the recovery of profits under writ of right before the passage
pter, see Purcell v. Wilson, 4 Grat. 16.
enn v. Hatcher, 81 Va. 31, 59 Am. Rep. 645, cited in notes
5457.
V. Va. decisions on similar statute, see Justis' Annotations,
section 30.
regory's Forms No. 306.

32. When court to assess the damages.—If there be no
ict tried in the cause, and judgment is to be rendered for
iff on demurrer, default or otherwise, the said damages
ssessed by the court, unless either party shall move to
assessed by a jury, or the court shall think proper to
so assessed, in which cases a jury shall be impaneled to
m. (Code 1887, § 2752.)

ice judgment in an action of ejectment does not become final
e intervention of the court or jury. Defendant may appear
rm of court, and move to set aside the judgment and allow
ad therein. Smithson v. Briggs, 33 Grat. 180. There ought
ch case be an order for an inquiry of damages. James River
a Co. v. Lee, 16 Grat. 424, and note thereto, Va. Rep. Anno.
tement of damages having been filed in ejectment proceed-
eason for inquiry of damages either by the court or a jury
ng v. Davis, 137 Fed. 198, 11 Va. Law Reg. 196.
tes to section 5481.
V. Va. decisions on similar statute, see Justis' Annotations,
section 31.
regory's Forms No. 306.

33. Defendant to give notice of claim for improvements.
lefendant intends to claim allowance for improvements,
the premises by himself or those under whom he claims,
le with his plea, or at a subsequent time before the trial
od cause allowed by the court), a statement of his claim
in case judgment be rendered for the plaintiff. (Code
53.)

a house on a lot conveyed in trust is burned down, and the
the deed employed workmen to build another house upon an
to give them a lien upon the lot and house for the cost of

Digitized by Google

building, and the workmen were not informed as to the first lien they had nearly completed their work, though the deed of trust duly recorded, the whole property was declared to be subject to the lien, and this section was held not to apply to the claim of the mech for the value of the improvements. This section is confined to of ejectment, or cases in which a decree or judgment is rendered ag any defendant for the land. Graeme v. Cullen, 23 Grat. 266; W Ex'r, v. Krebbs, 33 Grat. 693; Hurn v. Keller, 79 Va. 415; Effing Hall, 81 Va. 94, 107.

See notes to section 5481.

See Burks' Pleading and Practice, p. 204.

For W. Va. decisions on similar statute, see Justis' Annota chapter 90, section 32.

See Gregory's Forms No. 306.

Sec. 5484. How allowed.—In such case, the damages of plaintiff, and the allowance to the defendant for improvem shall be estimated, and the balance ascertained, and judg therefor rendered, as prescribed in chapter two hundred twenty-five. (Code 1887, § 2754.)

Sec. 5485. Postponement of assessment and allowance.—On motion of either party, the court may order the assessment of damages and allowance to be postponed until after the verdi the title is recorded. (Code 1887, § 2755.)

Sec. 5486. Judgment to be conclusive.—Any such judgme an action of ejectment instituted after the first day of July, teen hundred and fifty, shall be conclusive as to the title or rig possession established in such action, upon the party against v it is rendered, and against all persons claiming from, throug under such party, by title accruing after the commencemen such action, except as hereinafter mentioned. (Code 1887, § 2

Where a tenant and not a landlord, was sued in ejectment to re land of which the tenant was in possession, and before execution tenant removed and the landlord entered, either personally or by an tenant, neither the landlord nor such subsequent tenant could be sidered as claiming through or under the former tenant who w party to the suit, and the landlord was therefore not bound by the ment as an estoppel. King v. Davis, 137 Fed. 198, 11 Va. Law 180, and note.

Judgment in ejectment is conclusive of the title of the pa Nye v. Lovitt, 92 Va. 720, 24 S. E. 710.

Judgment in ejectment is conclusive as to title and right to p sion. Keith, P., and Cardwell, J., concurring, in Douglas Land C Thayer, 113 Va. 239, 74 S. E. 215.

A judgment rendered in an action of trespass actually determ the question of title is a bar to a subsequent action of ejectment bet the same parties or their privies. Elk Garden Co. v. T. W. Thaye 206 Fed. 212.

For early cases on the subject before the passage of the statut Chapman v. Armistead, 4 Munf. 382; Pollard v. Baylors, 6 Munf.

For W. Va. decisions on similar statute, see Justis' Annota chapter 90, section 35.

See Gregory's Forms No. 306.

Sec. 5487. Saving in favor of persons under disability.—If person against whom such judgment is rendered shall be, a time of the judgment, an infant or insane, the judgment sha

Digitized by Google

an action commenced within five years after the removal disability. (Code 1887, § 2757; 1902-3-4, p. 734.)

section does not apply to actions of ejectment brought by lessee possession of leased premises which had been recovered by ord under sections 5530-5531. Leonard v. Henderson, 23

W. Va. decisions on similar statute, see Justis' Annotations, , section 36.
Gregory's Forms No. 306.

88. **Recovery of mesne profits, etc., not affected.**—Noth- s chapter shall prevent the plaintiff from recovering mesne r damages done to the premises, from any person other defendant, who may be liable to such action. (Code 1887,

Gregory's Forms No. 306.

89. **Writ of right, etc., abolished.**—No writ of right, writ or writ of formedon, shall be hereafter brought. (Code 759.)

Mitchell v. Baratta, 17 Grat. 445, cited under section 5452.

90. **How boundary line or lines of real estate may be as- and established; petition may be filed for that purpose.**— on having a subsisting interest in real estate and a right ssession, or to the possession of some share, interest or hereof, upon petition filed in the court which would have on in an action of ejectment concerning such real estate, es in the clerk's office thereof, shall have the right to have ed and designated by the said court, the true boundary ines to such real estate, as to one or more of the coter- and owners. Petitioner in stating his interest shall con- the requirements of section fifty-four hundred and fifty- l shall describe with reasonable certainty said real estate boundary line or lines thereof which he seeks to estab- plat, showing such real estate and boundary line or lines, h the petition, may serve the purposes of such descrip-

etitioner shall make defendants to said petition all per- ing a present interest in the boundary line or lines sought ertained and designated, and the case shall be commenced ng a copy of the petition upon the defendant or by giving ce in writing that said petition has been filed. No formal nswer to said petition shall be necessary, but the defend- l state his grounds of defense in writing, if any he has, parties shall be deemed to be at issue, which issue shall be boundary line or lines of such real estate. The trial shall cted as other trials at law, and the same rules of evidence ly and the same defenses may be made as in other actions A trial by jury may be waived by consent of the parties, ase be tried by the court. Counsel for the petitioner shall

Digitized by Google

have the right to open and conclude the argument. The judgmen of the court shall be recorded in the common law order book, an in the current deed book of the court, and indexed in the names o the parties. The judge of the court in term time or vacation ma direct such surveys to be made as he may deem necessary. Th judgment of the court until reversed shall forever settle, deter mine, and designate the true boundary line or lines in question, an be binding upon the parties, their heirs, devisees, and assigns. Th judgment may be enforced in the same manner as a judgment in a action of ejectment. A writ of error from the Supreme Court o Appeals shall lie to such judgment in like manner as in a commo law action.

In a proceeding under this section, no claim of the plaintiff fo rents, profits or damages shall be considered. (1912, p. 133.)

Revisors' Note.—This section is based upon the act cited. Unde the language of the act any person "having an interest" in real estate wa permitted to file the petition. The revised section declares what sort o interest is required, and provides that the petitioner must have "a sub sisting interest in real estate and a right to its possession, or to th possession of some share, interest or portion thereof." In stating hi interest the plaintiff must conform to section 5459 relating to ejectmen The real estate and the boundary line or lines thereof sought to be estab lished must be described with reasonable certainty, but a plat may b used for this purpose.

The act permitted the petition to be filed only in court, and provide that the case should be matured in like manner as an action of ejec ment, except that it was not necessary to serve a copy of the petitio The revised section allows the petition to be filed in court or at rules, an expressly states that the proceeding shall be commenced by the servi of a copy of the petition upon the defendant, or by giving notice in wri ing of its having been filed. All persons having a present interest in th line or lines must be made defendants. No formal plea or answer necessary, but grounds of defense having been stated in writing, th parties are deemed to be at issue upon the petition and the grounds defense, which issue is declared to be the true boundary line or line Surveys may be ordered by the judge either in term time or vacatio whether application be made therefor or not, thus carrying into the sectio the construction placed upon the act of 1912 in Hamman v. Miller, 11 Va. 873, 83 S. E. 382.

The act did not provide how the judgment should be enforced. Th revised section enacts that the judgment may be enforced in the sam manner as judgments in ejectment. The proceeding is a proceeding law and not in equity (Wright v. Rabey, 117 Va. 884, 86 S. E. 71), an it is provided that writs of error shall lie in like manner as in comm law actions.

No claim for rents, profits or damages can be considered in th proceeding.

Construction of the act of 1912 (Acts 1912, p. 133), upon whi the above section is based.—*Remedy given is a summary proceeding law.*—The remedy given by this act is a summary proceeding at law, an not in equity, provided by the legislature for settling and determinin without a great deal of technical formality, the true boundary lines b

Digitized by Google

terminous owners or claimants, and the trial is to be by a jury, is waived, and upon issue or issues joined between the parties as actions at law. Wright v. Rabey, 117 Va. 884, 86 S. E. 71; comment, 1 Va. L. R. N. S. 545.

est of petitioner.—In Christian v. Bulbeck, 120 Va. 74, 90 S. E. petitioner claimed to have a fee simple interest, and the court, ttempting to construe the words "interest in real estate" as used t, held that the petitioner had a sufficient interest. The revised s more definite, and provides what sort of interest is required.

should be made defendants.—The language of the act of 1912 l persons interested in the coterminous real estate shall be o the said petition." Under this language it was held that ie petitioner had only a life estate, the remaindermen in fee essary parties to the proceeding, and that it was incumbent on ioner either to have them unite with him as plaintiffs or to make endants. Collier v. Hiden, 120 Va. 453, 91 S. E. 630. In this on attention is called to the fact that the revised section pro- it all persons having a present interest in the boundary line or ght to be ascertained and designated shall be made defendants.

trial.—As to jury trial, the act of 1912 provided that "trial by be waived by consent of the parties," and the same provision in the revised section. It was held that the act required a trial in every case unless such trial was waived by consent of the both plaintiff and defendant, and that section 6012 was not ap- Collier v. Hiden, 120 Va. 453, 91 S. E. 630.

ence.—In a proceeding under this section evidence which would n admissible in an action of ejectment or unlawful detainer in- he boundary line between said parcels of land is competent and e received. Hamman v. Miller, 116 Va. 873, 83 S. E. 382.

dence which tends to show that an old fence was on or intended the line, and that the parties or their predecessors in title had ed it in whole or in part as the line, is admissible. Hamman v. 16 Va. 873, 83 S. E. 382.

lat which is not referred to in or made a part of the chain of either the plaintiff or defendant is not admissible as evidence of t or location of the metes and bounds covered by the true title. same reasons it is not admissible on the question of the extent on of the metes and bounds covered by the color of title of the t. Christian v. Bulbeck, 120 Va. 74, 90 S. E. 661.

eys.—Whenever the court deems it proper, it may of its own and it is not only its right but its duty, to order such surveys y deem necessary to give effect to its judgment as to what con- the boundary by locating and marking the line on the ground. v. Miller, 116 Va. 873, 83 S. E. 382.

revisors' note above on this subject.

tiff's title.—The plaintiff must recover on the strength of his e. Christian v. Bulbeck, 120 Va. 74, 90 S. E. 661.

defense of adverse possession, whether with or without color of der a plea of the statute of limitations, is a defense which may under the act. Christian v. Bulbeck, 120 Va. 74, 90 S. E. 661.

diction of court to pass upon title.—The act gives the court ion to pass upon the title to the land included in the boundary ines fixed by the judgment of the court in a proceeding under Christian v. Bulbeck, 120 Va. 74, 90 S. E. 661.

note 1 Va. L. Reg. N. S. 713.

Digitized by Google

CHAPTER 225.

Allowance for Improvements.

Sec.
5491. How defendant may apply therefor, and have judgment suspended.
5492. How damages of plaintiff assessed.
5493. For what time.
5494. How value of improvements estimated in favor of defendant.
5495. If allowance for improvements exceed damages, what to be done.
5496. Verdict for balance, after offsetting rents, etc., against improvements.
5497. Balance for defendant, a lien on the land.
5498. How tenant for life, paying for improvements, reimbursed.
5499. Exception as to mortgagees and trustees.
5500. When plaintiff may require his estate only to be valued.
5501. How estimated.
5502. How he may elect to relinquish his title to defendant.
5503. How payment of such value to be made by defendant when land sold therefor.
5504. When such value to be deemed real estate.
5505. When and how defendant, evicted, may recover from plaintiff amount paid.

Sec. 5491. How defendant may apply therefor, and have judgment suspended.—Any defendant against whom a decree or judgment shall be rendered for land, where no assessment of damages has been made under the preceding chapter, may, at any time before the execution of the decree or judgment, present a petition to the court rendering such decree or judgment, stating that he, or those under whom he claims while holding the premises under a title believed by him or them to be good, have made permanent improvements thereon, and praying that he may be allowed for the same over and above the value of the use and occupation of such land; and thereupon the court may, if satisfied of the probable truth of the allegation, suspend the execution of the judgment or decree, and impanel a jury to assess the damages of the plaintiff and the allowances to the defendant for such improvements. (Code 1887, § 2760.)

This section alters the common law, and allows defendant, as set off to plaintiff's claim for rent and damages, compensation for improvements made by him at a time when there was reason to believe that his title was good, not exceeding the increase of value to same. Hollingsworth v. Funkhouser, 85 Va. 448, 8 S. E. 592.

Notice of infirmity in title.—A person with notice, actual or constructive, of infirmity in his title, cannot, upon recovery of such lands by rightful owners, obtain a compensation for improvements made thereon. Means of notice, with duty of using them, is equivalent to actual notice. Effinger v. Hall, 81 Va. 95.

Defendant in ejectment cannot recover value of improvements made after notice of plaintiff's title. Morris v. Terrell, 2 Rand. 6; McKim v. Moody, 1 Rand. 58.

This section does not apply to heir who after suit to which he is a party to settle his ancestor's estate, and after decree to sell real estate, but before all is sold, buys, under bona fide belief that it would be unnecessary to sell all in order to pay debts, the shares of his coheirs, in part of unsold real estate, and erects improvements. Hurn v. Kelley, 79 Va. 415.

Digitized by Google

rty cannot be said to be acting in good faith in putting improve-
land when he knows that at best, he has only a life estate in
Wright v. Johnson, 108 Va. 855, 62 S. E. 948.
llowance for improvements will be made save to bona fide pur-
Burton v. Mill, 78 Va. 468.
re one purchases land with knowledge of another's equitable
it that other neglects to assert his rights for a long time, during
rchaser makes valuable improvements, such purchaser will be
to value of improvements, but not if he makes improvements
h right is asserted. Southall v. McKeand, 1 Wash. 336.
erally.—This section applies only to actions of ejectment or to
which a judgment or decree is rendered against a defendant for
ranham v. Artrip, 115 Va. 314, 79 S. E. 390. It does not apply
vements on which lien is claimed under mechanics' lien law.
v. Cullen, 23 Grat. 266. See section 6436.
chaser without notice of deed of trust may recover value of im-
nts made on land embraced in trust deed, but he must account
and profits. Woods' Ex'r v. Krebbs, 33 Grat. 685.
wing crops and fertilizers are not permanent improvements under
ion. Wright v. Johnson, 108 Va. 855, 62 S. E. 948.
note to 7 Va. Law Reg. 584; also notes to section 5494.
d Hay v. Alexandria & W. R. Co. (C. C.), 20 Fed. 15.
entire chapter cited in Nixdorf v. Blount, 111 Va. 127, 68
8.
W. Va. decisions on similar statute, see Justis' Annotations,
91, section 1.
Report of Revisors 1849, p. 699.

5492. How damages of plaintiff assessed.—The jury, in as-
such damages, either under this chapter or under the pre-
chapter, shall estimate against the defendant the clear an-
lue of the premises during the time he was in possession
(exclusive of the use by the tenant of the improvements
made by himself or those under whom he claims), and also
nages for waste or other injury to the premises committed
defendant. (Code 1887, § 2761.)
W. Va. decisions on similar statute, see Justis' Annotations,
91, section 2.

5493. For what time.—The defendant shall not be liable for
nual value for any longer time than five years before the
for damages for any such waste or other injury done be-
id five years, except where he claims for improvements as
id. (Code 1887, § 2762.)
Burks' Pleading and Practice, p. 204.
W. Va. decisions on similar statute, see Justis' Annotations,
91, section 3.

5494. How value of improvements estimated in favor of de-
.—If the jury shall be satisfied that the defendant, or those
whom he claims, made, on the premises, at a time when there
ason to believe the title good under which he or they were
the said premises, permanent and valuable improvements,
all estimate in his favor the value of such improvements as
o made before notice in writing of the title under which
intiff claims, not exceeding the amount actually expended
ing them, and not exceeding the amount to which the value

Digitized by Google

of the premises is actually increased thereby at the time of the a sessment. (Code 1887, § 2763.)

A purchaser can not close his eyes to defects in the title appare upon the record, make improvements on the land, and then claim t benefit of this section on the ground that "there was reason to belie the title good." McDonald v. Rothgeb, 112 Va. 749, 72 S. E. 692.

This statute has no application to a purchaser at a judicial sa against whom a claim for purchase money is asserted and in who favor there is no decree of confirmation. Tyler v. Toms et als., Va. 125.

See Hollingsworth v. Funkhouser, 85 Va. 448, 8 S. E. 592, amo notes to section 5491.

Cited Hay v. Alexandria & W. R. Co. (C. C.), 20 Fed. 15.

For W. Va. decisions on similar statute, see Justis' Annotatio chapter 91, section 4.

Sec. 5495. If allowance for improvements exceed damages, wh to be done.—If the sum estimated for the improvements exceed t damages estimated by the jury against the defendant as aforesai they shall then estimate against him, for any time before the sa five years, the rents and profits accrued against, or damage f waste or other injury done by him, or those under whom he clai so far as may be necessary to balance his claim for improvement but in such case he shall not be liable for the excess, if any, such rents and profits, or damages, beyond the value of the improv ments. (Code 1887, § 2764.)

Sec. 5496. Verdict for balance, after offsetting rents, etc., again improvements.—After offsetting the damages assessed for the plai tiff and the allowances to the defendant for improvements, if an the jury shall find a verdict for the balance for the plaintiff or d fendant, as the case may be, and judgment or decree shall be e tered therefor according to the verdict. (Code 1887, § 2765.)

Sec. 5497. Balance for defendant, a lien on the land.—Any su balance due to the defendant shall constitute a lien upon the la recovered by the plaintiff, until the same shall be paid. (Co 1887, § 2766.)

Sec. 5498. How tenant for life, paying for improvements, rei bursed.—If the plaintiff claim only an estate for life in the land r covered, and pay any sum allowed to the defendant for improv ments, he or his personal representative may recover, at the d termination of his estate, from the remainderman or reversioner, t value of the said improvements as they then exist, not exceedi the amount so paid by him, and shall have a lien therefor on t premises, in like manner as if they had been mortgaged for t payment thereof, and may keep possession of said premises until be paid. (Code 1887, § 2767.)

Sec. 5499. Exception as to mortgagees and trustees.—Nothing this chapter, nor anything concerning rents, profits, and improv ments, in the preceding chapter, shall extend or apply to any su brought by a mortgagee, or trustee in a deed of trust to secu creditors, his heirs, or assigns, against a mortgagor or grantor,

Digitized by Google

ed of trust, his heirs, or assigns, for the recovery of the ged premises or of the land conveyed by such deed of trust. 887, § 2768.)

500. When plaintiff may require his estate only to be valued. the defendant shall claim allowance for improvements, as provided, the plaintiff may, by an entry on the record, re- iat the value of his estate in the premises, without the im- ents, shall also be ascertained. (Code 1887, § 2769.)

lefendant claims for improvements on the land, the plaintiff may ime before judgment is rendered on assessment of value of im- nts, though after the jury which tried the issue or passed upon nt's claim for improvements have been discharged, require that ie of his estate in the premises without improvements shall be ned, and such value is to be ascertained as of the time when the ent of value of improvements was made. Goodwyn v. Myers, . 336.

r W. Va. decisions on similar statute, see Justis' Annotations, 91, section 10.

5501. How estimated.—The value of the premises in such all be estimated as it would have been at the time of the , if no such improvements had been made on the premises tenant or any person under whom he claims, and shall be ined in the manner hereinbefore provided for, estimating ue of improvements. (Code 1887, § 2770.)

is too late after verdict to object to action of court in allowing ury that tried case on merits to fix the value of land, the rents ofits thereof, and the value of improvements claimed by de- . Corr v. Porter, 33 Grat. 278.

r W. Va. decisions on similar statute, see Justis' Annotations, 91, section 11.

5502. How he may elect to relinquish his title to defendant. plaintiff in such case, if judgment is rendered for him, may time during the same term, or before judgment or decree is ed on the assessment of the value of the improvements, in per- by his attorney in the cause, enter on the record his election nquish his estate in the premises to the defendant at the so ascertained, and the defendant shall thenceforth hold all ate that the plaintiff had therein at the commencement of the rovided he pay therefor the said value, with interest, in the r in which the court may order it to be paid. (Code 1887, .)

ted in Corr v. Porter, 33 Grat. 278.

5503. How payment of such value to be made by defendant; land sold therefor.—The payments shall be made to the plaint- into court for his use, and the land shall be bound therefor, the defendant fail to make the said payments within or at mes limited therefor respectively, the court may order the o be sold and the proceeds applied to the payment of said and interest, and the surplus, if any, to be paid to the de- nt; but if the said net proceeds be insufficient to satisfy the

Digitized by Google

said value and interest, the defendant shall not be bound for th deficiency. (Code 1887, § 2772.)

Cited in Corr v. Porter, 33 Grat. 278.

Sec. 5504. When such value to be deemed real estate.—If th party by or for whom the land is claimed in the suit be a minor o insane, such value shall be deemed to be real estate, and be dis posed of as the court may consider proper for the benefit of th persons interested therein. (Code 1887, § 2773; 1902-3-4, p. 699.

Sec. 5505. When and how defendant, if evicted, may recover fron plaintiff amount paid.—If the defendant or his heirs or assigns shall after the premises are so relinquished to him, be evicted thereof b force of any better title than that of the original plaintiff, the per son so evicted may recover from such plaintiff or his representativ the amount so paid for the premises, as so much money had an received by such plaintiff in his lifetime for the use of such person with lawful interest thereon from the time of such payment. (Cod 1887, § 2774.)

CHAPTER 226.

Waste.

Sec.
5506. Tenant in possession liable for waste.
5507. Also tenant in common, etc.
5508. Also guardian.
5509. Action therefor; if waste wanton, double damages.
5510. Waste, for tenant to sell or remove manure from leased premises.
5511. Punishment for waste committed during pendency of suit; plaintiff may recover treble damages.

Sec. 5506. Tenant in possession liable for waste.—If any tenan of land commit any waste thereon, or after he has aliened it, while he remains in possession, unless by special license so to do, he shall be liable to any party injured, for damages. (Code 1887, § 2775.)

Waste in woods.—As to waste in woods, though the principle which prevents the timber from being cut to the detriment of the inheritance is the same here as in England, it is not as rigidly applied. Here it is enough that the tenant does no wanton mischief, and leaves a sufficient supply of timber for the wants of remaindermen. Mccaulay's Ex'r v Dismal Swamp Land Co., 2 Rob. 507.

The principle in Mccaulay's Ex'r v. Dismal Swamp Land Co., 2 Rob. 507, as to rights of life tenant, approved in Bond v. Godsey, 99 Va 564, 39 S. E. 216.

Right of dower in woodland.—A tenant, by right of dower of land which is of value only by reason of timber used in making shingles, is entitled to use such timber for such purpose, or if dower be not assigned, and such business is prosecuted by remainderman, to her share of the profits of such business. Mccaulay's Ex'r v. Dismal Swamp Land Co., 2 Rob. 507. See also Findlay v. Smith, below.

Mining rights.—It was held not to be waste by a tenant in dower of coal lands to take any quantity of coal from mines then opened, or to

Digitized by Google

shafts into the same veins. Such tenant can penetrate through pened veins, and go still further into veins lying under the first. Puryear, 1 Rand. 258, 10 Am. Dec. 528.

vise to testator's wife and others, of certain salt mines for life vas held to give an unlimited use of mine and salt; and also of land of devisor, which he had in his lifetime used as fuel for on the works. Findlay v. Smith, 6 Munf. 134, 8 Am. Dec. 733.

may maintain action.—Alienee of husband's interest in wife's es only a life estate, and may be sued by husband and wife for Dejarnette v. Allen, 5 Grat. 499.

rson having legal title to one-third and equitable title to two- tract may enjoin waste, and set aside a conveyance thereof to Garrison v. Hall, 75 Va. 150.

ction against tenant for waste it must be shown that he is in n under a valid lease, and to this end he may dispute title of Ross v. Gill, 4 Call 250.

nction to stay waste is a proper remedy, even though statute emedy at law. Harris v. Thomas, 1 Hen. & M. 18. But see . Carter, 4 H. & M. 424.

nction lies to prevent waste by which property subject to vendor's d be impaired in value. Clarke v. Curtis, 11 Leigh 559, 37 Am. But it has been decided that an injunction ought not to be vendor, retaining vendor's lien, against grantee, to prevent rom cutting timber, unless he brings suit to subject land to alleges that value thereof is being impaired. Scott v. Wharton, M. 25.

erally.—It seems that a tenant for life may use estate for same and to same extent that it was used by tenant in fee. Mccaulay's ismal Swamp Land Co., 2 Rob. 507.

o what use by life tenant is not waste, see Mccaulay's Ex'r v. wamp Land Co., 2 Rob. 507.

note 8 Va. Law Reg. 690.

ussed, 13 Va. Law J. 213.

W. Va. decisions on similar statute, see Justis' Annotations, 92, section 1.

507. Also tenant in common, etc.—If a tenant in common, nant, or parcener commit waste, he shall be liable to his co- jointly or severally, for damages. (Code 1887, § 2776.)

owed in Graham v. Pierce, 19 Grat. 28, 100 Am. Dec. 658.

W. Va. decisions on similar statute, see Justis' Annotations, 92, section 2.

508. Also guardian.—If a guardian commit waste of the f his ward, he shall be liable to the ward, at the expiration uardianship, for damages. (Code 1887, § 2777.)

W. Va. decisions on similar statute, see Justis' Annotations, 92, section 3.

509. Action therefor; if waste wanton, double damages.— rson, entitled to damages in any such case, may recover the an action on the case; and if it shall be found by the jury e waste was committed wantonly, judgment shall be for the amount of damages assessed therefor. (Code 1887, §

isors' Note.—Under this section as it stood before the revision, aste was wanton, treble damages were allowed. The revised estricts the plaintiff in this case to double damages.

W. Va. decisions on similar statute, see Justis' Annotations, 92, section 4.

Digitized by Google

Sec. 5510. Waste, for tenant to sell or remove manure from lea premises.—If a tenant at will or for years, without a special lice so to do, remove by sale or otherwise from the leased premi manure made thereon in the ordinary course of husbandry, cons ing of ashes leached or unleached, collections from the stab barnyard, cattle pens, or other places on the leased premises, composts formed by an admixture of these or any of them with soil or other substances, such removal shall be deemed waste within the provisions of the preceding sections of this chap (Code 1887, § 2779.)

Sec. 5511. Punishment for waste committed during pendency suit; plaintiff may recover treble damages.—If the tenant in p session of land, pending any suit to recover or charge the sa with knowledge of such suit, commit any waste on the land, court in which the suit is, or the judge of said court in vacati may, on petition of the plaintiff alleging such waste, verified oath, and after reasonable notice to the said tenant, make an or forbidding the tenant to commit further waste on the land dur the pendency of the suit, and disobedience of the order by the t ant, after he shall have been served with a copy thereof, may punished as a contempt by the court in term or by the judge vacation; and if the plaintiff succeed in recovering or charging land, he may recover in an action on the case against him who c mitted the waste, three times the amount of the damages asses therefor; but it shall be provided in the order aforesaid that i not to take effect until the plaintiff, or some one for him, shall h given bond with sufficient surety before the said court or the cl thereof in his office, in such penalty as the court or judge ther shall prescribe, with condition to pay to the tenant, in case plaintiff does not succeed in recovering or charging the land, s damages as may accrue to the tenant in consequence of said ord (Code 1887, § 2780.)

Digitized by Google

TITLE 53.

Rents, Emblements, and Apportionment.

Assignment of lands under lease; notice to terminate a tenancy; recovery or rent, and right of re-entry.
Emblements.
Apportionment of money coming due at fixed periods.

CHAPTER 227.

nt of Lands Under Lease; Notice to Terminate a Tenancy; Recovery of Rent,* and Right of Re-Entry.

antees and assignees to ve same rights against ssees as lessors, etc.
ssees, etc., to have same ghts against grantees, etc., against lessors.
hat powers to pass to antee or devisee without xpress words; when attrnment unnecessary.
hen attornment void.
tice to terminate a tenncy; on whom to be rved; when notice necesry.
fect of failure of tenant vacate premises at expiation of term.
hen tenant deserts premes, how landlord may enr, etc.
medy for rent and for use nd occupation.
ho may recover rent, etc.
ho liable for it.
hen and by whom distress ade.
what goods levied.

Sec.
5524. When goods not to be removed without paying a year's rent. Lien for taxes, levies, and militia fines not affected.
5525. When goods of an undertenant may be removed from leased premises.
5526. When officer may enter by force to levy distress or attachment.
5527. When distress not unlawful because of irregularity, etc.
5528. Return of distress warrants; process of sale thereunder.
5529. Remedy, when rent is to be paid in other thing than money.
5530. Proceedings to establish right of re-entry, and judgment therefor.
5531. When defendant barred of relief.
5532. How trustee or mortgage relieved from the forfeiture.
5533. How owner, etc., relieved in equity.

to reduction of rent when premises are destroyed, in whole or in section 5180.
monographic note on Landlord and Tenant, Mason v. Moyers, 06, Va. Rep. Anno.

Digitized by Google

Sec.
5534. How judgment of forfeiture prevented.
5535. When suit for re-entry brought.
5536. In case of actual re-entry, written act of re-entry to be returned and recorded, and certificate thereof published.
5537. Fee of clerk.
5538. Within what time, and h owner may be restored his possession.
5539. Limitation of suit, e against person in possess by re-entry.

Sec. 5512. Grantees and assignees to have same rights agai lessees as lessors, etc.—A grantee or assignee of any land let to lea or of the reversion thereof, and his heirs, personal representati or assigns shall enjoy against the lessee, his personal represen tive or assigns, the like advantage, by action or entry for a forfeiture, or by action upon any covenant or promise in the lea which the grantor, assignor, or lessor, or his heirs, might have e joyed. (Code 1887, § 2781.)

This entire chapter cited in Church v. Goshen Iron Co., 112 Va. 6 72 S. E. 685.

For W. Va. decisions on similar statute, see Justis' Annotatio chapter 93, section 1.

Sec. 5513. Lessees, etc., to have same rights against grantees, et as against lessors.—A lessee, his personal representative, or assig may have against a grantee or alienee of the reversion, or of a part thereof, his heirs or assigns, the like benefit of any conditi covenant, or promise in the lease, as he could have had against t lessors themselves and their heirs and assigns, except the benefit any warranty, in deed or law. (Code 1887, § 2782.)

In general, the assignee of a term of years is not liable for breach of covenant in the case before assignment; but if assignee, by expr covenant with his assignor, bind himself to perform all the conditio in the case contained and required to be done and performed on part lessee, such a covenant not only binds lessee to fulfill the covena during his own time, but makes him liable for breaches before his tim Farmers' Bank v. Mutual Assur. Soc., 4 Leigh 69.

As to construction of covenants in leases, see section 5178 et se

For W. Va. decisions on similar statute, see Justis' Annotatio chapter 93, section 2.

Sec. 5514. What powers to pass to grantee or devisee without e press words; when attornment unnecessary.—In conveyances or d vises of rents in fee, with powers of distress and re-entry, or eith of them, such powers shall pass to the grantee or devisee without e press words. A grant or devise of a rent, or of a reversion or r mainder, shall be good and effectual without attornment of the te ant; but no tenant who, before notice of the grant, shall have pa the rent to the grantor, shall suffer any damage thereby. (Co 1887, § 2783.)

A. leases land to B. for twenty years, with liberty to B. to surrend at any time. A. devises the rents during his lease to his daughters, a fee simple afterwards to his son, P. P. sells to B., who surrenders t lease. Held, that this does not defeat the daughters' rights. B. mu pay rents or surrender unexpired term to them. Graham v. Woodso 2 Call 249.

Digitized by Google

nt charge or ground rent is real estate, and subject to all its and upon death of owner it goes to devisee or heir. Willis' om., 97 Va. 667, 34 S. E. 460.

rnment by tenant of person claiming land to person to whom e is conveyed by decree of court does not make person to whom rnment is made tenant of claimant who originally invested at- enant with possession. Miller v. Williams, 15 Grat. 218.

W. Va. decisions on similar statute, see Justis' Annotations, 3, section 3.

515. When attornment void.—The attornment of a tenant to nger shall be void, unless it be with the consent of the of such tenant or pursuant to or in consequence of the t, order, or decree of a court. (Code 1887, § 2784.)

W. Va. decisions on similar statute, see Justis' Annotations, 3, section 4.

516. Notice to terminate a tenancy; on whom to be served; otice necessary.—A tenancy from year to year may be ed by either party giving notice, in writing, prior to the ny year of the tenancy, for three months of his intention nate the same. A tenancy from month to month may be ed by either party giving thirty days' notice, in writing, the end of the month, of his intention to terminate the When such notice is to the tenant, it may be served upon pon any one holding under him the leased premises, or any reof. When it is by the tenant, it may be served upon any , at the time, owns the premises in whole or in part, or the such owner, or according to the common law. This sec- l not apply where, by special agreement, no notice is to be nor shall notice be necessary from or to a tenant whose to end at a certain time. (Code 1887, § 2785; 1902-3-4, p.

sors' Note.—Formerly, in prescribing the notice to be given to a tenancy from year to year, this section drew a distinction land situated in a city or town and land situated outside of a wn. If the land was situated in the country, six months' notice ired; if in a city or town, three months' notice was necessary. case it was incumbent upon the party to give such notice prior d of any year (of the tenancy). The revised section abolishes action and prescribes a uniform notice of three months.

eement that tenant is to get a house at price therein stated for , and have preference each succeeding year, is not a tenancy r to year, and does not entitle tenant to legal notice to quit. v. Morris, 5 Grat. 90.

greement by tenant that he will surrender possession whenever ser of the land requires it makes him tenant at will, and not r to year. Harrison v. Middleton, 11 Grat. 527.

Kaufman v. Mastin, 66 S. E. 92 (W. Va.), it was held that a olding over and paying monthly rent beyond the term of a lease r, in which lease rent is reserved by the month and is payable ly periods, does not alone imply a renewal by the year. A of the tenancy by the month is thereby implied, 15 Va. Law

o tenant in default after five days' notice, see section 5448.

n of notice to quit by landlord to tenant from year to year,

Digitized by Google

4 Min. (3d Ed.) p. 1763; of notice by tenant from year to year of his in tention to quit, Id.

For W. Va. decisions on similar statute, see Justis' Annotations chapter 93, section 5.

See Gregory's Forms Nos. 373, 374.

Sec. 5517. Effect of failure of tenant to vacate premises at ex piration of term.—A tenant from year to year, month to month o other definite term, shall not, by his mere failure to vacate th premises upon the expiration of the lease, be held as tenant for an other term when such failure is not due to his wilfullness, negli gence or other avoidable cause, but such tenant shall be liable t the lessor for use and occupation of the premises and also fo any loss or damage sustained by the lessor because of such failur to surrender possession at the time stipulated.

Revisors' Note.—This section is new. See Grice v. Todd, 120 Va 481, 91 S. E. 609.

Sec. 5518. When tenant deserts premises, how landlord may ente etc.—If any tenant from whom rent is in arrear and unpaid sha desert the demised premises and leave the same uncultivated o unoccupied, without goods thereon subject to distress sufficient t satisfy the said rent, the lessor or his agent may post a notice, i writing, upon a conspicuous part of the premises, requiring the ten ant to pay the said rent, in the case of a monthly tenant within te days, and in the case of a yearly tenant within one month from th date of such notice. If the same be not paid within the time spec fied in the notice, the lessor shall be entitled to possession of th premises and may enter thereon, and the right of such tenant theret shall thenceforth be at an end; but the landlord may recover th rent up to that time. (Code 1887, § 2786; 1902-3-4, p. 588.)

Sec. 5519. Remedy for rent and for use and occupation.—Rent o every kind may be recovered by distress or action. A landlor may also, by action, recover (where the agreement is not by deed a reasonable satisfaction for the use and occupation of lands; o the trial of which action, if any parol demise, or any agreement (no being by deed) whereon a certain rent was reserved, shall appea in evidence, the plaintiff shall not therefor be non-suited, but ma use the same as evidence of the amount of his debt or damages. I any action for rent, or for such use and occupation, interest sha be allowed as on other contracts. (Code 1887, § 2787.)

Where landlord entered upon part of premises leased against tenant' will, and, without his consent, cut and removed hay therefrom, but te ant continued to occupy premises for residue of year, held landlord l such disturbance of tenant lost benefit of entire contract, and is n entitled to recover any part of rent. Briggs v. Hall, 4 Leigh 484.

A person cultivating land under an agreement for a division crops is an employee, and not a tenant. Parrish's Case, 81 Va. 1.

A court of equity will not enjoin insolvent landlord from issuin distress warrant merely because tenant has large set-offs against plai tiff's demands. Hancock v. Whitehall Tobacco Warehouse Co., 100 V 443, 41 S. E. 860.

This statute settles question raised in Eppes' Ex'rs v. Cole, 4 He

Digitized by Google

31, 4 Am. Dec. 512; Brooks v. Wilcox, 11 Grat. 411; Mickle v. ee, 5 Rand. 571; Com. v. Ricks, 1 Grat. 416; Dow v. Adams' 5 Munf. 21; Cooke v. Wise, 3 Hen. & M. 463. The statute pro- ecifically for interest, and these cases, therefore, do not apply. it of every kind may be recovered by distress, but there can be ess unless the relation of landlord and tenant exists. Church v. Iron Co., 112 Va. 694, 72 S. E. 685. For difference between a and a lease, see this case.

a case in bankruptcy before the Circuit Court of Appeals of ted States for the Fourth Circuit involving a construction of 5519, 5522, 5523 and 5524, see Bird v. City of Richmond, 240 5.

Burks' Pleading and Practice, pp. 4, 6.

Sprinkel v. Rosenheim, 103 Va. 187, 47 S. E. 883.

W. Va. decisions on similar statute, see Justis' Annotations, 93, section 7.

5520. Who may recover rent, etc.—He to whom rent or com- on is due, whether he have the reversion or not, his personal ntative or assignee may recover it as provided in the pre- section, whatever be the estate of the person owning it, or his estate or interest in the land be ended. And when the of real estate in fee, or holder of a term, yielding him rent, e rent thereafter due shall be recoverable by such owner's devisee, or such termholder's personal representative. And owner or holder alien or assign his estate or term, or the ereafter to fall due thereon, his alienee or assignee may re- ich rent. (Code 1887, § 2788.)

ent charge or ground rent on death of owner descends to heir. Ex'r v. Com., 97 Va. 670, 34 S. E. 460.

Sprinkel v. Rosenheim, 103 Va. 187, 48 S. E. 883.

5521. Who liable for it.—Rent may be recovered from the r other person owing it, or his assignee, or the personal rep- tive of either; but no assignee is to be liable for rent which due before his interest began. Nothing herein shall impair ge the liability of heirs or devisees for rent, as for other f their ancestor or devisor. (Code 1887, § 2789.)

Sprinkle v. Rosenheim, 103 Va. 187, 48 S. E. 883.

5522. When and by whom distress made.—Rent may be dis- for within five years from the time it becomes due, and not rds, whether the lease be ended or not. The distress shall e by a constable, sheriff, or sergeant of the county or city the premises yielding the rent, or some part thereof, may he goods liable to distress may be found, under warrant from e, founded upon an affidavit of the person claiming the his agent, that the amount of money or other thing to be ed for (to be specified in the affidavit), as he verily believes, y due to the claimant for rent reserved upon contract from son of whom it is claimed. (Code 1887, § 2790; 1902-3-4, p.

visors' Note.—As this section stood before the revision, it con- upon clerks of circuit and corporation courts the right to issue warrants. This provision was inserted by the amendment of

Digitized by Google

1902-3-4, p. 664, and no longer appears in the section. As the cler could not try the warrants and justices are always convenient, the seemed to be no reason for giving clerks power to issue distress warran

When agent to collect rent not authorized to sue out distress warra Fishburne v. Engledove, 91 Va. 548, 22 S. E. 354.

Form of affidavit for warrant for distress for rent reserved in mone 4 Min. (3d Ed.) p. 1619; of warrant for distress for rent reserved money, Id.

As to forthcoming bonds by tenants, and defense thereon, see se tions 6518, 6519, 6522.

As to distress for advances to tenants, see section 6454.

See Sprinkel v. Rosenheim, 103 Va. 187, 48 S. E. 883.

For a case in bankruptcy before the Circuit Court of Appeals the United States for the Fourth Circuit involving a construction sections 5519, 5522, 5523 and 5524, see Bird v. City of Richmond, 2 Fed. 545.

For W. Va. decisions on similar statute, see Justis' Annotatio chapter 93, section 10.

See Gregory's Forms No. 26.

Sec. 5523. On what goods levied.—The distress may be levied any goods of the lessee, or his assignee, or under-tenant, found the premises, or which may have been removed therefrom not mo than thirty days. A levy within such thirty days shall have li effect as if the goods levied on had not been removed from t leased premises. If the goods of such lessee, assignee, or und tenant, when carried on the premises, are subject to a lien, which valid against his creditors, his interest only in such goods shall liable to such distress. If any lien be created thereon while th are upon the leased premises, or within thirty days thereafter, th shall be liable to distress, but for not more than one year's re whether it shall have accrued before or after the creation of t lien. No other goods shall be liable to distress than such as a declared to be so liable in this section, nor shall the goods of t under-tenant be liable to a greater amount than such under-tena owed the tenant at the time the distress was levied. (Code 18 § 2791.)

Revisors' Note.—The second sentence of this section is new, as also the words "or within thirty days thereafter" appearing in the fou sentence. It was held in Geiger v. Harmon, 3 Gratt. 130, under t former language of the section, that the landlord's lien for a year's re did not extend to protect the tenant's property from execution except cases where the goods were on the premises leased. Under that holdi in order for the distress warrant to take priority over an execution, was necessary for the distress warrant to be levied within the thirty da and before the execution was levied. See discussion in Burks' Pl. & section 13. The new language overturns the holding in Geiger v. Ha mon, and now if a distress be levied on the goods within thirty days af their removal, the effect is declared to be the same as if the goods levi on had not been removed from the leased premises, and the lien fo year's rent applies to the goods within thirty days after their remo as well as while they are on the leased premises, hence a distress warra levied within the thirty days takes priority over an execution levi during the same period, whether levied before or after the levying

Digitized by Google

s warrant. It will be observed, however, that the language is
ed to the lien of an execution.
atter part of the revised section prevents an injustice to the
nt which he suffered under the old law. Formerly, the goods
der-tenant were liable for the whole amount of the rent due
ant, regardless of the state of accounts between the tenant and
tenant (Bernard v. McClanahan, 115 Va. 453, 79 S. E. 1059);
are not liable to a greater amount than the under-tenant owed
at the time the distress was levied.
t of section.—At common law, goods of tenant taken in execu-
gh remaining on the premises, were not the subject of distress
ndlord lost his lien upon tenant's effects after the sheriff had
them. The object of this section therefore was to protect the
gainst liens created upon the property subject to distress upon
emises, after the tenancy began, by providing that liens so
ould be ineffectual to defeat landlord's right to recover for
rent, whether such rent accrued before or after the creation
ns, provided goods are distrained within five years from the
ent becomes due. Sprinkel v. Rosenheim, 103 Va. 185, 188,
83.
of trust.—Tenant under lease for term containing no agree-
renewal executed trust deed on personalty on premises. After-
dlord and tenant agreed on renewal different in terms from
ase. Held, effect of renewal was a new tenancy commencing
ution and record of trust deed which had priority over rent.
omattox v. Hamilton, 83 Va. 319, 2 S. E. 195.
e assignee of tenant holds over after year's lease, and lessor
nt, such acceptance of rent constituted a new tenancy, and,
f tenant having executed to creditor deed of trust on furniture
iration of first year, such deed had priority over rent for term
tenancy. City of Richmond v. Duesberry, 27 Grat. 210.
ant for a year executes deed of trust on part of his personal
o secure one creditor, and then executes another deed to
ther creditor, conveying all the property on leased premises.
on sale of property under distress rent is to be paid first out
y not embraced in first deed, which is to be exonerated if other
s sufficient. Jones v. Phelan, 20 Grat. 229.
nder-tenant.—See revisors' note above.
iability of an under-tenant does not arise out of contractual
etween him and the lessor, but by virtue of the statute.
. McClanahan, 115 Va. 453, 79 S. E. 1059.
iability of the under-tenant's property continues while on the
emises, and for thirty days after it is removed therefrom.
. McClanahan, 115 Va. 453, 79 S. E. 1059.
rally.—As to the case of Geiger v. Harmon, 3 Gratt. 130, see
ote above.
is no authority for levying either a distress warrant or an
t for rent upon property which has been removed from the
emises for more than thirty days. Dime Deposit Bank v.
13 Va. 567, 75 S. E. 179.
ccupant of a room or rooms in a tenement is a lodger and not
where the owner retains his character as master of the house,
same time retains the general control over the whole house.
nchburg Y. M. C. A., 115 Va. 745, 20 Va. L. Reg. 24 and note,
589.
but not construed in Wickham v. Richmond Spike Co., 107
7 S. E. 647.
general discussion of sections 5523 and 5524 as they stood at
see Wades v. Figgatt, 75 Va. 575; 11 Va. Law J. 445. As to
op reserved as rent, see sections 6454, 6455.
a case in bankruptcy before the Circuit Court of Appeals of the

Digitized by Google

United States for the Fourth Circuit involving a construction of sec 5519, 5522, 5523 and 5524, see Bird v. City of Richmond, 240 Fed.

Under this and the following section, construed in connection the National Bankruptcy Act, the claim (lien) of the landlord fo rent of the premises in which the bankrupt was conducting his bus is superior to and entitled to priority over the claims of clerks for s for three months immediately preceding bankruptcy. Lott v. Sals 237 Fed. 191 (C. C. A., Fourth Circuit); In re Hyman, Id.

See Burks' Pl. & Pr., pp. 6, 11, 12, 13, 14.

For W. Va. decisions on similar statute, see Justis' Annotat chapter 93, section 11.

See Gregory's Forms Nos. 26, 420, 421, 422, 423, 468, 469, 470,

Sec. 5524. When goods not to be removed without paying a y rent; lien for taxes, levies, and militia fines not affected.—If, the commencement of any tenancy, a lien be obtained or create deed of trust, mortgage, or otherwise, upon the interest or pro in goods on premises leased or rented, of any person liable fo rent, or the said goods be sold, the party having such lien, o purchaser of such goods, may remove them from the premise the following terms, and not otherwise, that is to say: on the t of paying to the person entitled to the rent so much as is in ar and securing to him so much as is to become due, what is so or secured not being more altogether than a year's rent in any If the goods be taken under legal process, the officer executi shall out of the proceeds of the goods, make such payment of is in arrear; and as to what is to become due, he shall sell a ficient portion of the goods on a credit till then, taking fro purchasers bonds, with good security, payable to the person s titled, and delivering such bonds to him. If the goods be not t under legal process, such payment and security shall be mad given before their removal. Neither this nor the preceding se shall affect any lien for taxes, levies, or militia fines. (Code § 2792.)

Revisors' Note.—The first sentence of this section now exp includes purchasers. They were probably provided for by the latte of the section, but it was thought best to make the language more ex

The trustee in a deed of trust given by the lessor on property it had been carried on leased premises cannot remove property leased premises without securing to lessor one year's rent. And tion of trustee to remove or sell said property is sufficient to wa swearing out of attachment. Offerdinger v. Ford, 92 Va. 63 S. E. 246.

The goods of the under-tenant cannot be subjected to the satisf of more than one year's rent. Bernard v. McClanahan, 115 Va. 79 S. E. 1059. But as to this see sections 5523, 5525 and revisors'

For a case in bankruptcy before the Circuit Court of Appeals United States for the Fourth Circuit involving a construction of se 5519, 5522, 5523 and 5524, see Bird v. City of Richmond, 240 Fed.

See notes to section 5523; Harvie v. Wickham, 6 Leigh 236.

See Burks' Pleading and Practice, pp. 12, 13, 14.

For W. Va. decisions on similar statute, see Justis' Annota chapter 93, section 12.

See Gregory's Forms No. 26.

Digitized by Google

5. When goods of an under-tenant may be removed from mises.—The preceding section is subject to the following s: An under-tenant, or a purchaser from him, or a cred- ng a deed of trust, mortgage, or other encumbrance cre- is goods after they were carried on the leased premises, ve the same upon payment of so much of the rent con- be paid by him as is in arrear, and securing the residue, ling one year's rent; and if his goods be taken under legal gainst him, the officer executing the same shall, out of the of his goods, make payment of so much of the rent as to is in arrear, and as to what is to become due from him, sufficient of the goods upon credit until then, taking from asers bonds with good security, payable to the party receive the same, and deliver them to him. (Code 1887,

ors' Note.—This section is new. The under-tenant is put on footing as the tenant, except that the claim against him is the amount he contracted to pay. See revisors' note to section ng on the latter part of that section.

eference at the end of this section should be stricken out. otes to preceding section.

6. When officer may enter by force to levy distress or at- —The officer having such distress warrant, or an attach- rent, if there be need for it, may, in the day time, break enter into any house or close in which there may be goods he distress or attachment, and may, either in the day or ak open and enter into any house or close wherein there ny goods so liable which have been fraudulently or clan- removed from the demised premises. He may also levy ess warrant or attachment on property liable for the rent he personal possession of the party liable therefor. (Code 93.)

ors' Note.—The last sentence of this section is new. It changes n law, and probably the law of Virginia, but the levy at common y a private individual. Distress for rent has now become a oceeding, the levy is by an officer in the execution of process, is no reason why an officer may not levy a distress warrant on the personal possession of the tenant as well as an execution perty in the personal possession of the execution debtor.

7. When distress not unlawful because of irregularity, re distress shall be made for rent justly due, and any ir- or unlawful act shall be afterwards done by the party g, or his agent, the distress itself shall not be deemed to ful, nor the party making it be therefore deemed a tres- initio; but the party aggrieved by such irregularity or act may, by action, recover full satisfaction for the special e shall have sustained thereby. (Code 1887, § 2794.)

damages for wrongful distress, see section 5783.

Digitized by Google

Sec. 5528. Return of distress warrants; process of sale thereun—It shall be the duty of each officer, who under the present law r execute warrants of distress, except where it is otherwise provi by law, to make return of his action and proceedings upon s warrants as may be placed in his hands for collection, and file same with the clerk of the circuit or corporation court of his cou or city, as the case may be, within sixty days after the same r have come to his hands. Upon the return of such warrant it s be the duty of such clerk to enter the same upon the execution b of his office after the manner as now provided by law as to ex tions issued by justices and returned unsatisfied, and the said c shall preserve such warrant in his office as is now provided a such unsatisfied executions. If such return shall show that a l has been made and that property levied on remains unsold it s be lawful for the said clerk of the circuit or corporation court, as case may be, in whose office such return is filed to issue a wri venditioni exponas thereon just as if the said return were upo writ of fieri facias. (1897-8, p. 755.)

Sec. 5529. Remedy, when rent is to be paid in other thing t money.—Where goods are distrained or attached for rent reser in a share of the crop, or in any thing other than money, the cl ant of the rent, having given the tenant ten days' notice, or, i be out of the county, having set up the notice in some conspicu place on the premises, may apply to the court to which the att ment is returnable, or the circuit court of the county or the poration court of the corporation in which the distress is made ascertain the value in money of the rent reserved, and to ord sale of the goods distrained or attached. The tenant may make same defenses that he could to a motion on a forfeited forthcom bond given for rent, and may also contest the value of what reserved for the rent. The court shall ascertain, either by its judgment, or, if either party require it, by the verdict of a j impaneled without the formality of pleading, the extent of the bility of the tenant for rent, and the value in money of such r and if the tenant has been served with notice shall enter judgm against him for the amount so ascertained. It shall also order goods distrained or attached, or so much thereof as may be necess to be sold to pay the amount so ascertained. The officer char with the execution of such warrant or attachment shall make ret thereof to the clerk's office of the court, showing how he has ecuted the same. If the goods so directed to be sold prove in ficient to pay the amount of the rent so ascertained, an execut may be issued on said judgment as in case of other judgments, wh may be levied on such property as would be leviable under execution issued on a judgment in an action brought to rec the rent. (Code 1887, § 2795.)

Digitized by Google

ors' Note.—Under this section as it stood before the revision t clear what defenses the tenant could make, at what stage, the defenses should be made. It appeared that the court had to go further than to ascertain the value in money of the rent r a sale of the property. Presumably, if defenses were not t the time of the application to ascertain the value, when the ne to sell the tenant could give a forthcoming bond and make e to a motion on that bond. This involved two proceedings in o necessity being seen for this, the revised section makes provi- aving the entire litigation at one time and in one proceeding. wed in Brooks v. Wilcox, 11 Grat. 411.
ote of Parrish's Case, 81 Va. 1, under section 5519.
of affidavit for warrant of distress for rent reserved in kind, d Ed.) p. 1619; of distress for rent reserved in kind, Id. p. 1620; to tenant to ascertain the value of chattels distrained or at- l.
Burks' Pleading and Practice, pp. 10, 47.
W. Va. decisions on similar statute, see Justis' Annotations, 3, section 15.
Gregory's Forms Nos. 264, 364.

30. **Proceedings to establish right of re-entry, and judg-** refor.—Any person who shall have a right of re-entry into reason of any rent issuing thereout being in arrear, or by f the breach of any covenant or condition, may serve a on in ejectment on the tenant in possession, where there such tenant, or, if the possession be vacant, by affixing the on upon the chief door of any messuage, or at any other place on the premises, which service shall be in lieu of a and re-entry; and upon proof to the court, by affidavit in udgment by default, or upon proof on the trial, that the ned was due, and no sufficient distress was upon the prem- at the covenant or condition was broken before the service claration, and that the plaintiff had power thereupon to re- shall recover judgment and have execution for such lands. 87, § 2796.)

re lessor can exercise right of re-entry for failure to pay rent, demand payment, unless such demand is waived by terms of hnston v. Hargrove, 81 Va. 118.
provisions of section 5487 do not apply to action brought to ased premises under this section. Leonard v. Henderson, 23

W. Va. decisions on similar statute, see Justis' Annotations, 3, section 16.

31. **When defendant barred of relief.**—Should the defend her person for him, not pay the rent in arrear, with interest , nor file a bill in equity for relief against such forfeiture, velve calendar months after execution executed, he shall be f all right, in law or equity, to be restored to such lands or s. (Code 1887, § 2797.)

owner of ground rent in fee secured on land of another brings st tenant in possession and obtains judgment by default. At owner of land was an infant. On arriving at full age, but after from date of judgment, owner brings ejectment against former

Digitized by Google

plaintiff. Held, that under this section he is barred. Leonard v. Hen son, 23 Grat. 331.

For W. Va. decisions on similar statute see Justis' Annotations, c ter 93, section 17.

Sec. 5532. How trustee or mortgagee relieved from the forfeit —Any mortgagee or trusteee of such lands not in possession the may, within twelve calendar months after execution executed the rent and all arrears, with interest and costs, or file a bill in e ty, for relief against such forfeiture; and thereupon may be relie against it, on the same terms and conditions as the owner of s lands or tenements would be entitled to. (Code 1887, § 2798.)

Sec. 5533. How owner, etc., relieved in equity.—If the owne such lands, or any person having right or claim thereto, shall, w in the time aforesaid, file his bill for relief in any court of equ he shall not have or continue any injunction against the proceedi at law on the ejectment, unless he shall, within thirty days n after a full and perfect answer filed by the plaintiff in ejectm bring into court, or deposit in some bank within the State to credit of the cause, such money as the plaintiff in ejectment shall his answers, swear to be due and in arrear, over and above all allowances and also the costs taxed in the suit, there to remain the hearing of the cause, or to be paid out to the plaintiff on g security, subject to the decree of the court. And in case the shall be filed within the time aforesaid, and after execution execu the plaintiff shall be accountable for no more than he shall, re and bona fide, without fraud, deceit, or wilful neglect, make of premises from the time of his entering into the actual possess thereof, and if it should be less than the rent payable, then the session shall not be restored until the plaintiff be paid the which the money so made shall fall short of the rent for the tim so held the lands. (Code 1887, § 2799.)

For W. Va. decisions on similar statute see Justis' Annotations, c ter 93, section 19.

Sec. 5534. How judgment of forfeiture prevented.—If any p having right or claim to such lands shall, at any time before trial in such ejectment, pay or tender to the party entitled to s rent, or to his attorney in the cause or pay into court, all the rent arrears, with interest and costs, all further proceedings in the ej ment shall cease. If the person claiming the land shall, upon filed as aforesaid, be relieved in equity, he shall hold the lan before the proceedings began, without a new lease or conveya (Code 1887, § 2800.)

Tender of rent to agent of owner before action of unlawful deta will defeat right of re-entry under terms of lease. Johnston v. Harg 81 Va. 118.

For W. Va. decisions on similar statute see Justis' Annotations, c ter 93, section 20.

Sec. 5535. When suit for re-entry brought.—In case the time re-entering be specified in the instrument creating the rent, c

Digitized by Google

ondition, the proceedings in ejectment shall not be begun time shall have elapsed. (Code 1887, § 2801.)

36. In case of actual re-entry, written act of re-entry to be and recorded, and certificate thereof published.—Where entry is made, the party by or for whom the same is made rn a written act of re-entry, sworn to by the sheriff or cer acting therein, to the clerk of the circuit court of y or corporation court of the city wherein the lands nts are, who shall record the same in the deed book, deliver to the party making the re-entry a certificate orth the substance of such written act, and that had been left in his office to be recorded, which certificate ublished at least once a week for two months successively, ewspaper published in or nearest to such county or cor- which publication shall be proved by affidavit to the sat- of the said clerk, who shall note the fact in the margin of d book against the record of the act of re-entry, in the Publication made and proved according to law. A. B., and shall return the original act of re-entry to the party hereto. Said written act of re-entry, when recorded, and d thereof, or a duly certified copy from such record, shall ce, in all cases, of the facts therein set forth. (Code 1887,

37. Fee of clerk.—The clerk shall be paid for recording, certificate, and noting publication, as aforesaid, one dollar cents, and shall collect and account for the same tax upon h act of re-entry offered for record as shall then be levied on deeds of conveyance. (Code 1887, § 2803.)

38. Within what time, and how, owner may be restored to ssion.—Should the person entitled to such lands at the time y made, or having claim thereto, not pay or tender the rent rrears thereof, with interest and all reasonable expenses in- bout such re-entry, within one year from the first day of on as aforesaid, he shall be forever barred from all right in uity to the said lands. In case any party having right shall nder the said rent and arrears, with interest and expenses aid, to the party making re-entry, within the time afore- d therefor, he shall be reinstated in his possession to hold as entry had not been made. (Code 1887, § 2804.)

39. Limitation of suit, etc., against person in possession by —No person who, or those under whom he claims, shall have sessed of lands by virtue of a re-entry for the term of two er the first day of July, eighteen hundred and fifty, shall be l therein by suit or otherwise for any defect of proceedings ntry. (Code 1887, § 2805.)

Digitized by Google

CHAPTER 228.

Emblements.

Sec.
5540. Law of emblements.
5541. What rent tenant entitled to emblements to pay.
5542. Compensation to outgoing tenant for preparation of land for crop.
5543. How lessee from tenant life or other uncertain terest to hold; how paid and apportioned.

Sec. 5540. Law of emblements.—In all cases the right to em ments shall be as at common law. (Code 1887, § 2806.)

As to doctrine of emblements at common law, see 2 Min. (4th 102-106.

Where there is an order for foreclosure of mortgaged premises, marshal sells under such order, the growing crops thereon cultivate the mortgagor passes to the purchaser. The doctrine of emblements not apply to such case. Crews v. Pendleton, 1 Leigh 297, 19 Am. Dec.

Quaere, whether crops grown upon land which is embraced in of trust conveying same, and all crops now or hereafter grown ther pass under deed or are subject to lien of executions. Brockenbrou Ex'x v. Brockenbrough's Adm'r, 31 Grat. 580.

As to right of dowress to emblements, see section 5730.

For W. Va. decisions on similar statute see Justis' Annotations, c ter 94, section 1.

Sec. 5541. What rent tenant entitled to emblements to pay.— tenant who is entitled to emblements, or his personal represe tive, shall pay a reasonable rent for so much land as the emblem shall occupy, in the same proportion as it shall bear in quan and value to the entire premises; and such rent shall be apportio among the owners of the reversion, if there be more than one, cording to their respective interests. (Code 1887, § 2807.)

Sec. 5542. Compensation to outgoing tenant for preparatio land for crop.—If any land has been prepared by the tenant pr ous to the expiration of the lease, for the purpose of putting a c into the ground, under such circumstances as would have entitled tenant, or his personal representative, to emblements, if the crop been put in, those who succeed to the land shall pay a reasona compensation for such preparation. (Code 1887, § 2808.)

Are "bulbs" crops? See 20 Va. L. R. 387.

Sec. 5543. How lessee from tenant for life or other uncertain terest to hold; how rent paid and apportioned.—If there be ten for life or other uncertain interest in land which is let to anot upon the determination of such life or other uncertain interest, lessee may hold the land to the end of the current year of the t ancy, paying rent therefor; the rent, if it be reserved in money, sh be apportioned between the tenant for life or other uncertain terest, or his personal representative, and those who succeed the land. If rent be reserved in kind, it shall be paid to the ten for life or other uncertain interest, or his personal representati and the said tenant or his personal representative, as the case m

Digitized by Google

all pay to those who succeed to the land a reasonable rent, ney, from the expiration of the life estate or other uncertain st to the end of the current year of the tenancy; the rent to id to those who succeed to the land shall be a charge in prefer- o other claims on the rent received in kind by such tenant or ersonal representative. (Code 1887, § 2809.)

CHAPTER 229.

Apportionment of Money Coming Due at Fixed Periods.

Sec.
Apportionment of rent, money, etc., in case of death of one interested. 5544.
Remedy of personal representative, etc. 5545.
5546. When chapter not to apply.
5547. Apportionment on purchase of part of land by holder of rent, or of part of rent by holder of land.

. 5544. **Apportionment of rent, money, etc., in case of death e interested.**—On the determination, by death or otherwise. e estate, or other thing, from or in respect of which any rent, or money coming due at fixed periods, issues or is derived, or e death of any person interested in such rent, hire, or money. erson, or the personal representative or assignee of the per- who would have been entitled, but for such death or deter- ion, to the rent, hire, or money coming due at any such period, have a proportion thereof, according to the time which shall elapsed of the time for which the said rent, hire, or other y was growing due, including the day of such death or de- nation, deducting a proportional part of the charges. (Code § 2810.)

. 5545. **Remedy of personal representative, etc.**—For recov- such proportion, the said person, representative, or assignee, after such fixed period, have such remedies as he would have or recovering the whole of such rent, hire, or other money, if ed thereto. (Code 1887, § 2811.)

. 5546. **When chapter not to apply.**—This chapter shall not to any case in which it is expressly provided that no appor- ent shall take place. (Code 1887, § 2812.)

. 5547. **Apportionment on purchase of part of land by holder nt, or of part of rent by holder of land.**—Where the holder of t shall purchase part of the land out of which the same issues, ent shall be apportioned in like manner as if the land had to him by descent; and where the holder of land, being part nd out of which a rent shall be issuing, shall purchase such or part thereof, the rent so purchased shall be apportioned oresaid. (Code 1887, § 2813.)

Digitized by Google

TITLE 54.

Money and Interest.

CHAPTER 230.

Money and Interest.*

Sec.
5548. The money of account.
5549. No writing invalid because not so expressed.
5550. In suits for foreign money, its value in the money of account to be fixed.
5551. Legal rate of interest.
5552. Contracts, etc., for more, illegal.
5553. Rate allowed to bankers, brokers and corporations.
5554. Plea of usury; evidence issue thereon; if contr usurious on its face, w judgment to be given.
5555. Excess over legal inter may be recovered back.
5556. Corporations not allowed plead usury.
5557. Nor, unless expressly auth ized, charge more than le interest.

Sec. 5548. The money of account.—The money of account of t State shall be the dollar, cent, and mill. All accounts by pub officers shall be so kept. (Code 1887, § 2814.)

Money and interest.—The following cases bear upon the general s ject of money and interest, though they do not construe any of the s tions of this chapter. Fox v. Taliaferro, 4 Munf. 243; McPerrin v. Ki 1 Rand. 172; Ross v. Norvell, 3 Munf. 170; Martin v. Hall, 9 Grat. Bell v. Alexander, 21 Grat. 1; Moffett v. Bickle, Id. 280; Counselman Holston Nat. Building & Loan Ass'n, 97 Va. 261, 33 S. E. 603; Junction R. Co. v. Bank of Ashland, 12 Wall, 226, 20 L. Ed. 385; Strayer v. Lo 83 Va. 715, 3 S. E. 372; Thorntons v. Fitzhugh, 4 Leigh 209. See 3 Law Reg. 62.

For W. Va. decisions on similar statute see Justis' Annotations, ch ter 96, section 1.

Sec. 5549. No writing invalid because not so expressed.—No wr ing shall be invalid, nor the force of any account or entry be i paired, because a sum of money is expressed therein otherwise th in the said money of account. (Code 1887, § 2815.)

Sec. 5550. In suits for foreign money, its value in the money account to be fixed.—In any suit for a sum of money expressed any foreign currency or otherwise than in the money of account this State, the jury, if there be one impaneled for any other pu pose, and if not, the court, shall ascertain the value in the sa money of account of the sum so expressed, making such allowan

*For monographic note on Usury, see Coffman v. Miller, 26 Gr 698, Va. Rep. Anno.

Digitized by Google

difference of exchange as shall be just; and the judgment
e may either be for what may be so ascertained, or for the
noney expressed as aforesaid to be discharged by the sum
ained. (Code 1887, § 2816.)

nfession of judgment for £1,800 Pennsylvania currency of the £1,440 Virginia currency, fixed the value. Strode v. Head, 2 9.

udgments for sterling money, the court should fix the rate of into current money if jury does not. Taylor v. McClean, 3 Call

gh declaration alleges indebtedness in money of account of the d bill of particulars sets forth the items of account in sterling its value is calculated and expressed in Federal money in the rticulars this is sufficient to admit the introduction of evidence ctions between the parties in sterling money. The better prac- ever, is to declare in sterling money, and let jury ascertain its domestic money, or to state indebtedness in foreign money of of so much domestic currency. George Campbell Co. v. George Co., 91 Va. 438, 22 S. E. 167.

W. Va. decisions on similar statute see Justis' Annotations, chap- ction 3.

551. Legal rate of interest.—Legal interest shall continue to
rate of six dollars upon one hundred dollars for a year, and
onately for a greater or less sum, or for a longer or shorter
d no person upon any contract shall take for the loan or
nce of money or other thing above the value of such rate.
887, § 2817; 1916, p. 323.)

isors' Note.—This section is identical with section 2817 of the 887. That section was amended by Acts 1916, p. 323, but being n that the amendment was unnecessary, the revisors omitted it.

t constitutes usury.—In order to constitute usury, both parties consenting to the unlawful interest—that is to say, the lender to the borrower to give—and there must be proof of a loaning and g. Price v. Campbell, 2 Call 111, 1 Am. Dec. 535. Or a for- to collect existing debt. Myers v. Williams, 85 Va. 621, 8 S. E. West v. Belches, 5 Munf. 187; Childers v. Deane, 4 Rand. 406.

pound interest.—Not usurious upon settlement of accounts to for balance due, including interest, and to receive interest on e. Brown v. Brent, 1 Hen. & M. 4. See Kraker v. Shields, 20 8; Bird's Committee v. Bird, 21 Grat. 712; Young v. Hill, 27 2; Childers v. Deane, 4 Rand. 406; Pindall's Ex'x v. Bank of 10 Leigh 481; Fultz v. Davis, 26 Grat. 903.

chases and sales.—A fair purchase of a bond at any discount is ious. Kenner v. Hord, 2 Hen. & M. 14: Hansbrough v. Baylor, 36. Nor of bank stock at any price unless the object be to borrow t more than lawful interest. Greenhow's Adm'x and Heirs v. Munf. 472, 8 Am. Dec. 751; Selby v. Morgan, 3 Leigh 577; rough's Ex'rs v. Spindle's Adm'rs, 17 Grat. 21. Nor to sell bank very high price. Skipwith v. Gibson, 4 Hen. & M. 490. Nor to ed States 8 per cent. stock at par. Bull v. Douglas, 4 Munf. 303, ec. 518. See Moffett v. Bickle, 21 Grat. 280; Belton v. Apperson, 207. See note to Nichols v. Fearson, 7 Pet. 103, 8 L. Ed. 623.

not usurious to purchase bona fide without notice of purpose for was executed (though at large discount), a bond given to obligee ose of raising money for obligor. Hansbrough v. Baylor, 2 Munf. so to purchase negotiable notes endorsed by payee for benefit of nd sold by broker. Taylor v. Bruce, Gilmer 42. Though when agent the notes are blank as to payees. Brummel v. Enders, 18 3. Or though made for benefit of payee. Whitworth & Whitworth , 5 Rand. 333; Law's Ex'rs v. Sutherland, 5 Grat. 357. Or though

Digitized by Google

broker advances money to maker before sale. Gimmi v. Cullen, 20 G 439. Or though note is payable to maker's own order. Mosely v. Bro 76 Va. 419; Bailey v. Hill, 77 Va. 492. But purchaser may be affec with knowledge by circumstances. Bailey v. Hill, 77 Va. 492.

Where property is sold bona fide, and not as a shift to cover a lo the deferred payments, by agreement at the time of sale, may be m to bear any rate of interest that the parties may agree upon without fringing the statute against usury. What is called interest is as muc part of the purchase price as the principal sum, and though it exceed legal rate the transaction is not usurious. Graeme v. Adams, 23 Grat. 2 14 Am. Rep. 130; Reger v. O'Neal, 10 S. E. 375; Kraker v. Shields, Grat. 398; Evans v. Rice, 96 Va. 50, 30 S. E. 463.

Penalties.—A penalty inserted in a contract, from which the pa may deliver himself, does not make such contract usurious, and the is the same where it is in the power of the party, by a compliance w his contract, to convert the penalty into a compensation for services r dered him by the other party. Pollard v. Baylors, 6 Munf. 433 (ov ruling Pollard v. Baylors, 4 Hen. & M. 223); Stratton v. Mutual Ass ance Society, 6 Rand. 22; Campbell v. Shields, 6 Leigh 517; Ward's Ad v. Cornett, 91 Va. 676, 22 S. E. 494, 49 L. R. A. 550; Graves v. Gra 1 Wash. 1; Winslow v. Dawson, 1 Wash. 118; Call v. Scott, 4 Call 402.

Bond without interest till maturity, but with interest at 8 per ce per annum after maturity, is not usurious on its face. The excess is garded as penalty, and not as usury. Ward's Adm'r v. Cornett, 91 676, 22 S. E. 494, 49 L. R. A. 550.

Deed of trust to secure such bond, given after its maturity, and tending the time of payment thereof, is not usurious, but furnishes secu for the principal and only legal interest thereon until paid. Id.

Bona fide holders.—Creditor induced debtor to allow him 15 per ce per annum upon debt, and to give bond as principal obligor, in wh the creditor joined as surety. The bond was passed to a third per to whom the amount was bona fide due, and who knew nothing of s usurious agreement. The debtor was entitled to no relief in equity aga such third person. Stone v. Ware, 6 Munf. 541.

Time from which interest runs.—Where a note provides for inte at a valid stated rate the debt bears interest at that rate until payme notwithstanding a judgment be obtained upon the note. Boswell v. Vein Pocahontas Coal Co., 217 Fed. 822. See section 6259, and notes.

Under the facts of this case it was held that interest was recovera on a debt for goods sold on a thirty-day credit at the legal rate of inte from the expiration of the credit until payment, including the period t the assets of the debtor were in the hands of a receiver in a suit to fo close a mortgage. American Iron Co. v. Seaboard Air Line, 233 U. 261.

The greater rate continues, in the absence of an agreement to contrary, after maturity of debt and until it is paid. Evans v. Rice, 96 50, 30 S. E. 463. See Cecil v. Hicks, 29 Grat. 1, 26 Am. Rep. 391.

Contracts of hazard.—Not usurious to contract to take, for the lo of 142 shares of bank stock for a year, 30 additional shares, as it i contract in which the principal is at hazard. Steptoe's Adm'rs v. Harve Ex'rs, 7 Leigh 501. See Smith v. Nicholas, 8 Leigh 330, next section.

State Bank of North Carolina discounted note, paying out there at face value, its own notes, which were below par, stipulating that ma should pay note in Virginia or other Northern bank notes. Virginia United States bank notes were at that time at par. The transaction is usurious. State Bank v. Cowan, 8 Leigh 238.

Bond given in 1863, for which borrower receives Confederate no at three for one of gold, payable on demand in current funds, is a contr in which the principal is at hazard, and not usurious. Boulware Newton, 18 Grat. 708; Hilb v. Peyton, 21 Grat. 386. But see Town Danville v. Sutherlin, 20 Grat. 555; Lynchburg v. Norvell, Id. 601.

Discount by individual.—Not usury for private individual to ded interest at time of discount of commercial paper, nor to reckon month

Digitized by Google

year at 360 days, and to take interest at one-half of 1 per cent. . Parker v. Cousins, 2 Grat. 372, 44 Am. Dec. 388.
was conveyed to pay interest for three years in advance upon on plea of usury, creditor may show that the land was con- value estimated in reference to the annual interest for three he same should accrue upon the debt. Porterfield v. Coiner,

ransaction on old debt.—Usury in transaction is purged by the f new bond with new parties, and last bond executed is valid. 'r v. Chandler, 18 Grat. 909, 98 Am. Dec. 762; Keckley v. Union Va. 458. But not where there is in fact the same principal l the transactions. Mathews' Adm'r v. Traders' Bank, 2 Va. 27 S. E. 609.
h usurious security be given for pre-existing valid debt, such l a valid obligation, and may be recovered. Parker v. Cousins, 2, 44 Am. Dec. 388.
r and creditor made a full settlement, the debtor transferring to dgments and debts to the amount of his debt, agreeing to make editor any deficit which might remain if any of them proved Debtor gave note to cover deficit, with third party as endorser. was founded on a new contract—on a new consideration—and in the previous notes given by debtor to creditor before their does not affect it. Coffman v. Miller, 26 Grat. 698.
rage and attorney's fees.—It is not usury for one to contract to r a certain sum, called "brokerage," to negotiate and guarantee him, and also to pay attorney's fees for making abstract of title perty whereon loan is secured, though said sums exceed lawful Keagy v. Trout, 85 Va. 390, 7 S. E. 329. See 7 Va. Law Reg.

earance" is the giving a further day for the return of a loan ime originally agreed on is passed. Graeme v. Adams, 23 Grat. m. Rep. 130.
ent in products.—Bond for the payment of £1,000, "or such m as shall be equal to the said £1,000, in 1774, that is to say, e as much land and as many negroes as it might have done at " was not usurious. Faulcon v. Harriss, 2 Hen. & M. 550.
ally.—Dating renewal note on day of payment of first note, he bank receives, under each note, interest for the same day, ry. Crump v. Nicholas, 5 Leigh 251; Parker v. Cousins, 2 Grat. m. Dec. 388.
isury to take one note bearing interest from date for several of which was undue. Keckley v. Union, 79 Va. 458.
ntract legal at time it is entered into cannot be made usurious ient events. Pollard v. Baylors, 6 Munf. 433; Southall v. Farish, 3-409, 7 S. E. 534, 1 L. R. A. 641; Ward's Adm'r v. Cornett, 91 2 S. E. 494, 49 L. R. A. 550.
agreed that A. will buy a piece of land as cheap as he can, and ll pay him $900 for it. A. pays $750 for the land, and conveys ho gives him his note for $900. Held not usury. Long's Ex'r 9 Leigh 556; Myers v. Williams, 85 Va. 621, 8 S. E. 483; Jones d, 6 Call 211.
sury in this case, though advanced shares receive less on final t than unadvanced shares. White v. Mechanics' Bldg. Fund Grat. 233.
of money to debtor to pay usurious debt is not usurious, not- ing the lender was aware of the purpose for which it was bor- Vaught v. Rider, 83 Va. 659, 3 S. E. 293, 5 Am. St. Rep. 305.
W. Va. decisions on similar statute see Justis' Annotations, chap- ction 4.

552. Contracts, etc., for more, illegal.—All contracts and es made, directly or indirectly, for the loan or forbearance y or other thing, at a greater rate of interest than is al- the preceding section, shall be deemed to be for an illegal

Digitized by Google

consideration as to the excess beyond the principal amou loaned or forborne. (Code 1887, § 2818.)

Amendment of statute.—Though a contract at the time it was was void under the statute of usury, if at the time of the decre statute had been amended, and only avoids the contract for the int the decree should be for the principal with interest from the date decree. Mosby v. St. Louis, &c., Co., 31 Grat. 629; Bain v. Savage, 7 904; White's Adm'x v. Freeman, 79 Va. 597. Legislature may r valid contracts which were previously usurious. Smoot v. People's petual Loan Ass'n, 95 Va. 686, 29 S. E. 746, 41 L. R. A. 589; Boss Iron Belt Building & Loan Ass'n, 96 Va. 119, 30 S. E. 440.

Shifts to evade usury.—A tacit understanding between borrowe lender, founded on a known practice of the latter to lend money at interest if the borrower purchased of him a horse at an unreasonable is a shift to evade the statute against usury. Douglass v. McChesn Rand. 109.

When a proposition is made for a loan of money, and the l will only consent to lend a part of the money wanted on condition the borrower shall receive stock at a price much above the market to make up the deficiency, and the bargain is made on these terms, contract is usurious. Stribling v. Bank of Valley, 5 Rand. 132; Ba Valley v. Stribling's Ex'r, 7 Leigh 26.

Where a loan is made upon condition that the borrower shal to the lender an option to purchase his land at a price far below its the acceptance of the option is a usurious contract. Carter v. Hool Va. 812, 83 S. E. 386.

Contract usurious by which, nominally, C. sells J. 16 slave $2,335, J. agreeing to resell the slaves or such of them as survive at end of year for $2,935. Clarkson's Adm'r v. Garland, 1 Leigh 14

Excessive discount.—A note valid in its inception is afterwar dorsed by a party to whom it has regularly come to a third perso greater discount than legal interest; such transaction is usurious. worth v. Adams, 5 Rand. 333. See Hogshead v. Baylor, 16 Grat. 105.

It is usurious to take assignment of bond at greater discount legal interest, and take deed of trust from assignor to secure pa of bond. Bell v. Calhoun, 8 Grat. 22; Bank of Radford v. Kirby, 1 498, 42 S. E. 303. See note to Bank v. Kirby in 8 Va. Law Reg. 5

Fees, costs and commissions.—In consideration of forbearance, ment debtor agrees to give real security for debt and to pay costs a commission which bank had agreed to pay its attorney for colle Held usurious. Toole v. Stephen, 4 Leigh 581.

A sum allowed a creditor "for services rendered and settled," an ing to 9 per cent. per annum, was usurious; it appearing that th tended services were to secure debt for creditor's own benefit. St Ware, 6 Munf. 541.

If a lender, as the price of the extension of the time of paym a loan, requires the borrower to pay his attorney's fees for suits a lender in addition to legal interest, the transaction is usurious. of Pocahontas v. Browning, 111 Va. 237, 68 S. E. 1000.

See section 5564 and notes.

New transactions on old debts.—It is usury to take from debt renewal of bond, his own bond for part, and an assignment of third p bond, the two aggregating more than the debt. Gibson v. Fristoe, 62, 1 Am. Dec. 502.

A bond given to close a series of transactions between the oblige the obligor, though containing no usurious interest in it, yet, having given for money loaned on usury, is within the statute. Campbell v terson, 11 Leigh 117.

Nevertheless, under the circumstances of this case, the bond sho received as evidence of the amount advanced. Id.

A surety in a bond who had given a deed of trust to secure the executes another deed of trust to secure another debt of his principa to the same parties, in consideration of the forbearance of the cre

Digitized by Google

ler the first deed. Held, the second deed is given upon a
nsideration, and is void. Hopkins v. Koonce, 6 Grat. 387.
nd contract is entered into, if first contract was usurious, all
ncluded in it must have been excluded from the second or it is
Graeme v. Adams, 23 Grat. 225, 14 Am. Rep. 130.

ases and sales.—A bond given by A. to S., the consideration
as in part a debt due from A. to S., in part debts of A. which S.
to pay, and for the balance bank and railroad stocks at prices
e their market value, is usurious. Bank of Washington v.
Grat. 173.

usury, in 1863, to purchase a $5,000 bond of the town of
public auction for $11,050 Confederate currency, such cur-
at the time ten for one of gold. Town of Danville v. Sutherlin,
55; City of Lynchburg v. Norvell, 20 Grat. 601. But see Boul-
wton, 18 Grat. 708; Hilb v. Peyton, 21 Grat. 386.

on bond or property.—It is usurious on a loan of money on
y 6 per cent. per annum interest, and indemnify lender for any
might impose on his bond. Meem v. Dulaney, 88 Va. 674,
63.

a building contract provided for six per cent. interest on loan
r provided for payment of taxes and insurance premiums on
onveyed to secure the loan, the contract was not tainted with
ddle States Loan, &c., Co. v. Miller's Adm'r, 104 Va. 464, 51

fide holder.—Since the passage of the act embodied in this
plea of usury cannot be sustained in an action on negotiable
ght by a bona fide holder for value who acquired the same
urity in due course of trade. Effect of such plea is to cast the
proof on the plaintiff to show that he is such holder. When
wn this he is entitled to recover. Lynchburg Nat. Bank v. Scott,
, 22 S. E. 487, 29 L. R. A. 827, 50 Am. St. Rep. 860. See note
e, 1 Va. Law Reg. 363.

act of hazard.—Where, upon a loan of money, the lender con-
eceive, in lieu of interest, something which may be worth more
cent. per annum, though it may be worthless, as the dividends
ock, the contract is usurious. Smith v. Nicholas, 8 Leigh 330.

ed to be for illegal consideration.—No part of usurious contract
t by this section is only "deemed to be for an illegal considera-
excess," etc. Fischer v. Lee, 98 Va. 166, 35 S. E. 441. See
v. Adams, 5 Rand. 333.

ing and loan associations.—A member of a building association
ay, on loan of $1,000, $17 per month, of which $5 was set apart
ks of the association for monthly interest, $2 for expenses, and
e loan fund. The transaction is usurious. Crabtree v. Old Do-
ilding & Loan Ass'n, 95 Va. 670, 29 S. E. 741, 64 Am. St. Rep.

how far building and loan association loans are usurious, see
. R. A. 129; 35 L. R. A. 244; 46 Am. St. Rep. 200. See, also,
Reg. 372, 585.

ct governing loans by building and loan associations, see chap-

ct of laws as to interest rates, see McGuire v. Parker, 1 Wash.
in v. Povall, 8 Leigh 93; Fant v. Miller, 17 Grat. 47; Bowman v.
Grat. 331, 18 Am. Rep. 686; Backhouse Ex'x v. Selden, 29 Grat.
nal Mut. Building & Loan Ass'n v. Ashworth, 91 Va. 706, 22
Nickels v. People's Building & Loan Ass'n, 93 Va. 380, 25 S. E.
Bankers' Loan & Inv. Co., 95 Va. 680, 29 S. E. 744, 64 Am. St.
Building & Loan Ass'n v. Tinsley, 96 Va. 322, 31 S. E. 508;
Eastern Building & Loan Ass'n, 181 U. S. 227, 21 Sup. Ct. 597,
834; note to Slacum v. Pomery, 6 Cranch 221, 3 L. Ed. 204.

rally.—A debt to be usurious must be so in the beginning. It
made so in subsequent accounts if by punctual payment the
n avoid the payment of excessive interest. Ward's Adm'r v.

Digitized by Google

Cornett, 91 Va. 676, 22 S. E. 676. Ruffin v. Commercial Bank, 708, 19 S. E. 790.

An agreement to set the profits of mortgaged property against terest on loan is usurious when in any view of the case profits excee rate of interest. Robertson v. Campbell, 2 Call 421-430; Reyn Carter, 12 Leigh 166, 37 Am. Dec. 642.

W., in consideration of £300 cash, agrees to discharge T. of £1,200 due H. Held agreement is usurious. Watkins v. Taylor, 2 424, 5 Am. Dec. 486.

Contract usurious where debtor, owing shares of bank stock, with his creditor to pay him, at a future day, the market price stock at that day, or $150 per share, at the creditor's option, wi dividends. Smith v. Nicholas, 8 Leigh 330.

As to whether or not premiums paid life insurance company to debt to insurer are usurious, see note to 53 L. R. A. 462.

For discussion of the Doctrine of Usury, see 3 Min. (2d Ed.) 30

Cited in a review of the case of Munford v. McVeigh, 1 Va. L. S. 647.

For W. Va. decisions on similar statute see Justis' Annotations, ter 96, section 5.

Sec. 5553. Rate allowed to bankers, brokers, and corporati Any licensed banker or broker, and any corporation authoriz law to make loans or to purchase or discount bonds, bills, or other paper, may loan money or discount bonds, bills, no other paper at a rate not exceeding one-half of one per cen thirty days, and may charge a minimum loan or discount fifty cents on loans or discounts for thirty days or more, and receive such interest in advance. (Code 1887, § 2819, 2820; p. 138.)

The law of usury applies to the banks, subject to the modifi prescribed by their charters. Stribling v. Bank of Valley, 5 Rand. 1

Taking interest in advance upon the whole amount of a no counted at bank is lawful. Id.

It is not usurious for bank to reckon 360 days as a year inst 365, the effect of which is to make the interest for a year a fractio than 6 per cent. per annum. State Bank v. Cowan, 8 Leigh 233.

On usury by National Banks, see note to Farmers & Mechanic Bank v. Dearing, 91 U. S. 29, 23 L. Ed. 196; First Nat. Bank v. Wa U. S. 151, 22 Sup. Ct. 457, 46 L. Ed. 475; Brown v. Marion Nat. 169 U. S. 416; Haseltine v. Central Nat. Bank, 183 U. S. 132, 22 S 50, 46 L. Ed. 118; National Exch. Bank v. Boylen, 26 W. Va. 554, 5 Rep. 113.

For a case relating to usury which was dependent upon the co tion of section 5198 of the Revised Statutes of the United Stat Baker v. Lynchburg Nat. Bank, 120 Va. 208, 91 S. E. 157.

Individuals have the right given to banks in this section as to interest in advance at the rate of one-half of one per cent. for thirt Parke v. Cousins, 2 Grat. 372. See, also, note "Discount by indivi under section 5551.

Cited in review of the case of Munford v. McVeigh, 1 Va. L. R 647.

Sec. 5554. Plea of usury; evidence on issue thereon; if co usurious on its face, what judgment to be given.—Any defe may plead in general terms that the contract or assurance on the action is brought was for the payment of interest at a g rate than is allowed by law, to which plea the plaintiff shall generally, but may give in evidence, upon the issue made up on, any matter which could be given in evidence under a s

Digitized by Google

n. Under the plea aforesaid, the defendant may give in any fact showing or tending to show that the contract or , or other writing upon which the action was brought, n usurious consideration. When the issue on such plea is the defendant, or if no such plea is made, and the con- assurance be in writing and shows that usurious interest therein contracted for, judgment shall be rendered for the sum only. (Code 1887, § 2821.)

ors' Note.—The last sentence of this section is intended to ex- t was believed to be the meaning of the former language.

a personal defence.—The plea of usury is a defence personal and so purchaser of land subject to a previous lien cannot object en is usurious, but is bound to discharge the lien as part of the e land. Spengler v. Snapp, 5 Leigh 478; Michie v. Jeffries, 21 ; Christian v. Worsham, 78 Va. 100; Dickenson v. Bankers' v. Co., 93 Va. 498, 25 S. E. 548; Saunders v. Baltimore Building ss'n, 99 Va. 140, 37 S. E. 775. For circumstances under which y enjoin sale, see Saunders v. Baltimore Building & Loan Ass'n, 0, 37 S. E. 775; Lee v. Feamster, 21 W. Va. 108, 45 Am. Rep.

quasi penal offense.—Facts constituting usury must be dis- eged and clearly proved. Smith v. Nicholas, 8 Leigh 330. The pleads usury must prove it; cannot make out prima facia case burden of proof. Harnsbarger's Adm'r v. Kinney, 6 Grat. 287. quasi penal offense, and to avail as defense must be established easonable doubt. Ward's Adm'r v. Cornett, 91 Va. 676, 22 S. E. . R. A. 550. Must be proved beyond a rational doubt to the Brockenbrough's Ex'rs v. Spindle's Adm'r, 17 Grat. 21. Must by clear and satisfactory preponderance of evidence. Evans v. a. 50, 30 S. E. 463. See Gilliam v. Clay, 3 Leigh 590.

nent for principal sum only.—In an action on usurious contract, ent is to be for the principal sum ascertained to be due after the usury and interest on that principal from date of the judg- ng v. Buck, 30 Grat. 828.

strument which on its face reserves more than the legal rate t is usurious in its inception, and judgment shall be rendered incipal sum only, though defendant files no plea of usury. Tur- ner, 80 Va. 379.

an action at law or suit in equity, the defense of usury be estab- lender can only recover the principal sum loaned or forborne. v. McVeigh's Adm'r, 92 Va. 446, 23 S. E. 857.

very may be had for the amount due him by a plaintiff suing on a contract, where usury is pleaded. Mathews' Adm'r v. Traders' a. Dec. 539, 27 S. E. 609.

fide holder.—Plea of usury cannot be sustained in an action able paper brought by a bona fide holder for value, who ac- same before maturity in due course of trade. Only effect of is to cast the burden of proof on the plaintiff to show that he lder; when he has shown this he is entitled to recover. Lynch- Bank v. Scott, 91 Va. 652, 22 S. E. 487, 29 L. R. A. 827, 50 Am. 60.

rally.—Land was conveyed to pay interest for three years in pon bond; upon plea of usury creditor may show that the land yed at a value estimated in reference to the annual interest for rs as the same should accrue upon the debt. Porterfield v. Grat. 55.

section, though in terms applicable only to a plea, is properly to a replication to a plea of setoff. Hope v. Smith, 10 Grat.

ff, upon bond surrendered by insolvent, brought action against ho pleaded as offsets two judgments against insolvent which he

Digitized by Google

had recovered. Held, usury in the bonds upon which the judgments recovered cannot be set up to the judgments, and they are valid of Id.

Cannot compel defendant to discover usury by interrogatories, u section 6236. Hogshead v. Baylor, 16 Grat. 99.

A plea of usury of a foreign State must state what the law of usu in that State. Fant v. Miller, 17 Grat. 47.

Where the facts are agreed or found by a jury, it is the provin the court to say whether they amount to usury or not. Stribling v. V Bank, 5 Rand. 132; Brockenbrough's Ex'rs v. Spindle's Adm'rs, 17 21.

The defense of usury, where it is probably correct, ought at all to be received in a court of equity (so long as the case is within the p of that court) without annexing any unreasonable condition the Ellzey v. Lane's Ex'x, 4 Munf. 66.

Defendant may plead to scire facias, brought to revive a decree was obtained against him by default, that the original contract usurious. Lane v. Ellzey, 4 Hen. & M. 504.

Form of plea of usury to debt on bond, 4 Min. (3d Ed.) p. 1749.

For W. Va. decisions on similar statute see Justis' Annotations, ter 96, section 6.

See Gregory's Forms No. 180.

Sec. 5555. Excess over legal interest may be recovered bac If an excess beyond the lawful interest be paid in any case for loan or forbearance of money or other thing, the person paying same may in a suit or action brought within one year there recover the full amount of such payment from the person whom the contract was made or to whom the assurance was gi and it may be so recovered from such person notwithstanding payment of the excess be made to his indorsee or assignee. If p erty has been conveyed to secure the payment of the debt a sale thereof is about to be made, or is apprehended, an injun may be awarded to prevent such sale pending the suit or ac (Code 1887, § 2823; 1895-6, p. 154; 1897-8, p. 372.)

Revisors' Note.—The changes made in this section consist in the tion of the words "or action" in line three of the text, the substitut line four of the words "the full amount of such payment" for the "it" contained in section 2823 of the Code of 1887, and the addition last sentence, which is taken from section 2822 of the Code of There is also omitted from section 2823 the latter part of that se which barred relief upon the plea of usury after one year from renew certain paper with banks or bankers. The omission just referred to made because in some instances it would work great hardship on the rowers, and also no good reason was perceived why banks and ba should stand on any different footing from other creditors. The st!tution above mentioned of the words "the full amount of such payn for the word "it" is not intended to make any material change in th sult.

Section 2822 of the Code of 1887, with the exception of the last tence thereof (which is now the last sentence of section 5555, above) been omitted. Said section 2822 appears in the Code of 1887 in the language of the Code of 1849. At the last mentioned date usury ren the contract absolutely void, and interest disqualified a witness to te The remedy afforded by that section, however, was given to enabl borrower to appeal to the conscience of the lender, and make him di the usurious transaction, but as the price of his appeal, the borrowe required to pay the principal sum. The disqualification of interest h been removed, there is no longer any necessity for a suit appealing t

Digitized by Google

of the lender, for in any action to recover the amount, he can
ed as a witness, and if it appears that the contract is usurious,
led by section 5552 that the contract shall be deemed to be for
consideration as to the excess beyond the principal amount so
forborne, so that the creditor cannot recover anything except
al. If, however, the lender has made payments on the usurious
hat case is provided for by section 5555 of this Code.
cation of payments on usurious contracts.—Where payments
made on a usurious debt, and the debtor has failed to apply the
specifically, the court should first eliminate the usury, if any,
rincipal of the debt, and apply the payments to the sum actually
forborne. Munford v. McVeigh's Adm'r, 92 Va. 446, 23 S. E.

e payments have been made upon a debt upon which a greater
terest than that allowed by law is reserved in the contract, or
n order to secure the forbearance of the lender, and the bor-
self applies the payment to the interest, or the lender so applies
assent of the borrower, the appropriation so made will not be
unless within one year thereafter a suit be instituted by the
for its recovery, or a suit be brought by the lender within that
which case the borrower may set it off against the demand for
s sued. Munford v. McVeigh's Adm'r, 92 Va. 446, 23 S. E. 857;
& Deposit Bank v. Fugate, 93 Va. 821, 23 S. E. 884; overruling
Scott, 4 Rand. 415; Turner v. Turner, 80 Va. 379; Meem v.
8 Va. 674, 14 S. E. 363.
e there is usury in the contract as distinguished from the reser-
a greater rate of interest than is allowed by law, as where the
expressed to be for a greater sum than that actually loaned or
in a suit either by the lender or borrower, at law or in equity,
duty of the court, usury being established, to eliminate the
principal, and then apply the rule as to payments as herein-
lared, applying all unappropriated payments in satisfaction of
pal sum justly due, and leaving undisturbed such payments as
have themselves applied, and upon the principal so ascertained
ould be allowed at the legal rate from the date of the judg-
ecree. Munford v. McVeigh's Adm'r, 92 Va. 446, 23 S. E. 857.
o this case 1 Va. Law Reg. 750.
e payments have been made upon a usurious contract, and the
himself applies the payment to the interest, or the lender so ap-
h the assent of the borrower, the appropriation so made will not
ed unless within one year thereafter a suit be instituted by the
for its recovery, or a suit be brought by the lender within that
which case the borrower may set it off against the demand for
is sued. Munford v. McVeigh's Adm'r, 92 Va. 446, 23 S. E.
oved. Crabtree v. Old Dominion Building & Loan Ass'n, 95 Va.
E. 741, 64 Am. St. Rep. 818; Bank of Radford v. Kirby, 100
2 S. E. 303. See Exchange & Deposit Bank v. Fugate, 93 Va.
E. 884. Also Spengler v. Snapp, 5 Leigh 478; Moseley v. Brown,
9; Clarkson's Adm'r v. Garland, 1 Leigh 147.
ing fund associations.—In ascertaining the amount to be de-
inst a borrowing member of a building fund association whose
f borrowing has been declared usurious, but who has made no
within twelve months before suit, a balance should be struck at
f his last payment, and no charge thereafter made for interest,
ines. He should be credited by his interest payments and the
l value of his stock, and a decree should be pronounced for the
ie, with interest from date of the decree. Crabtree v. Old Do-
ilding & Loan Ass'n, 95 Va. 670, 29 S. E. 741, 64 Am. St. Rep.
chapter 166 and notes.
rally.—A charge of usury being explicitly denied by the defen-
wer, the plaintiff has not a right to an order requiring him to
is books and papers for the purpose of establishing such charge.
's Adm'x and Heirs v. Harris, 6 Munf. 472, 8 Am. Dec. 751.
ancery court doubts whether sale of property was intended as a

Digitized by Google

shift to evade the statute against usury, it should direct an
Douglass v. McChesney, 2 Rand. 109.

In all cases where a party applies to a court of equity for
against a usurious contract, he can only be relieved upon payment of
cipal without interest. Young v. Scott, 4 Rand. 415.

Court should consider rate of usury 2½ per cent. per month
plaintiff charges usury of about 2½ or 3 per cent. per month, and
is no proof to ascertain rate. Fulcher v. Baker, 1 Leigh 453.

Having sought full relief in equity, borrower only relieved upo
terms of paying the principal money due. Turpin v. Povall, 8 Leigh
Campbell v. Patterson, 11 Leigh 117. See Rankin's Ex'r v. Ran
Adm'rs, 1 Grat. 153; Bank of Washington v. Arthur, 3 Grat. 173; M
v. Hall, 9 Grat. 8.

Court of equity will not compel the obligee to establish his cla
law before proceeding to enforce his security. Bank of Washingt
Arthur, 3 Grat. 173.

On bill to enjoin sale under deed of trust, proper relief is not t
petuate the injunction for the whole amount of the bond and its in
due but only for amount of usurious premium. Bell v. Calhoun, 8
22.

If usury be expunged, the usurious assurances remain as securit
the valid debt. Martin v. Hall, 9 Grat. 8.

Decree should be for principal loaned, with interest from date
cree, where statute has been amended, and only avoided contract as
terest, and not principal, as formerly. Mosby v. St. Louis Mut. Ins
31 Grat. 629; Bain v. Savage, 76 Va. 904.

Though notes be usurious and null, yet if part of their consider
was a valid debt, which continues to be a valid debt, the decree shou
for the principal of the new notes, with interest on the pre-existing
from the time it was entitled to bear interest. White's Adm'x v. Free
79 Va. 597. See Bank of Washington v. Arthur, 3 Grat. 173.

Where a borrower who has paid no part of the principal or usu
interest, comes into chancery, he must be required to pay only the
cipal sum loaned or forborne. Turner v. Turner, 80 Va. 379; Edm
Ex'r v. Bruce, 88 Va. 1007, 14 S. E. 840.

Error to dismiss bill filed under section 2822 of the Code of 18
the ground that plaintiff has ample remedy at law. Ruffin v. Comm
Bank, 90 Va. 708, 19 S. E. 790.

The answer of the creditor under oath, when responsive to the
must be accepted as true, in the absence of other evidence sufficie
overcome such answer. Ward's Adm'r v. Cornett, 91 Va. 676, 22
494, 49 L. R. A. 550. See Sneed v. Smith, 1 Pat. & H. 46; Wise v. I
9 Grat. 294; Terry v. Dickinson, 5 Va. Law J. 393.

Judgment debtor, who has defended action against him on g
of usury, cannot have relief in equity on same grounds. Harnsba
Adm'r v. Kinney, 13 Grat. 511. But court of equity will relieve aga
judgment by default on a usurious contract. Greer v. Hale, 95 Va.
28 S. E. 873, 64 Am. St. Rep. 814. See Brown v. Toell's Adm'r, 5
543, 16 Am. Dec. 759.

The measure of relief is the same in all cases involving the c
of usury, whether at law or in equity, no matter in what way the qu
is presented, if the usury be established. Id.

Several bills filed to set up usury, the first filed entitled to prio
usury established. Ryan v. Krise, 89 Va. 730, 17 S. E. 128.

See article 17 Va. Law Journal 295.

Sec. 5556. Corporations not allowed to plead usury.—No cor
tion shall, by way of defense or otherwise, avail itself of an
the provisions of the preceding sections of this chapter, to avo
defeat the payment of any interest which it has contracted to
nor shall anything contained in any of said sections be constru
prevent the recovery of such interest, though it be more than

Digitized by Google

st, and though that fact appear on the face of the contract. 1887, § 2825.)

his section was retroactive in its operation, and applied to contracts before its passage, though suit had been brought upon such contracts its passage. The section was held to be not in violation of the tution of the United States or that of Virginia. Town of Danville v. 25 Grat. 1, 18 Am. Rep. 663.

ureties of corporation cannot defend on ground of usury. Rosa v. field, 33 N. Y. 665. Nor can endorser for accommodation of cor- on. Stewart v. Bramhall, 74 N. Y. 85.

. 5557. Nor, unless expressly authorized, charge more than interest.—Nothing in the act of incorporation of any insur- banking, or other corporation, shall be construed as giving rity (unless expressly given), to charge, take, or receive, for oan or forbearance of money or other thing, more than the rate of interest. (Code 1887, § 2826.)

Though court cannot, by charter, create a corporation with power ke contracts contrary to usury laws, the Legislature may. Smoot v. le's Perpetual Loan Ass'n, 95 Va. 686, 29 S. E. 746, 41 L. R. A. 589; ree v. Old Dominion Building & Loan Ass'n, 95 Va. 670. Section 154 e Constitution of Va.

Digitized by Google

TITLE 55.

Contracts.

Ch. 231. Gaming contracts.
232. When written evidence is required to maintain acti and of scroll by way of seal, and impression on pa
233. Negotiable instruments.
234. Public holidays; contracts in writing; actions the and assignments.
235. For the relief of sureties.

CHAPTER 231.

Gaming Contracts.

Sec.
5558. Gaming contracts void.
5559. Recovery of money or property lost in gaming.
5560. Bill by loser against wi upon repayment, winne charged from other fo ures.

Sec. 5558. Gaming contracts void.—All wagers, conveyances surances, and all contracts and securities whereof the whole or part of the consideration be money or other valuable thing, laid, or bet, at any game, horse-race, sport or pastime, and all tracts to repay any money knowingly lent at the time and pla such game, race, sport or pastime, to any person for the purpo so gaming, betting, or wagering, or to repay any money so len any person who shall, at such time and place, so pay, bet or wa shall be utterly void. (Code 1887, § 2836.)

Generally.—M. having won money of W. at cards, and J. wo same sum of M., the bond of W., given at the request of M. to J that sum, is void. Woodson v. Barrett, 2 Hen. & M. 80, 3 Am. Dec.

Promissory note given for money lent at the time and place of ing a bet upon a presidential election, for the purpose of making th is void. Machir v. Moore, 2 Grat. 257.

Where any instrument is absolutely void in its creation, it cann made valid by any subsequent transaction arising out of it. Woods Barrett, 2 Hen. & M. 88, 3 Am. Dec. 612.

Lender of money is not bound to inquire of his borrower wh wanted the money for, nor is he to be affected by any use which bor chooses to make of the money. Krake v. Alexander, 86 Va. 206 9 S. E. 991.

A testator directing all his just debts to be paid does not auth the payment of a gaming debt of his, and devisee can hold devise of gaming debt charged upon it. Carter's Ex'rs v. Cutting, 5 Munf.

An executor ought not to be allowed a credit for paying a de his testator, appearing, on the face of the written instrument int

Digitized by Google

e it, to have been for money won at unlawful gaming. Carter's Cutting, 5 Munf. 223.

nbling machine not recoverable in an action of replevin. Board e Com'rs v. Wagner, 93 Md. 182, 48 Atl. 455, 52 L. R. A. 775, St. Rep. 423.

50 L. R. A. 762, note, as to acts prohibiting options for sale of commodities.

15 L. R. A. 836, note, as to recovery for goods sold to aid busi- gaming.

m of plea to debt on bond that it was used for money won by 4 Min. (3d Ed.) p. 1749.

Gregory's Forms No. 177.

tnership.—One of two partners qualifies as administrator of the nd there is personal property belonging to the partnership. The trator cannot question the title of his intestate to his moiety of perty, on the ground that it was bought and used for gambling . Watson v. Fletcher, 7 Grat. 1.

ler.—M. being indebted to D. for money won at gaming accepts favor of T. drawn by D. for the same, T. having no knowledge gaming. T. obtains judgment on acceptance, and M. files bill ef. The chancellor dissolves the injunction, and allows T. to his judgment at law against M., but decrees that, upon M.'s he amount of the debt to T., D. shall pay the same amount to d, decree is right in all respects. Dade's Adm'r v. Madison, 5 01. See Pettit v. Jennings, 2 Rob. 676.

ignee or endorsee.—The assignee of a bond for money won at cannot recover though the assignment was for a valuable con- on, and though he had no notice of the origin of the bond, he obligor, before the assignment, induces him to take the bond ising to pay him the money. Buckner v. Smith, 1 Wash. 296 Dec. 463; Hoomes v. Smock, 1 Wash. 389; Woodson v. Barrett, & M. 80, 3 Am. Dec. 612; Pettit v. Jennings, 2 Rob. 676. See dm'r v. Thomas, 5 Leigh 1. But indorsee may recover of in- upon implied contract of indorsement. Moffett v. Bickle, 21 0.

count by bank.—A discount by a bank of a note, in ignorance of that the proceeds were to be used in gambling in stocks, is not he purview of this section, notwithstanding the endorser knew proceeds were to be so used. Citizens Nat. Bank v. McDannald, 834, 83 S. E. 389.

endorser of a note who has notice that the proceeds thereof were sed in a gambling transaction, may acquire a good title from a ich discounted the note without such notice. Citizens Nat. Bank nnald, 116 Va. 834, 83 S. E. 389.

Lynchburg Nat. Bank v. Scott, 1 Va. Law Reg. 363, note, for dis- between a note tainted with mere illegality and one evidencing act declared by statute to be void, when either is in the hands a fide holder for value.

uitable relief.—Equity will relieve the obligor of a bond given for considerations against a judgment obtained against him by de- nd will also relieve sheriff against a judgment obtained against an error committed in executing writ of elegit issued upon the ned judgment (Woodson v. Barrett, 2 Hen. & M. 80, 3 Am. Dec. nough party gives no good reason for failure to defend (Skip- Strother, 3 Rand. 214); and though he elects to defend at law, surprised on the trial he will be relieved (White v. Washington's Grat. 645).

court of equity will relieve against that part of bond which is and sustain that which is good when obligor is plaintiff. Skip- Strother, 3 Rand. 214.

to issue out of chancery, see Nelson's Adm'r v. Armstrong, 5 54.

Digitized by Google

A court of equity will not lend its aid for the settlement and adj ment of the transactions of a partnership for gambling, nor give r to either partner against the other. Watson v. Fletcher, 7 Grat. 1.

The fact of a bond being on a gaming consideration cannot be es lished against a defendant who is the assignee by the answer of his defendant, the obligee and assignor. Hoomes v. Smock, 1 Wash. Dade's Adm'r v. Madison, 5 Leigh 401; Pettit v. Jennings, 2 Rob.

W. Va. decisions.—For W. Va. decisions on similar statute, Justis' Annotations, chapter 97, section 1.

Sec. 5559. Recovery of money or property lost in gaming.— person who shall, by playing at any game or betting on the side hands of such as play at any game, lose within twenty-four ho the sum or value of five dollars, or more, and pay or deliver same, or any part thereof, may, within three months next follow recover from the winner, the money or the value of the goods lost and paid or delivered, with costs of suit in civil action, ei by suit or warrant, according to the amount or value thereof. (C 1887, § 2837.)

Revisors' Note.—The amount has been reduced from seven dol to five dollars. Section 2839 of the Code of 1887 which provi when any other person than the loser might recover treble the valu the money or property lost in gaming has been omitted and the repealed.

For W. Va. decisions on similar statute, see Justis' Annotati chapter 97, section 2.

Cited but not construed in McIntyre v. Smith, 108 Va. 736, 62 S 930.

Sec. 5560. Bill by loser against winner; upon repayment, wi discharged from other forfeitures.—Such loser may file a bill equity against such winner, who shall answer the same, and u discovery and repayment of the money or property so won, or value, such winner shall be discharged from any forfeiture punishment which he may have incurred for winning the sa (Code 1887, § 2838.)

This section should be so construed as to embrace all forms gambling that its language is broad enough to cover. McIntyre Smith, 108 Va. 736, 62 S. E. 930.

See Gregory's Forms No. 137.

CHAPTER 232.

When Written Evidence is Required to Maintain Actions; and of Sc by Way of Seal, and Impression on Paper.

Sec.		Sec.	
5561.	When written evidence is required.		of seal; impression on pa as valid as on wax.
5562.	When scroll good by way		

Sec. 5561. When written evidence is required.—No action sh be brought in any of the following cases:

First, To charge any person upon or by reason of a represen tion or assurance concerning the character, conduct, credit, abil

Digitized by Google

dealings of another, to the intent or purpose that such
obtain thereby, credit, money, or goods; or,
To charge any person upon a promise made, after full
y a debt contracted during infancy, or upon a ratification
age, of a promise or simple contract made during infancy;

To charge a personal representative upon a promise to
ny debt or damages out of his own estate; or,
To charge any person upon a promise to answer for the
ault, or misdoings of another; or,
Upon any agreement made upon consideration of mar-

Upon any contract for the sale of real estate, or for the
reof for more than a year; or,
, Upon any agreement that is not to be performed within

the promise, contract, agreement, representation, assur-
ratification, or some memorandum or note thereof, be in
nd signed by the party to be charged thereby, or his
t the consideration need not be set forth or expressed in
g, and it may be proved (where a consideration is neces-
other evidence. (Code 1887, § 2840.)

ction 1.—For discussion of this subdivision, see 3 Va. Law

ase before the statute, see Lang v. Lee, 3 Rand. 410.

ction 2.—No particular form of words is necessary, but the
st import an unequivocal and unconditional recognition and
on of previous engagement, though they need not amount to
romise to pay. The memorandum or writing must recognize
as binding on the person who signs it, and must, in express
by fair construction, refer to the contract to be ratified, and
still subsisting. If, however, it be such writing as would bind
l, who was an adult, as a ratification of the act of a party
his agent, it will be sufficient. Ward v. Scherer, 96 Va. 318,
18.
the undertaking is to do a collateral thing under seal, or
transaction is an executed contract, the statute appears in-
, and, if so, the confirmation of such transaction may be as at
aw. 1 Min. (4th Ed.) 526.
stricted to actions against the infant, and does not cover case
is plaintiff. Hilton v. Shepherd, 92 Me. 160, 42 Atl. 387.
Barton, L. Pr. (2d Ed.) 307, note; 5 Va. Law Reg. 265.

ction 3.—If an executor promises, in writing, to pay a debt of
or, and at the time of his promise he has in his hands assets
for that purpose, such assets constitute a sufficient considera-
the executor is personally liable to pay the debt. Taliaferro
2 Call 258. See 2 Lom. Ex. & Ad. 274, 275, and cases cited.
rol agreement by an executor to pay a legacy out of his own
not void under this subsection, if a decree was previously
for the legacy, to be satisfied out of certain property appointed
tator, for a part of which property the executor was accountable
decree, and responsible de bonis propriis, and such agreement
in consideration of forbearance to enforce the decree. Patton
ns, 3 Munf. 59.
ssumpsit against an executor, in his individual character, for

Digitized by Google

the price of goods sold and delivered to him for the use of his testa widow and legatees, upon evidence being given of such sale and deliv of a promise by the defendant to pay for the goods out of his testat estate, and of assets sufficient for that purpose, the plaintiff may reco although the promise was not in writing. Collins' Adm'x v. Row Leigh 114.

Subsection 4—*Generally.*—As to the four requisites which must cur to make a promise under this subdivision binding, see 2 Va. Reg. 464.

It is not necessary that promise should be made at the reques the person whose debt the promisor assumes, or at the request of creditor. Colgin v. Henley, 6 Leigh 85.

This subsection does not require that a writing evidencing a pro to pay for the debt of another shall show on its face the agreement tween the parties in order to be valid. It only requires that the pro shall be in writing. Saunders v. Bank, 112 Va. 443, 71 S. E. 714.

A negotiable note made by third parties upon valuable considera and given to the creditor as collateral security for, or in part paymen a debt due by another is a sufficient compliance with this clause. Saun v. Bank, 112 Va. 443, 71 S. E. 714.

A guarantor may specify, in the letter of credit which he gives, terms on which he will be bound, and if these terms are complied he is bound. Wadsworth v. Allen, 8 Grat. 174, 56 Am. Dec. 137.

A guarantor undertaking to pay upon receiving reasonable no of the failure of the principal debtor to pay the debt when due dispe with notice of acceptance of the guaranty by the parties to whom addressed, even if the law would have required such notice. Id.

Consideration.—Promise, though in writing, must be founded consideration to make it binding. Parker v. Carter, 4 Munf. 273, 6 Dec. 513; Colgin v. Henley, 6 Leigh 85; Beers v. Spooner, 9 Leigh Saunders v. Bank, 112 Va. 443, 71 S. E. 714.

This section does not apply to promise to pay another's debt, w is founded on a new consideration, and there are newly contrac parties. Skinker v. Armstrong, 86 Va. 1011, 11 S. E. 977; Wrigl Smith, 81 Va. 777; Hopkins v. Richardson, 9 Grat. 485.

Original undertakings not within the statute.—A promise b surety that he will indemnify another if he becomes co-surety with on the debt of a third person is an original undertaking and not w the statute. Wolverton v. Davis, 85 Va. 64, 6 S. E. 619, 17 Am Rep. 56, disapproved; Alphin v. Lowman, 115 Va. 441, 79 S. E. 1 See editorial on this case, 19 Va. L. Reg. 785.

For an extended discussion of this paragraph, see opinion of K P., in Alphin v. Lowman, 115 Va. 441, 79 S. E. 1029.

This section does not apply where R. assigns bond of G. to K enable K. to purchase goods on the credit of his assignment, and g antees the payment of the bond by indorsement on the back thereof. K. purchases goods of H. on the credit of that assignment and guara Hopkins v. Richardson, 9 Grat. 485.

An agreement by a bank to discount notes with certain colla and to carry the loans until a third party can sell the collateral stated price and pay the notes from the proceeds, is an original un taking on the part of the bank and need not be in writing, although discount is a part of a scheme on the part of such third party to def the makers. Baker v. Berry Hill Co., 109 Va. 776, 65 S. E. 656.

Two joint debtors, A. and B., secured the debt on land. A. more than his share. B.'s land was sold, purchaser agreeing to stated sum, plus the excess paid by A. The promise is not within statute. Skinker v. Armstrong, 86 Va. 1011, 11 S. E. 977.

Ross intending to build a mill on a stream, Chapman verbally ag for a consideration to indemnify him against all injury which he sh sustain by the erection of a dam on the stream by third person; agreement is not within the statute. Chapman v. Ross, 12 Leigh

A verbal promise upon valuable consideration to pay the del

Digitized by Google

already contracted is not within this section. Goode v. Bryant, 314, 87 S. E. 588, 1 Va. L. R. N. S. 150.

positive personal undertaking of one person to pay for goods ivered to another is not within the statute of frauds. Kanter v. er, 118 Va. 625, 88 S. E. 60.

en promise is collateral.—If C. authorize H. to say to a merchant , C., would pay for any goods sold to his son-in-law, L.," or to chant of whom L. "might purchase" or "might wish to purchase hat he would pay for L." a certain sum—this is a collateral and, being verbal, is void under the statute of frauds. Cutler v. 6 Rand. 509. See Ware v. Stephenson, 10 Leigh 155. In case ods be charged to L. it is strong evidence that promise was col· Id.

mise is collateral within statute unless original debtor is re- Waggoner v. Gray's Adm'rs, 2 Hen. & M. 603; Noyes' Ex'x v. eys, 11 Grat. 636.

section 5.—Embraces antenuptial contracts. Hannon v. Houni- Va. 429, 12 S. E. 157.

s not appear to apply to promise of marriage, but to marriage nts. 1 Min. (4th Ed.) 275.

husband and wife may agree by parol that he shall hold for her use property acquired by him by virtue of the marriage, and, ghts of creditors will not be thereby affected, a court of equity orce the agreement. Statute is not applicable to this case, as it hown that the agreement was upon consideration of marriage. s Adm'r v. Riggan, 93 Va. 78, 24 S. E. 920.

parol promise by a father to his daughter's husband before the e is a sufficient consideration to sustain a written agreement made ne marriage. So, also, if the marriage be had on the father's Argenbright v. Campbell, 3 Hen. & M. 144. See Payne v. Munf. 373.

section 6—*Generally.*—For exceptions in equity to application te, see 2 Min. (4th Ed.) 851; statute generally, 2 Min. (4th Ed.) seq.

is section renders a parol contract for sale of real estate voidable d not void. Dupuy v. Delaware Ins. Co. (C. C.) 63 Fed. 680; v. Hurley, 110 Va. 31, 65 S. E. 472.

plies to contract to dispose of real estate by will in certain way. Hale, 90 Va. 728, 19 S. E. 739.

plies to parol extension of written agreement which obliges pur- to pay an augmented price. Heth's Ex'r v. Wooldridge's Ex'r, . 605, 18 Am. Dec. 751.

plies to an agreement between a purchaser of land and a third that such third person should be admitted as a partner in the e. Henderson v. Hudson, 1 Munf. 510; Walker v. Herring, 21 78, 8 Am. Rep. 616.

plies to contract whereby defendant employs plaintiff to furnish nd materials to build a house, and agrees to pay him money, mer- e, and land. McCrowell v. Burson, 79 Va. 290.

judicial sale made under a decree of a court of chancery is not the statute. Robertson v. Smith, 94 Va. 250, 26 S. E. 579, 64 Rep. 723.

es not apply to agreement by railroad company to maintain a at a particular place on its line for plaintiff's benefit so long as he ed it. Warner v. Texas, etc., Co., 164 U. S. 418, 17 Sup. Ct. 147, Ed. 495, 2 Va. Law Reg. 727. See note to this case, 2 Va. Law 1.

here a contract for the sale of real estate has been executed by a f conveyance to the purchaser and all that remains to be done is yment of the purchase money, the case is not within the statute. er v. Ashwell, 116 Va. 992, 83 S. E. 930.

o writing is necessary to create a good equitable title to real estate. v. Peters' Ex'r, 79 Va. 60.

Digitized by Google

Purchaser under nonenforceable contract may recover back anything he may have paid to vendor on account of purchase. Brown v. Pollard, 89 Va. 696, 17 S. E. 6.

A parol contract by which a vendee of land agrees to sell a portion of it to a subvendee, though assented to by the vendor, is within the statute. Hoover v. Baugh, 108 Va. 695, 62 S. E. 968.

Discussed, 7 Va. Law J. 195.

License to do certain acts on land is no interest in the land and need not be in writing. 2 Min. 22.

See, infra, notes on Specific Performance and Trusts in Real Estate.

Leases.—If an agent, verbally authorized to lease land, execute a lease thereon, such lease, if not good as the deed of the principal, is a sufficient memorandum or contract for a lease, binding the principal. The statute of frauds is no defense to the rights of the lessee thereunder. Mustard v. Big Creek, etc., Co. (W. Va.), 72 S. E. 1021.

Leases for more than five years should be recorded. Sections 5192, 5193. See, also, section 5141.

Real estate partnerships.—An agreement to become interested in and to share the profits from lands already owned by one or more of the partners at the time the partnership is formed is an agreement for the purchase and sale of an interest in real estate and falls within the statute. Burgwyn v. Jones, 113 Va. 511, 75 S. E. 188.

For a case wherein it was held that the contract in litigation with reference to certain lands created an agency and not a partnership, see Atlantic Coast Realty Co. v. Robertson (C. C. A., Fourth Circuit), 240 Fed. 372.

A partnership for the purchase and sale of real estate for speculation, the profits to be divided among the partners, is valid when verbally made. Burgwyn v. Jones, 113 Va. 511, 75 S. E. 188.

A partnership for the sale and purchase of land for speculation, the profits to be divided among the partners, is valid when verbally made, and the existence of the partnership and the extent of the interests of the partners may be shown by parol. Miller v. Fergusson, 107 Va. 249, 57 S. E. 649.

Standing timber.—Independently of section 1906c, Pollard's Code (see sections 1448-1454 of this Code), a contract for the sale of growing trees, which are to remain upon the land for a time for the purpose of further growth and profit, is a contract for the sale of an interest in land, and must be proved by a writing. But if the trees are to be severed immediately, or within a reasonable or convenient time, with a mere license to enter and take them away, without any stipulation for the beneficial use meanwhile of the soil, it is a sale of goods and need not be in writing. Hurley v. Hurley, 110 Va. 31, 65 S. E. 472; Hurricane Lumber Co. v. Lowe, 110 Va. 380, 66 S. E. 66.

Subsection 7— *Generally.*—Contemplates such contracts as on their face have performance postponed beyond one year, and not such as may or may not be performed within that period. Seddon v. Rosenbaum, 85 Va. 928, 9 S. E. 326, 3 L. R. A. 337.

For distinction between "an agreement that is not to be performed within a year" and "an agreement which is not to be defeated within a year," see Id.

A contract for personal services not to be performed within a year is within the statute. Rahm v. Klerner, 99 Va. 10, 37 S. E. 292.

A contract for one year's service, to begin and be performed within the year, is not within the statute. Conrad v. Ellison-Harvey Co., 120 Va. 458, 91 S. E. 763.

Plaintiff was employed under a written contract for one year from January 1, 1910, and continued in the employment from year to year without any other contract in writing until he was discharged in June, 1914. In an action for wrongful discharge, the defendant contended that the contract was within the statute of frauds. Held, that while the contract was based upon implication and presumption drawn in part from previous dealings between the parties, it was nevertheless a new

Digitized by Google

, not made until the year 1914 began, and to be performed with-
year, hence not within the statute. Conrad v. Ellison-Harvey
Va. 458, 91 S. E. 763.
ontract to erect and maintain a gate at a railroad crossing, and
de a keeper thereof, is not within the statute, although no time
within which it is to be performed. Richmond, etc., Co. v.
id, etc., Co., 96 Va. 670, 32 S. E. 787. See Warner v. Texas,
, 164 U. S. 418, 17 Sup. Ct. 147, 41 L. Ed. 495, 2 Va. Law Reg.
e 741.
full discussion of this subdivision, see 1 Va. Law Reg. 553.
e also for effect of part performance of contract invalid under
division (page 568); also as to recovery on a quantum meruit
thing done under such contract (page 577).
mise of a support at death of promisor in consideration of ser-
ndered during the balance of her life to be performed by promisee
in provision prohibiting an action upon a promise not to be
ed within a year unless in writing. Thomas v. Armstrong, 86
, 10 S. E. 6.
article discussing the validity of a verbal lease for one year or
mmencing in the future, see 17 Va. Law Reg. 97.
nership.—A parol contract of partnership, without any fixed
its continuance, and the business which may be completed with-
ar, is not void as coming within the statute. Jordan v. Miller,
442.
ons.—An agreement to sell stock at the end of three years,
option to the purchaser to call it at any time, may be performed
year, and is not within the statute. Seddon v. Rosenbaum, 85
9 S. E. 326, 3 L. R. A. 337.
e effect at death.—Promise to leave a support at death of
r in consideration of services during balance of her life to be
ed by promisee is not within the statute. Thomas v. Armstrong,
323, 10 S. E. 6, 5 L. R. A. 529.
erally.—The statute of frauds is a wise and salutary law, and
e fully and fairly carried into execution by the courts. Cutler v.
6 Rand. 509.
ere a verbal contract is entire, and relates in part to a matter
enders it necessary under the statute that the promise should be
ng, the whole promise is void. Engleby v. Harvey, 93 Va. 440,
225; Noyes' Ex'x v. Humphreys, 11 Grat. 636.
s section does not make void contracts herein mentioned, but
rovides that no action shall be brought on them. Therefore may
d in collateral action. Burruss v. Hines, 94 Va. 413, 26 S. E. 875.
e to subsection 6.
provisions of this statute may be pleaded by way of defense, but
t cannot be invoked as a statute to sustain a right of action, its
being to prohibit actions in certain cases designated. McIlvaine
tone L. Co., 105 Va. 613, 54 S. E. 473.
ere a debtor sells and conveys property to a purchaser, who as
sideration covenants that he will pay certain debts of his grantor,
rchaser conveys the property to a second purchaser who makes
enants, a motion for judgment in favor of the creditor against
inal debtor and each purchaser cannot be maintained. McIlvaine
tone Lumber Co., 105 Va. 613, 54 S. E. 473.
udicial sale made under a decree of a court of chancery is not
he statute. Robertson v. Smith, 94 Va. 250, 26 S. E. 579, 64
Rep. 723.
to whether the words, "no action shall be brought," apply to
nts set up by way of defense, see 1 Va. Law Reg. 553.
to five exceptions in equity to application of statute, see 2 Min.
.) 851.
cussed, 7 Va. Law J. 635; 10 Va. Law J. 577, 59.
monographic note on this statute, see Beale v. Digges, 6 Grat.
. Rep. Anno.

Digitized by Google

Form of declaration in trespass on the case for false representati of character, etc., 4 Min. (3d Ed.) p. 1731; of plea of statute of pa agreements in an action on a guaranty, Id., p. 1751.

Cited but not construed, Virginian R. Co. v. Jeffries, 110 Va. 4 66 S. E. 731.

For W. Va. decisions on similar statute see Justis' Annotations, ch ter 98, section 1.

See Gregory's Forms Nos. 48, 82, 176, 195.

Memorandum.—Memorandum of ratification of infant's contract m contain unequivocal and unconditional confirmation. Ward v. Scherer, Va. 318, 31 S. E. 518.

The memorandum must contain all the essential elements of the c tract (except the consideration), without recourse to parol proof. H v. Hale, 90 Va. 728, 19 S. E. 739; Rahm v. Klerner, 99 Va. 10, 37 S. 292, note 6 Va. Law Reg. 689.

The territory in which plaintiff, a traveling salesman, had the right sell is one of the essential terms of the contract sued on, which cannot shown by parol. Rahm v. Klerner, 99 Va. 10, 37 S. E. 292.

Auctioneers' Memorandum.—In sales at auction, the auctioneer is agent both of vendor and vendee; and his note or entry on his account sales of the sale, the price, and the purchaser's name is a sufficient mem randum. Smith v. Jones, 7 Leigh 165, 30 Am. Dec. 498; Brent v. Gre 6 Leigh 16; Walker v. Herring, 21 Grat. 678, 8 Am. Rep. 616; Aver v. Lipscombe, 76 Va. 404. So is memorandum made by auctioneer's cle Smith v. Jones, supra. Or by deputy sheriff conducting sale for she Brent v. Green, supra. But memorandum made after sale by auctione partner is not binding. Walker v. Herring, supra.

It is (in this case) immaterial whether the clerk who made the m or entry was appointed by the crier who acted as auctioneer or by the agent of the vendor for making the sale. Smith v. Jones, 7 Le 165, 30 Am. Dec. 498.

Memorandum may be sufficient though mention of credit on wh land sold be omitted. Smith v. Jones, 7 Leigh 165, 30 Am. Dec. 498.

As to auctioneer's memorandum not necessary to be recorded, sufficient to meet requirement of statute of frauds in case of sale of la see Brown v. Butler, 87 Va. 621, 13 S. E. 71.

Quaere, will memorandum made by auctioneer after sale bind p chaser? Walker v. Herring, 21 Grat. 678, 8 Am. Rep. 616.

By corporation.—A resolution of a board of directors of a corporat duly signed by its president and secretary, which sufficiently sets fo the terms of the contract, is a compliance with the statute. Central L Co. v. Johnston, 95 Va. 223, 28 S. E. 175; Newport News, etc., Co Newport News, etc., Co., 97 Va. 19, 32 S. E. 789.

Will.—Statute is not satisfied where the only memorandum is one two mutual wills, neither referring to the other or to any other writ Hale v. Hale, 90 Va. 728, 19 S. E. 739.

From separate papers.—Complete contract may be gathered by arate papers, but parol evidence is not admissible to connect the papers supply deficiencies. Rahm v. Klerner, 99 Va. 10, 37 S. E. 292; Fitzh v. Jones, 6 Munf. 83. See 2 Min. (4th Ed.) 848; Darling v. Cummi Ex'r, 92 Va. 521, 23 S. E. 880.

Letters.—A letter addressed to a real estate broker who has a lot sale, authorizing him to purchase the lot at a price stated and whic exhibited by the broker to the owner of the lot who accedes to the p mentioned, and writes and signs at the foot of the letter, "I accept above," is not a sufficient memorandum of a sale of real estate within meaning of this section. In order to give the letter any effect, the bro would have to act on the authority given him in the letter by making purchase and executing, as agent, a memorandum in writing. Unless until this was done there was no memorandum in writing signed by person to be charged or his agent. Jordan & Davis v. Mahoney, 109 133, 63 S. E. 467.

A letter written by the owner of land, in reply to a written prop to purchase, saying, "I accept the offer you made me for $1,500 ca

Digitized by Google

ied by such owner, is a sufficient compliance with the statute. v. Worthington Hardware Co., 115 Va. 497, 79 S. E. 1039.

d.—It seems that a deed of lease to a partnership signed by one in the name of the partnership is a sufficient memorandum. Kyle ts' Ex'r, 6 Leigh 495.

lelivered deed containing the bargain concluded between the s sufficient memorandum. Brent v. Green, 6 Leigh 16; Bowles son, 6 Grat. 78; Parrill v. McKinley, 9 Grat. 1, 58 Am. Dec. 212. in. (4th Ed.) 848.

nature.—Although an agreement to devise and bequeath land and property, in consideration of personal services to be rendered, d only by the intended testator, yet, if such services have been dered, the agreement is binding on the party who has signed the nt, and will be enforced against him. Burdine v. Burdine's Ex'r, 515, 36 S. E. 992, 81 Am. St. Rep. 741.

signing may be by a mark. Addy v. Grix, 8 Ves. Jr. 504; Wright ford, 17 Ves. Jr. 459; Argenbright v. Campbell, 3 Hen. & M. 144,

s held that a signing the name at the beginning, as "A. B. agrees etc., is sufficient. Roane, J., in Argenbright v. Campbell, 3 Hen. 7. See, also, 2 Lom. Dig. 33, 34.

ere seems to be no question that the name may be signed by writ- nywhere in the contract, but wherever placed it must appear to en done with the intention of authenticating the instrument and some other purpose, for a signing consists of both the act of writ- erson's name and the intention, in doing this, to execute and au- te the instrument signed, hence the mere writing by a proposed er of an agreement for the sale and purchase of real estate, con- the names of the parties at the beginning, but not otherwise signed urchaser, is not a signing by such purchaser within the meaning tatute of frauds. The writing of the name in that connection is for the purpose of identification, and not for authentication. nd v. Munsey, 119 Va. 791, 89 S. E. 882.

note, 2 Va. L. Reg. N. S. 948.

agent.—Agent may be authorized by parol, and signature of his ne is sufficient. Yerby v. Grigsby, 9 Leigh 387. See 2 Min. (4th 0. See Chapman v. Jewett, 24 S. E. 261, 2 Va. Dec. 336.

ading and evidence.—Whether or not promise is in writing is mat- vidence, and need not be stated in declaration. Skinker v. Arm- 86 Va. 1011, 11 S. E. 977. At law a defendant may insist upon efit of the statute by the general issue, or in equity by general Rowton v. Rowton, 1 Hen. & M. 92; Jackson's Assignees v. Cut- Munf. 313; Eaves v. Vial, 98 Va. 135, 34 S. E. 978. See this case hen statute must be specifically pleaded. See, also, Robertson v. 94 Va. 250, 26 S. E. 579, 64 Am. St. Rep. 723.

intiff must produce writing at trial unless defendant waives his require it by allowing agreement to be proved by oral testimony, h case he cannot rely upon statute in appellate court. Eaves v. Va. 135, 34 S. E. 978.

nsideration may be proved by evidence aliunde. Colgin v. Henley, 85.

rol evidence is admissible to prove that an auctioneer's memoran- sale does not contain a stipulation relied on as a condition. v. Lipscombe, 76 Va. 405.

er verdict, an objection will not lie that the contract sued on was by parol testimony when the statute of frauds required it to be ng. Failure to object at the proper time was waiver of the benefits tatute. Moore Lumber Corp. v. Walker, 110 Va. 775, 67 S. E. 374, Cas. 314.

cussion of parol evidence to supplement description of real estate en contract of sale, etc. 16 Va. Law Reg. 807.

to variance between allegata and probata as to consideration, see . Henley, 6 Leigh 85.

, generally, Buck v. Copland, 2 Call 218; 2 Min. (4th Ed.) 849; 5192, 5193, 5141.

Digitized by Google

Specific performance.—Notwithstanding the statute, courts of equ in order to defeat a fraud, will compel the specific execution of a parol c tract for the sale of lands if the contract is established by clear and c vincing proof. Boyd v. Cleghorn, 94 Va. 780, 27 S. E. 574.

If a specific execution of a parol contract for land in part perform is refused for any cause, the court will decree compensation to a pa who may have expended his money on the property of another on faith of such contract. Anthony v. Leftwich's Representatives, 3 Ra 238. See this case for the principles on which such compensation will made.

As to principles governing courts of equity in decreeing specific p formance of parol contracts for sale of land in part performed, especially, Wright v. Pucket, 22 Grat. 370; Pierce's Heirs v. Catro Heirs, 23 Grat. 588; Central Land Co. v. Johnston, 95 Va. 223, 28 S. 175; Hudson v. Max Meadows, etc., Co., 99 Va. 537, 39 S. E. 215; Darl v. Cumming's Ex'r, 92 Va. 521, 23 S. E. 880.

See, also, as to specific performance, Reynolds v. Necessary, 88 125, 13 S. E. 348; Walker's Adm'r v. Tyler, 94 Va. 533, 27 S. E. 4 Edichal, etc., Co. v. Columbia, etc., Co., 87 Va. 641, 13 S. E. 100; Du more v. Lyle, 87 Va. 391, 12 S. E. 610; Barrett v. Forney, 82 Va. 2 Hale v. Hale, 90 Va. 728, 19 S. E. 739; Bowman v. Wolford, 80 Va. 2 Payne v. Graves, 5 Leigh 561; McComas v. Easley, 21 Grat. 23; Anth v. Leftwich's Representatives, 3 Rand. 238; Rhea v. Jordan, 28 Grat. 6 Lester v. Lester, Id. 737; Brown v. Brown, 77 Va. 619; Williamson Paxton, 18 Grat. 475; Pigg v. Corder, 12 Leigh 69; Hale v. Wilkins 21 Grat. 75; Bowles v. Woodson, 6 Grat. 78; Parrill v. McKinley, 9 G 1, 58 Am. Dec. 212, Allen v. Smith, 1 Leigh 231; Jackson's Assignees Cutright, 5 Munf. 308.

For the requirements necessary to be fulfilled before parol contr to sell real estate is enforceable in equity, see Martin v. Martin, 112 731, 72 S. E. 680.

As to when equity will decree specific performance of a parol contr for the purchase of land, see East v. Atkinson, 117 Va. 490, 85 S. E. 4

Meritorious consideration.—As to specific performance of contra resting upon meritorious consideration, see Halsey v. Peters' Ex'r, 79 60; Griggsby v. Osborn, 82 Va. 371; Burkholder v. Ludlam, 30 Grat. 2 32 Am. Rep. 668. But see section 5141.

Of married woman's contracts.—As to specific performance of c tracts made by married woman, see Gentry v. Gentry, 87 Va. 478, 12 S. 966.

Suit for damages precludes suit for specific performance. Long Colston, 1 Hen. & M. 110.

Resulting, implied, and constructive trusts may be enforced—Expr trusts in real estate created by parol.—Where land is purchased and p for by one person, and conveyance is taken to another, the law will impl trust for the benefit of the former, and such purchase and payment m be proved by parol agreement. Bank v. Carrington, 7 Leigh 566; Ka v. O'Connors, 78 Va. 76, 77; Sinclair v. Sinclair, 79 Va. 42; Beecher Wilson, 84 Va. 817, 6 S. E. 209, 10 Am. St. Rep. 883; 2 Min. (4 Ed.) 639.

For numerous cases holding this doctrine, and for the general d trine that resulting, implied, and constructive trusts can be created enforced in Virginia, see note to Bank v. Carrington, 7 Leigh 566, Rep. Anno.; also footnote 7 Va. Law Reg. 21. See, also, 2 Min. (4th E 218 et seq.

A valid trust can be created by parol in personalty or the proceeds real estate, and when once created it cannot be subsequently altered revoked by the party creating it, but is governed by the same rule trusts created in writing. Riggan v. Riggan, 93 Va. 78, 24 S. E. 920.

An express trust in real estate may be created and established parol in this State, but the declaration must be unequivocal and explic and the evidence clear and convincing. Young v. Holland, 117 Va. 433, S. E. 637. Comment, 1 Va. L. R. N. S. 83, 149. See, also, 7 Va. L. R 15.

Digitized by Google

express trust in real estate can be created in this State by a parol nt and will be enforced by a court of equity, under certain cir-ces. Shield v. Adkins, 117 Va. 616, 85 S. E. 492. Editorial , 1 Va. L. R. N. S. 299. This case reviewed, 1 Va. L. R. N. S.

express trust in either real or personal property may be created , but the evidence to establish it must be clear and convincing. Berry's Ex'or, 119 Va. 9, 89 S. E. 242.
express trust in land may be created by parol. An infant may be , and if he holds property as trustee, a court of equity will enforce . Clary v. Spain, 119 Va. 58, 89 S. E. 130.
a case in which an express trust in real estate was claimed to t which was held to be a contract of sale within this section, see Adkins, 117 Va. 616, 85 S. E. 492. Editorial, 1 Va. L. R. N. S.

ere land is purchased and paid for by one person, and the con-is taken by another, the law will imply a trust for the benefit of er, and such purchase and payment may be proved by parol evi-Bank v. Carrington, 7 Leigh 566.
article, "Parol Trusts in Real Estate," see 1 Va. L. R. N. S. 83.

5562. When scroll good by way of seal; impression on paper as on wax.—Any writing, to which a natural person mak-hall affix a scroll by way of seal, shall be of the same force were actually sealed. The impression or stamping of a te or an official seal on paper or parchment alone shall be as if made on wax or other adhesive substance. (Code 1887,

isors' Note.—The words "or stamping" are new.
ognition of seal or scroll in body of instrument.—At common cognition of the seal in the body of the writing was not necessary it a specialty. Cromwell v. Tate, 7 Leigh 301. But in Virginia g for the payment of money or other purpose, which is not re-o be by deed, having a scroll at the foot thereof, with word written therein, but which is not recognized in the body of the nt as a seal, is not a sealed instrument. Austin's Adm'x v. Whit-x'rs, 1 Munf. 487, 4 Am. Dec. 550; Anderson v. Bullock, 4 Munf. nkins v. Hurt's Com'rs, 2 Rand. 446; Peasley v. Boatwright, 2 5; Cromwell v. Tate's Ex'r, 7 Leigh 301, 30 Am. Dec. 506; Turber-Bernard, 7 Leigh 302, note; Clegg v. Lemessurier, 15 Grat. 108. er v. Chamberlain, 83 Va. 286, 5 S. E. 174; Baird v. Blaigrove, 1 70. And the same rule applies to an actual or corporate seal. Salt Co. v. Norfolk, etc., Co., 95 Va. 461, 28 S. E. 567, note to Va. Law Reg. 728; Dinwiddie Co. v. Stuart, 28 Grat. 530, 531; v. National, etc., Co., 94 Va. 589, 27 S. E. 464.
e presence of corporate seal, without other evidence, to a contract valid without the seal, is not sufficient to change the apparent r of the instrument. Grubbs v. National, etc., Co., 94 Va. 589, 464, see note 3 Va. Law Reg. 282.
eems, however, that an instrument required by law to be under ch has a scroll attached to the name of the party will be held sealed instrument, though the scroll be not acknowledged in the the instrument, if the instrument is acknowledged as a deed v. Hewlett, 9 Leigh 511; Ashwell v. Ayres, 4 Grat. 283); or is in n of a power required to be by deed (Pollock v. Glassell, 2 Grat. See, also, Bradley Salt Co. v. Norfolk, etc., Co., 95 Va. 468, 28 .
distinction between writings required to be under seal and those ired to be under seal as to necessity for acknowledgment of seal of instrument, see Clegg v. Lemessurier, 15 Grat. 108.
ty having acknowledged a deed as his indenture has made it so y legal purpose. Currie v. Donald, 2 Wash. 58.
omission to recognize a scroll in the body of a deed is cured by

Digitized by Google

its solemn recognition by the grantor at the time of acknowledgm
Lacks v. Latham, 116 Va. 424, 82 S. E. 75.

Pleading.—One action of debt may be brought against all partie
an instrument sealed by some of them and not by others. Rankin v. Ro
8 Grat. 63.

Whether paper declared on as a simple contract is a sealed contrac
not cannot be raised by demurrer, but is a matter of fact to be presen
at the hearing by proper plea or motion. Grubbs v. National, etc., Co.,
Va. 589, 27 S. E. 464.

As to when question whether ancient instrument was sealed or
may be submitted to jury, see Reusens v. Lawson, 91 Va. 226, 21 S.
347.

Evidence.—Evidence aliunde is not admissible to prove that a sc
at the foot of a writing was intended as a seal. Clegg v. Lemessurier,
Grat. 108. But compare Grubbs v. National, etc., Co., supra, where
court speaks of the intention of the parties that a contract should be
instrument under seal being a matter of proof.

Generally.—In absence of evidence, scroll will be deemed corpo
seal. Jacksonville, etc., Nav. Co. v. Hooper, 160 U. S. 514, 16 Sup.
379, 40 L. Ed. 515. See note, 5 Va. Law Reg. 331; Lile's Notes on C
porations, p. 178 et seq., 2 Barton, L. Pr. (2d Ed.) 1274.

For discussion of whether a scroll may serve as a corporate s
see article 10 Va. Law Reg. 464.

Word "Seal" affixed to signature sufficient as scroll. Lewis' Ex'r
Overby's Adm'r, 28 Grat. 627.

See section 5, subsection 12; section 4485; 1 Barton, L. Pr. (2d E
94, 142, 145, note; 4 Min. (3d Ed.) 23 et seq., 882; 2 Min. (4th Ed.) 6
727, et seq., 835; 1 Va. Law Reg. 622, 3 Va. Law Reg. 282; Lile's No
on Corporations 178, and note to 15 Grat. 108, Va. Rep. Anno.; Pil
v. Roberts, 13 How. 472, 14 L. Ed. 228; Pierce v. Indseth, 106 U. S. 5
1 Sup. Ct. 418, 27 L. Ed. 254.

Digitized by Google

CHAPTER 233.

Negotiable Instruments.*

IABLE INSTRUMENTS IN GENERAL.
m and Interpretation.
orm of negotiable instrument.
ertainty as to sum; what constitutes.
When promise is unconditional.
eterminable future time; what constitutes.
dditional provisions not affecting negotiability.
missions; seal; particular money.
When payable on demand.
When payable to order.
When payable to bearer.
erms; when sufficient.
ate of; presumption as to.

Sec.
5574. Ante-dated and post-dated.
5575. When date may be inserted.
5576. Blanks; when may be filled.
5577. Incomplete instrument not delivered.
5578. Delivery; when effectual; when presumed.
5579. Construction where instrument is ambiguous.
5580. Liability of person signing in trade or assumed name.
5581. Signature by agent; authority; how shown.
5582. Liability of person signing as agent, etc.
5583. Signature by procuration; effect of.
5584. Effect of indorsement by infant or corporation.
5585. Forged signature; effect of.

evisors' Note.—The uniform negotiable instruments act has been in Virginia for about twenty years, and has worked well. For t reasons the revisors were exceedingly reluctant to make any ons whatever in this act which, with slight variations, has been in a majority of the States; but after having read and considered ble discussions of the act by distinguished lawyers, notably several by the late Dean Ames, of the Harvard Law School, in which he out some of the defects in the law, it seemed to the revisors that hanges were clearly necessary. These were made. (See sections 626, 5632, 5647, 5675, 5681.) For the discussions referred to, Harvard Law Review, 241, 442; 15 Harvard Law Review, 26; 16 l Law Review, 255; 10 Yale Law Journal, 84; American Law r (N. S.), Vol. 41, pp. 437, 499, 561. All of these articles are ed in Brannan's Negotiable Instruments Law.

erences.—Reference is made at the bottom of each section to the as numbered in the Virginia Acts of Assembly adopting the negotistruments law. (Acts 1897-98, pp. 896-918.)

notations.—In addition to the Virginia cases through 120 Va. con- the Negotiable Instruments Law, the annotations of this chapter many of the decisions of other States. The notes of these de- are taken by permission from addresses delivered by Hon. A. M. of Rhode Island, President of the Commissioners on Uniform State before the Commissioners in 1904-5-6-7. By the kindness of Mr. he notes of the earlier decisions of other States are also taken from lection of cases. A collection of the decisions of all States is in Brannan's Negotiable Instruments Law (2d Ed.). See, also, rd's Negotiable Instruments Law (3d Ed.).

es before adoption of uniform act.—The Virginia cases on the of negotiable instruments which were decided prior to the adoption uniform negotiable instruments law are not given in the notes to apter, except in a few instances.

Digitized by Google

Consideration.

Sec.
5586. Presumption of consideration.
5587. What constitutes consideration.
5588. What constitutes holder for value.
5589. When lien on instrument constitutes holder for value.
5590. Effect of want of consideration.
5591. Liability of accommodation party.

Negotiation.

5592. What constitutes negotiation.
5593. Indorsement; how made.
5594. Indorsement must be of entire instrument.
5595. Kinds of indorsement.
5596. Special indorsement; indorsement in blank.
5597. Blank indorsement; how changed to special indorsement.
5598. When indorsement restrictive.
5599. Effect of restrictive indorsements; rights of indorsee.
5600. Qualified indorsement.
5601. Conditional indorsement.
5602. Indorsement of instrument payable to bearer.
5603. Indorsement where payable to two or more persons.
5604. Effect of instrument drawn or indorsed to a person as cashier.
5605. Indorsement where name is misspelled, etc.
5606. Indorsement in representative capacity.
5607. Time of indorsement; presumption.
5608. Place of indorsement; presumption.
5609. Continuation of negotiable character.
5610. Striking out indorsement.
5611. Transfer without indorsement; effect of.
5612. When prior party may negotiate instrument.

Rights of the Holder.

Sec.
5613. Right of holder to sue; ment.
5614. What constitutes a holde due course.
5615. When person not deer holder in due course.
5616. Notice before full amo paid.
5617. When title defective.
5618. What constitutes notice defect.
5619. Rights of holder in course.
5620. When subject to original fenses.
5621. Who deemed holder in course.

Liabilities of Parties.

5622. Liability of maker.
5623. Liability of drawer.
5624. Liability of acceptor.
5625. When person deemed dorser.
5626. Liability of irregular dorser.
5627. Warranty; where nego tion by delivery, etc.
5628. Liability of general dorsers.
5629. Liability of indorser wh paper negotiable by de ery.
5630. Order in which indors are liable.
5631. Liability of agent or brol

Presentment for Payment.

5632. Effect of want of dem on principal debtor.
5633. Presentment where inst ment is not payable on mand.
5634. What constitutes a suffici presentment.
5635. Place of presentment.
5636. Instrument must be exhi ed.
5637. Presentment where inst ment payable at bank.
5638. Presentment where princi debtor is dead.
5639. Presentment to persons ble as partners.

Digitized by Google

Presentment to joint debtors.
When presentment not required to charge the drawer.
When presentment not required to charge the indorser.
When delay in making presentment is excused.
When presentment may be dispensed with.
When instrument dishonored by non-payment.
Liability of person secondarily liable when instrument dishonored.
Time of maturity.
Time; how computed.
Rule where instrument payable at bank.
What constitutes payment in due course.

Notice of Dishonor.

To whom notice of dishonor must be given.
By whom given.
Notice given by agent.
Effect of notice given on behalf of holder.
Effect where notice is given by party entitled thereto.
When agent may give notice.
When notice sufficient.
Form of notice.
To whom notice may be given.
Notice where party is dead.
Notice to partners.
Notice to persons jointly liable.
Notice to bankrupt.
Time within which notice must be given.
Where parties reside in same place.
Where parties reside in different places.
When sender deemed to have given due notice.
Deposit in post-office; what constitutes.
Notice to subsequent parties; time of.

Sec.
5670. Where notice must be sent.
5671. Waiver of notice.
5672. Whom affected by waiver.
5673. Waiver of protest.
5674. When notice dispensed with.
5675. Delay in giving notice; how excused.
5676. When notice need not be given to drawer.
5677. When notice need not be given to indorser.
5678. Notice of non-payment where acceptance refused.
5679. Effect of omission to give notice of non-acceptance.
5680. When protest need not be made; when must be made; of what certificate of protest is evidence.

Discharge of Negotiable Instruments.

5681. How instrument discharged.
5682. When person secondarily liable on discharged.
5683. Right of party who discharged instrument.
5684. Renunciation by holder.
5685. Cancellation; unintentional; burden of proof.
5686. Alteration of instrument; effect of.
5687. What constitutes a material alteration.

BILLS OF EXCHANGE.

Form and Interpretation.

5688. Bill of exchange defined.
5689. Bill not an assignment of funds in hands of drawee.
5690. Bill addressed to more than one drawee.
5691. Inland and foreign bills of exchange.
5692. When bill may be treated as promissory note.
5693. Drawee in case of need.

Acceptance.

5694. Acceptance; how made, etc.
5695. Holder entitled to acceptance on face of bill.
5696. Acceptance by separate instrument.
5697. Promise to accept; when equivalent to acceptance.

Digitized by Google

Sec.
5698. Time allowed drawee to accept.
5699. Liability of drawee retaining or destroying bill.
5700. Acceptance of incomplete bill.
5701. Kinds of acceptances.
5702. What constitutes a general acceptance.
5703. Qualified acceptance.
5704. Rights of parties as to qualified acceptance.

Presentment for Acceptance.

5705. When presentment for acceptance must be made.
5706. When failure to present releases drawer and indorser.
5707. Presentment; how made.
5708. On what days presentment may be made.
5709. Presentment; where time is insufficient.
5710. When presentment is excused.
5711. When dishonored by non-acceptance.
5712. Duty of holder where bill not accepted.
5713. Rights of holder where bill not accepted.

Protest.

5714. In what cases protest necessary.
5715. Protest; how made.
5716. Protest; by whom made.
5717. Protest; when to be made.
5718. Protest; where made.
5719. Protest both for non-acceptance and non-payment.
5720. Protest before maturity where acceptor insolvent.
5721. When protest dispensed with.
5722. Protest where bill is lost, etc.

Acceptance for Honor.

5723. When bill may be accepted for honor.
5724. Acceptance for honor; how made.
5725. When deemed to be an acceptance for honor of the drawer.
5726. Liability of acceptor for honor.

Sec.
5727. Agreement of acceptor
honor.
5728. Maturity of bill payable
ter sight; accepted
honor.
5729. Protest of bill accepted
honor, etc.
5730. Presentment for paymen
acceptor for honor;
made.
5731. When delay in making
sentment is excused.
5732. Dishonor of bill by acce
for honor.

Payment for Honor.

5733. Who may make payment
honor.
5734. Payment for honor;
made.
5735. Declaration before payn
for honor.
5736. Preference of parties o
ing to pay for honor.
5737. Effect on subsequent pa
where bill is paid for ho
5738. Where holder refuses to
ceive payment supra
test.
5739. Rights of payer for hon

Bills in Sets.

5740. Bills in sets constitute
bill.
5741. Rights of holders where
ferent parts are negotia
5742. Liability of holder who
dorses two or more part
a set to different person
5743. Acceptance of bills draw
sets.
5744. Payment by acceptor of
drawn in sets.
5745. Effect of discharging on
a set.

PROMISSORY NOTES A
CHECKS.

5746. Promissory note defined
5747. Check defined.
5748. Within what time a c
must be presented.
5749. Certification of check; e
of.
5750. Effect where holder
check procures it to be
tified.

Digitized by Google

When check operates as an assignment.

NERAL PROVISIONS.

efinitions and meaning of erms.

erson primarily liable on nstrument.

Sec.
5754. Reasonable time; what constitutes.
5755. Time, how computed; when last day falls on holiday.
5756. Application of chapter.
5757. Rule of law merchant; when governs.

EGOTIABLE INSTRUMENTS IN GENERAL.

Form and Interpretation.

5563. Form of negotiable instrument.—An instrument to be ble must conform to the following requirements:

must be in writing and signed by the maker or drawer.

ust contain an unconditional promise or order to pay a sum in money.

ust be payable on demand or at a fixed or determinable fume.

ust be payable to order or to bearer; and

here the instrument is addressed to a drawee he must be or otherwise indicated therein with reasonable certainty. , p. 896, § 1.)

cisions of other States.—A direction to charge payment to a cerd does not render a bill non-negotiable, when the order states when ment is to be made. It is not conditional upon the coming due particular payment. The statute is not cited, however, although in Massachusetts in 1898. Though the order was made payable before November 1, 1899, it may have been given before the ble Instruments Law was adopted. Shepard v. Abbott (1901), ss. 300, 60 N. E. 782.

order payable to A. or order out of a fund of $300, "or what may on my deposit book," is conditional, and therefore is not a ble instrument and does not import a consideration, confirming merchant. National Sav. Bank v. Cable (1901), 73 Conn. 569 428.

r note of cases holding that a note containing no name of the nor space to insert it, is not negotiable, see 11 Va. Law Reg. 689.

certificate of deposit signed by a trust company, payable to a named therein or his assigns, "which is assignable only on the of the company" is not a negotiable instrument under the Negotistruments Law. Zander v. N. Y. Sec. & Tr. Co., 70 N. E. 449 , Ct. of Appeals; affirming s. c. 81 N. Y. Supp. 1151.

instrument containing an unconditional order to pay a sum cer- money at a fixed future time to payee or order is a bill of ge.

the acceptor, unable to pay at maturity, asks for time, which is him by acceptance of his promissory note for the amount of the exchange, payable at a day future, the note is founded on a good ration, whether or not the maker was bound previously as ac- of the draft. Torpey v. Tebo, 184 Mass. 307 (1903), 68 N. E.

nder this section and section 132 as amended, Laws 1898, chapter order drawn by his creditor on his debtor, directing the debtor a certain amount to the order of a third person, is not binding

Digitized by Google

upon the debtor as a bill of exchange unless he accepts it in writing. Izzo v. Luddington, 79 App. Div. N. Y. 272 (1903).

An instrument issued by a bank certifying that I. has a deposit of $300 in the bank bearing interest at 7 per cent. per annum payable annually, due in two years from date "and will be cashed only upon being returned to the bank by the International Money Box Company of New York or their order," is a negotiable instrument. (Clearly this instrument fulfills all the requirements of a negotiable instrument laid down in this section, but strangely enough the act is not referred to.) Young v. American Bk., 89 N. Y. Supp. 915 (1904).

Under this section a mortgage note for a specified sum and payable at a certain future date was negotiable, though it provided that on default in interest or failure to comply with any of the conditions of the mortgage, the whole amount of the principal should become due and payable at the option of the mortgagee. Under section 5600 the addition of the words "without recourse" to an indorsement of a note does not impair its negotiable character. See, also, Loizeaux v. Fremder, 101 N. W. 423, Wisconsin (1904). Thorpe v Mindeman, 101 N. W. 417, Wisconsin (1904).

Under this section and section 5564, a note providing that, if not paid when due, both principal and interest shall bear an increased rate of interest is not negotiable. Under Civ. Code, section 2207, which provides that "several contracts relating to the same matters between the same parties, and made as parts of substantially one transaction, are to be taken together," a note stating that it is secured by a mortgage of the same date, and the mortgage providing that the mortgagor should pay the taxes and insurance, keep the property in repair, commit no waste, etc., and that in default of performance the principal and interest should become due and the mortgage should become subject to foreclosure, it was held that, under said section 2207, the note and the mortgage were parts of the same contract and must be read together, so that the entire contract contained conditions not certain of fulfilment, rendering the note non-negotiable. Where a note payable to order is assigned without indorsement, its negotiable character is destroyed. Cornish v. Wolverton, 81 Pac. 4, Montana (1905).

See Mass. Nat. Bk. v. Snow, cited under section 5570.

The plaintiff sued to recover on a draft for $1,500, "400 c. A. R. L. No. 3362, via A. R. L. B. L. direct." These words, under the usual custom of business, charged the payee with knowledge that a certain number of cases had been shipped by a certain line, and that the bill of lading went direct to the payee. Held, as the draft contained an unconditional order to pay a sum certain in money, it was negotiable, under this section and section 5565, and it does not indicate that the amount of the draft is to be paid only from the proceeds of the consignment.

Where the drawee of a negotiable draft had paid it to a holder in due course, the drawer claiming to have made a shipment to the drawee, the drawee cannot recover back the amount paid on discovering that the goods were never shipped to him. Waddell v. Hanover Nat. Bk., 97 N. Y. Supp. 305, 48 Misc. 578 (Supreme Court, 1905).

Bonds issued by a joint-stock association, secured by a trust deed and payable to bearer, are negotiable under this section and section 5565, although by their express terms the stockholders of the association are free from individual liability for payment of the bonds and the interest thereon, liability being confined to the security and to the assets of the association, such limitations not restricting the liability to a particular fund.

Where defendants negotiated through brokers a sale of a bond paying the party presenting the bond the proceeds of the sale, and thereafter on return of the bond to them by the purchaser (because payment of the interest coupons was refused, on the ground that the bond and coupons had been stolen), transmitted to the purchaser another bond of the same issue and tenor in lieu of the one returned, they were

Digitized by Google

in due course, under section 5620, having, in legal effect, re-ed the bond and coupons by trading therefor a bond the title to as not disputed. Hibbs v. Brown, 98 N. Y. Supp. 353 (Supreme 906).

instrument providing for the payment of money out of the on a specified job is not a negotiable instrument under this sec-l section 5565.

instrument not payable to order or to bearer is not a negotiable ent, under this section. Fulton v. Varney, 102 N. Y. Supp. 608

der this section and sections 5578, 5614 and 5618, municipal re negotiable instruments, and a bank is a holder in due course bonds, complete and regular on their face, deposited as collateral for a loan to the depositor, the bank having no knowledge ng after it thus had possession that the depositor was not in ssession and authorized to dispose of them. Borough of Mont-People's Bk., 67 Atl. 67, New Jersey (1907).

der this section and sections 5570 and 5571, a promissory note able to either "order" or "bearer" is non-negotiable.

tion 5686, avoiding a negotiable instrument if materially altered assent of the parties, contains no matter not contained in the the act and therefore it is not in contravention of the provision Constitution, article 2, section 17, providing that no law shall more than one subject, which shall be expressed in the title. . Harrell, 101 S. W. 424, Tennessee (1907).

st office money orders are not negotiable instruments. Bolognesi (C. C. A.), 189 Fed. 335, nor is a certificate of stock indorsed in Baker v. Davis, 97 N. E. 1094.

e following instruments have been held negotiable: Drafts drawn graph company on its Transfer Department. Postal Telegraph Co. (C. C. A.), 228 Fed. 601; a note containing reservation of the article sold. Exchange National Bank v. Steele (Ark.), 158 S. ; a post-dated check. Triponoff v. Sweeney (Ore.), 130 Pac 979, on Banks and Banking, section 389c; a certificate of deposit not to check and payable to depositor's order. Pomeroy National . Bank (W. Va.), 79 S. E. 665.

e negotiable quality of an instrument is not destroyed by the fact e instrument contains a provision that sureties consent that the f payment may be extended without notice. Farmer v. Bank 107 N. W. 170.

5564. Certainty as to sum; what constitutes.—The sum pay-a sum certain within the meaning of this chapter, although be paid—

Vith interest; or

y stated installments; or

y stated installments with a provision that upon default in nt of any installment or of interest the whole shall become r

Vith exchange, whether at a fixed rate or at the current rate;

Vith costs of collection or an attorney's fee in case payment ot be made at maturity. (Id., § 2.)

irginia decisions.—The stipulation in a negotiable note for the pay-f a fee of ten per cent. for the collection by an attorney is valid the laws of New York, and not contrary to the public policy in ate, and will be enforced in this State in an action on a New York ct containing such stipulation. Oglesby v. Bank, 114 Va. 663, E. 468.

Digitized by Google

A stipulation in a negotiable note for the payment of a reason attorney's fee if suit be brought thereon is valid and may be enfo Colley v. Summers Parrott Co., 119 Va. 439, 89 S. E. 906; overru Rixey v. Parre Bros., 89 Va. 113, 15 S. E. 498; and Fields v. Fi 105 Va. 714, 54 S. E. 888.

See 2 Va. L. Reg. N. S. 321, 531.

If, on a note promising to pay a debt and also counsel fees expenses, judgment is taken for the dobt only, saying nothing a counsel fees and expenses, the whole cause of action is merged in judgment. Sands v. Roller, 118 Va. 191, 86 S. E. 857.

See Gregory's Forms No. 553.

Decisions of other States.—Civil Code, section 3996, Mont. amended by Session Laws 1899, declares that a negotiable instru may provide for reasonable attorney's fees; and section 2, Ses Laws, 1903 (same as this section) provides that the sum payable is tain within the meaning of the act though it is to be paid with cost collection or an attorney's fee, in case payment shall not be made at turity. Held, that a note made payable with reasonable attorney's entitled the holder to collect such fees where the note is not pai maturity and it is placed in the hands of attorneys for collection, th it is not sued upon. Morrison v. Ornbaun, 75 Pac. 953. Sup. Montana (1904).

A provision in a promissory note, for attorney's fees in case of on note, is invalid under Laws 1890-1, chapter 267. (The note in was dated June 15, 1899, and the Negotiable Instruments Law went effect in North Carolina March 28, 1899 (see this section). This provides that the sum payable is a sum certain within the meanin this act, although it is to be paid—"with costs of collection or an torney's fee in case payment shall not be made at maturity." But Negotiable Instruments Law is not mentioned either by counsel o the court.) Exchange Bk. v. Ap. L. & L. Co., 128 N. Car. 193 (19

See Cornish v. Wolverton, cited under section 5563.

Sec. 5565. When promise is unconditional.—An unqualified o or promise to pay is unconditional within the meaning of this c ter though coupled with—

1. An indication of a particular fund out of which reimbu ment is to be made or a particular account to be debited with amount; or

2. A statement of the transaction which gives rise to the ins ment.

But an order or promise to pay out of a particular fund is unconditional. (Id., § 3.)

Decisions of other States.—See Waddell v. Hanover Nat. Bk., under section 5563.

See Fulton v. Varney, cited under section 5563.

See Hibbs v. Brown, cited under section 5563.

Sec. 5566. Determinable future time; what constitutes.—An strument is payable at a determinable future time within the m ing of this chapter which is expressed to be payable—

1. At a fixed period after date or sight; or

2. On or before a fixed or determinable future time speci therein; or

3. On or at a fixed period after the occurrence of a specified e which is certain to happen, though the time of happening be certain.

Digitized by Google

nstrument payable upon a contingency is not negotiable, and ppening of the event does not cure the defect. (Id., § 4.)

cisions of other States.—See Schlessinger v. Schultz, cited under 5633.

der this section and section 5569, a note payable to the order of ker "on demand after date" is a note payable on demand.

der section 5633, a note payable on demand must be collected a reasonable time. When a note was indorsed by a third party s not negotiated within ten days after its date, presentation for t within ten months was held to be sufficient to hold the indorser. section 5635, a note payable at a bank is properly presented for t at the bank, although the bank is in the hands of a receiver. l not be presented to the receiver personally. Schlessinger v. , 96 N. Y. Supp. 383 (1905).

5567. Additional provisions not affecting negotiability.—An ment which contains an order or promise to do any act in on to the payment of money is not negotiable. But the ne- le character of an instrument otherwise negotiable is not d by a provision which—

uthorizes the sale of collateral securities in case the instru- e not paid at maturity; or

uthorizes a confession of judgment if the instrument be not t maturity; or

Vaives the benefit of any law intended for the advantage or tion of the obligor; or

ives the holder an election to require something to be done in payment of money.

nothing in this section shall validate any provision or stipu- otherwise illegal. (Id., § 5.)

irginia decisions.—Judgments by confession, in general, are not ry to the policy of this State, nor to the terms of the negotiable nents law. The warrant of attorney, as used in this case, was a ıd lawful exercise of the power conferred by the instrument, al- it did not designate the person in whose favor the judgment was confessed. Colona v. Parksley Nat. Bank, 120 Va. 812, 92 S. E.

ee Gregory's Forms No. 552.

ecisions of other States.—A note containing a power of attorney to judgment upon it at any time after its date, "whether due or not," a negotiable instrument, following antecedent cases. Wisc. Meet- Baptists v. Babler (1902), 115 Wis. 289, 91 N. W. 678.

nder this section the negotiable character of an instrument is not d by a provision that "authorizes a confession of judgment if strument be not paid at maturity." The effect of a provision au- ng confession of judgment before maturity of the instrument is to y its negotiability. Milton Nat. Bank v. Beaver, 25 Pa. Super. 4 (1904).

5568. Omissions; seal,; particular money.—The validity and iable character of an instrument are not affected by the fact

t is not dated; or

Does not specify the value given or that any value has been therefor; or

Digitized by Google

3. Does not specify the place where it is drawn or the place wh
it is payable; or

4. Bears a seal; or

5. Designates a particular kind of current money in which p
ment is to be made.

But nothing in this section shall alter or repeal any statute
quiring in certain cases the nature of the consideration to be sta
in the instrument. (Id., § 6.)

Decisions of other States.—In an action on two undated promis
notes, a demurrer on the ground that the instruments were not n
was overruled, and it was held that the notes were payable on dem
no time for payment being designated. The decision is in accord
with the Negotiable Instruments Law, although not cited. See
section and section 5569. Didato v. Coniglio, 100 N. Y. Supp.
(1906).

Sec. 5569. When payable on demand.—An instrument is paya
on demand—

1. Where it is expressed to be payable on demand or at sigh
on presentation; or

2. In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when o
due it is as regards the person so issuing, accepting, or indorsin
payable on demand. (Id., § 7.)

Decisions of other States.—"I promise to pay to the order o
$2,000 at his office, New York City," is a note payable on demand,
firming the law merchant. In this respect it cannot be varied by
evidence. The omission of the words "for value received" does not
pair the note, affect its legal import, or weaken the presumption tha
was given for value.. McLeod v. Hunter (1899), 29 Misc. Rep.
61 N. Y. Supp. 73.

See Schlessinger v. Schultz, cited under section 5566.
See Schlessinger v. Schultz, cited under section 5633.
See Didato v. Coniglio, cited under section 5568.

Sec. 5570. When payable to order.—The instrument is payabl
order where it is drawn payable to the order of a specified pe
or to him or his order. It may be drawn payable to the order

1. A payee who is not maker, drawer, or drawee; or
2. The drawer or maker; or
3. The drawee; or
4. Two or more payees jointly; or
5. One or some of several payees; or
6. The holder of an office for the time being.

Where the instrument is payable to order the payee must
named or otherwise indicated therein with reasonable certainty.
§ 8.)

See notes under section 5576.

Decisions of other States.—Under this section a negotiable pro
sory note, indorsed in blank by the payee, is payable to bearer. U
section 5571, if the maker of a negotiable promissory note wrongf
obtains possession of it after it has been indorsed in blank by the pa
he is the bearer. Under section 5578, where the instrument is in
hands of a holder in due course, a valid delivery thereof by all pa
prior to him, so as to make them liable to him, is conclusively presu

Digitized by Google

tions 5618 and 5619, if the maker of a negotiable promissory
ns possession of it after it has been indorsed in blank by the
presents it at a bank for discount, the fact that the bearer
ker does not put the bank upon inquiry nor prevent it from
a holder in due course if it discounts the note in good faith
ctual knowledge of any infirmity. Under section 5563 and
57, a holder in due course of a promissory note, payable to
n acquire a good title to the note from one who has stolen it.
rt of this case, 72 N. E. 959, states that the notes in question
d December 9, 1897. The date is important, as the Negotiable
ts Law was not in effect in Massachusetts until 1898.) Mass.
v. Snow, 187 Mass. 159 (1905).
Gilley v. Harrell, cited under section 5563.

71. When payable to bearer.—The instrument is payable

—

n it is expressed to be so payable; or
n it is payable to a person named therein or bearer; or
n it is payable to the order of a fictitious or non-existing
nd such fact was known to the person making it so pay-

n the name of the payee does not purport to be the name
erson; or
n the only or last indorsement is an indorsement in blank.
)

ions of other States.—See Mass. Nat. Bk. v. Snow, cited under
70.
eaboard Nat. Bk. v. Bk. of America, cited under section 5592.
Gilley v. Harrell, cited under section 5563.

72. Terms; when sufficient.—The instrument need not fol-
nguage of this chapter, but any terms are sufficient which
dicate an intention to conform to the requirements hereof.
.)

73. Date of; presumption as to.—Where the instrument or
tance or any indorsement thereon is dated such date is
rima facie to be the true date of the making, drawing,
e, or indorsement as the case may be. (Id., § 11.)

74. Ante-dated and post-dated.—The instrument is not
r the reason only that it is ante-dated or post-dated, pro-
s is not done for an illegal or fraudulent purpose. The
whom an instrument so dated is delivered acquires the
eto as of the date of delivery. (Id., § 12.)

75. When date may be inserted.—Where an instrument ex-
be payable at a fixed period after date is issued undated,
the acceptance of an instrument payable at a fixed period
t is undated any holder may insert therein the true date
r acceptance and the instrument shall be payable accord-
he insertion of a wrong date does not avoid the instru-
he hands of a subsequent holder in due course; but as to
late so inserted is to be regarded as the true date. (Id.,

76. Blanks; when may be filled.—Where the instrument

Digitized by Google

is wanting in any material particular the person in possession
of has a prima facie authority to complete it by filling up the b
therein. And a signature on a blank paper delivered by the p
making the signature in order that the paper may be converte
a negotiable instrument operates as a prima facie authority
it up as such for any amount. In order, however, that any
instrument when completed may be enforced against any p
who became a party thereto prior to its completion it must be
up strictly in accordance with the authority given and wit
reasonable time. But if any such instrument after complet
negotiated to a holder in due course, it is valid and effectu
all purposes in his hands, and he may enforce it as if it had
filled up strictly in accordance with the authority given and
a reasonable time. (Id., § 14.)

Virginia decisions.—The rule of law merchant that where a
able instrument with an unfilled blank is intrusted to another the
in possession has authority, so far as a holder in due course is conc
to complete it consistently with the written or printed terms th
although he may thereby violate his actual authority (Frank v.
feld, 33 Grat. 377), is altered by this section in the case where the
takes the instrument before the blank is filled. In such case he
on notice, and must ascertain the real authority of the person int
with the incomplete instrument, and takes it at his peril. Guerr
Guerrant (Corporation Court of Danville), 7 Va. Law Reg. 63
note thereto.

This section of the negotiable instruments act materially chang
law as it existed in this State prior to the enactment of that act.
v. Thomas, 120 Va. 763, 92 S. E. 977.

Defendant endorsed his name on the back of a printed form
negotiable note sued on, leaving blank the provisions as to the
amount, and to whom and when payable. Defendant then deliver
incomplete instrument to his brother, who signed the note as
and delivered it to the plaintiff to be held by the latter as col
security to indemnify him against loss by reason of his endorsing p
and future notes for the said brother upon which the said brother
borrow money in bank. In consideration of such delivery to h
such note, the plaintiff endorsed notes for the brother, upon which
was borrowed. The brother died insolvent. Thereupon the pl
filled up the incomplete instrument with the amount of the notes
he had endorsed for the said brother, naming himself as payee
fixing "on demand" as the time of payment. The date had be
serted by the plaintiff when the note was delivered to him. The pl
knew nothing of a limitation upon the authority to complete the
ment. In an action against the endorser on the note as com
held, the plaintiff had authority to fill in the blanks as he did, t
fendant having introduced no evidence to rebut the prima facie aut
of the plaintiff given by this section to complete the instrument.
v. Thomas, 120 Va. 763, 92 S. E. 977.

Under the facts of this case, the blanks were filled in "wi
reasonable time." Brown v. Thomas, 120 Va. 763, 92 S. E. 977.

Decisions of other States.—A check payable to the plainti
handed by the defendant drawer to her husband to be delivered
plaintiff in payment of her debt to him, the amount being left
and being filled in by the plaintiff's manager with the husband's co
and was applied towards payment of his indebtedness to the pl
Held, evidence was admissible to show the authority given to th
band and the purpose for which it was given. Boston, S. & I.
Steuer (1903), 183 Mass. 140, 66 N. E. 646.

Digitized by Google

e one of the payees of a note, made payable to the payees jointly, it and mailed it to the maker, who then altered the note by s own name in the place of one of the payees and by erasing "jointly:" Held, that under this section, the maker had not to complete the note by filling the blanks, that under section ndorsement of all the payees was necessary to give good title nsferee, and that under sections 5685 and 5686 there was no arranty, on the part of the payee indorser, extending to the ondition of the note after it parted from her possession. necessary in commercial transactions that the rules of liability to negotiable paper should be fixed and certain. It is better rules be arbitrary than that they lack precision and certainty." defendant, who was one of the payees and accommodation in- a note, indorsed another note "for renewal" and mailed it to before maturity of the first note. The maker inserted his own he place of the name of one of the payees, and after maturity st note, took it up by discounting the second note. The dis- bank had no notice, until the time of the discount, that the de- ad indorsed the second note. Held, that the indorsement by dant before the maturity of the first note did not amount to of notice of dishonor of the first note under section 5671. Bk. of City of Brooklyn v. Gridley, 98 N. Y. Supp. 445 (1906).

577. **Incomplete instrument not delivered.**—Where an in- instrument has not been delivered it will not, if completed tiated without authority, be a valid contract in the hands older as against any person whose signature was placed before delivery. (Id., § 15.)

578. **Delivery; when effectual; when presumed.**—Every on a negotiable instrument is incompleted and revocable ivery of the instrument for the purpose of giving effect As between immediate parties and as regards a remote ier than a holder in due course the delivery in order to be must be made either by or under the authority of the party drawing, accepting, or indorsing as the case may be, and ase the delivery may be shown to have been conditional or ecial purpose only and not for the purpose of transferring erty in the instrument. But where the instrument is in the a holder in due course a valid delivery thereof by all rior to him so as to make them liable to him is conclusively d. And where the instrument is no longer in the possession y whose signature appears thereon a valid and intentional by him is presumed until the contrary is proved. (Id.,

notes to section 5614.

sions of other States.—In an action by the assignee of a note he maker the complaint alleged that the defendant made the t before maturity the payee indorsed and delivered it for value after maturity the indorsee assigned and delivered it for value aintiff; and the answer denied the indorsement and delivery for d the assignment and delivery for value, but the plaintiff's estified that the note bore the signatures of the maker and and that the assignment under seal was executed by the indorsee vered to the plaintiff. This evidence, under this section and 5586, 5607, 5621 and 5746, entitled the plaintiff to a recovery,

Digitized by Google

in the absence of evidence to the contrary. Colborn v. Arbecan N. Y. Supp. 986 (1907).

Under this section a person may manually deliver a negotia strument to another, on its face containing a binding obligat praesenti, of such person to such other, with a contemporaneous agreement that it shall not take effect until the happening of specified event (as, that others shall indorse it). This does not the rule that a written instrument cannot be varied by contempor parol agreement, but is only evidence to show that the instrument had vitality as a contract. Under sections 5614, 5616 and 561 title of the original holders was defective, and under section 562 burden is on the subsequent holder to prove acquisition of titl holder in due course. Hodge v. Smith, 110 N. W. 192 Wisconsin (

Evidence held insufficient to overcome the presumption of a delivery of a check presented for payment after death of the ma the existence of a sufficient consideration or to show that the mak subject to the control of the payee of the check, the plaintiff action. See this section and section 5586. Moak v. Stevens, 91 Supp. 903 (1904).

See Mass. Nat. Bk. v. Snow, cited under section 5570.

See Montvale v. People's Bk., cited under section 5563.

Sec. 5579. Construction where instrument is ambiguous.—W the language of the instrument is ambiguous or there are omi therein the following rules of construction apply:

1. Where the sum payable is expressed in words and also ures and there is a discrepancy between the two the sum de by the words is the sum payable; but if the words are ambi or uncertain, reference may be had to the figures to fix the an

2. Where the instrument provides for the payment of in without specifying the date from which interest is to run t terest runs from the date of the instrument, and if the instrum undated from the issue thereof.

3. Where the instrument is not dated it will be consider be dated as of the time it was issued.

4. Where there is a conflict between the written and printe visions of the instrument the written provisions prevail.

5. Where the instrument is so ambiguous that there is whether it is a bill or note the holder may treat it as either election.

6. Where a signature is so placed upon the instrument t is not clear in what capacity the person making the same intend sign he is to be deemed an indorser.

7. Where an instrument containing the words "I promise to is signed by two or more persons they are deemed to be jointl severally liable thereon. (Id., § 17.)

Virginia decisions.—The names of endorsers of negotiable usually appear on the back, but they may appear elsewhere w offending against the regularity required by the negotiable instru law. (Section 5614.) Under the facts of this case, held, the who took a negotiable note for value was warranted in treatin defendants as endorsers, although their names appeared on the of the note and not on its back. Colona v. Parksley Nat. Bank Va. 812, 92 S. E. 979.

Decisions of other States.—Where a note reciting "I promise t

Digitized by Google

ned by two persons, each one is a maker, and the note is a joint eral one of each maker. (Although the Negotiable Instruments s in force in Colorado before the date of this note, no reference e to the act. See this section and section 5622.) Ullery v. 79 Pac. 180, Colorado (1904).
e Germania Nat. Bk. v. Mariner, cited under section 5582.

5580. Liability of person signing in trade or assumed name. erson is liable on the instrument whose signature does not thereon except as herein otherwise expressly provided. But no signs in a trade or assumed name will be liable to the xtent as if he had signed in his own name. (Id., § 18.)

cisions of other States.—See Swenson v. Stoltz, cited under section

e drawees of a bill of exchange, discounted by plaintiff for the s benefit, were not liable thereon prior to acceptance, under this Under section 5694, the acceptance of a bill must be in writ- l signed by the drawee. Seattle Shoe Co. v. Packard, 86 Pac. alifornia (1906).

5581. Signature by agent; authority; how shown.—The sig- of any party may be made by a duly authorized agent. No ular form of appointment is necessary for this purpose, and thority of the agent may be established as in other cases of . (Id., § 19.)

5582. Liability of person signing as agent, etc.—Where the nent contains or a person adds to his signature words indi- that he signs for or on behalf of a principal or in a repre- ve capacity without disclosing his principal he is not liable on strument if he was duly authorized, but the mere addition of describing him as an agent or as filling a representative char- vithout disclosing his principal does not exempt him from per- liability. (Id., § 20.)

ecisions of other States.—Where, in an action against defendant ally upon a negotiable promissory note signed by him as "trustee," dence is conflicting as to whether the property bought for which te was given was for the assigned estate or otherwise, and whether yee agreed to accept the note in the maker's representative capa- he jury must pass upon the question in dispute. Megowan v. on (1902), 173 N. Y. 1, 65 N. E. 738.
note purporting to be of the defendant corporation, signed by sident and treasurer, known by the plaintiff to be accommodation without proof of execution by the president and treasurer, under ity from their corporation, does not bind the corporation. The able Instruments Law is not mentioned. See this section. Nat. Newport v. Snyder Mfg. Co., 107 App. Div. 95, New York (1905).
nder this section the makers of a negotiable promissory note sign- "trustees," without further disclosing their principal, the payee ng who it was, are held not to be individually liable. Kerby v. mer, 107 App. Div. 491, New York (1905).
negotiable note made by the Northwestern Straw Works was , "The Northwestern Straw Works, E. R. Stillman, Treas., John W. er," by Mariner, the secretary of the corporation, who neglected to e word "Secretary." Held, under this section and sections 5579 625, Mariner was not personally liable. Germania Nat. Bk. v. er, 109 N. W. 574, Wisconsin (1906).
purchaser of an interest-bearing certificate of deposit, payable to dorsed by one as trustee, is prima facie and presumptively charged

Digitized by Google

with actual knowledge of the trustee's want of authority to dispose the paper for his own benefit. Ford v. Brown, 1 L. R. A. (N. 188 (Tenn.).

Sec. 5583. Signature by procuration; effect of.—A signature "procuration" operates as notice that the agent has but a limi authority to sign, and the principal is bound only in case the ag in so signing acted within the actual limits of his authorty. (§ 21.)

Sec. 5584. Effect of indorsement by infant or corporation.— indorsement or assignment of the instrument by a corporation or an infant passes the property therein notwithstanding that fr want of capacity the corporation or infant may incur no liabi thereon. (Id., § 22.)

Decisions of other States.—A manufacturing corporation, wh otherwise has no power to make an accommodation indorsement, is given such power or made liable on such an indorsement under section and section 5591. Oppenheim v. Reigal Cigar Co., 90 N. Supp. 355 (1904).

Sec. 5585. Forged signature; effect of.—Where a signature forged or made without the authority of the person whose signat it purports to be it is wholly inoperative, and no right to retain instrument or to give a discharge therefor or to enforce paym thereof against any party thereto can be acquired through or un such signature unless the party against whom it is sought to force such right is precluded from setting up the forgery or w of authority. (Id., § 23.)

Virginia decisions.—Action will not lie against a member of a whose name has been fraudulently written as indorser on a negoti promissory note of the firm of which he was a member, but which was dissolved at the time the note was delivered, of which fact the t was ignorant, affirming antecedent cases. Pettyjohn v. Nat. Bk. (19 101 Va. 111, 43 S. E. 203.

Decisions of other States.—Where one procures a check by fal pretending he is another person (the maker knowing there is suc person), and indorses it in the name of such payee, the indorsee conveys no title. Tolman v. American Nat. Bank (1901), 22 R. I. 48 Atl. 480, 52 L. R. A. 877, 84 Am. St. Rep. 850.

A subsequent transferee, receiving the proceeds of negotiable sec ties obtained under a forged assignment thereof, is liable to the ov thereof. Casey, Adm'r v. Pilkington, 83 App. Div. N. Y. 91 (19 This section not cited in the opinion.

Where the drawer of a check was induced through fraud to del it to an impostor, believing him to be the person named in the ch and the impostor negotiated the instrument, receiving payment the from an innocent third party, the drawer must stand the loss as betw the bona fide holder and the drawer. (See this section. Although Negotiable Instruments Law went into effect in Utah in 1899, and transaction took place in 1902, no mention is made of the law.) He v. Commercial Nat. Bk., 75 Pac. 727, Utah (1904).

See Seaboard Nat. Bk. v. Bk. of America, cited under section 5

The plaintiff bank was the drawee of a forged check which it without detecting the forgery. Upon suit against the defendant b to recover the money so paid to the defendant, a holder in good f of the check, it was held, in the absence of evidence that the defen had been misled or prejudiced by the plaintiff's mistake, the plai can recover.

Digitized by Google

hough the Negotiable Instruments Law has been in force in this nce 1899, it is not referred to in this opinion. (See this section.) at. Bk. of Lisbon v. Bk. of Wyndmere, 108 N. W. 546, North (1906).

agent was authorized to indorse checks received from customers to the principal, and to deposit them in a designated bank for on for the principal's account. He indorsed some such checks rincipal's name and deposited them with a broker as margins on nal speculative stock account. The broker deposited the checks nk, which received them, and paid the proceeds thereof to him, faith. Held, the indorsements made by the agent were not s under this section, and therefore the bank receiving these in- checks and paying the proceeds to the broker in good faith is le to the principal as for a conversion of the checks. Salen v. the State of New York, 97 N. Y. Supp. 361 (1906).

draft was made payable to A. B., which came into the possession her man of the same name as the defendant. He procured an ction to a bank which then cashed the draft for him. He de- part of it in this bank and a draft or check upon it came to the in due course. It was held that the purchaser took it free of , under this section. Jamieson v. Heim, 86 Pac. 165 (1906).

holder of a check under a forged indorsement indorsed it to a nd received the amount thereof, which amount was paid to the the drawee, the plaintiff, which, on discovering the forgery, sued er the amount paid. Held, that by his indorsement of the check, orser warranted the genuiness of the prior forged indorsement, discovery of the forgery is liable to make good the amount he eived on the check.

he Negotiable Instruments Law was not cited. See this section, lman v. Am. Nat. Bk., 48 Atl. 480 or 22 R. I. 462.) Oriental Bk , 98 N. Y. Supp. 561, Supreme Court (1906).

e Moak v. Stevens, cited under section 5578.

Consideration.

5586. Presumption of consideration.—Every negotiable in- nt is deemed prima facie to have been issued for a valuable eration and every person whose signature appears thereon to ecome a party thereto for value. (Id., § 24.)

rginia decisions.—Notes secured by a deed of trust are prima facie e of a valuable consideration under this section. Murphy's Hotel Herndon's Adm'r, 120 Va. 505, 91 S. E. 634.

ted and applied in Reid v. Windsor, 111 Va. 825, 69 S. E. 1101.

ted but not construed in Lynchburg Milling Co. v. Bank, 109 Va. S. E. 980.

ecisions of other States.—See note to section 5752.

action was brought upon the defendant's negotiable note. The as want of consideration. At the trial the plaintiff read the note ence, and rested. In the absence of want of consideration, the f is entitled to recover. Bringman v. Von Glahn (1902), 71 App. 7, 75 N. Y. Supp. 845.

on examination of its assets, the directors of plaintiff bank found tiable promissory note signed by its cashier as a joint maker, who, eing interrogated, said that the defendant was to indorse the note, nt out and brought the defendant in, who thereupon indorsed the Held, that the fact that the defendant received no consideration indorsement would not relieve him from liability on the note Monticello v. Dooly (1902), 113 Wis. 590, 89 N. W. 490.

vidence is admissible in an action against a corporation as indorser egotiable promissory note, to show that the note was indorsed by cretary of the corporation with authority to indorse on behalf

Digitized by Google

of the corporation and that the corporation paid value therefor. Kar
Respondent v. Pottier & Stymus Mfg. & Impt. Co., Appellant, 82 A
Div. Sup. Ct. N. Y. 230 (1903).

A note executed by a married woman for her husband's accomm
tion, unenforceable in New Jersey because of Gen. St., p. 2017, sectio
prohibiting liability of a married woman as surety, or upon the def
or liability of another, is not made valid by this section. People's
Bk. v. Schepflin, 62 Atl. 333, New Jersey (1905).

See Colborn v. Arbecam, cited under section 5578.

Sec. 5587. What constitutes consideration.—Value is any con
eration sufficient to support a simple contract. An antecedent
pre-existing debt constitutes value, and is deemed such whether
instrument is payable on demand or at a future time. (Id., § 2

See notes to sections 5589, 5614.

Virginia decisions.—One who takes a negotiable promissory not
good faith for value, without notice of any defect, for a pre-existing d
is a holder for value, and can recover thereon. Payne v. Zell (19
98 Va. 294, 36 S. E. 379.

Decisions of other States.—A non-negotiable promissory note
not import a consideration, under the statute or the law merchant. D
v. Thompson (1900), 53 App. Div. 9, 65 N. Y. Supp. 459.

The breach of an executory agreement forming the consideration
a negotiable instrument is not a defense as against an indorsee
took the note for value before maturity with knowledge of the ag
ment, but without knowledge of any breach before his purchase, ci
many former decisions. Deyo v. Thompson (1900), 53 App. Div
65 N. Y. Supp. 459.

The holder of a negotiable promissory note, given as collat
security for an antecedent debt, is entitled to recover against an indo
in fraud of whose rights this note has been diverted from the purp
for which it was given; affirming the rule in Railroad Co. v. Bank,
U. S. 14, 26 L. Ed. 61. The plaintiff is a holder for value whose titl
the note is unaffected by any existing equities between antecedent part
Brewster v. Shrader (1899), 26 Misc. Rep. 480, 57 N. Y. Supp. 606.

The acceptance of a negotiable promissory note payable at a fut
date, for goods sold and delivered to the maker of the note, operates
forbearance of the right to sue the purchaser until the maturity of
note, and constitutes a consideration for an indorsement of the note m
for the purpose of procuring its acceptance, affirming cases anteced
to that law as to such indorsement. Mohlman Co. v. McKane (19
60 App. Div. 546, 69 N. Y. Supp. 1046.

Although under the statute "an antecedent or pre-existing debt
stitutes value," in an action against an accommodation indorser th
must be evidence that the holder of the instrument gave up an anteced
debt, either wholly or qualifiedly, to constitute consideration. In
absence of such evidence, a just result cannot be permitted to be
turbed by predicating error upon a refusal to charge on issue not embra
within the evidence. Roseman v. Mahoney (1903), 86 App. Div. 3
83 N. Y. Supp. 749.

The Appellate Division of the Supreme Court (N. Y.) has sho
a tendency to construe section 51 (same as this section) of the N. I
strictly and upon the theory that it was not intended thereby to cha
the law of New York, but only to declare the law as it existed.
note 11 Va. Law Reg. 773.

This section should be construed to mean that in order that an a
cedent debt shall constitute value that will support an action aga
accommodation makers or indorsers of a negotiable promissory n
fraudulently diverted, the antecedent debt must have been cance
on the face of the note. Sutherland v. Mead, 80 App. Div. Sup.
N. Y. 103 (1903). Affirming Roseman v. Mahoney, 83 N. Y. Supp.
(1903). See contra Brewster v. Schrader, 26 Misc. Rep. N. Y.

Digitized by Google

Payne v. Zell, 98 Va. 294 (1900), and note 17 Harvard Law 563. This decision is much to be regretted, and it is to be nat the case will be taken to the Court of Appeals and be reversed. e fault is not with the draughtsman, as intimated in the note in ard Law Review 563, is apparent, since other jurisdictions have ulty in holding otherwise. It is further to be noted that the tion placed by the court upon section 51 was not necessary to the of the case. In Payne v. Zell, 98 Va. 294, section 51 was held to cable to the transfer of a negotiable instrument as security only. rland v. Mead is followed by other courts, we shall fail to have ity as to the meaning of the word "value" in the case of an ante- debt. However clear the statutes, there is an unfortunate ten- f the courts to fall back to the old law. Must it be stated in so ords that antecedent or pre-existing debt shall constitute value, an instrument be transferred in payment or as security? hough under this section, "an antecedent or pre-existing debt con- value," a note given as security for a pre-existing debt is not le in the hands of the creditor against an accommodation indorser In order to be enforcible against an accommodation indorser, appear that the note was taken in payment of the pre-existing r that the creditor extended the time for the payment hereof. n v. Mahoney, 86 App. Div. N. Y. 377 (1903). (But see section

indorsee of a negotiable note, taken as collateral security for a ting debt, is a holder for value. Briket v. Edward (Kansas), 74 p. 1100 (1904). Although this case arose upon a note given the Negotiable Instruments Law was framed, and although this not yet adopted in Kansas, the opinion expresses and cites the cases on both sides of this controversy, including Sutherland v.

der this section (an antecedent debt constitutes value), an in- ess existing in favor of a bank against a forwarder of a draft for on, does not constitute the bank a holder of the draft for value, sense as to entitle the bank to retain the draft as against the ner, where the bank does not discharge or deal with the indebted- any way on the faith of the draft, the draft being not yet due not being possible to credit it to the forwarder or to apply it to btedness. Bk. of America v. Waydell, 92 N. Y. Supp. 666 (1905). an action on a note of a married woman and her husband, an stating that the note was without consideration as to the wife, iven for a pre-existing debt of the husband, was held to be a good , following Sutherland v. Mead, 80 N. Y. Supp. 507, and Roseman ney, 83 N. Y. Supp. 749, notwithstanding this section and sections id 5591.

e contra Brewster v. Schrader, 26 Misc. Rep. 480 (1899). This n will have to be carried to the Court of Appeals in New York the uniformity which is the object of the Negotiable Instruments n be secured, by reversal of this case. See the case of Sutherland 1; Hover v. Magley, 96 N. Y. Supp. 925 (1905).

e Wilkins v. Usher, cited under section 5621.

e Singer Mfg. Co. v. Summers, cited under section 5748

person taking commercial paper in extinguishment of a debt, lering the note of his debtor and the collateral, whether before r the maturity of the debt, is a holder for value. See this section, erred to in this case, however. Under section 5618, the notice ant of power in an officer of a corporation to transfer commercial held by it, in order to render the transfer ineffectual, must be dge on the part of the transferee of such facts as will make his taking the paper amount to bad faith. Ward v. City Trust Co., Y. Supp. 50 (1907).

5588. What constitutes holder for value.—Where value has time been given for the instrument the holder is deemed a

Digitized by Google

holder for value in respect to all parties who became such p to that time. (Id., § 26.)

Decisions of other States.—A subsequent holder for value, fide, can recover, notwithstanding the one he takes from may knowledge of the infirmities of the instrument. Deyo v. Thom (1900), 53 App. Div. 9, 65 N. Y. Supp. 459.

See Hover. v. Magley, cited under 5587.

A holder of a negotiable promissory note who derives his through a holder in due course, and who is not himself a party to fraud or illegality affecting the instrument, has all the rights of former holder in respect to all parties prior to the latter, and every h is deemed prima facie to be a holder in due course until the con is shown. Bryan v. Barr, 21 D. C. App. 190 (1903).

See Sutherland v. Mead, cited under section 5587.

In an action by the indorsee of a negotiable promissory against the maker, who was also the payee and indorser, a plea, demu to, alleged that the note was never duly negotiated or discounted value. Held, that this is the statement of an ultimate fact, and n a conclusion of law, and was therefore admitted to be true by the murrer.

An allegation in another plea that the plaintiff is not a bona holder in due course, also demurred to, was held to be a conclusio law, and therefore not admitted to be true by the demurrer. See section and sections 5590, 5592, 5613 and 5614. Rogers v. Morton N. Y. Supp. 49 (1905).

Where a check indorsed to plaintiff was valid at its inception, the plaintiff took it, without knowledge of any equitable defense the makers might have as against the payee, plaintiff was entitle enforce it as a bona fide purchaser for value, regardless of the am paid therefor. The Negotiable Instruments Law is not cited. Sec 5588 and 5614. Rosenthal v. Freedman, 103 N. Y. Supp. 714 (19

Sec. 5589. When lien on instrument constitutes holder for va —Where the holder has a lien on the instrument arising either f contract or by implication of law he is deemed a holder for valu the extent of his lien. (Id., § 27.)

Decisions of other States.—Where a negotiable promissory no transferred before maturity as collateral security for a pre-existing the transferee is not such a holder for value that he takes free equities of which he had no notice. Semble, this rule is change this statute. Brooks v. Sullivan (1901), 129 N. C. 190, 39 S. E. Cited in Payne v. Zell, 98 Va. 294, 36 S. E. 379.

Sec. 5590. Effect of want of consideration.—Absence or fa of consideration is matter of defense as against any person n holder in due course, and partial failure of consideration is a fense pro tanto, whether the failure is an ascertained and liqu ed amount or otherwise. (Id., § 28.)

Decisions of other States.—In an action on a note between original parties the defense of want of consideration is open to parties. The Negotiable Instruments Law (in force in New York not referred to. See this section and section 5591. Batterma Butcher, 88 N. Y. Supp. 685 (1904).

See Rogers v. Morton, cited under 5588.

Sec. 5591. Liability of accommodation party.—An accomm tion party is one who has signed the instrument as maker, dra acceptor, or indorser without receiving value therefor and for purpose of lending his name to some other person. Such a pe is liable on the instrument to a holder for value notwithstan

Digitized by Google

older at the time of taking the instrument knew him to be
accommodation party. (Id., § 29.)

cisions of other States.—The maker of an accommodation note
relieved from liability by an extension of time of payment given
her consent. Section 5591 provides that the maker of an accom-
on note is primarily liable, and section 5753 provides that the
primarily liable on a negotiable instrument is absolutely re-
to pay the same. National Citizens' Bank v. Toplitz (1903), 81
iv. 593, 81 N. Y. Supp. 422.

negotiable promissory note made for the accommodation of the
and transferred by him before maturity to a third person at 40
nt. discount for interest, is not enforceable by the transferee
the accommodation maker. That transferee's want of knowl-
at it was an accommodation paper and had no inception until it
into his hands is immaterial. The Negotiable Instruments Law
altered the rule. Strickland v. Henry (1901), 66 App. Div. 23,
Y. Supp. 12.

purchaser for value in due course of a promissory note can re-
against an accommodation maker, whether or not he knew him
nly an accommodation maker when he took the instrument, under
gotiable Instruments Act, confirming antecedent law. Rhinehart
ll, 69 Md. 356, 16 Atl. 126; Schwartz v. Wilmer (1899), 90
6, 44 Atl. 1059.

ant of consideration is not a defense to an action on a negotiable
sory note against an accommodation indorser, even though the
f acquired the note with knowledge that the defendant was only
mmodation indorser. Bankers' Iowa State Bank v. Mason Hand
Co. (Iowa, 1902), 90 N. W. 612. The Negotiable Instruments
lopted in Iowa in 1902 is not referred to.

holder for value of the payee, with the knowledge that the payee
as an accommodation note, may recover of the maker. Deyo v.
son (1900), 53 App. Div. 9, 65 N. Y. Supp. 459.

e Oppenheim v. Reigal Cigar Co., cited under section 5584.

e Batterman v. Butcher, cited under section 5590.

nder this section the drawer of an accommodation check cannot
vant of consideration against a bona fide holder. Met. Pr. Co. v.
er, 90 N. Y. Supp. 376 (1904).

e Hover v. Magley, cited under section 5587.

nder this section when the defendants, who were accommodation
rs on a negotiable promissory note for $300 on which $100 was
ed, returned it to the maker to procure a more satisfactory in-
and it was then destroyed by the indorsers and the maker, the
ants are still liable as accommodation indorsers for the $100 ad-
Westheimer v. Helmbold, 109 App. Div. 854, New York (1905).

here one of two defendants, makers of a note, voluntarily paid
erest thereon before maturity, although by its terms the interest
t due until maturity and the payee voluntarily consented to ex-
of the time of payment of the note, without regard to the time
he interest was paid, which payment of interest in advance and
ent for renewal was made without the knowledge or consent of
r maker, the other defendant who signed the note without con-
ion, for the accommodation of the first defendant, this accommoda-
aker was not released from liability by reason of such extension.
egotiable Instruments Law is not cited in the opinion, although
e in Wisconsin. Welch v. Kukuk, 107 N. W. 301, Wisconsin

.

he plaintiff was told by the paying teller of the defendant bank,
ch a raised check was drawn, that the check was good. He then
ed the check at the request of the teller, and was paid the amount
raised check. Under this section he became an accommodation
er, and became liable to the bank for the difference between the

Digitized by Google

amount of the check as originally drawn and the amount to which was raised. Smith v. State Bk., 104 N. Y. Supp. 750 (1907).

Under this section a negotiable instrument made without receivi value therefor, for the purpose of lending the maker's name to the pay is accommodation paper, and in an action by the indorsee he mu show, not only that he paid value before maturity of the note, but th he did not know or have reason to suspect the instrument was acco modation paper when he took it. National Bank of Newport v. Snyd Mfg. Co., 102 N. Y. Supp. 478 (1907).

An accommodation indorser of a raised check was here held liab to the defendant bank for the difference between the amount of the che as originally drawn and the amount to which it was raised, under t section. But inasmuch as the check was indorsed by the plaintiff the defendant's request in reliance upon the defendant bank's payi teller's statement that the check was good (for the amount to whi it had been raised), it would seem that the defendant bank had no rig to charge any part of the check to the plaintiff. Smith v. State Ban 104 N. Y. Supp. 750 (1907).

Under this section and sections 5681, 5682 and 5684, an accommo tion maker of a note who places the word "surety" after his signatu is not relieved from liability by an extension of time of payment witho his consent.

This decision is based chiefly upon section 5753. But see the follo ing authorities as to the liability of a surety, and quaere, whether bei a surety he was primarily liable: Hubbard v. Gurney, 64 N. Y. 45 Eaton & Gilbert on Comm. Paper, p. 401, section 80, c; Bigelow Bills, Notes & Cheques, p. 43. See also the vigorous dissenting critici on this case in Law Notes, September, 1907, p. 105, by T. A. S. (Thom A. Street), with which I agree. Cellers v. Meachem, 89 Pac. 4 Oregon (1907).

Negotiation.

Sec. 5592. What constitutes negotiation.—An instrument is gotiated when it is transferred from one person to another in su manner as to constitute the transferee the holder thereof. If p able to bearer it is negotiated by delivery; if payable to order it negotiated by the indorsement of the holder completed by livery. (Id., § 30.)

Decisions of other States.—A negotiable promissory note, void the hands of the payee because it is a foreign corporation doing busin in North Dakota without having complied with the laws of the State, n be enforced by a bona fide purchaser and indorsee for value, with notice of the facts rendering it void in the hands of the payee, notwi standing section 3265, Rev. Codes, 1899, the word "assigns" there not including the holder in due course of a negotiable instrument un sub-sections 30-52 and 57. Nat. Bank of Commerce v. Pick, 99 N. W. (1904), Sup. Ct. N. Dakota.

Under this section and sections 5593 and 5611 the transfer o negotiable instrument for value, by delivery without indorsement, ve in the transferee the transferrer's title thereto with the right to h the indorsement of the transferrer, notwithstanding section 5580 wh liability is predicated upon the instrument itself. Swenson v. Stoltz, Pac. 999, Washington (1904).

See Rogers v. Morton, cited under section 5588.

A negotiable promissory note has no validity between the par unless delivered. The Negotiable Instruments Law is not cited, althou in force in this State. See this section. Viets v. Silver, 106 N. W. Supreme Court, North Dakota (1905).

Digitized by Google

r this section and sections 5613, 5624, 5747, 5749 and 5751,
drawer of a check procured it to be certified before delivery
vees, and the bank failed before it was presented for payment,
was not liable thereon to the drawer, but only to the holder
urse at the time of the failure, and hence the drawer, on re-
e check from the payees, after the failure of the bank, was not
o set off the amount thereof against an indebtedness to the
hlessinger v. Kurzrok, 94 N. Y. Supp. 442 (1905).
ndorsee of a draft indorsed it, presented it to the drawee and
payment. The indorsement of the payee was a forgery. Held,
indorsee was liable, his indorsement being a guaranty of the
ss of the signature of the antecedent indorsers. (This section
on 5596.) A draft to the order of an existing firm without
edge is not a draft to the order of a fictitious or non-existing
ler section 5571, subdivision 3, unless the drawer had no knowl-
he existence of such a firm, and his intent was to make it pay-
earer. See p. 743. "The fictitiousness of the payee and the
e of the maker must concur." (But see section 5585. Sea
t. Bk. v. Bk. of America, 100 N. Y. Supp. 740, 51 Misc. 103

593. Indorsement; how made.—The indorsement must be
on the instrument itself or upon a paper attached thereto.
nature of the indorser without additional words is a suffi-
dorsement. (Id., § 31.)

inia decisions.—Where the name of the maker of a negotiable
e payable to the order of itself (a corporation) appeared only
he note, but its signature was affixed to an assignment thereof
to the note, it was held to be a sufficient endorsement. Colona
ey Nat. Bank, 120 Va. 812, 92 S. E. 979.

sions of other States.—See Swenson v. Stoltz, cited under sec-

594. Indorsement must be of entire instrument.—The in-
nt must be an indorsement of the entire instrument. An
nent which purports to transfer to the indorsee a part only
mount payable, or which purports to transfer the instru-
two or more indorsees severally does not operate as a
ion of the instrument. But where the instrument has
d in part it may be indorsed as to the residue. (Id., § 32.)

595. Kinds of indorsement.—An indorsement may be eith-
al or in blank, and it may also be either restrictive or
l or conditional. (Id., § 33.)

5596. Special indorsement; indorsement in blank.—A spe-
orsement specifies the person to whom or to whose order
rument is to be payable, and the indorsement of such in-
is necessary to the further negotiation of the instrument.
orsement in blank specifies no indorsee, and an instrument
sed is payable to bearer and may be negotiated by delivery.
34.)

isions of other States.—See Seaboard Nat. Bk. v. Bk. of America,
der section 5592.

5597. Blank indorsement; how changed to special indorse-
The holder may convert a blank indorsement into a special
nent by writing over the signature of the indorser in blank

Digitized by Google

any contract consistent with the character of the indorsement. § 35.)

Sec. 5598. When indorsement restrictive.—An indorsement is strictive which either—

1. Prohibits the further negotiation of the instrument; or
2. Constitutes the indorsee the agent of the indorser; or
3. Vests the title in the indorsee in trust for or to the us some other person.

But the mere absence of words implying power to negotiate not make an indorsement restrictive. (Id., § 36.)

Sec. 5599. Effect of restrictive indorsement; rights of indo —A restrictive indorsement confers upon the indorsee the rig

1. To receive payment of the instrument.
2. To bring any action thereon that the indorser could bring
3. To transfer his rights as such indorsee where the form of indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the indorsee under the restrictive indorsement. (Id., § 37.)

Cited but not construed in Fleshman v. Bibb, 118 Va. 582, 88 64.

Sec. 5600. Qualified indorsement.—A qualified indorsement stitutes the indorser a mere assignor of the title to the instrum It may be made by adding to the indorser's signature the w "without recourse" or any words of similar import. Such an dorsement does not impair the negotiable character of the ins ment. (Id., § 38.)

Decisions of other States.—Under this section an indorsee of a or bond, under an indorsement reciting that the indorser transfers al right, title and interest to the indorsee is a holder in due course. (It not appear, however, that the bond in question was negotiable, and transfer, copied within quotation marks, shows that it ceased to be n tiable when indorsed to the plaintiff.) Evans v. Freeman, 54 S. E. North Carolina (1906).

See Thorpe v. Mindeman, cited under section 5563.

Sec. 5601. Conditional indorsement.—Where an indorsemen conditional a party required to pay the instrument may disreg the condition and make payment to the indorsee or his transf whether the condition has been fulfilled or not. But any pe to whom an instrument so indorsed is negotiated will hold the s or the proceeds thereof subject to the rights of the person ind ing conditionally. (Id., § 39.)

Sec. 5602.' Indorsement of instrument payable to bearer.—W an instrument payable to bearer is indorsed specially it may ne theless be further negotiated by delivery; but the person indor specially is liable as indorser to only such holders as make through his indorsement. (Id., § 40.)

Sec. 5603. Indorsement where payable to two or more pers —Where an instrument is payable to the order of two or m payees or indorsees who are not partners all must indorse un

Digitized by Google

indorsing has authority to indorse for the others (Id., §

sions of other States.—See First Nat. Bk. of City of Brooklyn v. cited under section 5576.

604. Effect of instrument drawn or indorsed to a person as —Where an instrument is drawn or indorsed to a person as '' or other fiscal officer of a bank or corporation it is prima facie to be payable to the bank or corporation of e is such officer, and may be negotiated by either the in- nt of the bank or corporation or the indorsement of the (Id., § 42.)

sions of other States.—For several years, the president of a bank ved all the bank's mail, had indorsed all its drafts, and much of 's business had been done in the name of its officers as such. In of a draft upon this bank, made payable to the person who is , his name being followed by the abbreviation "Pt" it was held is section prima facie to be payable to the bank of which such president. Griffin v. Erskine, 109 N. W. 13, Iowa (1906).

er this section in an action on a certificate of deposit made pay- S., as cashier of the defendant bank, and indorsed by him as t was competent for the plaintiff to show that S. was the cashier fendant bank and was acting in that capacity in transferring the e sued on. The plaintiff was an innocent holder for value, and harged with knowledge of the dealings between "Secor, cashier," defendant bank which he represented. Johnson v. Buffalo Center ., 112 N. W. 164 Iowa (1907).

605. Indorsement where name is misspelled, etc.—Where e of a payee or indorsee is wrongly designated or misspelled indorse the instrument as therein described, adding, if he , his proper signature. (Id., § 43.)

606. Indorsement in representative capacity.—Where any is under obligation to indorse in a representative capacity indorse in such terms as to negative personal liability. (Id.,

607. Time of indorsement; presumption.—Except where rsement bears date after the maturity of the instrument egotiation is deemed prima facie to have been effected be- e instrument was overdue. (Id., § 45.)

isions of other States.—See Colborn v. Arbecam, cited under sec- 3.

608. Place of indorsement; presumption.—Except where trary appears every indorsement is presumed prima facie been made at the place where the instrument is dated. (Id.,

isions of other States.—Where a note is dated and made payable tate of New York, an indorsement in blank thereon is presumed, e common law and under this section, to have been made in New id one discounting the note in good faith can rely on such in- nt. Chemical Nat. Bk. v. Kellogg, 75 N. E. 1103, New York

609. Continuation of negotiable character.—An instrument ble in its origin continues to be negotiable until it has

Digitized by Google

been restrictively indorsed or discharged by payment or other
(Id., § 47.)

Sec. 5610. Striking out indorsement.—The holder may at
time strike out any indorsement which is not necessary to his
The indorser whose indorsement is struck out and all indo
subsequent to him are thereby relieved from liability on the
strument. (Id., § 48.)

See notes to section 5752.

Sec. 5611. Transfer without indorsement; effect of.—Where
holder of an instrument payable to his order transfers it for v
without indorsing it the transfer vests in the transferee such
as the transferrer had therein, and the transferee acquires in
dition the right to have the indorsement of the transferrer.
for the purpose of determining whether the transferee is a ho
in due course the negotiation takes effect as of the time when
indorsement is actually made. (Id., § 49.)

Decisions of other States.—See Swenson v. Stoltz, cited under se
5592.

Under this section and sections 5624, 5749, 5750 and 5751, the
to a check payable to a specified person passes by delivery withou
dorsement. The transfer of a check by the payee, by delivery withou
dorsement, destroys its negotiability, and the transferee takes merel
transferrer's title, subject to any equity between him and the drawe

The payee of a check, given to discharge an indebtedness due to
transferred it without indorsement for consideration, and the transf
presented it at the bank upon which it was drawn, which certified it.
the bank was liable, although it did not know who was the owner o
check when the certification was made. See also 86 N. Y. Supp.
(1904). Meuer v. Phenix Nat. Bk., 88 N. Y. Supp. 83 (1904).

The holder of a draft, in the absence of proof of indorsement by
payee, is not a bona fide purchaser for value, under this section. See
tion 5621. Mayers v. McRimmon, 53 S. E. 447, North Carolina (19

Sec. 5612. When prior party may negotiate instrument.—W
an instrument is negotiated back to a prior party such party m
subject to the provisions of this chapter, reissue and further n
tiate the same. But he is not entitled to enforce payment the
against any intervening party to whom he was personally lia
(Id., § 50.)

Decisions of other States.—The omission of the words "for v
received" does not impair the note, affect its legal import, or weaken
presumption that it was given for value. McLeod v. Hunter (1899)
Misc. Rep. 558, 61 N. Y. Supp. 73.

See Quimby v. Varnum, cited under section 5625.

Rights of the Holder.

Sec. 5613. Right of holder to sue; payment.—The holder of a
gotiable instrument may sue thereon in his own name and paym
to him in due course discharges the instrument. (Id., § 51.)

See notes to section 5618.

Virginia decisions.—The endorsee may maintain an action in his
name, though a third person may have paid one-half of the considera
and, in absence of any evidence that the third person occupied any w
or different position from the endorsee, with reference to the purc

Digitized by Google

note, no defense can be set up against the interest of such third in the note which could not be set up against the endorsee. an v. Bibb, 118 Va. 582, 88 S. E. 64.

r discussion upon what duress invalidates delivery, see 11 Va. Law 945.

e note, 10 Va. Law Reg. 1115.

cisions of other States.—A check becomes discharged on its pay- due course, and one who received payment of a certified check, but the money received thereon when threatened with suit, could not in an action against the bank on its acceptance or certification. . Twelfth Ward Bk., 86 N. Y. Supp. 867 (1904).

e Schlessinger v. Kurzrok, cited under section 5592.

e Rogers v. Morton, cited under section 5588.

5614. What constitutes a holder in due course.—A holder course is a holder who has taken the instrument under fol- conditions:

hat it is complete and regular upon its face.

hat he became the holder of it before it was overdue and t notice that it had been previously dishonored, if such was t.

hat he took it in good faith and for value.

hat at the time it was negotiated to him he had no notice of firmity in the instrument or defect in the title of the person ating it. (Id., § 52.)

rginia decisions.—The addition of the words "payable with in- to a negotiable note, in the same handwriting as that of the body instrument, written on a blank space after the words "value re- " nothing on the face of the note awakening suspicion, does not it incomplete or irregular on its face within the meaning of section Trustees of Am. Bk., etc., v. McComb, 105 Va. 473 (1906), 54 4.

bona fide holder for value may give good title to a negotiable in- nt, even though he sells to a person with notice, but a payee who a bona fide purchaser for value and afterwards reacquires the ent, does not acquire any better right against the maker than he the first instance. Aragon Coffee Co. v. Rogers, 105 Va. 51, 52 43.

a holder, in due course, of a negotiable instrument transfers the vith a guaranty of its payment and subsequently reacquires it in o protect his guaranty, but under circumstances which would have d to him knowledge of infirmities in the instrument, that knowl- oes not relate back so as to impair his original position as pur- for value and without notice. Ratcliffe v. Costello, 117 Va. 563, E. 469.

e taking negotiable paper before maturity as a collateral security lder in due course within the meaning of this section. Anderson n Bank, 117 Va. 1, 83 S. E. 1080; Colona v. Parksley Nat. Bank, . 812, 92 S. E. 979.

ough a negotiable note may be endorsed to one person, while a erson paid one-half of the consideration and was to receive one- the proceeds thereof, the endorsee is the holder in due course his section. Fleshman v. Bibb, 118 Va. 582, 88 S. E. 64.

bsequent to the assignment of a negotiable note to a bank as col- security for overdrafts (which assignment was treated as an en- ent) the maker gave the bank written instructions to place the its credit, which was done. Held, that this in no way invalidated dorsement previously made, as the original endorsement completed e of the bank as a bona fide holder, and it was competent for the and the bank thereafter to agree to change the original purpose

Digitized by Google

for which the transfer was made. Colona v. Parksley Nat. Bank, 120 812, 92 S. E. 979.

The names of endorsers of negotiable paper usually appear on back, but they may appear elsewhere without offending against the r larity required by the negotiable instruments law. Colona v. Park Nat. Bank, 120 Va. 812, 92 S. E. 979.

Cited but not construed. Holdsworth v. Anderson Drug Co., 118 359, 87 S. E. 565.

See editorial, 20 Va. L. Reg. 624.

Decisions of other States.—A check payable to the plaintiff handed by defendant drawer to her husband, to be delivered to the pl tiff, to pay a debt to become due from her to the plaintiff, was frau lently given by the husband to the plaintiff in payment of a debt he o the plaintiff, and was accepted by the plaintiff in settlement thereo good faith. Held, the plaintiff is a bona fide purchaser for value w out notice, affirming antecedent cases. Boston Steel & Iron Co. v. St (1903), 183 Mass. 140, 66 N. E. 646.

One is a holder in due course who takes a note, even from a t in good faith, for value, before maturity, without notice of any de affirming the law merchant. Greeser v. Sugarman (1902), 37 Misc. 799, 76 N. Y. Supp. 922.

Where the plaintiff purchased the defendant's check in due co for value before it was overdue, with a plausible explanation of the c for erasure of the indorsement of an intermediate indorser, purchasi from one to whom it was made payable, known to the plaintiff to be person whose name was indorsed on the check, the plaintiff is entitle recover the amount of the check. Goetting v. Day, 87 N. Y. Supp. (1904).

See Nat. Bank of Commerce v. Pick, cited under section 5592.

Where a note was made payable to the maker's order and was dorsed by him, by a firm for whose accommodation it was made, an the defendant, and was discounted by the firm for the plaintiff at more than six per cent., the note was void, as the note had no inception it was discounted and the discount was at a usurious rate in contraven of law.

In an action on such a note the burden is on the plaintiff of sh ing he took the note in good faith and without notice of any infirm Simpson v. Hefter, 87 N. Y. Supp. 243 (1904).

See Sutherland v. Mead, cited under section 5587.

The court declined to say whether the defense of usury has swept away by the Negotiable Instruments Law, and followed Strick v. Henry, 66 App. Div. 23 (1901).

Under this section and sections 5619 and 5621, where a holder check has no knowledge of defenses that would be good against p holders, and is an innocent purchaser for value, he is a holder in course. Benedict v. Kress et al., 89 N. Y. Supp, 607 (1904).

Under this section a person who takes a note from a person be maturity, as an agreement to forbear suing on the debt for a few at least, is a holder for value. Milius v. Kauffmann, 93 N. Y. Supp. (1905).

See Thorpe v. White, cited under section 5626.

See Rogers v. Morton, cited under section 5588.

Under this section, defining a holder in due course, and section 5 defining what is a defective title, held, where, after the execution of a and mortgage, the proposed mortgagee refused to make the loan, and agent for the mortgagor, who had endeavored to negotiate the loan, ca an assignment of the note and mortgage to be made to him by the posed mortgagee without the knowledge or consent of the mortgagor, agent is not a holder in due course, having acquired title not only w out consideration, but by a fraud on the makers of the note. Under sec 5621, when it is shown that the title of any person who has negotiated instrument is defective, the burden is on the holder to prove that he some person under whom he claims acquired the title as a holder in course. This case affirms what was the law in Iowa before the adop

Digitized by Google

Negotiable Instruments Law. Keegan v. Rock, 102 N. W. 805, 905).

here the holder of a check drawn on another bank deposited it to unt, and the bank where it was so deposited credited the amount depositor's account and the depositor's account remained sufficient the check in case of dishonor, the bank was not a holder of the n due course of business within this section so as to exclude de- which the drawer of the check might have against the payee. State Bk. v. Cowles, 73 N. E. 33, New York (1905).

der this section and section 5621, the provisions of which were perly in issue under the pleadings, the defense of failure of con- on, upon suit against the maker of a negotiable instrument by a ee for value, is unavailing. Brown v. Feldwert, 80 Pac. 414, (1905).

e Wilkins v. Usher, cited under section 5621.

an action by an indorsee of several promissory notes which pro- hat any delinquency in payment of interest should cause the whole mediately to become due, it appeared that the plaintiff became der of the notes six days after annual interest upon one of them due and was unpaid. It was held that he was not a holder in due within this section, defining a holder in due course as one who other things takes the instrument before it is overdue. Hodge v. , 108 N. W. 212, Wisconsin (1906).

der this section a bank discounting a note, with knowledge that rious, is not a holder in due course. Schlesinger v. Lehmaier, 99 pp. 389 (1906).

here a mere inspection of a check showed that it had been altered, a er thereof took with notice of the infirmity, and was not a holder course, under this section. Elias v. Whitney, 98 N. Y. Supp. 667. e Court (1906).

pre-existing debt is of itself a valuable consideration for a deed of ade to secure its payment, and if such a deed transfers unmatured ble notes to secure creditors of the grantor, the trustee is a holder course within the terms of this section, if within the other terms section.

e Hodge v. Smith, cited under section 5578.

e Rosenthal v. Freedman, cited under section 5588.

e Montvale v. People's Bk., cited under section 5563.

e taker of a negotiable instrument, complete and regular upon its fore it is overdue, in good faith and for value, and having no notice infirmity in the instrument, or defect in the title of the person ing it, has good title, even though the person from whom he takes have acquired it by fraud, theft or robbery. The Negotiable In- ts Law is not cited. Arons v. Ziegfeld, 52 Misc. Rep. 571, New 907).

der this section and sections 5618 and 5619 an answer, in an n a note given in part payment of a horse, alleging that the pur- f the horse and the giving of the note were induced by fraudulent tations as to the soundness of the horse, whereby the makers were d in a sum specified, and that when the plaintiff purchased the e knew that misrepresentations had been made—sufficiently that the plaintiff had notice of the infirmity of the note and took ct to such defense. Quiggle v. Herman, 111 N. W. 479, Wiscon- 07).

5615. When person not deemed holder in due course.—an instrument payable on demand, other than bank notes rtificates of deposit, is negotiated an unreasonable length e after its issue, the holder is not deemed a holder in due (Id., § 53.)

visors' Note.—The words "other than bank notes and certificates sit" are new. This change is made in consequence of the change section 5632. See revisors' note to that section.

Digitized by Google

Virginia decisions.—What is a reasonable time for any purpose pends always upon the facts of the particular case, and this familiar p osition is directly recognized by section 5754. Under the facts of case, the negotiable note was not negotiated an unreasonable time its issue. Colona v. Parksley Nat. Bank, 120 Va. 812, 92 S. E. 979.

Sec. 5616. Notice before full amount paid.—Where the tr feree receives notice of any infirmity in the instrument or de in the title of the person negotiating the same before he has p the full amount agreed to be paid therefor he will be deeme holder in due course only to the extent of the amount thereto paid by him. (Id., § 54.)

Decisions of other States.—Where a bank discounted a note placed the proceeds thereof to the indorser's credit, dishonor of the by the maker at maturity and before the indorser had drawn the amount of the credit, entitles the maker to set up the defense of a fai of consideration as against the bank. The plaintiff bank had notic an infirmity in the instrument or defect in the title of the indorser be paying to his order the proceeds of discount placed to his credit. Alb Co. Bk. v. People's Co-op. Ice Co., 86 N. Y. Supp. 773 (1904).

See Hodge v. Smith, cited under section 5578.

Sec. 5617. When title defective.—The title of a person who gotiates an instrument is defective within the meaning of chapter when he obtained the instrument or any signature ther by fraud, duress, or force and fear or other unlawful means, for an illegal consideration or when he negotiates it in breach faith or under such circumstances as amount to a fraud. (Id 55.)

See notes to following section.

Decisions of other States.—See Sutherland v. Mead, cited under tion 5587.

In an action against the makers of two negotiable promissory no when the defendants proved they were given to one S. as mere memora and on an agreement that they would not be transferred, so that procuring their discount by S. was a fraudulent diversion of the no the burden is on the plaintiff of proving that they were bona fide chasers. Mitchell v. Baldwin, 84 N. Y. Supp. 1043 (1903).

Both at common law and under this section and section 5621, w defendant bank issued its cashier's check to the plaintiff's order, and plaintiff indorsed it and delivered it to a gambler in payment for c used in gambling, and was present when the defendant paid the amo of the check to the gambler, the plaintiff protesting against such paym the defendant bank is liable to plaintiff for the amount of the ch Drinkall v. Movius State Bk., 88 N. W. 724, North Dakota (1901).

Where the maker of a note payable to himself is induced by a frau lent trick to indorse it without knowledge on his part of having, in f indorsed it and without having had any intention to indorse it at the t the indorsement was obtained, he is not liable thereon, even to a bona holder. (Although the Negotiable Instruments Law was in force in W ington before the date of this note, no reference is made to the act. this section and section 5618.) Yakima Valley Bk. v. McAllister, 79 1119, Washington (1905).

See Keegan v. Rock, cited under section 5614.

Under this section the title of a payee of a negotiable instrumen defective where the only consideration for the note is accrued interest a loan previously made at a rate of interest forbidden by Session L 1899, p. 128, chapter 80, section 2. Keene v. Behan, 82 Pac. 884, W ington (1905).

Under this section, where a note was executed by several persons the signature of one of them was procured by fraudulent representati

Digitized by Google

character of the instrument, and he could not have obtained
e of its true character by ordinary care, the note was void as to
akers. (The concluding words of the Wisconsin statute, "and
of such person is absolutely void when such instrument or signa-
so procured from a person who did not know the nature of the
it and could not have obtained such knowledge by the use of
care," were not in the original Negotiable Instruments Law.)
v. Arnold, 111 N. W. 212, Wisconsin (1907).
Hodge v. Smith, cited under section 5578.
editorial, 20 Va. L. Reg. 624.

618. What constitutes notice of defect.—To constitute no-
an infirmity in the instrument or defect in the title of the
negotiating the same the person to whom it is negotiated
ve had actual knowledge of the infirmity or defect or
ge of such facts that his action in taking the instrument
d to bad faith. (Id., § 56.)

inia decisions.—The fact that the holder in due course of a
e note acted negligently or was affected with suspicious circum-
n taking the note, is not sufficient to defeat his right of action
in the absence of proof of facts amounting to fraud on his part.
v. Bibb, 118 Va. 582, 88 S. E. 64.
, that under the evidence in this case, the plaintiff is a holder
urse of the negotiable note sued on. The same is in all respects
and no sufficient evidence of knowledge of the existence of any
in the note has been brought home to the plaintiff under this
Hawks v. Bowles, 119 Va. 108, 89 S. E. 93.
a case presenting the question of fact whether a purchaser of
k same with notice, see City Natl. Bank v. Hundley, 112 Va. 51,
494.
ussed in editorial in 20 Va. L. Reg. 624.
notes to section 5614.

sions of other States.—Mere suspicion of defect of title or knowl-
ircumstances that would excite suspicion in the mind of a prudent
ross negligence on the part of the taker at the time of transfer
it his title, following earlier Maryland cases. Valley Sav. Bank v.
1903), 97 Md. 458, 55 Atl. 435.
re plaintiff bought in Washington a negotiable promissory note
0, three months before maturity, payable at Cape Nome, knowing
rs to be solvent, for $500, making inquiry only of the payee as to
deration, and without knowledge of any infirmity, he may re-
reon, although the consideration from the payee to the maker
d. McNamara v. Jose (1902), 28 Wash. 461, 68 Pac. 903.
older for value of a negotiable promissory note, without notice
or breach of faith of intermediate parties, can recover of the
ffirming Banks v. McCosker (1896), 82 Md. 518, 34 Atl. 539, 51
Rep. 478; Black v. First Nat. Bank (1903), 96 Md. 399, 54 Atl.

re the evidence given upon the trial of an action upon a check
show that the holder had knowledge the check was originally de-
pon a condition that had not been fulfilled and that its payment
stopped, and the holder accepts it in payment of a past indebted-
he immediate assignor, the question whether the holder was a
due course is for the jury. M. Groh's Sons v. Schneider, 34
. 195, 68 N. Y. Supp. 862.
Goetting v. Day, cited under section 5614.
Sutherland v. Mead, cited under section 5587.
Karsch, Respt. v. Pottier & Stymus Mfg. & Impt. Co., cited under
586.
er this section, where a check was drawn November 24th and was
in blank and lost, a merchant, who took it before December 1st
from an unknown customer, whom he supposed to be the payee,
urther indorsement or inquiry of identity, was a bona fide holder

Digitized by Google

and entitled to payment, although the bank on which the check was d had received notice of the loss of the check and had been directed n pay the check. Unaka Nat. Bk. v. Butler, 83 S. W. 655, Tennessee (1

See Mass. Nat. Bk. v. Snow, cited under section 5570.

A third person taking a negotiable instrument given by a cor tion to an officer or director of the corporation, knowing he is su officer or director, is put upon inquiry as to the lawfulness of the of the note, and if it is subject to any legal infirmity, he cannot such infirmity by claiming to be a bona fide holder without notice. section is cited only in the dissenting opinion of McLean, J.) C Aubrey Terra Cotta Co., 94 N. Y. Supp. 524 (1905).

Under this section it is provided that to constitute notice of i firmity in the instrument or defect in the title of the person negotiati same, the person to whom it is negotiated must have had actual k edge of the infirmity or defect, or knowledge of such facts that his in taking the instrument amounted to bad faith.

Where certificates of deposit payable to C., "trustee" and "tr of B. F.," were wrongfully indorsed before maturity, by C., it was that the certificates themselves gave actual notice to the indorsee the paper represented a trust fund, and obligated such indorsee to in into the right of the trustee to dispose of it under the above section. v. Brown, 88 S. W. 1036, Tennessee (1905).

See Yakima Valley Bk. v. McAlister, cited under section 5617.

This section protects only a purchaser for value without notice fect of a negotiable instrument and does not repeal section 4223, St. requiring the indorsement of certain notes with the words "Ped Notes." Lawson v. First Nat. Bk. of Fulton, 102 S. W. 324, Ken (1907).

See Montvale v. People's Bk., cited under section 5563.

See Ward v. City Trust Co., cited under section 5587.

See Quiggle v. Hermon, cited under section 5614.

See Trustees of Am. Bk., etc., v. McComb, cited under section 5

Sec. 5619. Rights of holder in due course.—A holder in course holds the instrument free from any defect of title of parties and free from defenses available to prior parties a themselves, and may enforce payment of the instrument fo full amount thereof against all parties liable thereon. (1 57.)

Virginia decisions.—A pledgee of negotiable paper before matu not affected by a payment made by the maker to the payee, though in good faith, without knowledge of the assignment by the payee lateral security, unless the maker can prove that such payment was with the knowledge and consent of the pledgee, or was subsequentl fied by him. Anderson v. Union Bank, 117 Va. 1, 83 S. E. 1080.

See notes to section 5614.

Discussed in editorial in 20 Va. L. Reg. 624.

Decisions of other States.—Where the plaintiff in good faith chased a negotiable promissory note before maturity for one-half face value, he may collect the full amount from the maker, althou maker has a good defense against the payee, affirming antecedent McNamara v. Jose (1902), 28 Wash. 461, 68 Pac. 903.

See Albany Co. Bk. v. People's Co-op. Ice Co., cited under s 5616.

See Sutherland v. Mead, cited under section 5587.

See Nat. Bk. of Commerce v. Pick, cited under section 5592.

See Benedict v. Kress, cited under section 5614.

See Mass. Nat. Bk. v. Snow, cited under section 5570.

A holder of a negotiable instrument in due course takes it free any defenses available to prior parties among themselves, under th tion. Broadway Trust Co. v. Manheim, 95 N. Y. Supp. 93 (1905).

Under this section one who bought a second mortgage note for $ paying therefor $1,000, can recover, although the note and mortgag

Digitized by Google

by fraud, the purchaser having had no actual knowledge of the or defect, nor any knowledge of such facts that his action in e instrument amounted to bad faith. Lassas v. McCarty, 84 Pac. on (1906).

Alexander v. Hazelrigg, cited under section 5746.

re the defendant issued a certificate of deposit to one who in- in blank, and it passed into a bank, that, while indebted to the sent the certificate to the plaintiff for collection, and the plain- ted the bank indebted to it with the amount, and such debtor t into a receiver's hands before paying the certificate of deposit, tiff was not a purchaser in due course of business under this he credit given being nothing more than a conditional credit. ial Nat. Bk. v. Citizens State Bk., 109 N. W. 198, Iowa (1906).

plaintiff bank was a bona fide holder in due course of the nego- omissory notes sued on, which were complete and regular upon e, the bank becoming such a holder before maturity and without any infirmity in them or of any defect in the title of the person ng them. But the notes were usurious in their inception. Held, s section, the defense of usury is inapplicable to that extent, the w of the State being superseded by the Negotiable Instruments owing Wirt v. Stubblefield, 17 App. Cas. D. C. 283. Schlesinger , 114 App. Div. 546, New York (1906).

Quiggle v. Hermon, cited under section 5614.

er this section a holder for value without notice may enforce pay- the full amount of a negotiable instrument free from defenses between the original parties.

e Wisconsin law has the following words added which are not in nal act: "except as provided in sections 1944 and 1945 of these relating to insurance premiums, and also in cases where the he person negotiating such instrument is void under the pro- f sections 1676-25 of this act.") Arnd v. Sjoblom, 111 N. W. consin (1907).

Benedict v. Kress, cited under section 5614.

620. When subject to original defenses.—In the hands of der other than a holder in due course a negotiable instru- subject to the same defenses as if it were non-negotiable. older who derives his title through a holder in due course o is not himself a party to any fraud or illegality affecting rument has all the rights of such former holder in respect rties prior to the latter. (Id., § 58.)

inia decisions.—The rule of this section is sanctioned in Aragon . v. Rogers, 105 Va. 51, 52 S. E. 843, but no reference is made ction.

sions of other States.—A negotiable promissory note, although on a gambling consideration is valid in this district, in the hands a fide purchaser for value without notice, before maturity. The Statutes, 16 Car. II, chapter 8, and 9 Anne, chapter 14, against etc., in this respect are repealed, and a different rule established e Negotiable Instruments Law. Wirt v. Stubblefield (1900), 17 C. 283.

payee of a negotiable promissory note, with knowledge of defect strument, selling it to an innocent purchaser for value, cannot hereon. He is not an innocent purchaser for value without notice. v. Robertson (1901), 111 Wis. 334, 87 N. W. 190, 54 L. R. A. Am. St. Rep. 870.

ere a note was indorsed by the payee to another and by three suc- olders before it was acquired by the plaintiff, and the indorser aintiff was a bona fide holder of the note and transferred it for er maturity to the plaintiff, defenses available as between the parties were not available against the plaintiff. Jennings v. Car- N. Y. Supp. 475 (1904).

t why was not the plaintiff put upon inquiry upon taking the note

Digitized by Google

after maturity, and, therefore, under section 5618, he had "know of such facts that this action in taking the instrument amounted t faith"?)

Under this section a payee of a negotiable promissory note, w also the owner of the indebtedness which the note was indorsed to s is a lien holder and a holder in due course for value to the extent lien, and is entitled to recover to the amount of the debt due and se by the note, whether that debt was incurred before or after the ma of the note. Mersick v. Alderman, 60 Atl. 109, Connecticut (1905).

See Hibbs v. Brown, cited under section 5563.

Sec. 5621. Who deemed holder in due course.—Every hold deemed prima facie to be a holder in due course, but when shown that the title of any person who has negotiated the in ment was defective the burden is on the holder to prove tha or some person under whom he claims acquired the title as a h in due course. But the last mentioned rule does not apply in of a party who became bound on the instrument prior to th quisition of such defective title. (Id., § 59.)

Virginia decisions.—The fact that the defendant swears to a denying that the plaintiff is the holder in due course of the nego note sued on does not throw upon the plaintiff the burden of showing he is such a holder. Holdsworth v. Anderson Drug Co., 118 Va. 35 S. E. 565.

In an action on negotiable paper, the production of the paper dence makes out a prima facie case for recovery, and the plaintiff titled to rest his case until rebuttal evidence is offered by the defen Holdsworth v. Anderson Drug Co., 118 Va. 359, 87 S. E. 565.

Cited but not construed in Fleshman v. Bibb, 118 Va. 582, 88 64.

Decisions of other States.—The holder of a negotiable promi note given to him by a member of a firm in payment of such mem own debt, ostensibly signed by the firm, but not by the name autho in the articles of partnership, cannot recover of the firm. He is holder in due course under the Negotiable Instruments Law, affi antecedent cases. Lucker v. Iba (1900), 54 App. Div. 566, 66 N. Y. 1019.

The title of an indorsee of a negotiable note is defective whe consideration for the indorsement is unlawful, or where the indorse is procured by unlawful means. Drinkall v. Movius Bank, 11 N. D 88 N. W. 724, 57 L. R. A. 341, 95 Am. St. Rep. 693.

See Mitchell v. Baldwin, cited under section 5617.

See Karsch, Respt. v. Pottier & Stymus Mfg. & Impt. Co., cited 5586.

See Sutherland v. Mead, cited under section 5587.

Under this section, where the maker of a negotiable promissory sued on by an indorsee testified that it had been negotiated in viol of an agreement under which it was given, such negotiation constitu breach of faith against the maker, and required proof, on the part o holder, before a recovery could be had, that the note was received i ordinary course of trade, for a valuable consideration and without k edge of such agreement. German Am. Bk. v. Cunningham, 89 N. Y. 836 (1904).

Under this section the burden is on the transferee of a negot promissory note from the payee, to show, before it can recover ag the maker, that it was a bona fide holder for value, where the no shown to have been fraudulent in its inception. Consolidation Nat v. Kirkland, 91 N. Y. Supp. 353 (1904).

See Donikall v. Movius State Bk., cited under section 5617.

See Benedict v. Kress, cited under section 5614.

See Keegan v. Rock, cited under section 5614.

See Brown v. Feldwert, cited under section 5614.

Digitized by Google

Mayers v. McRimmon, cited under section 5611.
n action by an indorsee against the maker, it was held that when the inception of a negotiable instrument was alleged and proved, en was upon the indorsee to prove that he was a purchaser for fore maturity without notice and in good faith.
Negotiable Instruments Law is in force in this State and the con- eached is in accordance therewith (this section). But the court have overlooked that fact. It followed previous decisions in akota and neither the court nor the counsel on either side, so far eport shows, cited the Negotiable Instruments Law. Tamlyn v. , 107 N. W. 1081, North Dakota (1906).
Singer Mfg. Co. v. Summers, cited under section 5748.
ler this section a third person taking a note for value without ge that the maker was deceived as to the purpose for which he , taking it before maturity from the payee who indorsed it to a holder in due course.
ler section 5587, a person taking a note as collateral security for edent debt is a holder for value.
ler section 5614, a purchaser of a note on the day after its date, being payable one day after date, is a holder for value. Wilkins 97 S. W. 37, Kentucky (1906).
ler this section the prima facie validity of the holder's title to le paper ceases, when the fraudulent character of the paper is and the burden then shifts to the holder, to exonerate himself nplicity in the fraud. Cook v. Am. Tubing & Webbing Co., 65 , Rhode Island (1906).
Colborn v. Arbecam, cited under section 5578.
Benedict v. Kress, cited under section 5614.
n suit on a negotiable instrument, the defendant indorser can put nce that the note was given under duress and without considera- d it then becomes the duty of the plaintiff to show that he ac- itle as a holder in due course, under this section. This is in ac- with the New York cases prior to the Negotiable Instruments ngle v. Hyman, 104 N. Y. Supp. 390 (1907).
ler this section, where the payee of a note sued on negotiated ach of faith, the burden is on the plaintiff to show that it or the er whom it claims acquired title as a holder in due course. Nat. arre v. Foley, 103 N. Y. Supp. 553 (1907).
Hodge v. Smith, cited under section 5578.

Liabilities of Parties.

5622. Liability of maker.—The maker of a negotiable in- it by making it engages that he will pay it according to its nd admits the existence of the payee and his then capacity rse. (Id., § 60.)

isions of other States.—A negotiable promissory note to the order eign corporation that had not complied with the Colorado law aws 1897, chapter 51), without doing which it could not do busi- the State, is nevertheless valid in the hands of an innocent pur- or value, without notice, before maturity. McMann v. Walker 903), 72 Pac. 1055.
Ullery v. Brohm, cited under section 5579.

5623. Liability of drawer.—The drawer by drawing the in- it admits the existence of the payee and his then capacity to and engages that on due presentment the instrument will pted or paid or both, according to its tenor, and that if it onored and the necessary proceedings on dishonor be duly e will pay the amount thereof to the holder or to any sub-

Digitized by Google

sequent indorser who may be compelled to pay it. But the
may insert in the instrument an express stipulation negativ
limiting his own liability to the holder. (Id., § 61.)

Sec. 5624. Liability of acceptor.—The acceptor by accepti
instrument engages that he will pay it according to the tenor
acceptance, and admits—

1. The existence of the drawer, the genuineness of his
ture, and his capacity and authority to draw the instrumen

2. The existence of the payee and his then capacity to i
(Id., § 62.)

Decisions of other States.—See Meuer v. Phenix Nat. Bk., cite
section 5611.

See Schlessinger v. Kurzrok, cited under section 5592.

Sec. 5625. When person deemed indorser.—A person plac
signature upon an instrument otherwise than as maker, dra
acceptor is deemed to be an indorser unless he clearly indica
appropriate words his intention to be bound in some other ca
(Id., § 63.)

Virginia decisions.—Under this section a person who endo
blank a negotiable note without indicating "by appropriate words
tention to be bound in some other capacity," although the paper
in the hands of an agent of the payee, is deemed to be an endorser.
v. Summers-Parrott Co., 119 Va. 439, 89 S. E. 906.

Decisions of other States.—Where a negotiable promissory
transferred for value to the plaintiff sixteen months after its issu
the defendant signed her name on the back before delivery of the
the payee (who transferred the note to the plaintiff), she beco
indorser. McLean v. Bryer (1903), 24 R. I. 599, 54 Atl. 373.

See Rouse v. Wooten, cited under section 5651.

See Germania Nat. Bk. v. Mariner, cited under section 5582.

A director of a corporation, who signed his name on the back
executed by the corporation before their delivery, without havi
interest in the loan negotiated by the notes, and who was promised
president of the corporation protection from liability on the notes,
cidentally held merely a surety (this section). The Negotiable
ments Law has been in force in this State since April 20, 1897, bu
not referred to in the court's opinion, nor was the date of the ex
of the notes given. Crosby v. Woodbury, 89 Pac. 34, Colorado

Upon failure of the maker, the defendant, to pay his note at m
an irregular or anomalous indorser paid it to the indorsee, who
out his own indorsement and delivered the note to the irregular in
Five years afterwards he sold the paper to the plaintiff. Held, that,
paid the note, the irregular indorser had a cause of action agai
maker, but not upon the note. See this section and sections 562
and 5683. Quimby v. Varnum, 76 N. E. 671 (Mass., 1906).

Notwithstanding the provisions of this section and sections 562
and 5651, one who puts his name on the back of a negotiable instr
not otherwise a party to it, is a maker or surety, and not an indorse

It is impossible to follow with approval the reasoning by wh
plain provisions of the Negotiable Instruments Law are ignored, i
to follow what the law was in Ohio before the adoption of the Neg
Instruments Law, to the sacrifice of the uniformity the law is inte
bring about. It is to be hoped the case will be appealed and re
Rockfield v. First Nat. Bk. of Springfield, 4 Ohio L. Rep. 290 (19

Under this section and section 5626 (abrogating the rule in Ch
v. Vanness, 35 N. J. Law 517), one not otherwise a party, who pla
name in blank before delivery upon the back of a negotiable note, i
dorser. Gibbs v. Guaraglia, 67 Atl. 81, New Jersey (1907).

Digitized by Google

r this section one placing his signature upon an instrument other-
as maker, drawer or acceptor is deemed to be an indorser (unless
indicates a different intention by his words), abrogating the rule
ock v. Vanness, 35 N. J. Law, 517, that such an indorsement
r se no implied or commercial contract whatever.
r section 5630, parol evidence is admissible, as between several
to show that they agreed to become liable otherwise than in
in which they indorsed. Wilson v. Hendee, 66 Atl. 413, New
907).
r this section and section 5626, when a person not otherwise
a negotiable instrument places thereon his signature in blank
ivery, his status is fixed as that of an indorser, thereby changing
prior to the enactment of the Negotiable Instruments Law.
er v. Kuntz, 42 So. 886, Florida (1907).
r this section, those who put their names on the back of a nego-
trument before delivery, for the accommodation of the maker,
tiff knowing this fact, were held to be indorsers and not joint
f the note, and under sections 5651 and 5665 notice of dishonor
given them.
action brought against the makers and indorsers, the plaintiff
maker agreed, on certain terms, not to press the suit. Under
382, subd. 6, the indorsers were discharged. Deahy v. Choquet,
38 (1907).

626. **Liability of irregular indorser.**—Where a person, not
e a party to an instrument, places thereon his signature in
fore delivery, he is liable as indorser in accordance with the
g rules:

he instrument is a bill or note payable to the order of a
rson, or is an accepted bill payable to the order of the
or to bearer, he is liable to the payee and to all subsequent

he instrument is a note or unaccepted bill payable to the
the maker or drawer or payable to the bearer, he is liable
rties subsequent to the maker or drawer.
e signs for the accommodation of the payee, he is liable to
es subsequent to the payee. (Id., § 64.)

sors' Note.—In one of the discussions referred to in the re-
ote found at the beginning of this chapter (see Brannan's Ne-
Instruments Law, 2d Ed., pp. 198, 262), Dean Ames criticizes
on; and his criticism is probably best shown by the following
on:

s willing to sell goods to A on credit provided B becomes surety
o A makes his note payable to X, gets B to endorse it, and de-
to X in exchange for the goods. Under paragraph 1 the surety
to X. This is the correct result and the one intended by the
Suppose, however, that they attempt to accomplish it in a dif-
ay. Suppose X draws on A, payable to his own order. A ac-
s B to endorse, and hands the bill back to X. X sells it to Y.
onored at maturity, and X is compelled to take it up. X now
ght over against B. All intended that B should become liable
the bill being payable to the order of the drawer, section 2
the anomalous endorser, liable not to the drawer-payee, but
parties subsequent to the drawer-payee."
Ames' point is that this section should be amended so as to
liable to X in the latter case. In this point of view the revisers'
l, and were of opinion that the section should be so amended.
wing words are new: In paragraph 1, "a bill or note" and "or

Digitized by Google

is an accepted bill payable to the order of the drawer or to bearer in paragraph 2, "a note or unaccepted bill."

Decisions of other States.—The provisions of the Negotia struments Law as to the liability of irregular indorsers apply persons who indorse before delivery to the payee. Since the stat legal presumption is changed where the complaint alleges that regular indorsers indorsed before delivery to the payee. The t tention of indorsers as between themselves can always be shown evidence. Kohn v. Consolidated E. & E. Co. (1900), 30 Misc. Re 63 N. Y. Supp. 265.

This was an action brought upon a negotiable promissory note the executors of the first accommodation indorser by the second modation indorser who had been compelled to pay a judgment ered against her upon the note by the payee named therein. Phelps v. Vischer, 50 N. Y. 69, in order to establish the liability a first accommodation indorser, it had to be shown that he indor note for the purpose of giving the maker credit with the payee now held that this is abrogated by Laws 1897, 612 amended law Ch. 396, Sec. 114 (same as Sec. 5626), providing that where a not otherwise a party to an instrument, places his signature the blank before delivery, he is liable as indorser to the payee and subsequent parties, if the instrument is payable to the order of person. Coon, Respt, v. Levy et als., Appts., App. Div. N. Y. from the New York Law Journal, Aug. 19, 1904.

See note, 10 Va. Law Reg. 458, as to change in common la by this section.

Under this section it is not necessary for the complainant in tion on a negotiable promissory note, in order to charge a third as an indorser before delivery, to allege that the indorsement wa in order to give the maker credit with the payee, or that the p dorsed the note as surety for the maker. Corn v. Levy, 89 N. Y 658 (1904).

Under this section a person who writes his name on the ba negotiable instrument before delivery, not being the payee the liable as an indorser. Where, after a note was indorsed and d by the indorser to the maker, the latter altered it and delivere the payee, who took it without notice of the alteration, the indor liable to the payee under sections 5614 and 5686, defining a h due course and the effect of alteration. Thorpe v. White, 74 N. Massachusetts (1905).

Under this section, providing that where a person not othe party to an instrument places thereon his signature in blank bef livery, he is liable as an indorser to the payee and to all sub parties if the instrument is payable to the order of a third perso ble, that when the defendant indorsed a note payable to the ord third person, before such payee's indorsement, he became liable first holder of the note after it took effect and to all subsequent If the defendants indorsed before the payee did, defenses as to gality or consideration are open under said section. See Dunso Bunker, 2 Metc. 8. Under section 5628, declaring that every i indorsing without qualification warrants to all subsequent hol due course, the genuineness of the instrument, his own good ti the capacity of all prior parties to the contract, etc., an indorse the payee on a note executed by a corporation by its treasurer, defend on the ground that the treasurer had no authority to exec note, affirming prior law in Massachusetts. (Kenworthy v. Sawy Mass. 28.) Leonard v. Draper, 73 N. E. 644, Massachusetts (19

See Quimby v. Varnum, cited under section 5625.

See Rockfield v. First Natl. Bk., cited under section 5625.

Under this section, providing that where a person not othe party to an instrument payable to the order of a third person thereon his signature in blank before delivery, he is liable to the and to all subsequent parties, it was held that such a person plac (2478).

Digitized by Google

n the back of a note was liable only as an indorser. Far Rock-k. v. Norton, 79 N. E. 709, 186 N. Y. 484 (1906).
ider this section, subd. 2, and section 5630, an irregular indorser dorses negotiable paper to give credit to the acceptors and under eement that he would become liable for the goods furnished to ceptors, for which the negotiable paper was executed, is liable ne acceptor's failure to pay. Haddock, Blanchard & Co. v. Had-103 N. Y. Supp. 584 (1907).
e Gibbs v. Guaraglia, cited under section 5625.
e Baumeister v. Kuntz, cited under section 5625.

5627. Warranty; where negotiation by delivery, etc.—Every negotiating an instrument by delivery or by a qualified in-ient warrants—
hat the instrument is genuine and in all respects what it pur-to be.
hat he has a good title to it.
hat all prior parties had capacity to contract.
hat he has no knowledge of any fact which would impair lidity of the instrument or render it valueless.
when the negotiation is by delivery only the warranty ex-in favor of no holder other than the immediate transferee.
provisions of sub-division three of this section do not apply rsons negotiating public or corporate securities other than nd notes. (Id., § 65.)

rginia decisions.—Under this section the indorser of a check hich there is a prior forged endorsement is obliged to make it o a subsequent innocent holder for value. Main Street Bank v. rs' Bank, 116 Va. 137, 81 S. E. 24.

5628. Liability of general indorsers.—Every indorser who es without qualification warrants to all subsequent holders in urse—
he matters and things mentioned in sub-divisions one, two, ree of the next preceding section; and
hat the instrument is at the time of his indorsement valid ubsisting.
in addition he engages that on due presentment it shall be ed or paid, or both, as the case may be, according to its and that if it be dishonored and the necessary proceedings honor be duly taken he will pay the amount thereof to the or to any subsequent indorser who may be compelled to (Id., § 66.)

rginia decisions.—Evidence that the endorsers of a negotiable ere not to be bound by their endorsements until the note was t back to them for a final decision on the question whether or ey should become endorsers is inadmissible in an action against y a holder in due course. Colona v. Parksley Nat. Bank, 120 Va. 2 S. E. 979. See Woodward v. Foster, 18 Gratt. 200.
ecisions of other States.—See Leonard v. Draper, cited under sec-326.
n indorser is jointly and severally liable with the maker, and a need not exhaust his remedy against the maker before suing the r. (See this section, although the act is not cited.) Gardner v. , 109 App. Div. 106, New York (1905).

Digitized by Google

See Rockfield v. First Nat. Bk. cited under section 5625.

The indorser of a note made payable to several payees was h not liable to a transferee thereof when the maker without autho from or knowledge of the indorser altered the note before negotiat by striking out the name of one payee and substituting his own name payee thereon. Held, also, that this section did not apply; and e though the transferee of such altered note be considered to be a hol in due course, he is not entitled by virtue of section 5686 to enfo the note against the indorser according to its "original tenor" beca the note as altered never had an inception. First Nat. Bk. of Bro lyn v. Gridley, 112 App. Div. 398, New York (1906).

Sec. 5629. Liability of indorser where paper negotiable by de ery.—Where a person places his indorsement on an instrument gotiable by delivery he incurs all the liabilities of an indors (Id., § 67.)

Sec. 5630. Order in which indorsers are liable.—As respects another, indorsers are liable prima facie in the order in which t indorse; but evidence is admissible to show that as between among themselves they have agreed otherwise. Joint payees joint indorsees who indorse are deemed to indorse jointly and s erally. (Id., § 68.)

Virginia decisions.—The last clause of this sub-section does deprive the indorsers of the right to prove by evidence aliunde t they have made an agreement among themselves which varied the bility imposed by law. Alphin v. Lowman, 115 Va. 441, 79 S. E. 10

The object and effect of this sub-section is but to give statut force to a principle already established. Alphin v. Lowman, 115 441, 79 S. E. 1029.

See editorial on this case, 19 Va. L. Reg. 785.

See notes to section 5760.

Decisions of other States.—Since the passage of the Negotiable struments Law, evidence is admissible, even between indorsers, to sh that as between themselves they have agreed, as to the liability, oth wise than appears upon the note Morgan v. Thompson, 62 Atl. 4 New Jersey (1905).

Under this section, as respects one another, indorsers are liab prima facie, in the order in which they indorse, and under section 56 subd. 4, a valid tender of payment made by a prior party discharges secondarily liable on the instrument.

Where the defendant, who was an accommodation indorser and last indorser on the note sued on, and he was not a judgment deb when judgment was rendered against the other parties to the note, wh judgment was satisfied by a surety on the appeal bond of such judgm debtors, such payment operated to discharge the defendant's liabi on the note. State Bk. v. Kahn, 98 N. Y. Supp. 858, Supreme Co (1906).

See Haddock, B. & Co. v. Haddock, cited under section 5626.

See Wilson v. Hendee, cited under section 5625.

Sec. 5631. Liability of agent or broker.—Where a broker other agent negotiates an instrument without indorsement he curs all the liabilities prescribed by section fifty-six hundred a twenty-seven unless he discloses the name of his principal a the fact that he is acting only as agent. (Id., § 69.)

Digitized by Google

Presentment for Payment.

5632. Effect of want of demand on principal debtor.—Pre-nt for payment is not necessary, except in the case of bank nd certificates of deposit, in order to charge the person pri- liable on the instrument; but if the instrument is, by its payable at a special place, and he is able and willing to pay e at maturity, such ability and willingness are equivalent to er of payment upon his part. But except as herein otherwise ed, presentment for payment is necessary in order to charge awer and indorsers. (Id., § 70.)

visors' Note.—The words "except in the case of bank notes and tes of deposit" are new.

is section as it reads in the uniform negotiable instruments law n justly criticized, because it provides that presentment for pay- not necessary in order to charge the person primarily liable on, trument, saying nothing as to bank notes and certificates of de- The omission of an exception as to bank notes and certificates of was no doubt an oversight. It is true that certificates of deposit ly require the surrender of the certificate when making a demand money, but if a certificate of deposit is to be treated as demand payable without demand, then the statute of limitations would run it from the date of the certificate, which, of course, ought not to law. Dean Ames suggests that this section be amended so as to 'Presentment for payment is not necessary, except in case of bank nd certificates of deposit, in order to charge the person primarily n the instrument." (See Brannan's Negotiable Instruments Law, p. 174.) The revisors fully concurred in this suggestion. This also necessitated a corresponding change in section 5615, and ter section has been so changed as to read: "When an instrument e on demand, other than bank notes and certificates of deposit," ee section 5615 and revisors' note.

ecisions of other States.—See notes to section 5687.

e Welsh v. Kukuk, cited under section 5591.

nder this section and section 5651, a holder of a note exercising tion therein stated, to declare it due, upon non-payment of in- must make presentment and demand for payment, and give notice ndorser. Galbraith v. Shepard, 86 Pac. 1113, Washington (1906).

an action on a note payable on demand at a specified place no d on the maker need be proved, to fix his liability.

his decision is in accordance with the Negotiable Instruments Law, gh it is not cited. See this section. Hyman v. Doyle, 103 N. Y. 778 (1907).

an action against the maker of a negotiable note, payable at a lar time and place, a demand need not be averred or proved. If aker was ready and offered at the time and place specified to pay should plead it and prove it. This section does not change this. ce Oil & R. Co. v. First Nat. Bk., 88 Pac. 182, Colorado (1906).

5633. Presentment where instrument is not payable on de-—Where the instrument is not payable on demand present- must be made on the day it falls due. Where it is payable on id presentment must be made within a reasonable time after sue, except that in the case of a bill of exchange present- for payment will be sufficient if made within a reasonable fter the last negotiation thereof. (Id., § 71.)

Digitized by Google

Decisions of other States.—In an action against the indorser
negotiable promissory note payable on demand, demand made t
months after date of the note is not made within a reasonable t
Merritt v. Jackson (1902), 181 Mass. 69, 62 N. E. 987.

What is a reasonable time for presentment, so as to bind an indo
of a negotiable promissory note payable on demand, under this sect
is a question to be determined by the circumstances of the partic
case. German Am. Bk. v. Mills, 91 N. Y. Supp. 142 (1904).

See Schlessinger v. Schultz, cited under section 5566.

Under this section a note payable on demand must be colle
within a reasonable time, and where a note was indorsed by a t
party and was not negotiated within ten days after its date, presenta
for payment within ten months was held to be within sufficient tim
hold the indorser.

A note payable to the order of the maker, "on demand after d
at a bank designated, is a note payable on demand within section 5
and is not a note payable at a determinate future time within sec
5566.

Under sections 5635 and 5637, a note payable at a bank is prop
presented for payment at the bank though the bank is in the hands
receiver. Schlessinger v. Schultz, 96 N. Y. Supp. 383 (1905).

See Commercial Nat. Bk. v. Zimmerman, cited under section 5
See Plover Svgs. Bk. v. Moodie, cited under section 5747.

Sec. 5634. What constitutes a sufficient presentment.—Pres
ment for payment to be sufficient must be made—

1. By the holder or by some person authorized to receive p
ment on his behalf.

2. At a reasonable hour on a business day.

3. At a proper place as herein defined.

4. To the person primarily liable on the instrument, or if h
absent or inaccessible to any person found at the place where
presentment is made. (Id., § 72.)

Decisions of other States.—Where a note specifies on its face
place where it is payable and is presented there for payment, no pers
demand on the maker is necessary under this section and section 5
Nelson v. Grondahl, 100 N. W. 1093, North Dakota (1904).

Sec. 5635. Place of presentment.—Presentment for paymen
made at the proper place—

1. Where a place of payment is specified in the instrument an
is there presented.

2. Where no place of payment is specified but the address of
person to make payment is given in the instrument and it is th
presented.

3. Where no place of payment is specified and no address is gi
and the instrument is presented at the usual place of business
residence of the person to make payment.

4. In any other case if presented to the person to make paym
wherever he can be found, or if presented at his last known pl
of business or residence. (Id., § 73.)

Decisions of other States.—See Nelson v. Grondahl, cited un
section 5634.

See Schlessinger v. Schultz, cited under sections 5566 and 563

Sec. 5636. Instrument must be exhibited.—The instrument m
be exhibited to the person from whom payment is demanded

Digitized by Google

is paid must be delivered up to the party paying it. (Id.,

637. **Presentment where instrument payable at bank.**—he instrument is payable at a bank presentment for pay-st be made during banking hours unless the person to make has no funds there to meet it at any time during the day, case presentment at any hour before the bank is closed day is sufficient. (Id., § 75.)

sions of other States.—The maker of a negotiable promissory until the close of the banking hours of the bank where the note payable in which to pay it, affirming the prior rule in such cases. Am. Bank v. Milliman (1900), 31 Misc. Rep. 87, 65 N. Y. 2.

Schlessinger v. Schultz, cited under section 5633.

638. **Presentment where principal debtor is dead.**—Where on primarily liable on the instrument is dead and no place ent is specified presentment for payment must be made ersonal representative if such there be and if with the ex-f reasonable diligence he can be found. (Id., § 76.)

sions of other States.—See Reed v. Spear, cited under section

639. **Presentment to persons liable as partners.**—Where the primarily liable on the instrument are liable as partners place of payment is specified presentment for payment may to any one of them even though there has been a dissolu-he firm. (Id., § 77.)

640. **Presentment to joint debtors.**—Where there are sev-sons not partners primarily liable on the instrument and no payment is specified presentment must be made to them ., § 78.)

641. **When presentment not required to charge the drawer.** ntment for payment is not required in order to charge the where he has no right to expect or require that the drawee tor will pay the instrument. (Id., § 79.)

642. **When presentment not required to charge the indorser.** ntment for payment is not required in order to charge an where the instrument was made or accepted for his ac-ation and he has no reason to expect that the instrument paid if presented. (Id., § 80.)

643. **When delay in making presentment is excused.**—De-naking presentment for payment is excused when the de-aused by circumstances beyond the control of the holder imputable to his default, misconduct, or negligence. When se of delay ceases to operate presentment must be made asonable diligence. (Id., § 81.)

isions of other States.—Under this section and section 5748, the of a bank check must present it for payment within a reasonable order to render the indorser liable thereon. Where the payee ck on another bank indorsed and deposited the check in his own

Digitized by Google

bank, received credit for the amount of the check as cash in his account to be checked against with nothing to qualify the effe bank where the check is so deposited becomes its owner, and not agent to collect it for the payee. Where the drawee of a che been discharged from liability on his indorsement by delay of the in in presentment until the check is lost, the drawee does not wa indorsee's delay and renew his obligation as indorser by procuri indorsing a duplicate check at the request of such other bank. Bk. of Evansville, 102 N. W. 329, Wisconsin (1905).

Sec. 5644. When presentment may be dispensed with.—Pr ment for payment is dispensed with—

1. Where after the exercise of reasonable diligence presen as required by this chapter cannot be made.

2. Where the drawee is a fictitious person.

3. By waiver of presentment, express or implied. (Id.,

Decisions of other States.—Under the Negotiable Instrument as well as under prior decisions in Massachusetts, and under t merchant, words or acts of a maker and indorser of a negotiable p sory note which misled and put the holder off his guard, and reas induced him to omit due presentment and notice of non-payment stitute an implied waiver thereof. In re Swift (D. C.; 1901) 106 F

It is for the jury to determine, upon the evidence submitted, w there has been a waiver of presentment for payment and of no dishonor, under this section and section 5671. Torbert v. Montag Pac. 1145, Colorado (1906).

See 14 Va. Law Reg. p. 75 for review of a decision of the Ho Lords in which it was held that "fictitious" as used in the "Bill change Act" means fictitious by pretense of some person who is a to the instrument.

Sec. 5645. When instrument dishonored by non-payment. instrument is dishonored by non-payment when—

1. It is duly presented for payment and payment is refus cannot be obtained; or

2. Presentment is excused and the instrument is overdu unpaid. (Id., § 83.)

Decisions of other States.—See Reed v. Spear, cited under s 5651.

Sec. 5646. Liability of person secondarily liable when instr dishonored.—Subject to the provisions of this chapter, when t strument is dishonored by non-payment an immediate right course to all parties secondarily liable thereon accrues to the er. (Id., § 84.)

Sec. 5647. Time of maturity.—Every negotiable instrum payable at the time fixed therein without grace. When th of maturity falls upon Saturday, Sunday or a holiday, the i ment is payable on the next succeeding business day which a Saturday. Instruments payable on demand may, at the of the holder, be presented for payment before twelve o'clock on Saturday when that entire day is not a holiday. (Id., 1906, p. 366.)

Revisors' Note.—In the second sentence, the words "Saturday "which is not a Saturday" are new, and the words "instruments due or becoming payable on Saturday are to be presented for paym (2484)

Digitized by Google

succeeding business day, except that" contained in Acts 1906, ave been omitted. See comments on this section in Brannan's le Instruments Law (2nd Ed.), p. 99.

648. Time; how computed.—Where the instrument is pay- a fixed period after date, after sight, or after the happening cified event, the time of payment is determined by exclud- day from which the time is to begin to run and by includ- date of payment. (1897-8, p. 896, § 86.)

649. Rule where instrument payable at bank.—Where the ent is made payable at a bank it is equivalent to an order ank to pay the same for the account of the principal debtor (Id., § 87.)

5650. What constitutes payment in due course.—Payment in due course when it is made at or after the maturity of rument to the holder thereof in good faith and without hat his title is defective. (Id., § 88.)

Notice of Dishonor.

5651. To whom notice of dishonor must be given.—Except in otherwise provided, when a negotiable instrument has shonored by non-acceptance or non-payment notice of dis- nust be given to the drawer and to each indorser, and any or indorser to whom such notice is not given is discharged. 89.)

isions of other States.—A notice of protest addressed only to N. Y.," is insufficient where there is no evidence that the indorser, empted to be served with notice, ever lived or was sojourning York, and no inquiry was made to ascertain whether such was Fonseca v. Hartman, 84 N. Y. Supp. 131 (1903).

ler this section the drawer of an ordinary check may, before it is , revoke it and forbid its payment, in which case any subsequent made by the bank, after receipt of such notice not to pay it, is its peril. Pease & Dwyer Co. v. State Nat. Bk., 88 S. W. 172, ee (1905).

ler this section notice of dishonor must be given to charge an , although presentment to the one primarily liable was excused, ection 5645 through his death, and no personal representative n appointed (see 5638). Under sections 5638 and 5658, "rea- diligence" was exercised by the holder, who went two or three the office of the administrator of the deceased maker, to make nent, but was unable to find him there, or at a nearby railroad the seat of his other place of business interests at a time when t be expected to be there, and hence an indorser became liable, ving sufficient notice of dishonor. Held further, that notice of , served at indorser's store, by delivery thereof to his wife, who s his assistant, is sufficient notice. Reed v. Spear, 94 N. Y. 007 (1905).

, also, sections 5632 and 5676.

Rockfield v. First Nat. Bk., cited under 5625.

surety on a note is not entitled to notice of dishonor under this nor is such a surety an indorser under section 5625, but he is y liable, within section 5753. Rouse v. Wooten, 53 S. E. 430, Carolina (1906).

Digitized by Google

See Galbraith v. Shepard, cited under section 5632.
See Deahy v. Choquet, cited under section 5625.
When the drawer of a check stopped its payment, the notice o honor required under this section need not be given to the drawer, section 5676. Scanlon v. Wallach, 102 N. Y. Supp. 1090 (1907).

Sec. 5652. By whom given.—The notice may be given by behalf of the holder or by or on behalf of any party to the in ment who might be compelled to pay it to the holder and upon taking it up would have a right to reimbursement fro party to whom the notice is given. (Id., § 90.)

Decisions of other States.—Under this section and section where a notary gave due notice of protest of a firm note. to the who were makers and, at least in form, subsequent indorsers, inc a notice to defendant who was a member of the firm and accom tion indorser of the note, which notice was mailed to the defenda mediately, although the makers were not authorized, under this s to give a valid notice of protest to the defendant, they were auth to forward it to him as agents of the holder of the note, under s 5653. Traders' Nat. Bk. v. Jones, 93 N. Y. Supp. 768 (1905).

Sec. 5653. Notice given by agent.—Notice of dishonor m given by an agent either in his own name or in the name o party entitled to give notice, whether that party be his pri or not. (Id., § 91.)

Decisions of other States.—See Traders' Nat. Bk. v. Jones, under section 5652.

Sec. 5654. Effect of notice given on behalf of holder.—W notice is given by or on behalf of the holder it enures for the b of all subsequent holders and all prior parties who have a ri recourse against the party to whom it is given. (Id., § 92.)

Sec. 5655. Effect where notice is given by party entitled th —Where notice is given by or on behalf of a party entitled t notice it enures for the benefit of the holder and all parties quent to the party to whom notice is given. (Id., § 93.)

Sec. 5656. When agent may give notice.—Where the instr has been dishonored in the hands of an agent he may either h give notice to the parties liable thereon or he may give not his principal. If he give notice to his principal he must within the same time as if he were the holder, and the pri upon the receipt of such notice has himself the same time for notice as if the agent had been an independent holder. (94.)

Sec. 5657. When notice sufficient.—A written notice nee be signed and an insufficient written notice may be supplem and validated by verbal communication. A misdescription instrument does not vitiate the notice unless the party to the notice is given is in fact misled thereby. (Id., § 95.)

Sec. 5658. Form of notice.—The notice may be in writi merely oral and may be given in any terms which sufficiently tify the instrument and indicate that it has been dishonor

Digitized by Google

ptance or non-payment. It may in all cases be given by
g it personally or through the mails. (Id., § 96.)

isors' Note.—Acts 1906, p. 26, which provides for sending notice nor through the mails in cities and towns, has been omitted this provision is fully covered by sections 5658, 5665 and 5667.

isions of other States.—Notice of dishonor to an indorser who d no address to his signature, mailed to him directed to the ere he resides, is sufficient. Ebling Brewing Co. v. Reinheimer 32 Misc. Rep. 594, 66 N. Y. Supp. 458.

n action against the indorser of a negotiable promissory note Wisconsin, but actually executed, negotiated, and made pay- ndiana, in the absence of evidence to the contrary the note must dered an Indiana contract. The laws of Indiana control upon ions relating to the construction and legal effect of the contract grace and manner of notice to the indorser), while the law of n controls as to the form of the remedy, the conduct of the trial, rules of evidence (the kind and sufficiency of the evidence neces- rove dishonor).

he absence of evidence to the contrary, the presumption is that of Indiana as to what notice of dishonor is necessary to charge is the same as that of Wisconsin.

ertificate of the notary in Indiana, fully showing that the note s presented, that payment thereof was refused, and that it was l, that notice of the protest of "the aforementioned note" (a which was attached) was served on the indorsers by depositing the post office, is sufficient to charge the indorsers. Second k v. Smith (Wis.; 1903). 94 N. W. 664.

Reed v. Spear, cited under section 5651.

er this section and section 5659, service of notice of dishonor e an indorser, a corporation conducting a hotel, by leaving such t the cashier's window, is not enough; it not appearing that service was made upon any officer, of the defendant corpora- hat notice was left with such an officer, or even where it might nably inferred that an officer or agent of the corporation would t. Am. Ex. Bk. v. Am. Hotel Victoria Co., 92 N. Y. Supp. 1006

5659. To whom notice may be given.—Notice of dishonor given either to the party himself or to his agent in that (Id., § 97.)

isions of other States.—See Am. Ex. Bk. v. Am. Hotel Victoria d under section 5658.

660. Notice where party is dead.—When any party is dead death is known to the party giving notice the notice must n to a personal representative if there be one and if with ble diligence he can be found. If there be no personal rep- ive notice may be sent to the last residence or last place of s of the deceased. (Id., § 98.)

isions of other States.—A promissory note made and payable in is a contract governed by the laws of Canada. Under the Cana- ls of Exchange Act, 53 Vict., chapter 33, section 49 (Va. Act, 5660), the mailing of notice of dishonor to an indorser known ead, directed to a post office known to be one at which he had ived his mail while living, is not a good notice of dishonor. ts' Bk. v. Brown, 86 App. Div. N. Y. 599 (1903).

5661. Notice to partners.—Where the parties to be notified tners notice to any one partner is notice to the firm even there has been a dissolution. (Id., § 99.)

Digitized by Google

Sec. 5662. Notice to persons jointly liable.—Notice to join ties who are not partners must be given to each of them unle of them has authority to receive such notice for the others. § 100.)

Sec. 5663. Notice to bankrupt.—Where a party has bee judged a bankrupt or an insolvent, or has made an assignme the benefit of creditors, notice may be given either to the himself or to his trustee or assignee. (Id., § 101.)

Sec. 5664. Time within which notice must be given.—Notic be given as soon as the instrument is dishonored, and unless is excused as hereinafter provided must be given within the fixed by this chapter. (Id., § 102.)

See 11 Va. Law Reg. 689.

Sec. 5665. Where parties reside in same place.—Where th son giving and the person to receive notice reside in the same notice must be given within the following times:

1. If given at the place of business of the person to receive it must be given before the close of business hours on the da lowing.

2. If given at his residence it must be given before the hours of rest on the day following.

3. If sent by mail it must be deposited in the post-office in to reach him in usual course on the day following. (Id., §

Decisions of other States.—Under this section notice to an in that the note had not been paid, given two or three days after due, was too late. Solomon v. Cohen, 94 N. Y. Supp. 502 (1905)

See Deahy v. Choquet, cited under section 5625.

Sec. 5666. Where parties reside in different places.—Whe person giving and the person to receive notice reside in dif places the notice must be given within the following times:

1. If sent by mail it must be deposited in the post-office in to go by mail the day following the day of dishonor, or if be no mail at a convenient hour on that day by the next mail after.

2. If given otherwise than through the post-office then with time that notice would have been received in due course of n it had been deposited in the post-office within the time specif the last subdivision. (Id., § 104.)

See notes to section 5670.

Sec. 5667. When sender deemed to have given due not Where notice of dishonor is duly addressed and deposited post-office the sender is deemed to have given due notice no standing any miscarriage in the mails. (Id., § 105.)

Decisions of other States.—Where notice of dishonor of a n duly addressed and deposited in the post office, the sender is d to have given due notice notwithstanding any miscarriage in the State Bank v. Solomon, 84 N. Y. Supp. 976 (1903).

Sec. 5668. Deposit in post-office; what constitutes.—Not deemed to have been deposited in the post-office when deposi

Digitized by Google

ıch post-office or in any letter-box under the control of office department. (Id., § 106.)

669. **Notice to subsequent parties; time of.**—Where a party notice of dishonor he has after the receipt of such notice time for giving notice to antecedent parties that the holder r the dishonor. (Id., § 107.)

670. **Where notice must be sent.**—Where a party has added ess to his signature notice of dishonor must be sent to that but if he has not given such address then the notice must as follows:

her to the post-office nearest to his place of residence or to -office where he is accustomed to receive his letters; or

ıe live in one place and have his place of business in an- otice may be sent to either place; or

ıe is sojourning in another place notice may be sent to the ıere he is sojourning.

vhere the notice is actually received by the party within specified in this chapter it will be sufficient though not sent dance with the requirements of this section. (Id., § 108.)

isions of other States.—When notice of dishonor is sent by mail efendant indorser, directed to the place where the maker dated the indorser not having added her address to the indorsement, fficient notice of dishonor. Mohlman Co. v. McKane (1901), Div. 546, 69 N. Y. Supp. 1046.

Fonseca v. Hartman, cited under section 5651.

payee of a protested note cannot recover of an indorser who did ive notice of protest until three months thereafter, the notice st having been sent to him by mail addressed to a place at which ot live and which was not his last known address.

e this section; not cited in the opinion.) Albany Trust Co. v. ham, 99 N. Y. Supp. 343 (1906).

5671. **Waiver of notice.**—Notice of dishonor may be waived before the time of giving notice has arrived or after the n to give due notice, and the waiver may be express or im- (Id., § 109.)

isions of other States.—Waiver of notice of dishonor may be or after dishonor, and may be express or implied. Schwartz v. (1899), 90 Md. 136, 44 Atl. 1059. See Turnbull v. Maddux, 587, 13 Atl. 334, confirming antecedent law in Md.

First Nat. Bk., etc., v. Gridley, cited under section 5576.

Torbert v. Montague, cited under section 5644.

5672. **Whom affected by waiver.**—Where the waiver is em- in the instrument itself it is binding upon all parties, but it is written above the signature of an indorser it binds him (Id., § 110.)

5673. **Waiver of protest.**—A waiver of protest, whether in se of a foreign bill of exchange or other negotiable instru- s deemed to be a waiver not only of a formal protest but also sentment and notice of dishonor. (Id., § 111.)

5674. **When notice dispensed with.**—Notice of dishonor is sed with when after the exercise of reasonable diligence it

Digitized by Google

cannot be given to or does not reach the parties sought
charged. (Id., § 112.)

Decisions of other States.—What is "reasonable diligence"
question of fact for the jury. Brewster v. Schrader (1899), 26
Rep. 480, 57 N. Y. Supp. 606.

See Fonseca v. Hartman, cited under section 5651.

Sec. 5675. Delay in giving notice; how excused.—Delay in
ing notice of dishonor is excused when the delay is caused b
cumstances beyond control of the holder or other person se
to give notice under section fifty-six hundred and fifty-two
not imputable to his default, misconduct, or negligence. Whe
cause of delay ceases to operate notice must be given with re
able diligence. (Id., § 113.)

**Revisors' Note.—The words "or other person seeking to give
under section fifty-six hundred and fifty-two," inserted after "h
are new. The reason for this insertion is manifest.**

Sec. 5676. When notice need not be given to drawer.—Not
dishonor is not required to be given to the drawer in either
following cases:

1. Where the drawer and drawee are the same person.

2. Where the drawee is a fictitious person or a person not h
capacity to contract.

3. Where the drawer is the person to whom the instrument i
sented for payment.

4. Where the drawer has no right to expect or require tha
drawee or acceptor will honor the instrument.

5. Where the drawer has countermanded payment. (Id., §

Decisions of other States.—See Scanlon v. Wallach, cited unde
tion 5651. As to whom notice of dishonor must be given, see s
5651.

Sec. 5677. When notice need not be given to indorser.—N
of dishonor is not required to be given to an indorser in eith
the following cases:

1. Where the drawee is a fictitious person or a person not h
capacity to contract and the indorser was aware of the fact
time he indorsed the instrument.

2. Where the indorser is the person to whom the instrum
presented for payment.

3. Where the instrument was made or accepted for his acc
dation. (Id., § 115.)

Sec. 5678. Notice of non-payment where acceptance refu
Where due notice of dishonor by non-acceptance has been
notice of a subsequent dishonor by non-payment is not nec
unless in the meantime the instrument has been accepted
§ 116.)

Sec. 5679. Effect of omission to give notice of non-accepta
An omission to give notice of dishonor by non-acceptance do

Digitized by Google

ce the rights of a holder in due course subsequent to the
n. (Id., § 117.)

5680. When protest need not be made; when must be made; t certificate of protest is evidence.—Where any negotiable ient has been dishonored it may be protested for non-accept- r non-payment, as the case may be; but protest is not re- except in the case of foreign bills of exchange. The cer- of protest of any negotiable instrument shall, in all cases, r such protest be made in this State or not, be prima facie ce of what is stated therein, or at the foot, or on the back , in relation to presentment, demand, dishonor, and notice , and the court shall take judicial notice of the seal of the annexed to such certificate in like manner and with like s if the protest had been of a foreign bill of exchange. (Id., . 395, § 118.)

visors' Note.—The second sentence of this section is taken from 08, p. 395, and is added to this section because considered the ppropriate place for it. It is regarded as a very necessary addi- the section in view of the decision in the case of Corbin v. Bank, 661, 13 S. E. 98.

ction 2850 of the Code of 1887 was amended by Acts 1893-4, p. consequence of the decision in Corbin v. Bank, 87 Va. 661, 13 S. 24 Am. St. Rep. 673, the purpose being to change the rule laid n that case. By Acts 1902-3-4, p. 899, the said section 2850 was d. In 1908, however (Acts 1908, p. 395), the provision was l, and it appears in the revised section above.

e 10 Va. L. Reg. 89; 11 Va. L. Reg. 66; Nelson v. Fotterall, 7 79; Stainback v. Bank, 11 Gratt. 260; Walker v. Turner, 2 Gratt. aughter v. Farland, 31 Gratt. 134.

Discharge of Negotiable Instruments.

5681. How instrument discharged.—A negotiable instrument harged:

y payment in due course by or on behalf of the principal ;

y payment in due course by the party accommodated, where strument is made or accepted for accommodation;

y the intentional cancellation thereof by the holder;

When the principal debtor becomes the holder of the instru- t or after maturity in his own right. (1897-8, p. 896, § 119.)

evisors' Note.—In one of the discussions referred to in the re- note found at the beginning of this chapter (see Brannan's Ne- Instruments Law, 2nd Ed., p. 174), Dean Ames criticizes para- 4 of this section of the original act. This paragraph reads as : "By any other act which will discharge a simple contract for yment of money." Of it Dean Ames says: "If a creditor ac- horse in satisfaction of his claim, not yet matured, the simple t claim is discharged. But if a holder accepts a horse from the before maturity, in satisfaction of the note, the note is not dis- d. The accord and satisfaction gives the maker merely a per- defense, which is cut off the moment the note is transferred to a

Digitized by Google

holder in due course. This sub-section should be cancelled. It w be superfluous, even if it were accurate." The revisors were of opi that paragraph 4 should be omitted. This was done, so that wh now paragraph 4 of section 5681 was formerly paragraph 5 of se 119 of the original act.

Cited but not construed in Nottingham v. Ackiss, 107 Va. 63 S. E. 592.

Decisions of other States.—Under the Laws 1897, ch. 612, 200, sub. 5, providing that a negotiable instrument is discharged the principal debtor becomes the holder in his own right at or after turity; under sub-sec. 191, defining the holder as the payee or ind in possession, and under sub-sec. 192, defining the person prim liable as the person who, by the terms of the instrument, is absol required to pay the note—a demand note is discharged and the m is freed from liability thereon when an endorsee, upon payment of of the amount of the note, voluntarily surrenders it to the maker, though the maker promises at the time to pay the balance of the Schwartzman v. Post, 84 N. Y. Supp. 922 (1903).

Under this section, in case of dishonor of a foreign bill of change made payable in New York, the holder is entitled to recover amount of the draft with interest and protest fees, and is not entitl recover in addition, exchange and re-exchange. Pavenstedt v. N Life Ins. Co., 99 N. Y. Supp. 614 (1906).

See Vanderford v. Farmers' & M. Nat. Bk., etc., cited under tion 5753.

See Cellers v. Meachem, cited under section 5591.

Sec. 5682. When person secondarily liable discharged.—A pe secondarily liable on the instrument is discharged—

1. By any act which discharges the instrument.
2. By the intentional cancellation of his signature by the ho
3. By the discharge of a prior party.
4. By a valid tender of payment made by a prior party.
5. By a release of the principal debtor unless the holder's of recourse against the party secondarily liable is expressly served.
6. By any agreement binding upon the holder to extend the of payment or to postpone the holder's right to enforce the in ment unless made with the assent of the party secondarily li or unless the right of recourse against such party is expressly served. (Id., § 120.)

Virginia decisions.—Cl. 6 of this section is declaratory of the merchant. Cape Charles Bank v. Farmers' Mut. Exchange, 120 Va. 92 S. E. 918.

The question of the existence of such an agreement as is tioned in Cl. 6 of this section is a mixed question of law and fact; when the mutual agreement is to be gathered from the acts of the ties, their situation and the surrounding circumstances, it is for jury to determine what were the intention and understanding which the minds of the parties met, but if the facts and circumsta are all ascertained, whether they constitute such an agreement or is a question of law for the court. Cape Charles Bank v. Farmers' Exchange, 120 Va. 771, 92 S. E. 918.

Payment and acceptance of interest in advance is not in itself an agreement as is contemplated by Cl. 6 of this section, but it is dence tending to prove the existence of the agreement, and in the sence of any other evidence bearing upon the negative of the ques it affords prima facie evidence of the existence of the agreement. S evidence, however, will rebut the prima facie case thus made out, v

Digitized by Google

se is not submitted on the bare facts of the payment and accept- f interest in advance. Cape Charles Bank v. Farmers' Mut. Ex- , 120 Va. 771, 92 S. E. 918.

ne agreement contemplated by Cl. 6 of this section need not be ed. It may be implied from acts, declarations, facts and cir- nces. Its form is immaterial. It may be by parol as well as in . It must, however, be a binding contract enforceable at law or ty. It must be supported by a valuable consideration. It must a definite period, however short. When implied in law it is still act in fact and not in law, and hence an actual meeting of the of the contracting parties is essential to such an agreement, to t within the operation of the statute and common law rule which rmer has enacted. Cape Charles Bank v. Farmers' Mut. Ex- . 120 Va. 771, 92 S. E. 918.

here such a release as is mentioned in Cl. 6 of this section is re- as a defense in an action on a negotiable instrument, the bur- proving the existence of the agreement rests upon the defendant. Charles Bank v. Farmers' Mut. Exchange, 120 Va. 771, 92 S. E

or article upon what constitutes an agreement binding upon the as required by sub-sec. 6, see 11 Va. Law Reg. 102.

ecisions of other States.—See Vanderford v. Farmers' & M. Nat. c., cited under section 5753.

ee Cellers v. Meachem, cited under section 5591.

ee Deahy v. Choquet, cited under section 5625.

nder this section the intentional cancellation of the signature of no is secondarily liable on a negotiable promissory note with the t of the holder releases such person secondarily liable, although be no consideration for such cancellation. McCormick v. Shea. Y. Supp 467.

5683. Right of party who discharged instrument.—Where strument is paid by a party secondarily liable thereon it is scharged, but the party so paying it is remitted to his former as regards all prior parties, and he may strike out his own ll subsequent indorsements and again negotiate the instru- except—

Where it is payable to the order of a third person and has paid by the drawer; and

Where it was made or accepted for accommodation and has paid by the party accommodated. (Id., § 121.)

ecisions of other States.—In an action on a negotiable promissory y an indorsee against an indorser, allegation of payment thereof ubsequent indorser (who is only secondarily liable) is demurrable. h Bank v. Brooks (1901), 63 App. Div. 220, 71 N. Y. Supp. 388. ee Quimby v. Varnum, cited under section 5625.

5684. Renunciation by holder.—The holder may expressly nce his rights against any party to the instrument before, at, er its maturity. An absolute and unconditional renunciation s rights against the principal debtor made at or after the ity of the instrument discharges the instrument. But a re- ation does not affect the rights of a holder in due course with- otice. A renunciation must be in writing unless the instru- is delivered up to the person primarily liable thereon. (Id., .)

ecisions of other States.—Where the members of a firm endorse dually a note given by the firm, they are indorsers, with all the

Digitized by Google

liabilities of indorsers, and the holder of such note may covenant
the firm not to sue it on the note, and yet he may reserve his ri
against the indorsers. Faneuil Hall Nat. Bk. v. Meloon, 183 Mass.
(1903), 66 N. E. Rep. 410.

Under this section where the payee of a note retained it, and a
his death it was found among his papers in an envelope with a wri
signed by the payee addressed to his executors stating that he wis
the inclosed note to be canceled in case of his death, "and if the
does not allow it, I wish you to notify my heirs that it is my wish
orders." The writing was not a valid renunciation and the note
mained a subsisting obligation. Leask v. Dew, 92 N. Y. Supp.
(1905).

Under this section the release of a surety on a note cannot be sh
by parol; the word "renunciation" being used in the sense of releas
must be in writing. Baldwin v. Daly, 83 Pac. 724, Washington (1906

See Cellers v. Meachem, cited under section 5591.

Sec. 5685. Cancellation; unintentional; burden of proof.—A
cellation made unintentionally or under a mistake or without
authority of the holder is inoperative; but where an instrum
or any signature thereon appears to have been cancelled the bur
of proof lies on the party who alleges that the cancellation
made unintentionally or under a mistake or without author
(Id., § 123.)

Decisions of other States.—See First Nat. Bk., etc., v. Gridley,
under section 5576.

See Gilley v. Harrell, cited under section 5563.

Sec. 5686. Alteration of instrument; effect of.—Where a neg
able instrument is materially altered without the assent of
parties liable thereon it is avoided except as against a party
has himself made, authorized, or assented to the alteration
subsequent indorsers.

But when an instrument has been materially altered and i
the hands of a holder in due course not a party to the altera
he may enforce payment thereof according to its original te
(Id., § 124.)

Virginia decisions.—This section is but declaratory of pre-exis
law. Hoffman v. Bank, 99 Va. 480, 39 S. E. 134.

Decisions of other States.—In two actions against the maker of
negotiable promissory notes there was conflicting testimony as to whe
the words "with interest" were on the notes when they were negoti
or were added afterwards. Upon dismissal of the complaints and
peal from judgments for the defendants, it appeared that at the
the attention of the court had not been drawn to the Negotiable In
ments Law in force in New York. See Laws 1897, ch. 612, sec.
(Va. Act, sec. 5686), upon the effect of the alteration of a negoti
instrument and changing the old rule. Judgments reversed and
trials ordered. Mut. Loan Assn., Appt. v. Lesser, Respt., 76 App.
N. Y. 614 (1902).

A holder in due course of a negotiable instrument who was n
party to the alteration made therein without the assent of all the pa
liable thereon may enforce payment thereof according to its orig
tenor.

The fact that the payee's endorsement of a negotiable promis
note was forged does not excuse one who subsequently endorsed the
for the accommodation of the maker from liability to a subsequent
dorsee and holder in due course who was compelled to take up the
before maturity and who had it protested for non-payment. See
5614, 5618, 5621; Packard v. Windholz, 40 Misc. Rep. N. Y. 347 (19
(2494)

Digitized by Google

dgment affirmed. See 88 App. Div. 365. Nov. Term, 1903, citing secs. 5586-5591, and holding that one who indorsed a promis-ote for the maker's accommodation, knowing the note is to be r the maker's benefit, is not relieved from liability to one to whom ker negotiated the note for value, simply because the latter knew accommodation nature of the indorsement.

is not a material alteration of a draft to add a word of descrip-nen it is intended by the parties that the paper shall go to the e in the exact capacity or relationship indicated by the title af-The Negotiable Instruments Law (in force in New York) is not ned. See this section and section 5687. Birmingham Trust & . v. Whitney, 88 N. Y. Supp. 578 (1904).

nder this section where the payee of defendant's check, represent-vas lost, received and cashed one in place of it and then changed e of the first check so as to make it dated ten days later than nade, the plaintiff, who became its owner in due course, was held ntitled to recover on it. Moskowitz v. Deutsch, 92 N. Y. Supp. 905).

e Thorpe v. White, cited under section 5626.

e material alteration of a note after execution and delivery ren-wholly void, except in favor of a holder in due course not con-with the alteration, under this section. Hecht v. Shenners, 105 309, Wisconsin (1905).

hen an instrument has been materially altered and is in the hands lder in due course not a party to the alteration, he may enforce t thereof according to its original tenor.

note made in Ohio and indorsed in New York is decided under of New York as to the indorser. Colonial Nat. Bk. v. Duerr, 95 Supp. 810 (1905).

e First Nat. Bk., etc., v. Gridley, cited under section 5576.

e First Nat. Bk., etc., v. Gridley, cited under section 5628.

e American Bk. v. McComb, cited under section 5614.

though this section provides that if a negotiable instrument is lly altered without the consent of the parties liable thereon, it led, except as against one who has authorized or assented to the and subsequent indorsers, yet a holder for value can recover in gainst an indorser of a negotiable promissory note for $75, raised ne indorsement to $375, the court resting its decision upon the that the defendant indorser negligently left the note in such on that the fraudulent changes could be easily made, quoting pproval Young v. Grote, 4 Bing. 253, a case spoken of by English as a fountain of bad law. See Bigelow, The Law Bills, Notes & s (2d ed.), 220, and also Schofield v. The Earl of Londesbor-App. Cases, L. R. 1896, 514, to the contrary, and the better law. be hoped that this case will be carried to the court of last re-d reversed. The case of Young v. Grote is not applicable be-he clerk who raised the check was the agent of the drawer and r. Nat. Bk. of Albany v. Lester, 104 N. Y. Supp. 418 (1907).

ne maker of a negotiable note who negligently fills out a blank o that additional words and figures can be inserted without crowd-iable to a purchaser for value for the full amount of the note as d; and this is not changed by this section. Nat. Ex. Bk. of Al-Lester, 104 N. Y. Supp. 418 (1907).

e notes to section 5687.

5687. What constitutes a material alteration.—Any altera-hich changes—

he date.

he sum payable, either for principal or interest.

he time or place of payment.

he number or the relations of the parties.

Digitized by Google

5. The medium or currency in which payment is to be made.

—Or which adds a place of payment where no place of payme is specified, or any other change or addition which alters the eff of the instrument in any respect is a material alteration. (Id. 125.)

Virginia decisions.—The bank, without the knowledge or cons of the payee of a negotiable promissory note, but not indorsed by h struck out his name as payee, and inserted another name. Held, t was a material alteration under this statute and under the law merch that avoided the note as to such payee upon suit by bank. Hoffman Bank (1901), 99 Va. 480, 39 S. E. 134.

Decisions of other States.—See Birmingham T. & S. Co. v. Whitn cited under section 5686.

A bill in equity seeking relief on the ground of alteration of a c tain negotiable instrument should describe the alteration, that the co may see whether it was a material alteration as a matter of law. Jeff v. Rosenfeld (1901), 179 Mass. 506, 61 N. E. 49.

BILLS OF EXCHANGE.

Form and Interpretation.

Sec. 5688. Bill of exchange defined.—A bill of exchange is unconditional order in writing addressed by one person to anoth signed by the person giving it, requiring the person to whom it addressed to pay on demand or at a fixed or determinable fut time a sum certain in money to order or to bearer. (Id., § 12

Decisions of other States.—A draft which has no time of paym expressed, and is not payable to order or bearer, is non-negotia Westberg v. Chicago Lumber Co. (1903), 117 Wis. 589, 94 N. W. 5

For note of case as to what law governs as to endorsement o foreign bill of exchange, see 11 Va. Law Reg. 145.

Under this section and sections 5714 and 5747, where a negoti instrument was drawn by the seller of iron on the buyer, who reside a foreign country, which, with the bill of lading attached, was indor for discount, it was a foreign bill of exchange and not a check. Whe foreign bill of exchange was presented for payment and payment formally demanded and refused, but the bill was not duly protested non-payment, the drawer was discharged from liability to the indor Amsinck v. Rogers, 93 N. Y. Supp. 37 (1905).

A drawee of a check is not liable to the holder until it accept promises to pay in writing, under this section and sections 5747, 5 and 5751.

This action was based upon a parol promise (by telephone) to the check. But as a check is a bill of exchange drawn on a bank payable on demand, it is a species of bill, and although it need not presented for acceptance to render the parties thereto liable, yet, a does not operate as an assignment of any part of the fund to the cr of the drawer, with the bank, and the drawee bank is not liable to holder unless and until it accepts or certifies the check, and as, ex as otherwise provided and there is no exception, the provisions of Negotiable Instruments Law, applicable to a bill of exchange pay on demand, apply to a check, the provision applicable to a bill of change, that acceptance or certification must be in writing, applies to a check. Van Buskirk v. State Bk. of Rocky Ford, 83 Pac. 778, orado (1905).

Sec. 5689. Bill not an assignment of funds in hands of drawe

—A bill of itself does not operate as an assignment of the fu

Digitized by Google

hands of the drawee available for the payment thereof, and rawee is not liable on the bill unless and until he accepts me. (Id., § 127.)

irginia decisions.—The acceptance of a check must be in writing, by the bank, to afford a cause of action against it; a check does erate as an assignment of the fund on deposit and the bank is not to the holder until it accepts or certifies the check. Balto. & O. v. First Nat. Bank, 102 Va. 753, 47 S. E. 837.

ee 10 Va. L. Reg. 190, 193 and note.

ee Jones v. Crumpler, 119 Va. 143, 89 S. E. 232, cited under sec- 696.

ecisions of other States.—Under this section and section 5694 a aint in an action on an order given by a railroad contractor on lant railroad company, alleging that defendant received and ac- the order, and promised and agreed to retain out of moneys due become due to the contractor, the amount of the order, etc., but to allege defendant's written acceptance thereof, did not state a of action against the defendant. Wadhams v. Portland V. & Y. . 79 Pac. 597, Washington (1905).

. 5690. Bill addressed to more than one drawee.—A bill may ldressed to two or more drawees jointly, whether they are ers or not, but not to two or more drawees in the alternative succession. (Id., § 128.)

. 5691. Inland and foreign bills of exchange.—An inland bill change is a bill which is or on its face purports to be both n and payable within this State. Any other bill is a foreign Unless the contrary appears on the face of the bill the holder treat it as an inland bill. (Id., § 129.)

. 5692. When bill may be treated as promissory note.—Where bill drawer and drawee are the same person, or where the ee is a fictitious person or a person not having capacity to act, the holder may treat the instrument at his option either ill of exchange or a promissory note. (Id., § 130.)

. 5693. Drawee in case of need.—The drawer of a bill and ndorser may insert thereon the name of a person to whom older may resort in case of need—that is to say, in case the s dishonored by non-acceptance or non-payment. Such per- s called the referee in case of need. It is in the option of older to resort to the referee in case of need or not as he see fit. (Id., § 131.)

Acceptance.

. 5694. Acceptance; how made, etc.—The acceptance of a s the signification by the drawee of his assent to the order of drawer. The acceptance must be in writing and signed by rawee. It must not express that the drawee will perform his ise by any other means than the payment of money. (Id., §

Virginia decisions.—See Balto. & O. R. Co. v. First Nat. Bank, cited section 5689.

Digitized by Google

Decisions of other States.—See Izzo v. Luddington, cited under tion 5563.

See Wadhams v. Portland, cited under section 5689.

See Seattle Shoe Co. v. Packard, cited under section 5580.

Sec. 5695. Holder entitled to acceptance on face of bill.— holder of a bill presenting the same for acceptance may rec that the acceptance be written on the bill, and if such reque refused may treat the bill as dishonored. (Id., § 133.)

Sec. 5696. Acceptance by separate instrument.—Where ar ceptance is written on a paper other than the bill itself it does bind the acceptor except in favor of a person to whom it is sh and who on the faith thereof receives the bill for value. (I 134.)

Virginia decisions.—The drawee of a draft wrote the followi a letter to the drawer: "We phoned the bank to send over your yesterday. They will send it over today." Held, not an accepta but even if it could be considered as such that under this sectio letter would not bind the drawee in favor of a person to whom the ter was never shown, and who did not, on the faith thereof, receiv draft for value. Jones v. Crumpler, 119 Va. 143, 89 S. E. 232.

Decisions of other States.—Under Gen. St. Kansas 1901, secs. 548, the drawee of a bank check cannot be held liable upon a cla contract of acceptance external to the bill unless the language clearly and unequivocally imports an absolute promise to pay.

See this section, which is similar to the Kansas secs. 547, The Negotiable Instruments Law is not referred to in this opinion though in force in Kansas since June 8, 1905, probably because checks were dated October 15, 1903. First Nat. Bk. of Atchinso Commercial Svgs. Bk., 87 Pac. 746, Kansas (1906)

Sec. 5697. Promise to accept; when equivalent to acceptan An unconditional promise in writing to accept a bill before drawn is deemed an actual acceptance in favor of every person upon the faith thereof receives the bill for value. (Id., § 135

Sec. 5698. Time allowed drawee to accept.—The drawee i lowed twenty-four hours after presentment in which to d whether or not he will accept the bill, but the acceptance if g dates as of the day of presentation. (Id., § 136.)

Sec. 5699. Liability of drawee retaining or destroying b Where a drawee to whom a bill is delivered for acceptance des the same or refuses within twenty-four hours after such deliver within such other period as the holder may allow to return bill accepted or non-accepted to the holder he will be deeme have accepted the same. (Id., § 137.)

Decisions of other States.—Mere retention of a bill of exch by the drawee to whom it has been delivered for acceptance is equivalent to acceptance. It must be shown in addition that there either destruction or refusal to return to the holder, if within the st or some circumstances, contractual or tortious, to arouse estoppel, reason of non-negotiability, the instrument is governed only by common law, and where the facts are in dispute it is a question fo jury. Westberg v. Chicago Lumber Co. (1903), 117 Wis. 589, 94 N 572, confirming the antecedent cases.

Sec. 5700. Acceptance of incomplete bill.—A bill may be cepted before it has been signed by the drawer, or while ot

Digitized by Google

incomplete, or when it is over-due, or after it has been dis-
ed by a previous refusal to accept, or by non-payment. But
a bill payable after sight is dishonored by non-acceptance
he drawee subsequently accepts it the holder, in the absence
y different agreement, is entitled to have the bill accepted as
e date of the first presentment. (Id., § 138.)

. 5701. **Kinds of acceptances.**—An acceptance is either gen-
or qualified. A general acceptance assents without qualifi-
n to the order of the drawer. A qualified acceptance in ex-
terms varies the effect of the bill as drawn. (Id., § 139.)

. 5702. **What constitutes a general acceptance.**—An accept-
to pay at a particular place is a general acceptance unless it
ssly states that the bill is to be paid there only and not else-
e. (Id., § 140.)

. 5703. **Qualified acceptance.**—An acceptance is qualified,
is:

Conditional—that is to say, which makes payment by the
tor dependent on the fulfillment of a condition therein stated.

Partial—that is to say, an acceptance to pay part only of the
nt for which the bill is drawn.

Local—that is to say, an acceptance to pay only at a particular

Qualified as to time.

The acceptance of some one or more of the drawees but not
. (Id., § 141.)

. 5704. **Rights of parties as to qualified acceptance.**—The
r may refuse to take a qualified acceptance, and if he does
btain an unqualified acceptance he may treat the bill as dis-
ed by non-acceptance. Where a qualified acceptance is taken
rawer and indorsers are discharged from liability on the bill
s they have expressly or impliedly authorized the holder to
a qualified acceptance or subsequently assent thereto. When
rawer or an indorser receives notice of a qualified acceptance
ust within a reasonable time express his dissent to the holder
will be deemed to have assented thereto. (Id., § 142.)

Presentment for Acceptance.

. 5705. **When presentment for acceptance must be made.**—
ntment for acceptance must be made—

Where the bill is payable after sight or in any other case where
ntment for acceptance is necessary in order to fix the ma-
of the instrument; or

Where the bill expressly stipulates that it shall be presented
ceptance; or

Where the bill is drawn payable elsewhere than at the resi-
or place of business of the drawee.

Digitized by Google

In no other case is presentment for acceptance necessary i
der to render any party to the bill liable. (Id., § 143.)

Decisions of other States.—See Van Buskirk v. State Bk., etc., under section 5688.

Sec. 5706. When failure to present releases drawer and indo—Except as herein otherwise provided the holder of a bill w is required by the next preceding section to be presented fo ceptance must either present it for acceptance or negotiate it in a reasonable time. If he fail to do so the drawer and a dorsers are discharged. (Id., § 144.)

Sec. 5707. Presentment; how made.—Presentment for accept must be made by or on behalf of the holder at a reasonable on a business day and before the bill is overdue to the draw some person authorized to accept or refuse acceptance on hi half; and

1. Where a bill is addressed to two or more drawees wh not partners presentment must be made to them all unless has authority to accept or refuse acceptance for all, in which presentment may be made to him only.

2. Where the drawee is dead presentment may be made t personal representative.

3. Where the drawee has been adjudged a bankrupt or a solvent or has made an assignment for the benefit of creditors sentment may be made to him or to his trustee or assignee. § 145.)

Sec. 5708. On what days presentment may be made.—A bill be presented for acceptance on any day on which negotiable in ments may be presented for payment under the provisions of tions fifty-six hundred and thirty-four and fifty-six hundred forty-seven. When Saturday is not otherwise a holiday pre ment for acceptance may be made before twelve o'clock noo that day. (Id., § 146.)

Sec. 5709. Presentment; where time is insufficient.—Where holder of a bill drawn payable elsewhere than at the place of ness or the residence of the drawee has not time with the exerci reasonable diligence to present the bill for acceptance before senting it for payment on the day that it falls due the delay ca by presenting the bill for acceptance before presenting it for ment is excused and does not discharge the drawers and indo (Id., § 147.)

Sec. 5710. When presentment is excused.—Presentment fo ceptance is excused and a bill may be treated as dishonore non-acceptance in either of the following cases:

1. Where the drawee is dead or has absconded or is a ficti person or a person not having capacity to contract by bill.

2. Where after the exercise of reasonable diligence present cannot be made.

Digitized by Google

ere although presentment has been irregular acceptance
refused on some other ground. (Id., § 148.)

5711. When dishonored by non-acceptance.—A bill is dis-
by non-acceptance—

en it is duly presented for acceptance and such an accept-
s prescribed by this chapter is refused or cannot be obtained;

en presentment for acceptance is excused and the bill is
pted. (Id., § 149.)

712. Duty of holder where bill not accepted.—Where a bill
presented for acceptance and is not accepted within the
ed time the person presenting it must treat the bill as dis-
by non-acceptance or he loses the right of recourse against
wer and indorsers. (Id., § 150.)

5713. Rights of holder where bill not accepted.—When a
dishonored by non-acceptance an immediate right of re-
against the drawers and indorsers accrues to the holder and
entment for payment is necessary. (Id., § 151.)

Protest.

5714. In what cases protest necessary.—Where a foreign bill
ng on its face to be such is dishonored by non-acceptance it
e duly protested for non-acceptance, and where such a bill
has not previously been dishonored by non-acceptance is
red by non-payment it must be duly protested for non-
t. If it is not so protested the drawer and indorsers are
ged. Where a bill does not appear on its face to be a for-
l protest thereof in case of dishonor is unnecessary. (Id.,

note of case as to protest of foreign bill of exchange, see 11
Reg. 145.
Gregory's Forms, Nos. 34, 35, 36.
Amsinck v. Rogers, cited under section 5688.

5715. Protest; how made.—The protest must be annexed to
or must contain a copy thereof, and must be under the hand
l of the notary making it and must specify—
e time and place of presentment.
e fact that presentment was made and the manner thereof.
e cause or reason for protesting the bill.
e demand made and the answer given, if any, or the fact
e drawee or acceptor could not be found. (Id., § 153.)

5716. Protest; by whom made.—Protest may be made by—
notary public; or
any respectable resident of the place where the bill is
red in the presence of two or more credible witnesses. (Id.,

Digitized by Google

Sec. 5717. Protest; when to be made.—When a bill is prote such protest must be made on the day of its dishonor unless c is excused as herein provided. When a bill has been duly n the protest may be subsequently extended as of the date of noting. (Id., § 155.)

Sec. 5718. Protest; where made.—A bill must be protested the place where it is dishonored, except that when a bill dr payable at the place of business or residence of some person o than the drawee has been dishonored by non-acceptance it be protested for non-payment at the place where it is expre to be payable, and no further presentment for payment to or mand on the drawee is necessary. (Id., § 156.)

Sec. 5719. Protest both for non-acceptance and non-payme A bill which has been protested for non-acceptance may be su quently protested for non-payment. (Id., § 157.)

Sec. 5720. Protest before maturity where acceptor insolve Where the acceptor has been adjudged a bankrupt or an insol or has made an assignment for the benefit of creditors before bill matures the holder may cause the bill to be protested for ter security against the drawer and indorsers. (Id., § 158.)

Sec. 5721. When protest dispensed with.—Protest is dispe with by any circumstances which would dispense with notice of honor. Delay in noting or protesting is excused when dela caused by circumstances beyond the control of the holder and imputable to his default, misconduct, or negligence. When cause of delay ceases to operate the bill must be noted or prote with reasonable diligence. (Id., § 159.)

Sec. 5722. Protest where bill is lost, etc.—Where a bill is los destroyed or is wrongly detained from the person entitled to it protest may be made on a copy or written particulars the (Id., § 160.)

Acceptance for Honor.

Sec. 5723. When bill may be accepted for honor.—Where a of exchange has been protested for dishonor by non-acceptanc protested for better security and is not overdue any person being a party already liable thereon may, with the consent of holder, intervene and accept the bill supra protest for the hono any party liable thereon or for the honor of the person for w account the bill is drawn. The acceptance for honor may be part only of the sum for which the bill is drawn, and where t has been an acceptance for honor for one party there may further acceptance by a different person for the honor of anc party. (Id., § 161.)

Sec. 5724. Acceptance for honor; how made.—An acceptanc honor supra protest must be in writing and indicate that it i

Digitized by Google

ce for honor and must be signed by the acceptor for honor.
62.)

725. **When deemed to be an acceptance for honor of the** —Where an acceptance for honor does not expressly state se honor it is made it is deemed to be an acceptance for r of the drawer. (Id., § 163.)

726. **Liability of acceptor for honor.**—The acceptor for hon- le to the holder and to all parties to the bill subsequent to y for whose honor he has accepted. (Id., § 164.)

727. **Agreement of acceptor for honor.**—The acceptor for such acceptance engages that he will on due presentment bill according to the terms of his acceptance: provided, it have been paid by the drawee: and provided also, that it e been duly presented for payment and protested for non- and notice of dishonor given to him. (Id., § 165.)

728. **Maturity of bill payable after sight; accepted for hon-** ere a bill payable after sight is accepted for honor its ma- calculated from the date of the noting for non-acceptance from the date of the acceptance for honor. (Id., § 166.)

729. **Protest of bill accepted for honor, etc.**—Where a dis- bill has been accepted for honor supra protest or contains nce in case of need it must be protested for non-payment t is presented for payment to the acceptor for honor or n case of need. (Id., § 167.)

730. **Presentment for payment to acceptor for honor; how** Presentment for payment to the acceptor for honor must be follows:

t is to be presented in the place where the protest for non- t was made it must be presented not later than the day g its maturity.

it is to be presented in some other place than the place was protested then it must be forwarded within the time in section fifty-six hundred and sixty-six. (Id., § 168.)

731. **When delay in making presentment is excused.**—The ns of section fifty-six hundred and forty-three apply where delay in making presentment to the acceptor for honor or in case of need. (Id., § 169.)

5732. **Dishonor of bill by acceptor for honor.**—When the ishonored by the acceptor for honor it must be protested for ment by him. (Id., § 170.)

Payment for Honor.

5733. **Who may make payment for honor.**—Where a bill n protested for non-payment any person may intervene and supra protest for the honor of any person liable thereon or

Digitized by Google

for the honor of the person for whose account it was drawn. § 171.)

Sec. 5734. Payment for honor; how made.—The payment honor supra protest in order to operate as such and not as a voluntary payment must be attested by a notarial act of h which may be appended to the protest or form an extension (Id., § 172.)

Sec. 5735. Declaration before payment for honor.—The not act of honor must be founded on a declaration made by the for honor or by his agent in that behalf declaring his intenti pay the bill for honor and for whose honor he pays. (Id., § 17

Sec. 5736. Preference of parties offering to pay for hon Where two or more persons offer to pay a bill for the honor o ferent parties the person whose payment will discharge most ties to the bill is to be given the preference. (Id., § 174.)

Sec. 5737. Effect on subsequent parties where bill is paid for or.—Where a bill has been paid for honor all parties subseque the party for whose honor it is paid are discharged, but the for honor is subrogated for and succeeds to both the rights duties of the holder as regards the party for whose honor he and all parties liable to the latter. (Id., § 175.)

Sec. 5738. Where holder refuses to receive payment supra test.—Where the holder of a bill refuses to receive payment protest he loses his right of recourse against any party who have been discharged by such payment. (Id., § 176.)

Sec. 5739. Rights of payer for honor.—The payer for hon paying to the holder the amount of the bill and the notaria penses incidental to its dishonor is entitled to receive both th itself and the protest. (Id., § 177.)

Bills in Sets.

Sec. 5740. Bills in sets constitute one bill.—Where a bill is d in a set, each part of the set being numbered and containing a ence to the other parts, the whole of the parts constitute one (Id., § 178.)

Sec. 5741. Rights of holders where different parts are negot —Where two or more parts of a set are negotiated to different ers in due course the holder whose title first accrues is as bet such holders the true owner of the bill. But nothing in this se affects the rights of a person who in due course accepts or the part first presented to him. (Id., § 179.)

Sec. 5742. Liability of holder who indorses two or more pa a set to different persons.—Where the holder of a set indorse or more parts to different persons he is liable on every such and every indorser subsequent to him is liable on the part h

Digitized by Google

f indorsed as if such parts were separate bills. (Id., §

5743. Acceptance of bills drawn in sets.—The acceptance e written on any part, and it must be written on one part If the drawee accepts more than one part and such accepted are negotiated to different holders in due course he is liable ry such part as if it were a separate bill. (Id., § 181.)

5744. Payment by acceptor of bills drawn in sets.—When eptor of a bill drawn in a set pays it without requiring the earing his acceptance to be delivered up to him and that part urity is outstanding in the hands of a holder in due course he e to the holder thereon. (Id., § 182.)

5745. Effect of discharging one of a set.—Except as herein ise provided, where any one part of a bill drawn in a set is rged by payment or otherwise the whole bill is discharged. 183.)

PROMISSORY NOTES AND CHECKS.

5746. Promissory note defined.—A negotiable promissory ithin the meaning of this chapter is an unconditional prom- writing made by one person to another, signed by the maker, ng to pay on demand or at a fixed or determinable future sum certain in money to order or to bearer. Where a note wn to the maker's own order it is not complete till indorsed . (Id., § 184.)

rginia decisions.—This section is but declaratory of a principle ersal application. Hoffman v. Bank, 99 Va. 480, 39 S. E. 134.

cisions of other States.—A promissory note, stating, "Having use of a money loss to my friend ....., I have given her $3,000. this amount in trust for her one year after date, or thereafter, on l, I promise to pay to the order of ..... her heirs or assigns, housand dollars with interest,' as it did not conclusively appear face of the instrument that there was no consideration, imports deration sufficient to authorize recovery in the absence of any e to rebut it, following Carnwright v. Gray, 127 N. Y. 92; Hickok ting, 86 N. Y. Supp. 1059 (1904).

e Colborn v. Arbecam, cited under section 5578.

nder this section, providing that "where a note is drawn to the s own order, it is not complete until indorsed by him," a com- on such a note, failing to allege the maker's indorsement, is fatal- ctive. Simon v. Mintz, 101 N. Y. Supp. 86 (1906).

nder this section a note dated, signed by one person promising and severally to pay to D. L. or order a sum stated in sixty days, ble and payable at M. Bank with interest at 6 per cent. per annum, gotiable promissory note.

nder section 5619, one holding a negotiable promissory note in urse for a valuable consideration without notice of any defect recover thereon when such note was given for a gambling debt, ntucky Statute of 1903, sec. 1955, declaring all gambling debts void.

t see Wirt v. Stubblefield, 17 App. Cas. D. C. 283, contra, under

Digitized by Google

the Negotiable Instruments Law. See also Bayley v. Taber, 5 Mass (1809); Alexander v. Hazelrigg, 97 S. W. 353, Kentucky (1906).

Sec. 5747. Check defined.—A check is a bill of exchange d on a bank payable on demand. Except as herein otherwise pr ed, the provisions of this chapter applicable to a bill of exch payable on demand apply to a check. (Id., § 185.)

Virginia decisions.—See Baltimore & Ohio R. R. Co. v. First Bk., cited under section 5685.

For note of case as to what law governs as to endorsement o eign bill of exchange, see 11 Va. Law Reg. 145.

The acceptance of a check must be in writing, and signed b bank, in order to afford a cause of action against it. B. & O. R. Bank, 102 Va. 753, 10 Va. Law Reg. 190, 193, and note, 47 S. E.

Decisions of other States.—See Gordon v. Levine, cited under tion 5754.

Under this section and sections 5633 and 5754, where a check indorsed to a bank and was forwarded to various banks for colle in accordance with the regular custom of business, sufficient dili was held to have been exercised to charge the indorser, althoug mand might have been more promptly made if other and extraord means had been resorted to. Plover Svgs. Bk. v. Moodie, 110 N. W Iowa (1906).

See Amsinck v. Rogers, cited under section 5688.

A post-dated check is a negotiable instrument, and is subject t laws relating to negotiable instruments (this section and section 5 Where post-dated checks were deposited in a bank, which took th good faith, paying full value with no notice of any equities betwee drawer and the one to whose credit they were deposited, such eq were no defense in an action by the bank against the drawer. T dorsee of a check after maturity, with notice of defenses, is prot where he received it from a party who received it before maturit without knowledge of any defect. Symonds v. Riley, 74 N. E. Massachusetts (1905).

See Schlesinger v. Kurzrok, cited under section 5592.

See Van Buskirk v. State Bk., etc., cited under section 5688

Checks drawn on plaintiff's bank were paid by allowance of at Clearing-House. Upon discovery that the drawer had no depos demand was made on the indorser of the checks until action was br against him six days later. Held, under this section and section plaintiff could not recover of the indorser. State Bk v. Weiss, 91 Supp. 276 (1904).

Sec. 5748. Within what time a check must be presente check must be presented for payment within a reasonable time its issue, or the drawer will be discharged from liability th to the extent of the loss caused by the delay. The death of the er, however, shall not operate as a revocation of the authority bank upon which it is drawn to pay the check if it be presente payment within two weeks from the date of the death of the dr Such bank shall retain for a period of two weeks after know of the death of the depositor any money standing upon its bo books to the credit of such depositor, and after paying thereou checks which may be presented within said period of two shall, upon demand, pay the residue to the persons entitled th in the manner prescribed by law. (Id., § 186; 1906, p. 212; 19 395; 1910, p. 563.)

Revisors' Note.—The first sentence of this section is section the act as found in Acts 1897-98, pp. 896-918. The residue of th (2506)

Digitized by Google

taken from Acts 1908, p. 395, amending Acts 1906, p. 212. In the term "bank or banker" is used in several places. In the the words "or banker" are omitted in each instance, because sec. 52 defines the meaning of "bank," which includes "banker." The section of the act is also omitted as unnecessary, because the ction plainly applies only to checks. The act required the bank n the money for a period of two weeks after NOTICE of the death depositor. In the revised section NOTICE is changed to LEDGE.

cisions of other States.—See Gordon v. Levine, cited under sec- 54.

here a cashier's check was issued May 18, 1904, and indorsed May 6, the time was not unreasonable, under this section.

antecedent debt constitutes value under section 5587. Where e of one who negotiated an instrument was defective, the burden he holder to show that he, or the one under whom he claims, ac title as a holder in due course, under section 5621. Singer Mfg. Summers, 55 S. E. 522, North Carolina (1906).

e Symonds v. Riley, cited under section 5747.

e Aebi v. Bk of Evansville, cited under section 5643.

5749. Certification of check; effect of.—Where a check is d by the bank on which it is drawn the certificate is equiv- o an acceptance, and the check shall be charged to the draw- count. (1897-8, p. 896, § 187.)

visors' Note.—The words "and the check shall be charged to the 's account" are taken from Acts 1910, p. 563.

ted but not construed, White v. Bonney, 110 Va. 864, 68 S E.

cisions of other States.—Where a bank, at the request of a bona lder for value, certifies a check drawn to order, and there are no between the maker and the bank, the holder can recover of the hough the maker has not indorsed the check to him. Meuer v. Nat. Bk., 86 N. Y. Supp. 701 (1904). (Affirmed, 88 N. Y. Supp. y 13, 1904.)

e Schlesinger v. Kurzrok, cited under section 5592.

nder this section and section 5750, when a creditor received a rom his debtor and procured its certification by the bank on which drawn, it was held to be a payment to the amount of the check. is Paper Co. v. Tonowanda B. & P. Co., 94 N. Y. Supp. 946 (1905).

indorser of negotiable paper does not warrant to the drawee the eness of the maker's signature, but such warranty only extends to ient holders in due course of trade.

e drawee of a check, by accepting it, makes himself a guarantor . Farmers' & Merchants' Bk. v. Bk. of Rutherford, 88 S. W. ennessee (1905).

e Meuer v. Phenix Nat. Bk., cited under section 5611.

5750. Effect where holder of check procures it to be certified. re the holder of a check procures it to be accepted or certified awer and all indorsers are discharged from liability thereon. 3, p. 896, § 188.)

cisions of other States.—See Meuer v. Phenix Nat. Bk., cited un- tion 5749.

e certification, at the drawer's request, of a check on funds in nd the transfer by the bank at the time of the amount of such to the payee's account, with the apparent knowledge of either awer or payee, will not, in the event of non-payment of the check presented with due diligence (the bank having failed) discharge awer from liability to the payee, under the Negotiable Instruments Cullinan v. Un. Surety & Guar. Co., 79 App. Div. N. Y. 409 (1903).

Digitized by Google

See St. Regis Paper Co. v. Tonawanda, etc., cited under sectio 5749.

See Meuer v. Phenix Nat. Bk., cited under section 5711.

Sec. 5751. When check operates as an assignment.—A check itself does not operate as an assignment of any part of the funds the credit of the drawer with the bank, and the bank is not liable the holder unless and until it accepts or certifies the check. (Id § 189.)

Virginia decisions.—See Baltimore & Ohio R. R. Co. v. First Na Bk., cited under section 5689.

Under the direct provisions of this section a check does not opera as an assignment of the fund on deposit, and the bank is not liable the holder unless and until it accepts or certifies the check. B. & O. Co. v. Bank, 102 Va. 753, 10 Va. Law Reg. 190, and note, 47 S. E. 83

For note of case upon stoppage of payment and disregard by ba see 11 Va. Law Reg. 427.

Cited but not construed, White v. Bonney 110 Va. 864, 68 S. 273.

Decisions of other States.—See Meuer v. Phenix Nat. Bk., cite under section 5749.

The holder of a check has no contract with the bank on which it drawn, and no legal right to exact its payment until the bank accepts certifies the check. Nat. Bk. of N. J. v. Berrall, 58 Atl. Rep. 189 (1904

Under this section, as between the holder of a check for value due course and one asserting a junior lien on the drawer's bank deposi the check was not an appropriation of the deposit reversing the law Kentucky prior to the Negotiable Instruments Law. Boswell v. Citizen Svgs. Bk., 96 S. W. 797, Kentucky (1906).

See Schlesinger v. Kurzrok, cited under section 5592.

See Van Buskirk v. State Bk., etc., cited under section 5688.

See Meuer v. Phenix Nat. Bk., cited under section 5611.

See State Bk. v. Weiss, cited under section 5747.

GENERAL PROVISIONS.

Sec. 5752. Definitions and meaning of terms.—In this chapter, u less the context otherwise requires—

"Acceptance" means an acceptance completed by delivery or not fication.

"Action" includes counter-claim and set-off.

"Bank" includes any person or association of persons carryin on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note whi is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiab promissory note.

"Delivery" means transfer of possession, actual or constructiv from one person to another.

"Holder" means the payee or indorsee of a bill or note who is possession of it or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument complete form to a person who takes it as a holder.

Digitized by Google

rson'' includes a body of persons, whether incorporated or

ue'' means valuable consideration.

itten'' includes printed, and ''writing'' includes print. (Id.,

cisions of other States.—The plaintiff indorsed a negotiable pro- note to a bank, for collection, before maturity. It was protest- returned to the plaintiff, and was produced at the trial with the nent cancelled. Held, the plaintiff became an indorsee in pos- upon the return of the protested instrument and invested with ts of all holders of commercial paper. Such an indorser in pos may cancel the indorsement it had made. See section 5610. ssession of the note was sufficient to maintain suit. See section N. H. Mfg. Co. v. N. H., P. & B. Co. (1903), 76 Conn. 126, 55 4.

ndorsement'' means an indorsement completed by delivery. See, ction 5622. An allegation that the payee ''indorsed and trans- is enough, confirming antecedent cases. An allegation that payee the note to the plaintiff would have been enough. Louisville n. Co. v. Int. Tr. Co. (Colo. App. 1903), 71 Pac. 898.

5753. Person primarily liable on instrument.—The person rily'' liable on an instrument is the person who by the terms nstrument is absolutely required to pay the same. All other are ''secondarily'' liable. (Id., § 192.)

cisions of other States.—See Cellers v. Meachem, cited under sec- 91.

der this section and sections 5681 and 5682, a plea that the de- one of the makers of a negotiable note, signed it as surety only, act was known to the payee (but without saying also that it was to the other makers), and had been discharged by an extension by the payee to the principal debtor made without the knowl- the defendant—is fatally defective. Vanderford v. Farmers' & Nat. Bk. of Westminster, 66 Atl. 46 Maryland (1907).

e Rouse v. Wooten, cited under section 5651.

5754. Reasonable time; what constitutes.—In determining s a ''reasonable time'' or an ''unreasonable time'' regard is had to the nature of the instrument, the usage of trade or ss (if any) with respect to such instruments, and the facts of rticular case. (Id., § 193.)

rginia decisions.—What is a reasonable time for any purpose de- lways upon the facts of the particular case, and this familiar tion is directly recognized by this section. Under the facts of e, the negotiable note was not negotiated an unreasonable time s issue. (See section 5615.) Colona v. Parksley Nat. Bank 120 , 92 S. E. 979.

cisions of other States.—See note to section 5633.

der this section and sections 5747 and 5748, in an action on a by the payee against the drawer, the check being drawn on a bank and delivered in Boston on Saturday, and on the following passed to another person by the payee, being indorsed the next esday, to one who deposited it on the following Thursday in a or collection, which bank through its messenger presented it to wee the next day, Friday, on which day the drawee had failed, it ld that the check was not presented for payment within a rea- time. Gordon v. Levine, 80 N. E. 505, Massachusetts (1907).

e Plover Svgs. Bk. v. Moodie, cited under section 5747.

here a demand note was indorsed without consideration, for the nodation of the maker, and its payment was secured by the de-

Digitized by Google

posit of certain securities, and two years after the making of the the plaintiff complained to the indorser of its non-payment, and ward wrote twice a year that the maker was in default in payme interest, but no steps were taken to charge the indorser, by presen of the note for payment until more than three years had elapsed presentment was not within a reasonable time, under this section section 5633.

This case abrogates the distinction heretofore made in New between notes or bills payable on demand and bearing interest and payable on demand merely. See Merritt v. Todd, 23 N. Y. 28 Parker v. Stroud, 98 N. Y. 379. Commercial Nat. Bk. v. Zimme 77 N. E. 1020, 185 N. Y. 210 (Ct. App. N. Y., 1906).

Sec. 5755. Time, how computed; when last day falls on hol —Where the day or the last day for doing any act herein req or permitted to be done falls on Sunday or on a holiday the act be done on the next succeeding secular or business day. (I 194.)

Sec. 5756. Application of chapter.—The provisions of this ter do not apply to negotiable instruments made and delivered to March third, eighteen hundred and ninety-eight. (Id., §

See Mayers v. McRimmon, cited under section 5611.

Sec. 5757. Rule of law merchant; when governs.—In any not provided for in this chapter the rules of the law merchant govern. (Id., § 196.)

See Guerrant v. Guerrant, 7 Va. Law Reg. 639.

Decisions of other States.—See Mass. Nat. Bk. v. Snow, cited section 5570.

See Am. Bk. v. McComb, cited under section 5614.

CHAPTER 234.

Public Holidays; Contracts in Writing; Actions Thereon, and Assign

Sec.
5758. Public holidays; days designated.
5759. On what writings action of debt may be maintained; in assumpsit thereon rule as to proof of consideration.
5760. Upon what note or bill or other negotiable instrument, and when action of debt or assumpsit may be brought, and against whom.
5761. A writing, payable to a person who is dead, valid.
5762. Of writings binding persons jointly.
5763. Compromise by creditor with a co-obligor, etc.
5764. How contract to be cre how, in case of a sur
5765. When part performan an obligation, etc., to guish it.
5766. Right of contribution n fected.
5767. Assignment of life insu policies.
5768. Assignees, etc., may s their own names; wha counts allowed.
5769. How assignee may su signor.
5770. Jurisdiction in equity,

Sec. 5758. Public holidays; days designated.—In each yea first day of January, the nineteenth day of January (known a

Digitized by Google

n day), the twenty-second day of February, the thirtieth May (Confederate Memorial day), the third day of June son Davis day), the fourth day of July, the first Monday in ber (known as Labor day), the Tuesday after the first Mon- November (Election day), and the twenty-fifth day of De-, or whenever any of said days shall fall on Sunday, the y next following such day—and any day appointed or recom- l by the Governor of this State or the President of the United as a day of thanksgiving, fasting or religious observance, e a legal holiday, and every Saturday after twelve o'clock hall be a half holiday. (Code 1887, § 2844; 1889-90, p. 117; p. 256; 1895-6, p. 412; 1899-00, p. 137; 1901-2, p. 581; 1902- 18; 1904, p. 251.)

visors' Note.—The revisors added June 3 (Jefferson Davis Day). 18, p. 121, omits this, but makes some additions to the section. e reference at the end of this section to Acts 1899-00 should be 1374, not 137

5759. On what writings action of debt may be maintained; mpsit thereon rule as to proof of consideration.—An action of ay be maintained upon any note or writing by which there is nise, undertaking, or obligation to pay money, if the same ned by the party who is to be charged thereby, or his agent. tion may also be maintained on any such note or writing for st due instalment of a debt payable in instalments, although nstalments thereof be not due. And in any action of assump- any such note or writing, the rule as to averment and proof sideration shall be the same as in an action of debt thereon. 1887, § 2852.)

evisors' Note.—The second sentence of the text is new, and s the rule announced in Peyton v. Harman, 22 Grat. 643.

onsideration.—In debt on promissory note plaintiff need not aver ve consideration. Peasley v. Boatwright, 2 Leigh 195; Crawford gh, 2 Va. Cas. 521. See, as to assumpsit before statute, Jackson kson, 10 Leigh 448; Averett's Adm'r v. Booker, 15 Grat. 163, . Dec. 203.

e section 5586.

hen upon promise to pay money assumpsit is brought, no aver- of consideration is necessary in the pleading. Penn. R. Co. v. 106 Va. 645, 56 S. E. 567.

hen debt lies.—Will lie for payee against acceptor of an order. gsworth v. Milton, 8 Leigh 50. See Smith v. Segar, 3 Hen. & M. Vilson v. Crowdhill, 2 Munf. 302; Raborg v. Peyton, 2 Wheat. 385; d. 268. Or for penalty by statute. Sims v. Alderson, 8 Leigh V. U. Tel. Co. v. Bright, 90 Va. 778, 20 S. E. 146.

ay be brought on judgment record whereof is destroyed. New- v. Drummond, 4 Leigh 57. Or upon judgment against executor inistrator. Braxton v. Wood's Adm'r, 4 Grat. 25, 35. Or upon knowledgment of indebtedness in a deed between the parties. v. Forsyth, 3 Grat. 308. Or upon written acknowledgment of t which has been assigned. Cunningham v. Herndon, 2 Call 530; ck v. Herndon's Ex'rs, 4 Hen. & M. 200. Or upon note which en destroyed. Moses v. Trice, 21 Grat. 556, 8 Am. Rep. 609.

ebt will lie upon bond for payment of money with option to dis- e "in notes or bonds due on good solvent men in the county of R.,"

Digitized by Google

and it is not necessary to notice the provision as to the mode of pay in the declaration. Butcher v. Carlile, 12 Grat. 520. Or to pay in g at regular prices. Minnick v. Williams, 77 Va. 758. Or to pay in or silver or its equivalent. Turpin v. Sledd's Ex'r, 23 Grat. 238.

On official bonds.—May be maintained by sheriff from forthco bond payable to him. Beale v. Downman, 1 Call 249.

May be brought upon defective forthcoming bond even after successful motion for judgment. Hewlett v. Chamberlayne, 1 Wash.

Could be maintained by executor upon three months' replevy payable to his testator (Booker's Ex'rs v. McRoberts, 1 Call 243); th it give back interest from the time when the rent became due, and from date of bond (Early v. Owen, 6 Munf. 319).

When debt will not lie.—Debt will not lie against a sheriff for ing an execution upon the property of plaintiff's tenant without pa a year's rent. Byrd v. Cocke, 1 Wash. 232. Nor for military ficates. Gibbon v. Jameson's Ex'rs, 5 Call 294. Nor to recover a tain amount in "notes of U. S. Bank, or either of the Virginia Ba they not being money. Beirne v. Dunlap, 8 Leigh 514; Dunga Henderlite, 21 Grat. 149. See opinion of Tucker, P., in Beirne v. Du as to distinction between cases in which debt will and will not lie.

Instalments.—Debt will not lie upon bond payable in instalm until whole amount is payable. Covenant proper action for instalm Peyton v. Harman, 22 Grat. 643. See 4 Min. (3d Ed.) 495. But revisors' note above.

Generally.—In debt on bond, words obviously omitted by mis may be supplied. Peyton v. Harman, 22 Grat. 643.

One action of debt may be brought against all the parties to strument sealed by some of them and not by others. Rankin v. R 8 Grat. 63.

A bond is the bond of the party who executes it, though his n is neither in penal part nor condition. Beery v. Homan's Commi 8 Grat. 48; Luster v. Middlecoff, 8 Grat. 54, 56 Am. Dec. 129.

Parol evidence is admissible to ascertain who is principal in du signed by "R., President of R. R. Co.," without any addition. Richm etc., Co. v. Snead, 19 Grat. 354, 100 Am. Dec. 670.

An action of assumpsit will lie upon an agreement in writing wh by a husband has agreed to make certain monthly payments to his in lieu of alimony, pending a suit by her for divorce. Newman v. Comb, 112 Va. 408, 71 S. E. 624.

See 1 Barton, L. Pr. (2d Ed.) 120, 134, et seq. 309, 314; 3 (2d Ed.) 151, 389; 4 Min. (3d Ed.) 31, 550, 697-702; Burks' Pl. & pp. 82, 94, 144.

For election between debt and assumpsit, see 4 Min. (3d Ed.)

Discussed, 13 Va. Law J. 154.

For W. Va. decisions on similar statute, see Justis' Annotati chapter 99, section 10.

See Gregory's Forms Nos. 34, 35, 36.

Sec. 5760. Upon what note or bill or other negotiable instrum and when action of debt or assupmsit may be brought, and aga whom.—Upon any note, check, bill of exchange, or other instrum which under the laws of the State is negotiable, whether the s be payable in or out of this State, an action of debt or assum may be maintained and judgment given jointly against all liabl virtue thereof, whether drawer, endorsers, or acceptors, or aga any one or any intermediate number of them for the principal charges of protest if the same should be protested, with the inte thereon from the date of protest, and in case of such bills for d ages also. (Code 1887, § 2853; 1897-8, p. 716.)

Digitized by Google

ot will lie upon negotiable note payable out of this state at ar bank. Hays v. Northwestern Bank, 9 Grat. 127.
ot will lie for payee against acceptor of an order (Hollingsworth n, 8 Leigh 50); and before the statute not against acceptor of xchange (Smith v. Segar, 3 Hen. & M. 394; Wilson v. Crowdhill, 302).
writing in the form of a promissory note, under seal, is not a it a specialty; and therefore the drawer and indorsers of such an ent made negotiable and payable at a bank cannot be sued jointly, ence not being the same. Mann v. Sutton, 4 Rand. 253. But ion 5568.
an action upon a protested negotiable note against the makers lorsers, the accidental omission of the sum for which the note ren in the description of it in the declaration, when it appears her parts of the declaration, is not ground of demurrer. Archer l, 9 Grat. 622.
an action by the holder of a bill of exchange against the indorser, cessary to allege that notice of protest was given to the defendant. v. Pomery, 6 Cranch 225, 3 L. Ed. 204.
nount of protest charges must be stated. Wilson v. Lenox, 1 194, 2 L. Ed. 79.
a proceeding by motion for a judgment for money against a nt whose name, along with the names of others, appeared as r of a negotiable note, defendant sought to show by parol that bility, if any, was that of a surety or joint maker, and not that ndorser in the technical sense, his contention being that the other akers should have been joined as parties defendant. Held, the e was properly excluded as immaterial, the plaintiff having the o sue as he did regardless of whether the defendant was a joint or an indorser. Colley v. Summers Parrott Co., 119 Va. 439, . 906.
e Taylor v. Beck, 3 Rand. 316; Stott v. Alexander, 1 Wash. 331; v. Stratton, 9 Grat. 615; Corbin v. Planters' Nat. Bank, 87 Va. S. E. 98, 24 Am. St. Rep. 673; section 6125; 2 Va. Law Reg. 384; on, L. Pr. (2d Ed.) 120, 128, 143; 2 Barton, L. Pr. (2d Ed.) 701; (3d Ed.) 550, 640, 695, 911; 3 Min. (2d Ed.) 452, 465; Burks' Pr., pp. 52, 53, 83, 120.
or election between debt and assumpsit, see 4 Min. (3d Ed.) 448. orm of declaration in debt on foreign bill of exchange protested n-payment, 4 Min. (3d Ed.) 1669; of declaration in debt on bill of exchange protested for non-acceptance, Id. 1667; of de- on in debt on negotiable note protested by indorsee against and two indorsers, Id. 1666.
or W. Va. decisions on similar statute, see Justis' Annotations, 99, section 11.
e Gregory's Forms Nos. 35, 36.

5761. A writing, payable to a person who is dead, valid.—d, note, or other writing to a person or persons who, or some om, are dead at the time of its execution, shall be as valid as person or persons were then alive, and may be proceeded on name of the personal representative of such person, or the ors or survivor, or of the representative of the last survivor h persons. (Code 1887, § 2854.)

obertson, executor of Cole, recovers judgment against Claiborne, es out execution thereon, but before the execution is delivered to eriff Robertson dies. The execution being then delivered to the , he levies it on property of the defendant, and takes forthcoming payable to Robertson, executor of Cole. Held, the execution was ly levied, though Robertson was dead before it was delivered, and

Digitized by Google

the forthcoming bond was rightly taken to Robertson, as executor was good. Turnbull v. Claiborne, 3 Leigh 392.

A motion for award of execution on the forthcoming bond was by Turnbull, executor of Robertson, who was executor of Cole. the forthcoming bond belonged to Cole's estate, and Turnbull was tled to the money, and to award of execution of the bond, as the r sentative of Cole. not as the representative of Robertson. Id.

On a parol contract between S. and R., whereby R., on a consi tion moving entirely from S., promises to pay S.'s daughter, M.. a of money after S.'s death, M. cannot maintain either debt or assu for the money; the representative of S. only can maintain an acti law. Ross v. Milne, 12 Leigh 204, 37 Am. Dec. 646.

For W. Va. decisions on similar statute, see Justis' Annota chapter 99, section 12.

Sec. 5762. Of writings binding persons jointly.—If one b with another, either jointly or as a partner, by a judgment, b note, or otherwise, for the payment of a debt, or the perform or forbearance of an act, or for any other thing, die in the life of such other, the representative of the decedent may be charg the same manner as he might have been charged, if those b jointly or as partners, had been bound severally as well as joi otherwise than as partners. (Code 1887, § 2855.)

Revisors' Note.—This section as it appears in the Code of 1887 taken from the Code of 1849 without change (Code 1849, p. 582, ch 144, section 13). The present section contains some change in guage, the object being to express more clearly what the revisors of intended, as to which see Report of Revisors, p. 724.

Partners.—Surviving partner of mercantile house alone liabl law to the creditors of the house, but if he prove insolvent the esta the surviving partner is liable in equity. Sale v. Dishman's Ex' Leigh 548; Galt's Ex'rs v. Calland's Ex'r, 7 Leigh 594; Jackson v. 8 Leigh 689 (decided before amendment of statute).

One partner is not bound upon a bond executed by the other in the partnership name for a partnership debt, though he ma bound for the debt. Sale v. Dishman's Ex'rs, 3 Leigh 548.

As to contribution between partners, see Sands v. Durham, 98 397, 36 S. E. 472, 54 L. R. A. 614; overruled, 99 Va. 263, 38 S. E.

Marshaling of assets.—Does not change or affect the order in w the separate assets of the deceased partner are to be applied in payment of his debts as prescribed by section 5390. Robinson v. A 85 Va. 721, 8 S. E. 835.

The social assets are applicable first to the social debts, and i sufficient the social creditors come in as general creditors pari passu separate creditors of the same class upon the separate estate of deceased partner. Pettyjohn's Ex'rs v. Woodruff's Ex'r, 86 Va. 10 S. E. 715; Ashby's Adm'r v. Porter, 26 Grat. 455; Straus v. K good, 21 Grat. 585; Morris' Adm'r v. Morris' Adm'r, 4 Grat. 293.

Two suits.—Where two suits having same object are pending, de in one for account suspends the other. Suit to administer dece partner's separate property for his separate creditors, and suit to minister partnership property for the partnership creditors, not ha the same object, this rule does not apply. Robinson v. Allen, 85 721, 8 S. E. 835.

Pleading.—At law representative must be sued in separate ac Richardson's Ex'x v. Jones, 12 Grat. 58, per Lee, J.

The executors of two deceased obligors cannot be joined in same action. Watkins' Ex'rs v. Tate, 3 Call 521 (2d Ed.) 451.

Where a joint judgment is obtained against two defendants, one dies, an action of debt on the judgment will lie against represents

Digitized by Google

ed defendant. Roane's Adm'r v. Drummond's Adm'rs, 6 Rand.

riting in the form of a promissory note under seal is not a a specialty, and therefore the drawer and indorsers of such an nt, made negotiable and payable at a bank, cannot be sued he defence not being the same. Mann v. Sutton, 4 Rand. 253. section 5568.

ival.—In an action of debt against two, one dies and the suit is against his administratrix, and then she and another defendant arate confessions of judgments, and a separate judgment is against each. This is not error. Richardson's Ex'x v. Jones, 53.

erally.—At common law estate of surety on joint bond who died rincipal obligor was not bound (Minge v. Field, 2 Wash. 136 175; Richardson v. Johnston, 2 Call 528 [2d Ed.] 445; Elliott's yell, 3 Call 268 [2d Ed.] 234; Watkins' Ex'rs v. Tate, 3 Call 521 451; Atwell's Adm'rs v. Milton, 4 Hen. & M. 253); unless there his part a moral obligation antecedently existing to pay the Chandler's Ex'x v. Neale's Ex'rs, 2 Hen. & M. 124).

ute is permissive, and creditor may still proceed in equity. ok's Ex'rs v. Harveys, 1 Va. Dec. 265. But see section 5770.

s not affect the principle that the defeat of the remedy against obligor upon a ground not personal to himself defeats it as obligors. Brown's Adm'r v. Johnson, 13 Grat. 644.

1 Barton, L. Pr. (2d Ed.) 139, 143, et seq.; 2 Barton, L. Pr. 785; 2 Min. (4th Ed.) 829; Burks' Pl. & Pr., pp. 52, 901.

W. Va. decisions on similar statute, see Justis' Annotations, 99, section 13.

763. Compromise by creditor with a co-obligor, etc.—A may compound or compromise with any joint contractor or or, and release him from all liability on his contract or obli- without impairing the contract or obligation as to the other ntractors or co-obligors. (Code 1887, § 2856.)

such compromise the right of contribution between the joint is not impaired. Penn v. Bahnson, 89 Va. 253, 15 S. E. 586.

s not impair the obligation of contracts existing at the date of ge (April 25, 1867), and is not unconstitutional as to such con- Yuille's Adm'r v. Wimbish's Adm'r, 77 Va. 308.

S., and others, of the firm of A, C. & Co., owed $2,000 to G., d to pay, and paid G. $400 on G.'s promise to release M. & S. date. Held, the agreement was binding on G., and M. and S. eased. Seymour v. Goodrich, 80 Va. 303.

litor who has compromised with one of several joint obligors, ived his full share of the obligation, may sue the other obligors making the released obligors a party. Penn v. Bahnson, 89 Va. S. E. 586.

1 Barton, L. Pr. (2d Ed.) 148; 2 Min. (4th Ed.) 830; 3 Min. 214; Burks' Pleading and Practice, pp. 19, 428.

764. How contract to be credited; how, in case of a surety. said compounding or compromise is made, the contract or on shall be credited with a full share of the party released, where the compounding or compromise is with a surety or y, and in that case, as between the creditor and principal, it shall be for the sum actually paid by the compounding (Code 1887, § 2857.)

n a compounding or compromise, the contract shall be credited full share of the party released, except in the case of a surety

Digitized by Google

or co-surety, when the credit shall be the amount paid. Penn v. son, 89 Va. 253, 256, 15 S. E. 586. See 3 Min. (2d Ed.) 214.

Sec. 5765. When part performance of an obligation, etc., tinguish it.—Part performance of an obligation, promise or u taking, either before or after a breach thereof, when express cepted by the creditor in satisfaction and rendered in pursua an agreement for that purpose, though without any new cons tion, shall extinguish such obligation, promise, or underta (Code 1887, § 2858.)

Payment of a less sum, at the time and place where a gre due, was held at common law never to be a satisfaction of the g sum, there being no consideration for giving up the rest of the nor was unsealed agreement to accept less sum binding. Lee v. H 75 Va. 22; Smith v. Phillips, 77 Va. 548; Seymour v. Goodrich, 303; Smith v. Chilton, 84 Va. 840, 6 S. E. 142; Fire Ins. As Wickham, 141 U. S. 564, 12 Sup. Ct. 84, 35 L. Ed. 860; 3 Va. Law 616; 9 Va. Law J. 264. This section changes the rule.

The burden of proof is on the debtor to bring himself with provisions of this section, providing that part performance of an tion expressly accepted by the creditor in satisfaction shall so op Standard Sewing M. Co. v. Gunter, 102 Va. 568, 10 Va. Law Reg 126, and note, 46 S. E. 690; Thomas v. Brown, 116 Va. 233, 81 S.

This section was never intended to enable a debtor to perp a wrong and injustice upon his creditor by taking advantage of his ing need of money. In this case there was no meeting of the mi the parties that the lesser amount was accepted in full satisf but it was accepted under protest and aggravated circumstances o straint, and the creditors were held entitled to recover the rem of the debt. Thomas v. Brown, 116 Va. 233, 81 S. E. 56.

See article upon Accord and Satisfaction, 9 Va. Law J. 264.

See 1 Barton, L. Pr. (2d Ed.) 149, 530; 2 Min. (4th Ed.) 4 Min. (3d Ed.) 167, 168.

Cited in Chicago, M. & St. P. R. Co. v. Clark, 178 U. S. 3 Sup. Ct. 924, 44 L. Ed. 1099.

Discussed, 13 Va. Law J. 154.

Sec. 5766. Right of contribution not affected.—Nothing con in the three preceding sections shall affect or impair the right o tribution between joint contractors and co-obligors. (Code § 2859.)

By compromise under preceding sections, the right of contri between the obligors is not, under said sections, impaired. P Bahnson, 89 Va. 253, 15 S. E. 586; Yuille's Adm'r v. Wimbish's 77 Va. 308.

See 1 Barton, L. Pr. (2d Ed.) 149.

Sec. 5767. Assignment of life insurance policies.—A policy surance on life, taken out by the insured himself, or by a p having an insurable interest in his life, in good faith, and n the mere purpose of assignment, may be lawfully assigned t one, for a valuable consideration, as any other chose in action, out regard to whether the assignee has an insurable interest life insured or not, and the assignee may recover upon it wh the insured might have recovered but for such assignment. 3-4, p. 256.)

For the rule prior to the passage of this act, see Crismond v. 117 Va. 34, 83 S. E. 1045.

See 1 Va. L. R. N. S. 587 and note.

Digitized by Google

768. **Assignees, etc., may sue in their own names; what disallowed.**—The assignee or beneficial owner of any bond, note, or other chose in action, not negotiable, may maintain there- s own name any action which the original obligee, payee, or ing party might have brought, but shall allow all just dis- not only against himself, but against such obligee, payee, acting party, before the defendant had notice of the assign- transfer by such obligee, payee, or contracting party, and o allow all such discounts against any intermediate assign- ansferrer, the right to which was acquired on the faith of gnment or transfer to him and before the defendant had the assignment or transfer by such assignor or transferrer er. (Code 1887, § 2860.)

ision of 1887.—This section was changed by revision of 1887 allow any beneficial owner, though not a formal assignee, of a action which is in its nature transferable, yet not negotiable, to action upon it in his own name, and a set-off is allowed, under circumstances, against an intermediate assignor or transferrer. ddress, 2 Barton L. Pr. (2d Ed.) 1390.

at may be assigned.—As to what may be equitably assigned, see Ricamore, 87 Va. 466, 12 S. E. 799; Bristol, etc., Co. v Thomas, 96, 25 S. E. 110; Iaege v. Bossieux, 15 Grat. 83, 76 Am. Dec. ooks v. Hatch, 6 Leigh 535; N. & W. R. Co. v. Read, 87 Va. 185, 395; Porter v. Young, 85 Va. 49, 6 S. E. 893; Anderson v. De Grat. 363; Same v. Gallego's Adm'r, Id.; Shields v. Mahoney,. 94 27 S. E. 23.

d with collateral condition was not assignable before the act of r, 1795, and therefore the assignee of such a bond could not an action upon it. Craig v. Craig, 1 Call 483.

at constitutes equitable assignment.—As to what will constitute assignment, see Switzer v. Noffsinger, 82 Va. 518; Brooks v. Leigh 534; S. V. R. Co. v. Miller, 80 Va. 821; Lambert v. Jones, H. 144; Hicks v. Roanoke, etc., Co., 94 Va. 741, 27 S. E. 596; ke, etc., Asso. v. Coleman, 94 Va. 433, 26 S. E. 843.

gnee does not acquire legal title.—The assignee does not acquire title to the debt, but an equitable right. Garland v. Richeson, 266.

gnee of a non-negotiable chose stands in shoes of assignor, and subject to all the debtor's equities against the assignor existing me or before notice of assignment, and based on honest trans- etween him and assignor. Etheridge's Adm'r v. Parker, 76 Va. bbins v. Bruce, 80 Va. 389. Yet such equities must be clearly ifestly established by proof before they shall affect an assignee notice, especially if the obligor after assignment promised pay- the full amount of the bond to the assignee. Mayo v. Giles' Munf. 533. Nor does assignee take assignment subject to any a third person not party to the bond of which he has no notice. Holcombe, 3 Leigh 597, 24 Am. Dec. 683. See Stockton v. Munf. 68, 5 Am. Dec. 504.

ice.—Effect of notice is not to make debtor disclose his defence, reclude him from setting up defence after-acquired against as- Gordon v. Rixey, 76 Va. 694; Stebbins v. Bruce, 80 Va. 389.

o may maintain action and how.—Assignee may institute such and such actions only, as his assignor could have maintained. Walker, 92 Va. 540, 24 S. E. 226. May sue at law in his own in that of original obligee for his benefit. Garland v. Richeson, 266.

ere debtor and creditor are firms in which there are one or more

Digitized by Google

common partners, no action at law can be maintained in the name assignee of chose, as none could have been maintained by his as Aylett v. Walker, 92 Va. 540, 24 S. E. 226.

Under this section trustee and assignee of joint stock compa sue in his own name for unpaid subscriptions to capital stock pany. Glenn v. Scott (C. C.), 28 Fed. 804.

Assignee of a bond cannot sue as obligee, but the assignmer be set forth in his declaration. Gordon v. Brown's Ex'r, 3 M. 219.

An averment in declaration that the payee of a non-negotiab indorsed and delivered it to the plaintiff is sufficient averment of signment. Freeman's Bank v. Ruckman, 16 Grat. 126.

This section does not authorize an assignee of a judgment t tain an action against an officer and the sureties on his official b a breach occurring prior to assignment, by reason of the officer's to return a forthcoming bond taken on the judgment as prescri statute to give the bond the force of a judgment against the o Com. v. Wampler, 104 Va. 337, 11 Va. Law Reg. 664, and n S. E. 737.

For extended article upon the right of an assignee of a ju to sue sheriff on official bond for breach of duty before assignm 11 Va. Law Reg. 867. See, also, id., 667.

The assignee or a beneficial owner of a contract may, und section, maintain an action in his own name. Portsmouth R. Oliver R. Co., 109 Va. 513, 64 S. E. 56.

Under this section suit may be brought on an assigned c action either in the name of the original obligee or payee, in hi for the use of the assignee, or in the name of the assignee Carozza v. Boxley, 203 Fed. 673.

A debt due from another, though evidenced by an open acc a chose in action, and the assignees may maintain an action the their own name under this section. Phillips v. Portsmouth, 1 180, 78 S. E. 651.

If A. in a letter to B. acknowledges that he owes money to C. assigns this paper to D., probably no action can be maintained his own name against A., but he must bring suit in the nam Minnis v. Pollard, 1 Call 226.

The plaintiff's attorney may fill up a blank indorsement. an it payable to the plaintiff during the trial of the cause. Hooe v 5 Call 61.

It is not sufficient plea to an action in behalf of the assign bond against the obligor that before notice of the "assignm effects of the assignor were attached in the defendant's hands decree entered that he should pay the debt to the attaching credi and that accordingly he had made such payment," if it appears i pleadings that the bond was assigned before the attachment stituted, and suit brought upon it by the assignee before the paym made. Wilson v. Davisson, 5 Munf. 178. See Schofield v. Cox, 533, U. S. v. Vaughan, 3 Bin. 394, 5 Am. Dec. 375.

See section 5143 and revisors' note.

Proof of assignment.—Proof of assignment not necessary if Clason v. Parrish, 93 Va. 24, 24 S. E. 471. See section 6125.

In a bill by an assignee against the obligor and assignor, signment is not questioned by the assignor. There is no neces proving it as against the obligor. Mayo's Ex'r v. Carrington's Grat. 74.

Evidence.—If an action of debt be brought by the assign bond or note against the obligor or maker, and he pleads paymen plaintiff, evidence of the payment to the assignor will not supp issue. Phelps v. Frazer, 3 Rand. 103; Hatcher v. Cabell, 6 Ra

Statement of assignor.—Statements of the obligee of a tit made after assignment thereof, in the absence of the assignee a judicial to his interest, are not competent evidence against such a

Digitized by Google

nnot affect his rights. Coldiron v. Asheville Shoe Co., 93 Va. 5 S. E. 238; Brock's Adm'r v. Brock, 92 Va. 173, 23 S. E. 224; Ex'r v. Warren, 80 Va. 512; Wilcox v. Pearman, 9 Leigh 144. eceipt as evidence against assignee, see Wilcox v. Pearman, supra; v. Long, 3 Munf. 136.

rden of proof.—Where subsequent assignee claims that he took ignment for value without notice of the previous assignment, and e previous assignment was fraudulent, the burden is, of course, to prove the case. Daily's Ex'r v. Warren, 80 Va. 512.

t-off.—If a bill of exchange is drawn on one who accepts it on h of the funds of the drawer in his hands, he acquires an equitable t in those funds, and is entitled to set off his liability on the ac- es against his obligation to pay those funds and to retain them to for his indemnity. Lambert v. Jones, 2 Pat. & H. 144.

set-off, as between the maker and the payee, acquired after a r of an overdue negotiable note, though acquired without notice transfer of the note by the payee, cannot be set off against the Davis v. Miller, 14 Grat. 1. See this case for quaere as to what s such overdue note is subject. See, also, Stewart v. Anderson, 6 203, 3 L. Ed. 199; Feazle v. Dillard, 5 Leigh 30; Ritchie v. 5 Munf. 388, 7 Am. Dec. 688.

, obligor, and E., payee, of the bond, having become bankrupts. ssignee in bankruptcy sues H., surety on bond. Held, that H. set off an account due by E. to S. Edmunds' Assignee v. Harper, t. 637.

is indebted to D., by bond payable January, 1820, which, after it is assigned by D. to C.; but, before notice of assignment, F. becomes for D. in a bond to B., payable February, 1822. D. becomes in- . Held, F. is entitled in equity to set off the amount of the bond ch he is D.'s surety to B., though not yet due (unless he is in- ied against his suretyship), against his own bond to D., in the of C., the assignee. But he may waive this equity, as against the ee, by his own conduct, and in this case it was held he did so waive eazle v. Dillard, 5 Leigh 30. See Clopton's Adm'r v. Morris, 6 278.

must appear that the set-off offered was property of defendant he received notice of the assignment. Ritchie v. Moore, 5 Munf. Am. Dec. 688.

ee sections 6144-6150.

stoppel.—If assignee is induced to take assignment by defendant's e to pay, or if defendant after notice of assignment expressly or ily promises to pay the debt, he is estopped from setting up any e he had against assignor. Feazle v. Dillard, 5 Leigh 30; Steb- Bruce, 80 Va. 389; Davis' Adm'r v. Thomas, 5 Leigh 1. But mere will not operate such estoppel. Stebbins v. Bruce, supra.

purchaser of land warranted by the vendor to be free of all en- ances is not precluded from relief in equity against his bond for rchase money by the circumstance that before he made the pur- he was fully apprised of the encumbrance. Stockton v. Cook, f. 68, 5 Am. Dec. 504.

imitation.—A draft drawn on a trustee on account of the trust and therefore payable out of the fund, operated as an equitable ment pro tanto thereof. A direct trust was thus created in favor wee, the enforcement of which is not subject to any statutory ion. Bain v. Buff's Adm'r, 76 Va. 371.

enerally.—For the difference between a guarantee and an assign- and the rights and obligations resulting therefrom, see the opin- Staples, J., in Welsh v. Ebersole, 75 Va. 651.

ee note to section 5561, taken from McIlvane v. Big Stone Lumber 05 Va. 613, 54 S. E. 473.

Where a sub-contractor executed an order on his contractor to pay nount due or to become due on the sub-contract to certain others,

Digitized by Google

the contractor's acceptance of the order did not create a new debt b tween the original contractor and the assignees for the whole amou of the assignor's claim, nor bar all the assignor's rights therein. Caroz v. Boxley, 203 Fed. 673.

As to remedy in equity, see 2 Va. Law Reg. 384.

See 1 Barton, L. Pr. (2d Ed.) 216, 235; 2 Min. (4th Ed.) 839; Min. (2d Ed.) 432, 434-5, 439; 4 Min. (3d Ed.) 30, 785, 790; Burk Pl. & Pr., pp. 56, 109.

See generally upon assignments, Cox's Ex'r v. Crockett, 92 Va. 5 22 S. E. 840; Spooner's Adm'r v. Hilbish's Ex'r, 92 Va. 333, 23 S. E. 75 Williams v. Watkins, 92 Va. 680, 24 S. E. 223; Didier v. Patterson, Va. 534, 25 S. E. 661; Knisely v. Williams, 3 Grat. 265, 46 Am. Dec. 19 Lewis' Adm'r v. Glenn, 84 Va. 947, 6 S. E. 866; Braxton v. Bell, 92 V 229, 23 S. E. 289; Commercial Bank v. Cabell, 96 Va. 552, 32 S. E. 5 Evans v. Rice, 96 Va. 50, 30 S. E. 463; First Nat. Bank v. Holland, 99 V 495, 39 S. E. 126, 55 L. R. A. 155, 86 Am. St. Rep. 898.

As to assignment of debt carrying the security, and the righ duties, and liabilities of the parties thereupon, see McClintic v. Wis Adm'rs, 25 Grat. 448, 18 Am. Rep. 694; Schofield v. Cox. 8 Grat. 53 Castleman v. Berry, 86 Va. 604, 10 S. E. 884; Penn v. Hearon, 94 V 773, 27 S. E. 599; Hurt v. Miller, 95 Va. 32, 27 S. E. 831; Arents v. Co 18 Grat. 750; Mayo's Ex'r v. Carrington's Ex'r, 19 Grat. 74; Gordon Fitzhugh, 27 Grat. 835; Grubbs v. Wysors, 32 Grat. 127-131.

See generally as to rights of assignor and assignee inter se, Dail Ex'r v. Warren, 80 Va. 512; Tucker v. Daly, 7 Grat. 330; Braxton Harrison's Ex'rs, 11 Grat. 51, 52; Clayton v. Fawcett's Adm'rs, 2 Le 19; Green v. Ashby, 6 Leigh 135; Broadus v. Rosson, 3 Leigh 1 Coiner v. Hansbarger, 4 Leigh 452; Wilson's Adm'r v. Barclay's E 22 Grat. 534; Long v. Pence, 93 Va. 584, 25 S. E. 593; Fisher v. Basse 9 Leigh 119, 33 Am. Dec. 227; Schofield v. Cox, 8 Grat. 533; Laughlin v. Duffield, 5 Grat. 133; Bank v. Pindall, 2 Rand. 465; Good v. Stuart, 2 Hen. & M. 105; Welsh v. Ebersole, 75 Va. 651; Crawford McDonald, 2 Hen. & M. 189; Arents v. Com., 18 Grat. 750; Peay Morrison's Ex'rs, 10 Grat. 149; Mays v. Callison, 6 Leigh 230; Stu v. Burwell, 2 Hen. & M. 536; Etheridge's Adm'r v. Parker, 76 Va. 2 Bank v. Weisiger, 2 Pet. 331, 7 L. Ed. 441, 492; Same v. Tyler, 4 P 366, 7 L. Ed. 888; Mackie's Ex'r v. Davis, 2 Wash. 219, 1 Am. Dec. 4 Drake v. Lyons, 9 Grat. 54; Crawford v. McDaniel, 1 Rob. 448; 2 Law Reg. 559.

Due diligence to recover of maker or obligee must be shown assignee in order to recover of assignor. See Lee v. Love, 1 Call 4 Barksdale v. Fenwick, 4 Call 492; Mackie's Ex'r v. Davis, 2 Wash. 2 1 Am. Dec. 482; Minnis v. Pollard, 1 Call 226; Payne's Ex'rs v. Huffm 98 Va. 372, 36 S. E. 476; Harrison's Adm'r v. Raines' Adm'x, 5 Mu 456; Thompson v. Govan, 9 Grat. 695; Bronaugh v. Scott, 5 Call Carper v. Marshall, 98 Va. 438, 36 S. E. 526; Wilson's Adm'r v. Barcl Ex'r, 22 Grat. 534; Barksdale v. Fenwick, 4 Call 503; Peay v. Morris Ex'rs, 10 Grat. 149; Wood's Adm'r v. Duval, 9 Leigh 6; Drane v. Sch field, 6 Leigh 386; Hooe v. Wilson, 5 Call 61; Caton v. Lenox, 5 Rand. McWilliams v. Smith, 1 Call 123; Johnston v. Hackley, 6 Munf. 4 Scates v. Wilson, 9 Leigh 473; Smith v. Triplett, 4 Leigh 590; Arnol Hickman, 6 Munf. 15.

See section 5759; Picket v. Morris, 2 Wash. 255; Barksdale Fenwick, 4 Call 492; Smith v. Triplett. 4 Leigh 590; Goodall v. Stu 2 Hen. & M. 105; McClung v. Arbuckle, 6 Munf. 315; Campbell v. S man, 87 Va. 655, 13 S. E. 114; Hall v. Smith, 3 Munf. 550; Goodal Stuart, 2 Hen. & M. 111; Mackie's Ex'r v. Davis, 2 Wash. 219, 23 Am. Dec. 482; Arnold v. Hickman, 6 Munf. 15; Drane v. Schofiel Leigh 386; 3 Robinson, Pr. (Ed. 1858) 396; 3 Min. (2d Ed.) 4 Barton, L. Pr. (2d Ed.) 128; Hopkins v. Richardson, 9 Grat. 4 Long v. Pence, 93 Va. 584, 25 S. E. 593; Coiner v. Hansbarger, 4 L 452; Brown v. Ross, 6 Munf. 391; Peay v. Morrison's Ex'rs, 10 Grat. 1 Caton v. Lenox, 5 Rand. 31; Clark v. Young, 1 Cranch 181, 2 L. Ed.

Digitized by Google

v. Doremus, 3 How. 515, 11 L. Ed. 705; Lee v. Love, 1 Call 497; s v. Marshall, 4 Hen. & M. 455; Barley's Ex'r v. Layman's Adm'r, 18; Whitworth v. Adams, 5 Rand. 377; Stubbs v. Burwell. 2 Hen 6; Wood's Adm'r v. Duval, 9 Leigh 6.
ed but not construed in Selden v. Williams, 108 Va. 542, 62 S. E.

W. Va. decisions on similar statute, see Justis' Annotations, 99, section 19.
Gregory's Forms No. 32.

5769. **How assignee may sue assignor.**—Any such assignee ficial owner may recover from any assignor of such writing; y joint assignors shall be joined as defendants in one action, emote assignor shall have the benefit of the same defense as uit had been instituted by his immediate assignee. (Code 2861.)

risors' Note.—The words "or beneficial owner" are new. See g section.
common law assignee could not maintain action against remote . Dunlop v. Harris, 5 Call 16; Hooe v. Wilson, Id. 61; Caton , 5 Rand. 31.
intiff may recover under this section upon the general counts for aad and received, and for money paid, laid out, and expended. ker, J., Drane v. Scholfield, 6 Leigh 386. Or by motion under 3046. Long v. Pence, 93 Va. 584, 25 S. E. 593. See note to this Va. Law Reg. 612.
a proceeding by an assignee of a note against a remote assignor er on the contract implied by the assignment, the note is a y basis of evidence for the plaintiff in order to prove the assign- nd also to show the measure of the plaintiff's recovery. Long , 93 Va. 584, 25 S. E. 593.
3 Va. Law Reg. 745; 1 Barton, L. Pr. 235; 3 Min. (2d Ed.) Min. (3d Ed.) 32.
W. Va. decisions on similar statute, see Justis' Annotations, 99, section 15.

5770. **Jurisdiction in equity, when.**—A court of equity shall e jurisdiction of a suit upon a bond, note, or writing, by gnee or holder thereof, unless it appear that the plaintiff an adequate remedy thereon at law. (Code 1887, § 2862.)

or to this statute equity had jurisdiction of equitable assign- Winn v. Bowles, 6 Munf. 23.
seems that equity still has jurisdiction of suit by assignees of n action other than bonds, notes, or writings. 2 Va. Law Reg. Min. (2d Ed.) 435.
assignee of a chose in action has not a right in all cases to come ourt of equity upon the mere ground that he cannot sue in his ne at law, but it must appear that he is prevented from suing at the name of the assignor, or the assignor himself would have ght if he had not assigned to go into a court of equity. Moseley , 4 Rand. 392.
Barton, L. Pr. (2d Ed.) 235-6; 3 Min. (2d Ed.) 435.
ed but not construed in Carozza v. Boxley, 203 Fed. 673; cited a. L. Reg. 547.
W. Va. decisions on similar statute, see Justis' Annotations, 99, section 16.

Digitized by Google

CHAPTER 235.

For the Relief of Sureties.

Sec.
5771. How sureties on official bonds relieved.
5772. How, on bonds of State depositaries; what Treasurer to do as to deposits until new bond given.
5773. Officer failing to give new bond removed from office; depositary discontinued, if new bond not given.
5774. Surety may require creditor to sue.
5775. Effect of failure to sue.
5776. How surety, on bond under decree of cou payment of money, m tain indemnity,
5777. Surety's remedy agains cipal for money paid.
5778. Effect of confession of ment, or, etc., by without notice to pri or knowledge by princ suit and not defendin
5779. When contribution wrongdoers enforced.

Sec. 5771. How sureties on official bonds relieved.—When the s (or his committee or personal representative) of any officer, or missioner or receiver under decree of a court, required to give shall petition the court by which the bond is taken, or in whi in the clerk's office of which, it is recorded, or the circuit cou the county, or circuit or corporation court of the corporati which (where the bond of such officer is not taken by or filed i court or clerk's office) the officer resides, to be relieved fro suretyship, such court shall, on proof of reasonable notice intended motion, require such officer, commissioner, or receiv give a new bond in the same manner as if none had been giv him: Provided, that the surety, in any bond required to b proved by the Governor, shall file his petition in the Circuit of the city of Richmond; and the surety, in the bond of any of the Supreme Court of Appeals, shall file his petition in said at the place of session where his principal is such clerk. 1887, § 2887.)

A surety who has complied with the provisions of this sectio the arbitrary right to be relieved whether he became surety valuable consideration or not. He is not required to show cause condition precedent to relief, the court having no discretion. remedy is mandamus if trial court refuses relief. U. S., etc., Peebles, 100 Va. 585, 42 S. E. 310.

A guarantee company is entitled to be relieved as are indivi although the liability was assumed for a valuable consideration.

See section 280.

Sec. 5772. How, on bonds of State depositaries; what Treasu do as to deposits until new bond given.—The surety in any required of a depositary by section twenty-one hundred and eight, may petition the Finance Board to be relieved from th ligation, and the Finance Board, upon proof of reasonable not such depositary of the said petition, shall require the said d tary to give a new bond in the same manner as if none had

Digitized by Google

And the Treasurer of the State, upon notice of the said pe- shall make no further deposits with the said depositary until uch new bond shall have been given, approved, and accepted. n the meantime, if he deem it best for the interest of the shall withdraw such deposits as may be with such depositary, mmunicate in writing forthwith the fact of such withdrawal Finance Board, and thereafter keep or deposit the same as ance Board may direct. (Code 1887, § 2888.)

visors' Note.—Section 2156 creates a finance board, hence where- e word "Governor" formerly appeared in this section, the words ce Board" are now used.

5773. Officer failing to give new bond removed from office; ary discontinued, if new bond not given.—If any such officer, ssioner or receiver, being so required, fail to give such new within the time required by the court, he shall be deemed to ty of a breach of duty, and shall be forthwith removed from ce or trust; and if the new bond required of any depositary given within the time required, such depositary shall be dis- ued and the moneys of the State be forthwith withdrawn. 1887, § 2889.)

5774. Surety may require creditor to sue.—The surety, guar- or endorser (or his committee or personal representative), of rson bound by any contract, may, if a right of action has ac- thereon, require the creditor or his committee, or personal entative, by notice in writing, to institute suit thereon, and if bound in a bond with a condition, or for the performance of collateral undertaking, he shall also specify in such require- the breach of the condition or undertaking for which he re- suit to be brought. (Code 1887, § 2890.)

visors' Note.—Under the former language of this section it was Edmondson v. Potts, 111 Va. 79, 68 S. E. 254, 21 Ann. Cas. 1365, e notice must show a clear and distinct demand to the creditor vith to institute suit." The word "forthwith" no longer appears section. The omission of this word is due to the change made in lowing section.

notice to sue under this section must comply substantially with tute and must show a clear and distinct demand to the creditor vith to institute suit." A notice to "take such action as is neces- get an endorser's name off the note," or to sue one of the parties , is not a sufficient compliance with the statute. Edmondson v. 111 Va. 79, 68 S. E. 254, 21 Ann. Cas. 1365. Annotated 16 Va. eg. 357. But see revisors' note above.

or lengthy article on subrogation in Va., see 16 Va. Law Reg. 321. ted but not construed, Manson v. Rawlings, 112 Va. 384, 71 S. E.

e notes to next section.

r W. Va. decisions on similar statute, see Justis' Annotations, 101, section 1.

5775. Effect of failure to sue.—If such creditor, or his com- , or personal representative, shall not, within fifteen days after equirement, institute suit against every party to such con-

Digitized by Google

tract, who is resident in this State and not insolvent, and pros
the same with due diligence to judgment and by execution, he
forfeit his right to demand of such surety, guarantor or end
or his estate, and all his co-sureties and their estates, the m
due by any such contract for the payment of money, or the
ages sustained by any breach of the collateral condition or u
taking specified as aforesaid; but the conditions, rights, and
edies against the principal debtor shall remain unimpaired the
(Code 1887, § 2891.)

Revisors' Note.—Under this section the creditor has fifteen
after notice given under the preceding section within which to ins
suit. Formerly, he was given "a reasonable time." It was th
better to fix a definite period. The words "guarantor or endorser"
in line six of the text are new, and the purpose of their insertion
make the language as comprehensive as that of the preceding secti

Indorser.—First indorser may require holder of note to sue, no
standing agreement between holder and second indorser to extend ti
payment, and such an extension does not release first indorser. W
v. Independence Nat. Bank, 96 Va. 728, 32 S. E. 459, 70 Am. St. Rep

Receiver.—A receiver appointed to collect purchase money o
sold by him as commissioner, for which he had taken a bond with
to himself, is not a creditor in the sense of the statute. Davis' Ad
Snead, 33 Grat. 705.

Several sureties.—Where some of several sureties who hav
quired creditor to sue are discharged by his failure so to do, the
sureties are also discharged, though they may not have united in t
quirement. Wright's Adm'r v. Stockton, 5 Leigh 153.

Equitable relief.—Surety, before payment of debt, may res
equity to compel creditor to collect and principal debtor to pa
debt. Kent v. Matthews, 12 Leigh 574; Hatcher's Adm'r v. Hat
Ex'rs, 1 Rand. 53; Humphrey v. Hitt, 6 Grat. 524, 52 Am. Dec.
Randolph's Adm'x v. Kinney, 3 Rand. 397.

Surety may enforce for his exoneration any lien of creditor on
of principal, and may bring any suit in equity which a creditor
bring. Stephenson v. Taverners, 9 Grat. 398. See, also, Cabell's
v. Megginson's Adm'rs, 6 Munf. 292.

Surety is in equity discharged from the debt where creditor
out an attachment and levies same on goods of principal debtor suf
to satisfy the debt, but afterwards accepts a mortgage and releas
attachment, and debtor eloigns the mortgaged effects. Ashby's Ad
Smith's Ex'x, 9 Leigh 164.

Laches.—Laches is neglect to do something that a party shou
surety can never charge creditor with laches until he has in vain n
him to pursue principal. Alexander v. Byrd, 85 Va. 690, 8 S. E.
Coleman v. Stone, 85 Va. 386, 7 S. E. 241; Croughton v. Duval, 3 C

Due diligence.—Does not peremptorily require obligee, after o
ing judgment, to sue out execution upon it; only requires due dili
Harrison's Ex'r v. Price's Ex'r, 25 Grat. 553.

Negligence cannot be imputed to creditor where clerk has r
to issue execution because of stay law. Id.

Creditor is not required to pursue the estate of the princi
equity to impeach alleged frudulent conveyances or to subject an
of the principal or to exhaust his remedies against the principal
he can look to surety. Id. See Meade v. Grigsby's Adm'rs, 26 Gra

Countermand of execution.—Countermand of execution by cr
after it goes into the hands of the sheriff, but before it is levied
not release surety of execution debtor. Humphrey v. Hitt, 6 Grat
52 Am. Dec. 133.

Release of levy.—Nor will release of levy of execution upon

Digitized by Google

of surety release co-surety. Alexander v. Byrd, 85 Va. 690, 8 S. E. See Harrison's Ex'r v. Price's Ex'r, 25 Grat. 553.

Reasonable time.—Reasonable time here, when suit was commenced months after notice was given. Yuille's Adm'r v. Wimbish's Adm'r, . 308.

The statute now requires suit to be instituted within fifteen days notice. See revisors' note above.

Generally.—This section does not change the relation or the con- between creditor and surety. Harrison's Ex'r v. Price's Ex'r, 25 553.

Guaranty is distinguished from suretyship in being secondary while atter is a primary obligation. Piedmont Guano & Mfg. Co. v. s, 86 Va. 941, 11 S. E. 883.

For general liability of a guarantor, see 2 Va. Law Reg. 78. See rton, L. Pr. (2d Ed.) 1079; 2 Min. (4th Ed.) 830, 840; 3 Min. Ed.) 188, 214.

See Burks' Pleading and Practice, p. 390.

Cited, Edmondson v. Potts, 111 Va. 79, 68 S. E. 254, 21 Ann Cas. Manson v. Rawlings, 112 Va. 384, 71 S. E. 564; Colona v. Parksley Bank, 120 Va. 812, 92 S. E. 979.

For W. Va. decisions on similar statute, see Justis' Annotations, er 101, section 2.

c. 5776. **How surety, on bond given under decree of court for ient of money, may obtain indemnity.**—A surety (or his com- ee, or personal representative) in a bond (other than the bond commissioner or receiver) given under a decree or order of a t for the payment of money, if no suit be pending for the very thereof, may file his petition in the court which rendered ade the decree or order, or to which the case has been removed, bond of indemnity. The petition shall state that the petition- s reason to believe that he, or the estate he represents, is likely ffer pecuniary loss in consequence of such suretyship, the nds of such belief, and be verified by affidavit. Upon the filing e petition and proof of reasonable notice to the principal in ond, and all the parties in interest, the court may require such nnifying bond, with satisfactory sureties, to be given within ne to be prescribed. If such bond be given, it shall be with ition and shall bind the obligors therein to indemnify the ties in the former bond against all loss or damage in conse- ce of such former bond. If such bond be not given, the court, e request of such surety, personal representative, or committee, e money be due and payable, or whenever the same becomes and payable, shall order suit to be brought for its recovery, and ecuted to judgment and by execution. (Code 1887, § 2892.)

c. 5777. **Surety's remedy against principal for money paid.**— y person liable as bail, surety, guarantor, or endorser, or any ff liable for not taking sufficient bail, or the committee, or or personal representative of any so liable, pay, in whole or art, any judgment, decree, or execution, rendered or awarded ccount of such liability, the person having right of action for amount so paid, may, by motion in the court in which the said ment, decree, or execution was rendered or awarded, obtain

Digitized by Google

judgment or decree against any person against whom such r
of action exists for the amount so paid, with interest from the
of payment, and five per cent. damages on said amount. (Code 1
§ 2893.)

In general.—As to who are sureties, see Tompkins v. Mitche
Rand. 428; Buchanan v. Clark, 10 Grat. 164; Harrison v. Fiel
Wash. 136; Harris v. Brooks, 21 Pick. 195, 32 Am. Dec. 254; Willi
Adm'r v. Macatee's Trustee, 86 Va. 681, 10 S. E. 1061; Cox v. Tho
Adm'x, 9 Grat. 312; Morrow's Adm'r v. Peyton's Adm'r, 8 Leigh

Remedy is cumulative, and does not deprive party of his actio
law or suit in equity. Mills v. Central Bank, 16 Grat. 97; Tinsl
Oliver's Adm'r, 5 Munf. 419; Eppes v. Randolph, 2 Call 125; Mou
v. Bank's Ex'r, 6 Munf. 387.

Before a surety is entitled to be subrogated to the rights of
creditor, he must have paid or satisfied the debt of the principal.
execution of bond to creditor is not sufficient unless it be accepte
satisfaction of debt of the principal. Combs v. Candler, 95 Va. 7
S. E. 815.

Undertaking by surety to pay the bond for consideration rec
from principal does not convert the surety into the principal and
principal into the surety in respect to the creditor. William & M
College v. Powell, 12 Grat. 372.

See sections 6044-6046 and notes. See 2 Barton, L. Pr. (2d
783, 1069, et seq., 1394; 4 Min. (3d Ed.) 1323.

As to the surety's right of contribution and substitution, see 2
(4th Ed.) 840; Enders v. Brune, 4 Rand. 438; Watts v. Kinney, 3 I
272, 23 Am. Dec. 266; Douglass v. Fagg, 8 Leigh 588; Hopewe
Cumberland Bank, 10 Leigh 206 (2d Ed.) 214; Givens v. Nelson's
10 Leigh 382 (2d Ed.) 397; McClung v. Beirne, 10 Leigh 394 (2d
410, 34 Am. Dec. 739; Haffey's Heirs v. Birchetts, 11 Leigh 85; Pov
Ex'rs v. White, 11 Leigh 309 (2d Ed.) 322; Wheatley's Heirs v. Calh
12 Leigh 264, 37 Am. Dec. 654; Bank v. Boisseau, Id. 387; Ker
Matthews, Id. 573; Brown v. Glascock's Adm'r, 1 Rob. 461 (2d
486; Robinson v. Sherman, 2 Grat. 178, 44 Am. Dec. 381; Bentl
Harris' Adm'r, 2 Grat. 357; Leake v. Ferguson, Id. 419; Rodge
McCluer's Adm'rs, 4 Grat. 81, 47 Am. Dec. 715; Preston v. Presto
Grat. 88, 47 Am. Dec. 717; Stephenson v. Taverners, 9 Grat. 398; H
Manser, 11 Grat. 522; Clevinger v. Miller, 27 Grat. 740; Crome
Cromer's Adm'rs, 29 Grat. 280; Chrisman's Adm'x v. Harman, 29
494, 26 Am. Rep. 387; Robertson v. Trigg's Adm'r, 32 Grat. 76; Gr
v. Wysors, Id. 127; Sherman's Adm'r v. Shaver, 75 Va. 1; Rhea v. Pre
Id. 757; Bank of O. D. v. Allen, 76 Va. 200; Hauser v. King, Id.
Rosenbaum v. Goodman, 78 Va. 121; Penn v. Ingles, 82 Va. 65;
drick v. Forney, 22 Grat. 748; Rixey v. Pearre, 89 Va. 113, 15
498; Exchange, etc., Co. v. Bayless, 91 Va. 134, 21 S. E. 279; Ror
Ferguson, 96 Va. 411, 31 S. E. 817; Sands' Adm'r v. Durham, 98
392, 36 S. E. 472, 54 L. R. A. 614; Repass v. Moore, 98 Va. 377, 36
474; Nalle v. Farish, 98 Va. 130, 34 S. E. 985; Sands' Adm'r v. Dur
99 Va. 263, 38 S. E. 145, 54 L. R. A 614, 86 Am. St. Rep. 884; Fu
son v. Taylor, 100 Va. 426, 41 S. E. 863.

As to the effect, in respect to the surety, of creditors, mere i
gence of principal, or extending, by contract, time of payment or
formance, or releasing liens and securities without the surety's con
see 3 Min. (2d Ed.) 186; Croughton v. Duval, 3 Call 70 (2d Ed.)
Hill v. Bull, Gilmer, 149; Norris v. Crummey, 2 Rand. 323; Loc
Summers, 3 Rand. 511; Hunter's Adm'r v. Jett, 4 Rand. 104; McKe
Ex'rs v. Waller, 1 Leigh 434; Alcock v. Hill, 4 Leigh 622; Harnsber
Ex'r v. Geiger's Adm'r, 3 Grat. 144; Humphrey v. Hitt, 6 Grat.
52 Am. Dec. 133; Walker v. Com., 18 Grat. 13, 98 Am. Dec. 631; Sha
v. McMullin, 25 Grat. 211; Harrison's Ex'r v. Price's Ex'r, 25 Grat.
Com. v. Holmes, Id. 771; Smith v. Com., Id. 780; Adams v. Logan

Digitized by Google

1; Coffman v. Moore's Ex'rs, 29 Grat. 244; Richmond & P. R. asey, 30 Grat. 218; Callaway's Ex'rs v. Price's Adm'r, 32 Grat. v. Martin, 78 Va. 1; Christian v. Keen, 80 Va. 369; Kyger v. Va. 507, 16 S. E. 627; Stuart v. Lancaster, 84 Va. 772, 6 S. E. change, etc., Co. v. Bayless, 91 Va. 134, 21 S. E. 279; State Sav. Baker, 93 Va. 510, 25 S. E. 550; Bacon's Adm'r v. Bacon's 94 Va. 686, 27 S. E. 576; Wright v. Independence Bank, 96 32 S. E. 459, 70 Am. St. Rep. 889; Bridgewater Mills Co. v. 98 Va. 721, 37 S. E. 290.

cussed, 9 Va. Law J. 1.

m of notice of motion by surety against principal, 4 Min. (3d 39.

W. Va. decisions on similar statute, see Justis' Annotations, 101, section 3.

Gregory's Forms No. 354.

ading.—Surety having paid five several sums of money for prin- y maintain five several motions, and recover several judgments debts and costs of each motion. Ayres v. Lewellin, 3 Leigh 609.

otion by defendant to consolidate, see Id., 615.

he notice apprise defendant of the grounds of motion it is suf- Graves v. Webb, 1 Call 443. But if the notice descend to par- proof must correspond. Drew v. Anderson, Id. 51.

he defendant appear and judgment be rendered on a hearing, the f the motion is not part of the record unless it be made so by xceptions. Ayres v. Lewellin, 3 Leigh 609.

5778. Effect of confession of judgment, or, etc., by surety notice to principal, or knowledge by principal of suit and ending it.—If any such surety (other than bail), or his com- or heir, or personal representative, confess judgment, or udgment to go against him by default, without giving notice principal (if he be a resident of the State), or his committee, onal representative, to defend the suit, and after such prin- ffers to defend the suit, and tenders counter security, ap- by the court in which the suit is pending, the said principal, committee, or heirs, or representative, may have the benefit y defense against the motion or suit of such surety, or his ttee, or representative, or heirs, against him that he might ad against the creditor; and in all cases in which any prin- ebtor, or his committee, or representative, or heirs, knowing pendency of any suit against his surety, or the committee, or r personal representative of such surety, shall not offer to such suit, he shall be precluded from making any de- o the claim of the surety which he might have made against t of the creditor. (Code 1887, § 2894.)

e 2 Barton, L. Pr. (2d Ed.) 1074.

r W. Va. decisions on similar statute, see Justis' Annotations, 101, section 4.

5779. When contribution among wrongdoers enforced—Con- on among wrongdoers may be enforced where the wrong is act of negligence, and involves no moral turpitude.

visors' Note.—This section is new.

Digitized by Google

TITLE 56.

Actions for Injuries, and Action of Detinue.

Ch. 236. Actions for injuries.
237. Action of detinue.

CHAPTER 236.

Actions for Injuries.

Sec.
5780. Action for seduction.
5781. For insulting words.
5782. Unauthorized use of the name or picture of any person for the purpose of trade or for advertising purposes prohibited.
5783. For wrongful distress, etc.
5784. Replevin abolished.
5785. Damages from violation of a statute, and remedy therefor, and the penalty.
5786. When suit may be maintained on account of death of a person caused by wrongful act of another.
5787. How and when to be brought; how damages awarded; new trials.
5788. To whom amount recovered to be paid.
5789. How claims to damages under Sec. 5786 may be compromised, and amount received distributed.
5790. When right of action not to determine, nor action, brought, to abate.
5791. Liability of intrastate mon carriers by rail operated by steam fo jury to, or death of ployees.
5792. Contributory negligenc bar to recovery; violat safety appliance acts.
5793. Assumption of risk; tion of safety app acts.
5794. Contracts exempting liability void; set-off surance.
5795. The term common carr embrace receivers, etc not persons, etc., oper steam railroads primar incidental to the oper of coal mines, etc.; roads owned by count
5796. Action may embrace ity under both State Federal acts.

Sec. 5780. Action for seduction.—An action for seduction m maintained, without any allegation or proof of the loss of the se of the female, by reason of the defendant's wrongful act. (1887, § 2896.)

In general.—Does not give action in any case in which it di lie at common law; only dispenses with proof of loss of service. Hodges, 13 Grat. 726.

Where a daughter, over the age of twenty-one years, who lives from her father's house, under a contract for her service made by self, after she became of age, for her own benefit, is seduced, the (2528)

Digitized by Google

father will not lie either at common law or under this statute. Hodges, 13 Grat. 726.

es not alter rule as to commencement of action, and when daughd away from her father's house at the time of the seduction, but d and was confined there, and nursed, the statute of limitations y begin to run from that time. Clem v. Holmes, 33 Grat. 722, Rep. 793. See 1 Barton, L. Pr. (2d Ed.) 110. See, also, 1 Bar- Pr. 186; 4 Min. (3d Ed.) 528, et seq.; 1 Min (4th Ed.) 223, 430; v. Campbell, 13 Grat. 573; Gregory's Forms No. 77.

r W. Va. decisions on similar statute, see Justis' Annotations, 103, section 1.

eading.—In action by father for the seduction of daughter de- n must allege relation of master and servant, as the action is d on that relation, and not that of parent and child. Lee v. , 13 Grat. 726. As to what is sufficient allegation of that rela- e Clem v. Holmes, 33 Grat. 722. 36 Am. Rep 793.

aintiff may elect to bring trespass or case for the seduction. v. Elliott, 6 Munf. 587; Same v. Elliotte, Gilmer 33. See sec- 86. Counts in trespass may be joined to count in case in action case Parsons v. Harper, 16 Grat. 64.

idence.—Defendant's letters to plaintiff's daughter relative to the are admissible; but the hearsay testimony of witness not acquaint- h plaintiff's general reputation for chastity, and her mere loose ge and immodest remarks to other young men, are inadmissible; here defendant fails on examination in chief to give details of s taken by her with him on night of seduction, such details are ly excluded when offered on re-examination. Fry v. Leslie, 87 9, 12 S. E. 671.

enhance damages plaintiff may prove that defendant promised to his daughter, and by means of said promise had succeeded in de- ng her. White v. Campbell, 13 Grat. 573.

ecuniary condition of the defendant may be shown. Clem v. s, 33 Grat. 722, 36 Am. Rep. 793.

efense.—Infancy no defense. Fry v. Leslie, 87 Va. 269, 12 S. E.

nstruction.—Not error to instruct the jury that if the conduct of aintiff shall appear to have been indiscreet, that is a circumstance should mitigate the damages, and to refuse to instruct that they to find for the defendant if it appeared to them that the father did t with the caution of a man of ordinary prudence Parker v. El- 3 Munf. 587.

. 5781. For insulting words.—All words which, from their construction and common acceptation, are construed as in- and tend to violence and breach of the peace, shall be action- No demurrer shall preclude a jury from passing thereon. e 1887, § 2897.)

n general.—All common-law defamations are insults. Moseley v. 6 Grat. 534; Payne v. Tancil, 98 Va. 266, 35 S. E. 725. Applies rds written as well as spoken. Chaffin v. Lynch, 83 Va. 106, 1 803. If publication be necessary, the writing and sending of such to the person libeled is sufficient. Rolland v. Batchelder. 84 Va. 5 S. E. 695.

Letter sent by servant to neighbor's wife, artfully asserting that she nvited writer to meet her, and proposing private interview, at a and place specified, is within the meaning of the statute, and ac- ble. Rolland v. Batchelder, 84 Va. 664, 5 S. E. 695.

To charge a white man with being a negro is calculated to inflict and damage upon him, for which he has a cause of action. Spen- Looney, 116 Va. 767, 82 S. E. 745; 20 Va. L. Reg. 540 and note.

A publication stating that fines collected by an officer did not ap-

Digitized by Google

pear on the records are not insulting, within the meaning of the
Moss v. Harwood, 102 Va. 386, 46 S. E. 385.

It is not place where libelous article is printed, but the place
it is published and circulated, that makes words actionable her
making one who procured their publication liable therefor. Ha
Bailey, 63 Fed. 873, 11 C. C. A. 476.

In the absence of an averment in the declaration that fro
usual construction and common acceptation alleged defamatory
are construed as insults and tend to violence and a breach of the
or some equivalent, declaration is demurrable. Moss v. Harwo
Va. 386, 9 Va. Law Reg. 1042, and note. 46 S. E. 385.

A publication containing insulting words may be declared on
the statute, though it be libelous under the common law. Ch
Lynch, 83 Va. 106, 1 S. E. 803; Payne v. Tancil, 98 Va. 262, 3
725.

An allegation that the words used are, "from their usual co
tion and common acceptation construed as insults, and tend to v
and breach of the peace," makes the declaration one under the s
though words used are objectionable at common law. Haskell v.
63 Fed 873, 11 C. C. A. 476.

Declaration is demurrable unless it sufficiently sets out either
of common-law slander or an insult under the statute. Hogan
moth, 16 Grat. 80.

The common law and statutory causes of action cannot be h
in one count. Moseley v. Moss, 6 Grat. 534; Hogan v. Wilmo
Grat. 80; Chaffin v. Lynch, 83 Va. 106, 1 S. E. 803.

Declaration must aver that the words from the usual consti
and common acceptation are construed as insults, and tend to v
and breach of the peace, or else employ some other equivalent av
to denote that the words are actionable under the statute. Ho
Wilmoth, 16 Grat. 80; Chaffin v. Lynch, 83 Va. 106, 1 S. E. 803.

Where the words are not charged to have been spoken of
cerning the plaintiff, and there is nothing which can by fair co
tion, apply to the plaintiff, the declaration will be insufficient.
Shelor, 2 Munf. 193; Donaghe v. Rankin, 4 Munf. 261.

In an action for a statutory slander, the plaintiff must decla
der the statute. If he does not, his declaration must set out a co
law slander, and if the words charged do not amount to slande
cannot be helped by the innuendo. Moseley v. Moss, 6 Grat. 53

A declaration laying the charge in the alternative, viz., th
defendant spoke words or words of like import, is good after v
Bell v. Bugg, 4 Munf. 260.

For monographic note on Libel and Slander, see Bourland v. E
8 Grat. 27, Va. Rep Ann.

Form of declaration in trespass on the case for slander, und
statute of Virginia, 4 Min. (3d Ed.) 1711.

See 12 Va. L. Reg. 275 et seq.

See 1 Barton, L. Pr. 189; 4 Min. (3d Ed.) 467; Burks' Pl.
pp. 249, 252, 348, 487, 949; section 6240; 3 Va. Law Reg. 469.
generally, Dillard v. Collins, 25 Grat. 343; Adams v. Lawson, 17
250, 94 Am. Dec. 455.

Cited but not construed, Meade v. Meade, 111 Va. 451, 69 S. E

For W. Va. decisions on similar statute, see Justis' Annot
chapter 103, section 2.

Abusive language is a misdemeanor under section 4536.

Justification and privileged communications.—Section 6240 a
rule as to privileged communications apply as well to actions unde
section as to common-law actions of libel and slander. Chaffin v. L
84 Va. 884, 6 S. E. 474; Id. 83 Va. 115, 116, [illegible] E. 803. See
ley v. Moss, 6 Grat. 534; Brooks v. Calloway, 12 [illegible]gh 466. See
erally, as to justification and privileged communications, Chaffin v L
83 Va. 106, 1 S. E. 803. Brown v. N. & W. R. Co., [illegible]0 Va. 61
S. E. 664, 60 L. R. A. 472; Reusch v. Roanoke, etc., Co. [illegible]1 Va. 53

Digitized by Google

58; Strode v. Clement, 90 Va. 553, 19 S. E. 177; Bourland v. 8 Grat. 27.

rson attacked may reply.—One insult cannot be set off against , yet if a man is attacked by another in a newspaper he may re- his reply is not unnecessarily defamatory of his assailant, and stly made in his defense, it will be privileged. Chaffin v. Lynch, 106, 1 S. E. 803. See Harman v. Cundiff, 82 Va. 239. As to offensive language as provocation, see Bourland v. Eidson, 8 7.

astruction of spoken words.—Words will be understood by the n the sense in which they were understood by the bystanders. . Young, 1 Wash. 150, 1 Am. Dec. 446; Roane, J., in Cave. v. 2 Munf. 194.

ner words.—When words laid in the declaration have been proved, before, proof of the speaking of like words as those laid, either r after they were spoken, is admissible to affect the measure of s. Hansbrough v. Stinnett, 25 Grat. 495.

finding that defendant caused the publication of libelous articles sustained where it appears from his testimony as a witness for that he uttered the words set out in declaration in a conversa- h editor of paper prior to their publication. Haskell v. Bailey, 873, 11 C. C. A. 476.

nages.—It is not necessary to prove actual pecuniary loss result- n the utterance of insulting words, as the law presumes that dam- sult therefrom. Boyd v. Boyd, 116 Va. 326, 82 S. E. 110; Ram- Harrison, 119 Va. 682, 89 S. E. 977.

ere is no rule of law fixing the measure of damages, nor can it ned by any process of computation. The jury is regarded as the l safest tribunal to determine not only the character of the al- sulting words, but also the measure of damages. Boyd v. Boyd, 326, 82 S. E. 110.

ere the speaking of the insulting words is admitted, the charac- he witnesses who testify only as to the language used, and the tances attending its utterance, and not as to the damages sus- is of no value in determining the damages sustained. Boyd v. 16 Va. 326, 82 S. E. 110.

Boyd v. Boyd, 116 Va. 326, 82 S. E. 110 (action under this sec- mmonly known as the anti-dueling act), the plaintiff was a and the defendant a man. A recovery of $3,000 damages was In Ramsay v. Harrison, 119 Va. 682, 89 S. E. 977 (also an nder this section), the plaintiff was a man and the defendant a in which case a recovery of $2,500 damages was sustained

e object of this section is to prevent the use of insulting words, n action thereunder it is not necessary for the plaintiff to prove ecuniary loss resulting from the utterance of the insulting words that the jury might give punitive damages. Ramsay v. Harri- 9 Va. 682, 89 S. E. 977.

idence in mitigation of damages, see section 6240 and notes.

to inadequacy of damages, see Blackwell v. Landreth, 90 Va. S. E. 791.

murrer to evidence.—It is improper for trial court to compel to join in defendant's demurrer to the evidence. Rolland v. ler. 84 Va. 664, 5 S. E. 695. But the provision as to demurrer ie benefit of plaintiff, and may be waived by him. Brown v. N. Co., 100 Va. 619, 42 S. E. 664, 60 L. R. A. 472.

v trials—When verdict set aside.—Court has the power to cor- manifest departure from right and justice on the part of the action under this statute. Corr v. Lewis, 94 Va. 26, 26 S. E.

e verdict of the jury will not be set aside unless it is so grossly e (or inadequate) as to indicate that the jury, in rendering it, tuated by prejudice, passion or corruption, or that they were mis-

Digitized by Google

led by some mistaken view of the case. Boyd v. Boyd, 116 Va. 32 S. E. 110.

Putting party on terms.—If the court has no right to set as verdict as excessive, it has no right to put a party upon terms to a a less sum. Boyd v. Boyd, 116 Va. 326, 82 S. E. 110.

Sec. 5782. Unauthorized use of the name or picture of any pe for the purpose of trade or for advertising purposes prohibited person, firm, or corporation that knowingly uses for advertising poses, or for the purposes of trade, the name, portrait, or pi of any person, resident in the State, without having first obta the written consent of such person, or if dead, of his survi consort, or if none, his next of kin, or, if a minor, of his or parent or guardian, as well as that of said minor, shall be de guilty of a misdemeanor and be fined not less than fifty nor than one thousand dollars. Any person whose name, portrai picture is used within this State for advertising purposes or the purposes of trade, without the written consent first obta as above provided, or if dead, the surviving consort, if any, none, his next of kin, as the case may be, may maintain a su equity against the person, firm, or corporation so using his n portrait, or picture, to prevent and restrain the use thereof; may also sue and recover damages for any injuries sustaine reason of such use, and if the defendant shall have knowingly such person's name, portrait, or picture in such manner as is fo den or declared to be unlawful by this chapter, the jury, in its cretion, may award exemplary damages. (1904, p. 111.)

Revisors' Note.—The act from which this section is taken prot living persons only. The revised section protects the dead as well a living.

For notes upon the right of privacy, see 11 Va. Law Reg. 63, 10 idem 824, 12 idem 91.

Decisions of other States.—Under similar statute in New Yo was decided that the provisions did not violate the due process of the equal protection of the laws or impairment of contract claus the State or Federal Constitutions. Nor is the statute invalidate the fact that it provides that the name, portrait or picture of an i cannot be used for advertisement purposes without the written co of his or her parent or guardian. Wyatt v. James Creery Co., 111 Supp. 86. See also Peck v. Tribune Co., 214 U. S. 185.

In Binns v. Vitagraph Co., 103 N. E. 1108, the N. Y. Court o peals decided that a similar statute applied in a case where a movin ture company used a picture representing it to be the likeness o plaintiff when, as a matter of fact, it was not.

In an action for damages on the ground that the defendants published a likeness of plaintiff in an advertisement without his au ity, the Supreme Court of Rhode Island held that there was no such as "the right of privacy" for the invasion of which an action for ages lies at common law. Henry v. Cherry & Webb, 73 Atl. Rep.

The Court of Appeals of Kentucky, however, sustained a judg for the plaintiff in the case where a picture was published, accomp by a personal sketch and a forged letter of recommendation of a p medicine. Foster, Milburn & Co. v. Chinn, 120 S. W. Rep. 364.

The Supreme Court of the United States, in Peck v. Tribune Co Sup. Ct. Rep. 454, 214 U. S. 185, reversed the U. S. Circuit Court i recting a verdict for the defendant where a woman's picture was

Digitized by Google

under the name of another person with the statement that she nstantly used a certain brand of whiskey herself and as nurse had t to her patients.

e also Roberson v. Rochester F. Box Co., 50 L. R. A. 478, and h v. New England L. Ins. Co., 69 L. R. A. 101.

5783. For wrongful distress, etc.—If property be distrained y rent not due, or attached for any rent not accruing, or under any attachment sued out without good cause, the owner such property may, in an action against the party suing out arrant of distress or attachment, recover damages for the ful seizure, and also, if the property be sold, for the sale there- Code 1887, § 2898.)

his section was designed to meet both the case where no rent is accruing and the case where the distress or attachment is for han is due or accruing. Rep. Rev. 1849, 735, note.

landlord who employs an agent to lease his property and receive s not liable in damages for the act of the agent in unlawfully suing listress warrant against the tenant, unless he directed or approved oceedings had under the distress warrant, or failed to repudiate roceedings after full knowledge of them. Fishburne v. Engledove, 548, 22 S. E. 354.

he circumstance that the party distrained upon sued out a writ of n, which was never prosecuted, will not prevent him from main- a case for the wrongful distress. Olinger v. McChesney, 7 Leigh

laintiff may elect to bring either trespass or case. Olinger v. Mc- y, 7 Leigh 660.

eclaration is bad on general demurrer if it does not set forth the n of landlord and tenant existing between plaintiff and defendant. v. Murdaugh, 2 Leigh 447.

this case a judgment in favor of tenant in action of unlawful de- brought against him is no evidence that no rent was due at the he distress warrant was sued out. Fishburne v. Engledove, 91 Va. 2 S. E. 354.

variance between the contract of lease as alleged and as proved fatal. Olinger v. McChesney, 7 Leigh 660.

the absence of any charge of fraud, malice, oppression or other aggravation, the measure of the plaintiff's damages is com- ion for the injury suffered. Fishburne v. Engledove, 91 Va. 548, E. 354.

e 1 Barton, L. Pr. (2d Ed.) 200; 4 Min. 131; Sams, Attachment, Barton, L. Pr. (2d Ed.) 1010; Burks' Pleadings and Practice, p.

or W. Va. decisions on similar statute, see Justis' Annotations. r 103, section 3.

5784. Replevin abolished.—No action of replevin shall be ter brought. (Code 1887, § 2899.)

ee Vaiden v. Bell, 3 Rand. 448.

5785. Damages from violation of a statute, and remedy there- nd the penalty.—Any person injured by the violation of any e may recover from the offender such damages as he may sus- y reason of the violation, although a penalty or forfeiture ch violation be thereby imposed, unless the same be expressly oned to be in lieu of such damages. And the damages so sus- l, together with any penalty or forfeiture imposed for the ion of the statute, may be recovered in a single action of tres-

Digitized by Google

pass on the case upon proper counts when the same person is ent to both damages and penalty: but nothing herein contained affect the existing statutes of limitation applicable to the foreg causes of action respectively. (Code 1887, § 2900; 1901-2, p.

Purpose and effect of section.—The purpose of this section merely to preserve to the person injured the right to maintain hi tion for the injury he may have sustained by reason of the wrongc of another, and to prevent the wrongdoer from setting up the de that he had paid the penalty of his wrongdoing under a penal sta It was not intended to create a new ground for bringing an actio damages. Connelly v. W. U. Tel. Co., 100 Va. 51, 40 S. E. 618, 56 A. 663, 93 Am. St. Rep. 919; Tyler v. Western Union Tel. Co. (C. 54 Fed. 634; Hortenstine v. Virginia-Carolina Ry. Co., 102 Va. 91 S. E. 996. See note 7 Va. Law Reg. 717.

This section confers no new or enlarged right upon a party in as a result of the violation of a statute. A party suing for an i arising from an act of a defendant, in violation of a statute, cla damages, and not merely the penalty prescribed in the act, would to allege and prove the same facts, which he would have to allege prove if the act of negligence complained of was not in violation statute, since the purpose of this section was merely to preserve t person injured the right to maintain his action for the injury he have sustained by reason of the wrongdoing of another, and to pr the wrongdoer from setting up the defense that he had paid the pe imposed under a penal statute. Hortenstein v. Va.-Carolina Ry. Co. Va. 914, 923, 47 S. E. 996.

Generally.—See W. U. Tel. Co. v. Reynolds, 77 Va. 173, 46 Am 715, for damages recovered for violation of section 4042; N. & W Co. v. Irvine, 84 Va. 553, 5 S. E. 532, where it was held that pla injured by railroad company's refusal to carry his baggage was not l ed to the penalty, but might recover the amount of actual damag & D. Co. v. Noell, 86 Va. 19, 9 S. E. 473, 13 Va. Law J. 320, where ages caused by the obstruction of streets by railroad company wer covered; Southside R. Co. v. Daniel, 20 Grat. 344, where damag land caused by faulty construction of railroad embankment were r ered; U. S. S. Co. v. Nottingham, 17 Grat. 115, 91 Am. Dec. 378, w damages were claimed for collision.

See, also, 7 Va. Law Reg. 659, 3 Va. Law Reg. 222; 1 Barton, L (2d Ed.) 200.

If separate actions be brought, can defendant require them consolidated? See Ayres v. Lewellin, 3 Leigh 609.

For W. Va. decisions on similar statute, see Justis' Annota chapter 103, section 7.

Sec. 5786. When suit may be maintained on account of death person caused by wrongful act of another.—Whenever the deat a person shall be caused by the wrongful act, neglect, or defau any person or corporation, or of any ship or vessel, and the neglect, or default is such as would (if death had not ensued) entitled the party injured to maintain an action, or to proce rem against said ship or vessel, or in personam against the ow thereof or those having control of her, and to recover damag respect thereof, then, and in every such case, the person wh corporation or ship or vessel which, would have been liable, if d had not ensued, shall be liable to an action for damages, or, if a or vessel, to a libel in rem, and her owners or those responsible her acts or defaults or negligence to a libel in personan, notw

Digitized by Google

g the death of the person injured, and although the death ve been caused under such circumstances as amount in law ony. (Code 1887, § 2902.)

tute is remedial.—Statute is remedial, and is to be liberally d. B. & O. R. Co. v. Wightman's Adm'r. 29 Grat. 431, 26 Am. 4.

o may maintain action.—In an action to recover damages for h of his infant child, occasioned by the wrongful act of another, n be no recovery where it appears that the negligence of the or of the custodian of the infant to whom the father intrusted it, tely contributed to the result. The doctrine of imputed negli- s no application to such a case. R. F. & P. R. R. Co. v. Martin, 201, 9 Va. Law Reg. 891, and note, 45 S. E. 894.

provisions of this section authorize an action for the wrongful a resident alien, for the benefit of his resident alien widow and residing in another State. Pocahontas Collieries Co. v. Rukas, 278, 11 Va. Law Reg. 399, 406 and note, 51 S. E. 449.

administrator of a decedent who was a resident alien, and whose and infant child are non-resident aliens, may bring the action for in this section. Low Moor Iron Co. v. La Bianca's Admr., 83, 55 S. E. 532.

object of the statutes on this subject is to give the right of ac- ere none existed at common law and to prevent an action from which would otherwise have abated, but not to allow two actions the same defendant for the same injury. Brammer v. N. & W. 107 Va. 206, 57 S. E. 593. See opinion of trial judge in same Va. Law Reg. 244.

he wrongdoer dies before his victim does no action can be main- gainst his personal representative. Beavers v. Putnam, 110 Va. S. E. 353.

common law personal actions died with the person and could not ed either by or against the personal representative, and this rule been altered in respect to an injury done to the person. The action given by this section is an independent right of action and does not survive to the personal representative. Beavers am, 110 Va. 713, 67 S. E. 353.

person convicted of a felony and in confinement, against whom a right of action under this section may be sued through his ee under section 4998 et seq. Merchant v. Shry, 116 Va. 437, 106.

established common law rule that a father could not recover loss of the services of his minor son between the time of his nd the time when he would have attained his majority, has not rogated or even changed by this section, which only gives to the stributees and personal representatives of the deceased the right n in the name of the personal representative for a personal in- ongfully inflicted on the deceased and which resulted in his or does this section affect the common law right of a personal tative or parent to recover for losses between time of injury ulting death. Stevenson v. Ritter Lumber Co., 108 Va. 575, 62 51.

a parent recover for death of a baby? See 15 Va. Law Reg.

itation.—The limitation to the action given by this section is r. Anderson v. Hygeia Hotel Co., 92 Va. 687, 24 S. E. 269. See se and note, 2 Va. Law Reg. 27; Manuel v. N. & W. R. Co., 99 37 S. E. 957. See, also, section 5790 and notes; Birmingham O. Ry. Co., 98 Va. 648, 37 S. E. 17, 6 Va. Law Reg. 411. See g section.

erally.—For article on the history and construction of this sec- e 15 Va. Law Reg. 825.

Digitized by Google

See monographic note on Master and Servant, Hewes v dridge, 1 Rob. 143, Va. Rep. Anno.; Burks' Pl. & Pr., p. 68.

For monographic note on Death by Wrongful Act, see De K Wilkinson's Adm'r, 2 Pat. & H. 663, Va. Rep. Anno.

As to when the owner or employer is liable for the negligent the independent contractor, see 2 Va. Law Reg. 804; Emmerson 94 Va. 60, 26 S. E. 386, 2 Va. Law Reg. 834, note.

As to liability of corporations for punitive damages or smart see 1 Va. Law Reg. 471.

Referred to, but not construed, in R. & D. R. Co. v. Anderson's 31 Grat. 812, 31 Am. Rep. 750; B. & O. R. Co. v. Wightman's 29 Grat. 431, 26 Am. Rep. 384; Matthews v. Warner's Adm'r, 2 570, 26 Am. Rep. 396; B. & O. R. Co. v. Sherman's Adm'x, 30 Gra Roberts v. A. & F. R. Co., 83 Va. 313, 2 S. E. 518; Richmond v Adm'x, 103 Va. 322, 49 S. E. 482.

See, also, B. & O. R. Co. v. Whittington's Adm'r, 30 Grat. 8 & O. R. Co. v. Noell's Adm'r, 32 Grat. 394; R. & D. R. Co. v. Adm'r, 78 Va. 93; Moon's Adm'r v. R. & A. R. Co., 78 Va. 745, Rep. 401; Clark's Adm'r v. R. & D. R. Co., 78 Va. 709, 49 Am. Rep The Harrisburg, 119 U. S. 199, 7 Sup. Ct. 140, 30 L. Ed. 358; Sh Adm'r v. C. & O. R. Co., 81 Va. 188, 59 Am. Rep. 654; Farley's v. R. & D. R. Co., 81 Va. 783; Va. Mid. R. Co. v. White, 84 V 5 S. E. 573, 10 Am. St. Rep. 874.

It is well for each count to allege, in the language of the that the death was "caused by the wrongful act, neglect, or de etc. See 1 Barton, L. Pr. 201; 3 Min. 287, 288; 4 Min. 454.

As to libel in rem for death by wrongful act, see The Mar (D. C.) 18 Fed. 918; Evich v. The Glendale (D. C.) 77 Fed. 90 Glendale v. Evich, 81 Fed. 633, 26 C. C. A. 500; The Anglo-Pata 235 Fed. 92 (C. C. A., Fourth Circuit); Indra Line v. Palmetto phate Co., 239 Fed. 94 (C. C. A., Fourth Circuit). See notes to 5787 under "Federal Courts."

See Gregory's Forms No. 126.

See following sections of this chapter.

For W. Va. decisions on similar statute, see Justis' Annot chapter 103, section 5.

Workmen's compensation act.—A workmen's compensation a passed at the session of 1918. See Acts 1918, p. 637.

Sec. 5787. How and when to be brought; how damages awa new trials.—Every such action shall be brought by and in the of the personal representative of such deceased person and one year after his or her death, but if any such action is br within said period of one year after said person's death, and f cause abates or is dismissed without determining the merits action, the time said action is pendng shall not be counted part of said period of one year, and another suit may be br within the remaining period of said one year as if such forme had not been instituted. No action, however, shall be main by the personal representative of one who, after injury, has promised for such injury and accepted satisfaction therefor ous to his death. The jury in any such action may award such ages as to it may seem fair and just, not exceeding ten tho dollars, and may direct in what proportion they shall be distri to the surviving widow or husband and children of the deceas if there be none such, then to the parents, brothers and sist the deceased. But nothing in this section shall be constru

Digitized by Google

ve the court of the power to grant new trials as in other cases. 1887, § 2903; 1904, p. 110.)

evisors' Note.—The second sentence of this section is new, and pose is to set at rest a doubt which has been expressed on the sub- See note in 70 Am. St. Rep. at p. 684; Brammer v. Norfolk & W. 107 Va. 206, 57 S. E. 593.

ie words "and grandchildren" should have been inserted in line om the bottom of this section. The omission was inadvertent, believed not to be material in view of the provisions of the next .

imary object of statute.—The primary object of this statute was pensate the family of the deceased and not in the interest of his l estate. R. F. & P. R. R. Co. v. Martin, 102 Va. 201, 9 Va. Law 91, and note, 45 S. E. 894.

ederal courts.—The right given in rem by preceding section (5786) a lien, and may be enforced by a libel in rem in the federal court he injury occurs in waters of the State navigable from the sea. endale (D. C.) 77 Fed. 906, affirmed 81 Fed. 633, 26 C. C. A. 500 ıling The Manhasset [D. C.] 18 Fed. 918); The Anglo-Patagonian, d. 92 (C. C. A., Fourth Circuit).

here administrator and defendant are citizens of different States, ion may be brought in the federal courts, though the deceased was en of the same State with defendant, where his widow and chil- ill reside. Harper v. N. & W. R. Co. (C. C.) 36 Fed. 102.

ie fact that a citizen of another State is selected for the purpose ferring on the federal court jurisdiction of an action hereunder. ot defeat the jurisdiction. Goff's Adm'r v. Norfolk & W. R. Co. 36 Fed. 299.

iat a ship was in charge of a compulsory pilot at the time of a col- or which she was in fault does not absolve her from liability for ıth of persons caused by the collision under section 5786. Indra Palmetto Phosphate Co., 239 Fed. 94 (C. C. A., Fourth Circuit).

r a case in which an action under sections 5786-5788 was allowed District Court of the United States for the Eastern District of ork, against a Delaware corporation, see Lauria v. E. I. Du Pont ıours & Co., 241 Fed. 687.

mitation—Statute of.—No action can be brought after twelve after death, though former action, which was nonsuited had been ıced within twelve months; but see section as above amended. v. N. & W. Ry. Co., 99 Va. 188, 37 S. E. 957. The limitation to affect the right. See, also, 1 Va. Law Reg. 694; 2 Va. Law 6.

henever the statute of limitations affects the right as well as the , and it appears of record that the period of limitation has ex- the defense can be made by demurrer. Dowell v. Cox, 108 Va. S. E. 272.

e action does not survive to the personal representative, within aning of section 5818, and must be brought within the year (ex- above provided). Anderson v. Hygeia Hotel Co., 92 Va. 687, 24 69. See same case and note, 2 Va. Law Reg. 27. See Birming- C. & O. Ry. Co., 98 Va. 548, 37 S. E. 17; 6 Va. Law Reg. 411, See notes to section 5790.

e provision of section 5809, excluding one year from death from ation of time within which suit must be brought, does not apply section. If declaration shows on its face that the death occurred han twelve months before action brought, advantage may be of the limitation by demurrer. Manuel v. N. & W. Ry. Co. 99 , 37 S. E. 957. See 3 Va. Law Reg. 63.

rties in interest need not be named.—It is not necessary to aver eclaration for whose benefit the suit is prosecuted. B. & O. R. Co. v. ıan's Adm'r, 29 Grat. 431, 26 Am. Rep. 384; Matthews v. Warner's

Digitized by Google

Adm'r, 29 Grat. 570, 26 Am. Rep. 396; Harper v. N. & W. R
(C. C.) 36 Fed. 102.

Evidence.—The plaintiff may, before the jury has rendered a ve
introduce evidence to prove that the deceased left a widow and chil
and the number and age of the children. B. & O. R. Co. v. Sher
Adm'x, 30 Grat. 602.

In action for killing wife, evidence admissible tending to
wife's influence towards financial and moral betterment of hus
Simmons v. McConnell, 86 Va. 494, 10 S. E. 838, 14 Va. Law J. 106

Evidence is admissible to show the condition and circumstanc
the family of the deceased, his business qualifications, the conditi
his health, the amount he was realizing annually from his employ
the value of his services to his family, and the damage suffered by
in the loss of his care, nurture, and instruction. B. & O. R. Co. v. W
man's Adm'r, 29 Grat. 431, 26 Am. Rep. 384.

In an action for death by wrongful act or neglect, evidence c
pecuniary condition of the deceased at the time of his death is inadm
ble. Such evidence tends to excite the sympathy of the jury, a
received, is presumed to have wrongfully affected the verdict.
& O. R. Co. v. Ghee's Adm'x, 110 Va. 527, 66 S. E. 826.

It is not competent for the defendant to show that deceased
policies of insurance on his life for the benefit of his wife and chi
and that they have been paid. B. & O. R. Co. v. Wightman's Adm
Grat. 431, 26 Am. Rep. 384.

Damages.—The jury is not confined to the mere pecuniary los
injury, but may give such damages as "to them may seem fair and
Matthews v. Warner's Adm'r, 29 Grat. 570, 26 Am. Rep. 396.

If deceased left a wife and children, the jury may properly
the damages with reference to the pecuniary loss sustained by the
and children: First, by fixing the same in such sum as would be eq
the probable earnings of the deceased during the probable period
life if he had not been killed, taking into consideration his age,
ness capacity, etc.; and, second, by adding thereto the value of hi
vices in the attention to and superintendence, education, and care
family. B. & O. R. Co. v. Wightman's Adm'r, 29 Grat. 431, 26 Am.
384.

Excessive damages—New trial.—New trial on ground of exc
damages will not be granted unless verdict be such as to shoc
understanding, and impress no dubious conviction of the jury's prej
and passion. Bertha Zinc Co. v. Black's Adm'r, 88 Va. 303, 13
452, 15 Va. Law J. 654.

Form of verdict.—For the form of a verdict assessing damage
distributing them among parties in interest which was upheld b
Supreme Court, see Powhatan L. Co. v. Whetzel, 118 Va. 161, 86
898.

Neglect of deceased.—Neglect or misconduct of deceased, while
sidered in mitigation of damages, constitutes no defense where the
was caused by **wrongful act.** Matthew v. Warner's Adm'r, 29 Grat.
26 Am. Rep. 396. See, also, Farley v. Richmond, 81 Va. 783.

Case in which father cannot recover for death of child.—If a f
through his agent, the custodian of the child, is guilty of negli
proximately contributing to cause its death, the father cannot re
damages in an action for his own benefit. The doctrine of imputed
gence has no application to the case, but the rule that the negl
father cannot recover is founded upon the fundamental principle
no one can acquire a right of action by his own negligence. Richm
F. & P. R. Co. v. Martin's Adm'r, 102 Va. 201, 45 S. E. 894.

Generally.—Cited but not construed in Richmond v. Gay's A
103 Va. 322, 49 S. E. 482; Beavers v. Putnam, 110 Va. 713, 67 S. E.

See Brammer v. N. & W. R. Co., cited under section 5786.

For article on the history and construction of this section, see 1
Law Reg. 825.

Digitized by Google

s to venue of action for wrongul death, see 3 Va. Law Reg. 607:
or W. Va. decisions on similar statute, see Justis' Annotations,
r 103, section 6.
ee Gregory's Forms No. 126.

5788. To whom amount recovered to be paid.—The verdict, re be one, and the judgment of the court shall, in all cases, y the amount or the proportion to be received by each of the ciaries, if any such there be. No verdict, however, shall be ide for failure to make such specification, but if the jury een discharged their failure to make the specification at the at which the verdict is rendered shall be corrected by the trial at any time before judgment is entered, and for this pur- t may hear evidence if deemed necessary. The amount recov- n any such action shall be paid to the personal representative, fter the payment of costs and reasonable attorney's fees, shall tributed by such personal representative to the surviving wife, nd, child, and grandchild of the decedent; or if there be no vife, husband, child or grandchild, then to the parents, broth- id sisters of the decedent in such proportions as has been ained by the judgment of the court, and shall be free from all and liabilities of the deceased; but if there be no such wife, nd, child, grandchild, parent, brother or sister, the amount so ed shall be assets in the hands of the personal representative disposed of according to law. This and the preceding section bject to this proviso: Where the decedent has left a widowed r and also a widow, but no child or grandchild, the amount re- ed shall be divided between the mother and the widow in portions as the jury or court may direct. (Code 1887, § 2904; . 110.)

evisors' Note.—Before the revision this section provided that the t recovered should be distributed by the personal representative beneficiaries (naming them) "in such proportions as the jury may irected, OR, IF THEY HAVE NOT DIRECTED, ACCORDING TO TATUTE OF DISTRIBUTIONS." The meaning of this language nsidered doubtful. See Pinchum v. Southern Ry. Co., 10 Va. Law 32, criticized by Prof. Graves in his Notes on Torts, p. 27. It observed that under the revised section the surviving wife (or d), child, AND GRANDCHILD of the decedent constitute the pre- class of beneficiaries, and that the parents, brothers and sisters decedent constitute the deferred class. Under the former section, hildren were not put either in the preferred or deferred class, he revised section places them in the preferred class. tachment of grandparents for their grandchildren was considered than that for collateral kindred. The first two sentences of the section are new, and in consequence of their insertion, the former ge applicable to the statute of distributions (capitalized above) ger appears.

e judgment of the court must in all cases specify the beneficiaries e amount going to each. The verdict of the jury is required to , but if it fails to do so, the section points out how the specifica- all be made before judgment is entered. If there are none of the

Digitized by Google

kindred mentioned in the section, then the judgment should spec
the recovery is for the benefit of the estate of the decedent. It
deemed necessary to make any other change in the language of
tion as to the beneficiaries. The language used seems plain enough
cate that there is a preferred class of beneficiaries composed of
viving wife, husband, child and grandchild, and as long as any
remain there can be no recovery for the benefit of the deferred cl
can any of the deferred class be placed in the same class with
ferred class, and if there be none of either class enumerated, t
recovery must be for the benefit of the decedent's estate. It ca
for the benefit of any other collateral kindred.

See notes to section 5786.

Action for wrongful death of resident alien, for the benefi
resident alien widow and children, residing in another State, will
Pocahontas Collieries Co. v. Rukas, 104 Va. 278, 11 Va. Law R
406 and note, 51 S. E. 449.

See Brammer v. N. & W. R. Co., cited under section 5786.

See Powell's Adm'x v. Powell, 84 Va. 415, 4 S. E. 744; 1
L. Pr. (2d Ed.) 202; 3 Min. (2d Ed.) 288; 4 Min. (3d Ed.) 455,
L. Reg. 69.

For article on the history and construction of this section,
Va. Law Reg. 825.

See Gregory's Forms No. 126.

**Sec. 5789. How claim to damages under section fifty-seve
dred and eighty-six may be compromised, and amount receiv
tributed.**—The personal representative of the deceased ma
promise any claim to damages arising under section fifty-seve
dred and eighty-six before or after action brought, with th
sent of the persons who would be entitled to the damages rec
in an action therefor brought by such representative under
fifty-seven hundred and eighty-seven; or if any such perso
incapable from any cause of giving consent, the personal re
tative may compromise with the approval of the judge of th
wherein any such action has been brought, or if none ha
brought, with the consent of the judge of the court wherei
action may be brought. Such approval may be applied for
personal representative, on petition to the said judge, in t
vacation, stating the compromise, the terms thereof, and
therefor, and convening the parties in interest. If the jud
prove the compromise, and the parties in interest do not agre
the distribution to be made of what has been or may be recei
the personal representative under the said compromise, or if
them are incapable of making a valid agreement, the judg
direct such distribution as a jury might direct under sectio
seven hundred and eighty-seven as to damages awarded by th
other respects, what is received by the personal representati
der the compromise shall be treated as if recovered by him
action under the section last mentioned. When the judge
vacation, he shall return all the papers in the case, and order
therein, to the clerk's office of his said co[redacted] The clerk sh
the papers in his office as soon as received, and [redacted]thwith ent

Digitized by Google

n the order book on the law side of the court. Such orders, l the proceedings in vacation, shall have the same force and is if made or had in term. (Code 1887, § 2905.)

visors' Note.—The compromise may be made either before or ie action is brought. In case the compromise is made after the g of the action, and any of the parties are non sui juris, it must the approval of the judge of the court wherein the action is ; if no action has been brought, then the approval of the judge court wherein the action may be brought must be obtained.

wer of judge to sanction compromises in actions for injuries re- in death was added by the revisors of 1887, in order to facilitate proceedings. Burks' Address, 2 Barton L. Pr. (2d Ed.), 1389.

e Powell's Adm'x v. Powell, 84 Va. 415, 4 S. E. 744. This case nd was decided before the Code of 1887 went into effect.

r article on the history and construction of this section, see 15 v Reg. 825.

ed but not construed in R., F. & P. R. R. Co. v. Martin, 102 v Reg. 893, 45 S. E. 894.

to compromise by fiduciaries generally, see section 5440; as to ion, section 6163.

e Barton, L. Pr. (2d Ed.) 203; 3 Min. (2d Ed.) 288; 4 Min.) 456.

5790. When right of action not to determine, nor action, brought, to abate.—The right of action under sections fifty- hundred and eighty-six and fifty-seven hundred and eighty- shall not determine, nor the action, when brought, abate by ath of the defendant, or the dissolution of the corporation corporation is the defendant; and, where an action is brought erson injured for damage caused by the wrongful act, neglect, ault of any person or corporation, and the person injured dies g the action, the action shall not abate by reason of his but, his death being suggested, it may be revived in the f his personal representative, and the declaration and other ngs shall be amended so as to conform to an action under s fifty-seven hundred and eighty-six and fifty-seven hundred ghty-seven, and the case proceeded with as if the action had rought under the said sections. But in such cases there shall one recovery for the same injury. Nothing contained in ction shall be construed to extend the time within which an for any other tort shall be brought, nor to give the right to a claim for a tort not otherwise assignable. (Code 1887, § 1893-4, p. 83.)

visors' Note.—Section 2906 of the Code of 1887 was confined to here the decedent died from the effects of the injury. That sec- owever, was amended by Acts 1893-4, p. 83, and the right of re- xtended. Under this amendment it was held in Birmingham v. Ry. Co., 98 Va. 548, 37 S. E. 17, that the right of revival existed the plaintiffs in actions for personal injuries died pending the WITHOUT REGARD TO THE CAUSE OF DEATH, but that the d section did not make all actions for personal injuries revivable. o, note, 6 Va. Law Reg. 411. For discussions of the amendment, Va. Law Reg. 694, 2 Va. Law Reg. 27, and 4 Va. Law Reg. 772.

Digitized by Google

The revised section was not intended to change the holding in Bi
ham v. C. & O. Ry. Co., supra, but the provision for the amendment
declaration and other pleadings so as to conform to an action
sections 5786 and 5787 was taken from the section as it appears
Code of 1887. This provision was re-inserted so as to remove s
the difficulties suggested in the discussions above mention
has been discovered since the enactment of the Code that the re-in
of the provision for amendments in connection with the langua
in this section would extend the operation of the section beyon
was intended. This difficulty can only be remedied by legislatio
Legislature, therefore, will be asked to amend and re-enact this
by putting a period after the word "representative" and striki
the word "and" in line ten of the text, and inserting immediately
after as the beginning of that sentence the following words:
death resulted from the injury."

If the death resulted from the injury, and the action is
the section provides there shall be but one recovery for the same
that is, the recovery is to cover the damages both for the injury
death.

The last sentence is intended to meet difficulties that hav
suggested with reference to the act of limitations in other act
tort, and the right to assign such rights of action.

For a personal injury not resulting in death, for which no
is brought by the injured party in his lifetime, no provision is
has ever been made, and it simply dies as at common law.

This and the preceding sections do not affect the rule of the c
law, and do not cause to survive, within the meaning of section
the right of action for an injury to the person by the wrongf
neglect, or default of another. Such right of action still, as at c
law, dies with the person, and the limitation of one year applies
case. Anderson v. Hygeia Hotel Co., 92 Va. 687, 24 S. E. 269
Law Reg. 27, note; Manuel v. N. & W. Ry. Co., 99 Va. 188, 37 S.
See, also, 1 Va. Law Reg. 694; 2 Va. Law Reg. 386; 3 Va. La
63, 442, 609, 837; Birmingham v. C. &. O. Ry. Co., 98 Va. 548, 3
17, 6 Va. Law Reg. 411, note; 4 Va. Law Reg. 772.

The object of this section is to give the right of revival i
where the plaintiff in actions for personal injuries dies pendi
action, without regard to the cause of death, and not to make all
for personal injuries revivable. Birmingham v. C. & O. Ry.
Va. 548, 37 S. E. 17, note 6 Va. Law Reg. 411.

If the wrongdoer dies before his victim does no action can be
tained for the death; the right of action is given only against the
doer, and as he is dead there is no one in being who can b
Beavers v. Putnam, 110 Va. 713, 67 S. E. 353.

In personal injury case if trial court erroneously sets aside a
for plaintiff, and on second trial defendant gets judgment, and
then dies, his personal representative may have writ of error to
the action of the trial court on the first trial. Jackson v. Wi
112 Va. 128, 70 S. E. 539.

See Brammer v. N. & W. R. Co., cited under section 5786.

See notes to section 5786.

For article on the history and construction of this section,
Va. Law Reg. 825.

See Barton, L. Pr. (2d Ed.) 114, 203; 4 Min. (3d Ed.) 61
976.

**Sec. 5791. Liability of intrastate common carriers by railroa
erated by steam for injury to, or death of, employees.**—Ever
mon carrier by railroad engaged in intrastate commerce sh

Digitized by Google

in damages to any of its employees suffering injury while he ployed by such carrier in such commerce, and in case of his , to his personal representative, for such injury or death, re- g in whole or in part from the wrongful act or neglect of any e officers, agents, servants or employees of such carrier, or by n of any defect or insufficiency, due to its neglect, in its cars, es, appliances, machinery, track, roadbed, works, boats, ves, or other equipment. If the action be for the death of an oyee, sections fifty-seven hundred and eighty-seven, fifty-seven red and eighty-eight, fifty-seven hundred and eighty-nine and seven hundred and ninety, shall apply thereto as far as ap- ble. No action shall be maintained under this section, unless it mmenced within one year from the day the cause of action ed. (1916, p. 762, § 1.)

Revisors' Note.—This and the five following sections are based upon t of 1916 cited. The first part of section 5791 follows more closely nguage of the Federal Employers' Liability Act than did the Vir. act referred to, but of course the section applies only to railroads ed in intrastate commerce while the Federal act applies only to rail- engaged in interstate commerce. The last two sentences of section are new. The act failed to name the beneficiaries, to prescribe a tion within which the action may be brought, and to provide for important matters which are now covered by these two sentences. mitation of one year conforms to the limitation prescribed in sec- 787 on actions brought under section 5786. The limitation of ten and dollars on the amount of the recovery appearing in the act een omitted from section 5791 because covered by section 5787, is made a part of section 5791 as far as applicable. The act of above referred to, was restricted to negligence. Section 5791 fol- he language of section 5786 and also of Acts 1912, p. 583 (section of Pollard's Code, as amended), and extends the action to wrong- ts as well as neglects. The first part of section 5793 is substantially y of the constitutional provision. (Const., section 162.) In con- nce of sections 5791 to 5796, inclusive, Acts 1912, p. 583, amend- ction 1294k of Pollard's Code (1904), has been omitted and thereby ed.

Liability of intrastate steam railroads for injury to, or death of, yees.—Sections 5791 to 5796 of this Code constitute the present Virginia on the subject of the liability of intrastate common car- by railroads operated by steam for injury to, or death of, em- s. Section 1294k of Pollard's Code, as is stated in the revisors' above, has been repealed. The notes to section 162 of the Con- on should be read in connection with the sections of the Code mentioned. See, also, the following cases, which arose under the r law: N. & W. R. Co. v. Cheatwood, 103 Va. 356, 365, 49 S. E. Southern R. Co. v. Foster, 111 Va. 763, 69 S. E. 972; Potomac, P. Co. v. Chichester, 111 Va. 152, 68 S. E. 404; Ches. & O. R. Co. artz, 115 Va. 723, 80 S. E. 568. See 8 Va. Law Reg. 245; 12 Va. g. 447, 531, 535.

For digest of Federal Employers' Liability Act, see 19 Va. L. Reg. editorial upon the act, 20 Va. L. Reg. 788.

e. 5792. Contributory negligence no bar to recovery; violation fety appliance acts.—In all actions or motions hereafter brought st any such common carrier to recover damages for personal

Digitized by Google

injuries to any employee, or where such injuries have resulte
his death, the fact that such employee may have been guilty of
tributory negligence shall not bar a recovery, but the damages s
be diminished by the jury in proportion to the amount of ne
gence attributable to such employee; and no such employee,
may be injured or killed, shall be held to have been guilty of
tributory negligence in any case where the violation by such c
mon carrier of any statute enacted for the safety of employees
tributed to the injury or death of such employee. (Id., § 2.)

See article, 2 Va. L. Reg. N. S. 561.

Sec. 5793. Assumption of risk; violation of safety appliance a
—In any action brought against any common carrier, under or
virtue of section fifty-seven hundred and ninety-one, to recc
damages for injuries to, or death of, any of its employees,
knowledge of any employee injured or killed of the defective
unsafe character or condition of any machinery, ways, applian
or structures of such carrier, shall not of itself be a bar to recov
for any injury or death caused thereby, nor shall such emplo
be held to have assumed the risk of his employment in any
where the violation by such common carrier of any statute enac
for the safety of employees contributed to the injury, or death
such employee. (Id., § 3.)

See article, 2 Va. L. Reg. N. S. 561.

Sec. 5794. Contracts exempting from liability void; set-off of
surance.—Any contract, rule, regulation, or device whatsoever,
purpose or intent of which shall be to enable any common car
to exempt itself from any liability created by section fifty-se
hundred and ninety-one, shall to that extent be void; but in
action brought against any such common carrier under or by
tue of said section, such common carrier may set off therein
sum it has contributed or paid to any insurance, relief, benefit,
indemnity companies that may have been paid to the injured
ployee or the person entitled thereto on account of the injury
death for which said action was brought. (Id., § 4.)

Sec. 5795. The term common carrier to embrace receivers, e
but not persons, etc., operating steam railroads primarily as
cidental to the operation of coal mines, etc.; railroads owned
county.—The term "common carrier" as used in the four preced
sections shall include the receivers or other persons or corporati
charged with the duty of the management or operation of the bu
ness of a common carrier, whose motive power is steam; but sh
not include persons, firms or corporations owning or operating ste
railroads when such railroads are primarily and chiefly used
incidental to the operation of coal, gypsum, or iron mines, or s
mills, nor shall it apply to any railroad owned or operated by a
county. (Id., § 5.)

Digitized by Google

5796. **Action may embrace liability under both State and l acts.**—The declaration or other pleading in any such action nbrace a cause of action growing out of any act of Congress United States of America for said injury or death, without demurrable on this account, and without the plaintiff being ed to elect under which statute he claims. The five preceding s shall not apply to electric railways operated wholly within ate. (Id., § 6.)

CHAPTER 237.

Action of Detinue.

Sec.

When and how property sued for may be taken from possession of defendant; the bond to be given by plaintiff.

How defendant or other claimant may have property returned; the bond required therefor; what to be done with property, if bond not given.

Exceptions to sufficiency of bonds.

5800. How right of plaintiff to have property taken from possession of defendant contested, process abated, and property returned.

5801. Final judgment.

5802. What not error; if verdict omit value, how ascertained.

5803. Plaintiff to pay charges for keeping property; when same to be taxed in costs.

5804. Where bond filed with justice to be returned.

5797. **When and how property sued for may be taken from ion of defendant; the bond to be given by plaintiff.**—When- n any action of or warrant in detinue, it is made to appear affidavit of the plaintiff, his agent, or attorney,

hat there is good reason to believe that the defendant is in- t, so that any recovery against him for the alternate value property and for damages and costs will probably prove un- g,

r that the property, for the recovery of which such action rant is brought, will be sold, removed, secreted, or otherwise ed of by the defendant, so as not to be forthcoming to answer al judgment of the court or justice respecting the same;

r that such property will be destroyed or materially dam- or injured by neglect, abuse, or otherwise, if permitted to longer in possession of such defendant or other person claim- der him;

nd when such affidavit shall also state the kind, quantity, lue of the property claimed by the plaintiff in such action or nt, and that the affiant verily believes the plaintiff is en- to recover the same, the clerk of the court in which, or the before whom, such action or warrant is pending, shall issue ler or other process directed to the sheriff or other proper

Digitized by Google

officer, as the case may be, commanding him to seize the pro
mentioned in such affidavit and deliver the same to the plai
and it shall be the duty of the officer to whom such order or pr
is directed and delivered, to proceed forthwith to execute the
No such order or process, however, shall be issued until the p
iff, or some one for him, shall execute a bond, with sufficient su
to be approved by and filed with the clerk or justice, in a pe
at least double the estimated value of the property claimed,
able to the defendant, with condition to redeliver the proper
seized to the defendant, or to the person from whose possessi
was taken, if the right to the possession shall be adjudged ag
the plaintiff, and to pay all costs which may be awarded agains
plaintiff in such action or warrant, and all damages which ma
crue to the defendant or any other person by reason of the se
of such property under such order or process. (Code 1887, §
1916, p. 716.)

**Revisors' Note.—The following should be observed with refe
to the paragraph numbered 4: Formerly, the order or other pr
commanded the officer to seize and TAKE INTO HIS POSSESSIO
property mentioned in the affidavit. In most states replevin is
where in Virginia we use the action of detinue, but rep
has been abolished in Virginia. (Section 5784.) The former ch
on detinue was criticized and the preference claimed for replevin be
under the Virginia statute the plaintiff could only recover possessi
his property at the end of the litigation, whereas in replevin he rec
possession at the beginning. Even under the former language of
section, however, in practice the officer in many cases took the pro
and instead of retaining it, turned it over to the plaintiff. The re
section removes the criticism above referred to, and now the offi
commanded to "seize the property mentioned in such affidavit an
liver the same to the plaintiff," so that the plaintiff may, in all p
cases, regardless of the practice heretofore, recover possession o
property at the beginning of the litigation. The latter part of the
tion pertaining to the condition of the plaintiff's bond conforms t
change governing the action of the officer.**

**The amendment of 1916 (Acts 1916, p. 716) authorizing office
break open doors in order to execute the process in certain cases
been omitted because covered by section 6483.**

This chapter does not affect the equitable jurisdiction to decre
specific delivery of title papers to heirs at law, devisee, and other pe
properly entitled to the custody and possession of same. Kelly v. Le
etc., Co., 98 Va. 405, 36 S. E. 511, 81 Am. St. Rep. 736.

The insolvency of a defendant in detinue is no ground for an in
tion to prevent the removal or disposition of the subject of litiga
An ample remedy is afforded the plaintiff by this section. Langfo
Taylor, 99 Va. 577, 39 S. E. 223, 7 Va. L. Reg. 575. See section

A bond with condition, "If the said Lacelle Jackson shall pa
costs and damages which may be awarded against him or sustained by
person by reason of his suing out the action of detinue," will not auth
a recovery thereon, by a claimant of the property taken, for dam
sustained for the sale of the property. Jackson v. Hopkins, 92 Va.
24 S. E. 234.

Such bond is not void, but may be sued on, so far as the condi
are good, as a statutory bond. Id.

Digitized by Google

to be one of the anomalies of our system of pleading that
inue may be joined in the same action, but it has never
t a plaintiff can sue in detinue and recover in debt. The
ion of detinue is the unlawful detainer of the specific prop-
—not any other property, and not a money obligation due
endant to the plaintiff. Va. Land Immigration Bureau v.
Va. 821, 99 S. E. 691.
rton, L. Pr. (2d Ed.) 214; 4 Min. (3d Ed.) 429; Burks' Pl.

ographic note on Detinue, see Hunt's Adm'r. v. Martin's
t. 5778, Va. Rep. Anno.
Va. decisions on similar statute, see Justis' Annotations,
section 2.
ory's Forms Nos. 392, 603.

How defendant, or other claimant may have property e bond required therefor; what to be done with proper- not given.—The defendant in any such action or war- other person claiming title to the property so seized and sion of by the officer, may have such property returned y time after such seizure, upon executing a bond, with rety, to be approved by the officer, payable to the a penalty at least double the estimated value of such ith condition to pay all costs and damages which may against the defendant in said action or warrant, and which may accrue to any person by reason of the re- l property to the defendant or such claimant, and also property forthcoming to answer any judgment or order t or justice respecting the same; which bond shall be such officer, and by him returned to the office of the the justice who issued such order or process. The offi- eiving such bond, shall forthwith return the property im to the defendant, or any other person claiming title from whose possession it was taken. But if no such livered to such officer, after such seizure, the property nds of the officer shall be kept by him, unless it be perish- ensive to keep, in which case it may be sold by order of or by the judge in vacation; or, if the case be before a he peace, by order of such justice; such sale to be made e manner as if it were a sale under execution. (Code 8.)

s' Note.—The words "if in the hands of the officer" found line from the bottom of the text are new. Their insertion is sary by the change made in the preceding section.
Va. decisions on similar statute, see Justis' Annotations, , section 4.
egory's Forms No. 393.

9. Exceptions to sufficiency of bonds.—Either party may ions to the sufficiency of the bond of the other or of the f the property (if he has given bond), or such claimant xceptions to the sufficiency of the bond of either party; urt or justice before whom the action or warrant is pend-

Digitized by Google

ing, or the judge of said court in vacation, may, on the moti
either party or of the claimant, after reasonable notice t
others, pass upon said exceptions and make such order there
as may be just and reasonable. (Code 1887, § 2909.)

Sec. 5800. How right of plaintiff to have property taken from session of defendant contested, process abated, and propert turned.—The right to any such order or process as is provide in section fifty-seven hundred and ninety-seven, may be cont by the defendant or claimant of the property, before the cou justice, or judge of such court in vacation, after reasonable n to the plaintiff or his attorney; and if the court, judge or ju be of opinion that the order or process was issued on false su tions or without sufficient cause, such order or process sha abated, and the property returned to the possession of the p from whom it was taken, to abide the final trial of the acti warrant. (Code 1887, § 2910.)

Sec. 5801. Final judgment.—When final judgment is render the trial of such action or warrant, the court or justice shal pose of the property or proceeds, according to the rights of entitled; and when in any such action or warrant the plaintiff prevail under a contract which, regardless of its form or ex terms, was in fact made to secure the payment of money t plaintiff or his assignor, judgment shall be for the recovery o amount due the plaintiff thereunder, or else the specific prop and costs, and the defendant shall have the election of payin amount of said judgment or surrendering the specific property the court or justice may grant the defendant a reasonable tim exceeding thirty days, within which to discharge such judg upon such security being given as the court or justice may sufficient. (Code 1887, § 2911; 1916, p. 508.)

As to damages for detention after judgment affirmed by app court, see section 6377.

Plaintiff may at his option have writ of possession for the itself or fi. fa. for alternate value. Section 6484.

For W. Va. decisions on similar statute, see Justis' Annot chapter 102, section 6.

See Gregory's Forms Nos. 296, 305.

Sec. 5802. What, not error; if verdict omit value, how ascert —In such action, if on an issue concerning several things, in o more counts, no verdict be found for part of them, it shall n error, but the plaintiff shall be barred of his title to the omitted; and if the verdict omit the price or value, the cour at any time have a jury impaneled to ascertain the same. 1887, § 2912.)

For case before the statute, see Butler v. Parks, 1 Wash. 76.

If, in a declaration for several slaves laying separate valu jury find a joint value, it is error, and as to that a venire facias d will be awarded under the act of assembly in order to ascertain th

Digitized by Google

values. Higgenbotham v. Rucker, 2 Call 313 (2d Ed.) 265; Corn- v. Truss, 2 Munf. 195.
See 2 Barton, L. Pr. (2d Ed.) 704; 4 Min. (3d Ed.) 907.
For W. Va. decisions on similar statute, see Justis' Annotations, ter 102, section 6.
See Gregory's Forms Nos. 296, 305.

c. 5803. Plaintiff to pay charges for keeping property; when e to be taxed in costs.—The legal charges, if any, for keeping such property, while in the possession of the officer, shall be by the plaintiff and certified by the officer to the clerk or jus- who, in case such order or process be not abated, and final gment be rendered for the plaintiff, shall tax the same along the other costs of the suit. (Code 1887, § 2913.)

c. 5804. Where bond filed with justice to be returned.—Any l filed with or returned to a justice shall be forthwith returned him to the clerk's office of the circuit court of the county or oration court of the city in which he resides. (Code 1887, § ; 1902-3-4, p. 587.)

Digitized by Google

TITLE 57.

Limitation of Suits.

CHAPTER 238.

Limitation of Suits.

Sec.
5805. Limitation of entry on or action for land.
5806. Right not saved by claim.
5807. Further time allowed persons under disability.
5808. Provisos as to the preceding section.
5809. Period to be excluded from computation of the time within which, by operation of any statute or rule of law, any civil proceeding must be commenced.
5810. Limitation of personal actions generally.
5811. When right of action upon bonds of fiduciaries deemed to have first accrued; limitation of suits against fiduciaries themselves.
5812. Limitation of action, when there is a new promise in writing; how plaintiff to sue in such case.
5813. Effect of promise of personal representative or joint contractor.
5814. Effect, on right of action, of devise for payment of debts.
5815. Limitation of action, etc., on a recognizance.
5816. Of motion against officer for failure to return execution.
5817. Ground rents.
5818. Of actions not befor fied.
5819. Actions on judgmen of another State.
5820. Limitation of suits voluntary deeds, et
5821. Promise not to pl statute.
5822. To repeal a grant.
5823. Saving as to person disability.
5824. As to persons dea right accrues.
5825. As to plaintiff when vented by defendan right of action on contract barred.
5826. Further time given suit abates or is on ground not affec right to recover.
5827. Limitation of enforce deeds of trust an gages.
5828. Repeal of limitation remove bar of statu
5829. State not within st limitations.
5830. As to rights and existing when thi takes effect.

Sec. 5805. Limitation of entry on or action for land.—No shall make an entry on, or bring an action to recover, a lying east of the Alleghany mountains, but within fifteen y any land lying west of the Alleghany mountains, but wit years, next after the time at which the right to make suc

Digitized by Google

bring such action shall have first accrued to himself or to some son through whom he claims. For the purposes of this section county of Carroll shall be held and considered as lying wholly t of the Alleghany mountains. (Code 1887, § 2915.)

Adverse possession—What constitutes.—The possession requisite to plaintiff's right of entry must be actual, exclusive, uninterrupted, ble, notorious, hostile, under a claim of right, and must continue dur- the whole period of statutory limitation. Hollingsworth v. Sherman, Va. 668; Stonestreet v. Doyle, 75 Va. 356, 40 Am. Rep. 731; Clarke McClure, 10 Grat. 305; Robinett v. Preston's Heirs, 4 Grat. 141; ley v. English, 5 Grat. 141; Taylor's Devisees v. Burnsides, 1 Grat. ; Overton's Heirs v. Davisson, 1 Grat. 211, 42 Am. Dec. 544; Koiner Rankin's Heirs, 11 Grat. 420; Cline's Heirs v. Catron, 22 Grat. 378; vlin v. Reynolds, 25 Grat. 137; Thomas v. Jones, 28 Grat. 383; Turpin Saunders, 32 Grat. 27; Virginia Min. & Imp. Co. v. Hoover, 82 Va. 449, . E. 689; Andrews v. Roseland Iron & Coal Co., 89 Va. 393, 16 S. 252; Chapman v. Chapman, 91 Va. 397, 21 S. E. 813, 50 Am. St. Rep. ; Reusens v. Lawson, 91 Va. 226, 21 S. E. 347.

Intention.—Adverse possession depends upon the intention with ich the possession is taken and held, and while the intention to claim title must be clear it need not be expressed. The intention may be erred, and is for the jury to determine. Haney v. Breeden, 100 Va. , 42 S. E. 916; Brock v. Bear, 100 Va. 562, 42 S. E. 307.

Possession under mistake.—On this important subject see Schau- ch v. Dillemuth, 108 Va. 86, 60 S. E. 745; Christian v. Bulbeck. 120 74, 90 S. E. 661, and cases cited in these opinions.

Claim sufficient to support, effect of paper title.—To constitute an verse possession of land entry and possession under claim of right or le is sufficient. The only effect of claiming under a deed or paper le is to enlarge and extend the possession beyond the portion actually cupied to the whole lot described in the deed. Sharp v. Shenandoah rnace Co., 100 Va. 27, 40 S. E. 103; Virginia Midland R. Co. v. rbour, 97 Va. 118, 33 S. E. 554.

Of uncleared lands.—While lands remain uncleared or in a state of ture they are not susceptible of adverse possession against an older tentee, except by acts of ownership effecting a change in their condi- tion, which from their nature indicate a notorious claim of title. arman v. Ratliff, 93 Va. 249, 24 S. E. 1023. See Sulphur Mines Co. v. ompson's Heirs, 93 Va. 293, 25 S. E. 232.

Color of title is that which has the semblance or appearance of title, gal or equitable, but which in fact is no title. It is not necessary that e title under which the party claims should be a valid one, or that his antor should have had title. Sharp v. Shenandoah Furnace Co., 100 a. 27, 40 S. E. 103; Shanks v. Lancaster, 5 Grat. 110, 50 Am. Dec. 108. ee, as to color or claim of title, 2 Va. Law Reg. 553; Creekmur v. reekmur, 75 Va. 430; Chapman v. Chapman, 91 Va. 397, 21 S. E. 813, Am. St. Rep. 846; Sulphur Mines Co. v. Thompson's Heirs, 93 Va. 3, 25 S. E. 232; Sharp v. Shenandoah Furnace Co., 100 Va. 27, 40 E. 103.

Enforcement of judgment liens.—This section has no application to suit of a judgment creditor to enforce his lien against the land. lanary v. Kane, 102 Va. 547, 46 S. E. 312, 681. But see and carefully mpare McClanahan's Adm'r v. N. & W. R. Co., 15 Va. App. 663.

When and against whom statute runs.—The running of the statute coincident with the beginning of adverse possession. 6 Va. Law Reg. 05, 713.

Against Commonwealth.—Statute does not run against the Com- monwealth as to waste and unappropriated land, and her grantee may ecover it. Gore v. Lawson, 8 Leigh 458; Overton's Heirs v. Davisson, Grat. 211, 42 Am. Dec. 544. See Reusens v. Lawson, 91 Va. 226, 1 S. E. 347; Shanks v. Lancaster, 5 Grat. 110, 50 Am. Dec. 108.

Digitized by Google

Statute runs against municipal corporations. See 1 Va. Law 547.

No person can acquire any right or title to any part of a highv adverse possession thereof for any length of time whatever. Ya Warrenton. 84 Va. 337, 4 S. E. 818, 10 Am. St. Rep. 860.

Against former privies.—Where the possession was origina privity with the adverse claimant, there must be a clear, positiv continuous disclaimer and disavowal of the title, and the assertion adverse right brought home to the claimant. Hulvey v. Hulvey, 182, 23 S. E. 233; Duggins v. Woodson, 117 Va. 299, 84 S. E. 652

Against vendor.—Statute will not commence to run in fa vendee against vendor who has retained title until vendee has diss the privity of title between them by the assertion of an adverse and an open and continuous disclaimer of the title of his vendor, disclaimer must be clearly brought home to the knowledge of the Chapman v. Chapman, 91 Va. 397, 21 S. E. 813, 50 Am. St. Rep Alleghany County v. Parrish, 93 Va. 615, 25 S. E. 882; Virginia M R. Co. v. Barbour, 97 Va. 118, 33 S. E. 554.

In 1823, A., a married woman, inherits real estate. In Ja 1868, she and her husband conveyed it to B., who shortly after b ejectment to recover it. The jury found a special verdict setting facts as above, and finding that the husband's right of entry ha barred before the conveyance to B., but found nothing with res wife's right of re-entry. Held, that under the provisions of these s (5805, 5806, 5807), as regulated by section 5442, B. was enti recover. Collins v. Riley, 104 U. S. 322, 26 L. Ed. 752.

Against a co-tenant or co-parcener.—No co-parcener or ten common in possession of the whole subject can avail himself c possession as a defence under the statute of limitation against t without an actual disseisin or ouster of their co-parceners or co-t Purcell v. Wilson, 4 Grat. 16; Stonestreet v. Doyle, 75 Va. 356, Rep. 731; Fry v. Payne, 82 Va. 759, 1 S. E. 197. Silent possessi sufficient. Lagorio v. Dozier, 91 Va. 492, 22 S. E. 239. But will run in favor of purchaser from one co-tenant claiming whole Johnston v. Virginia Coal & Iron Co., 96 Va. 158, 31 S. E. 85.

Against landlord.—Statute does not begin to run in favor of against landlord until full notice to the landlord of his disclai hold as tenant or his assertion of an adverse title. Reusens v. L 91 Va. 227, 21 S. E. 347. See Koiner v. Rankin's Heirs, 11 Gra Neff v. Ryman, 100 Va. 521, 42 S. E. 314; Creigh's Heirs v. Hen Grat. 231; Creekmur v. Creekmur, 75 Va. 430.

Claim under lost will.—If a son takes possession of land left deceased father claiming title to it under a lost will, the statute to run against the other heirs from the time of taking such poss and the pendency of a suit to set up the will will not prevent the r of the statute. Caperton v. Gregory, 11 Grat. 505.

In favor of widow.—A widow being entitled to her mansi curtilage until dower be assigned her, her possession not being a will not in law be so deemed, and the statute will not begin to ru such possession end, or she publishes her claim to be adverse and by actual and open disseisin. Hannon v. Hounihan, 85 Va. 4 S. E. 157.

Against purchaser at judicial sale.—Where sale of land under is made and confirmed, purchase money paid, but no deed, and owner's heirs remain in possession, the statute does not begin against the purchaser until the heirs make distinct disavowal title, and their assertion of their adverse claim is brought home Whitlock v. Johnson, 87 Va. 323, 12 S. E. 614.

Though land be sold and deed given by commissioners, statu not begin to run against purchaser in favor of those in possessio confirmation of the deed by the court. Evans v. Spurgin, 6 Gra 52 Am. Dec. 105.

Against purchaser under trust deed.—If deed of trust be g

Digitized by Google

tute begins to run against purchaser under such deed in favor antor or those claiming under him from the time of sale under l. Creigh's Heirs v. Henson, 10 Grat. 231.

urchases and pays for land from N., and takes deed or title ich was lost or mislaid. C. takes possession, enters, and makes ients. Soon after this sale N. conveyed same land to trustee to rtain debts, and the trustee sold under the trust deed. Held, egan to run in favor of C. against all the world from the time king possession. Nowlin v. Reynods, 25 Grat. 137.

ist claimant under equitable title.—An equitable title to land against the holder of the legal title is barred by an adversary n of more than twenty years held by the claimant of the legal claimant of the equity having full knowledge of such possession commencement, and being under no disability. Straughan v. 4 Rand. 493; Cresap v. McLean, 5 Leigh 381.

ere, will the statute begin to run against grantor in voidable deed s option of avoidance continues? Birch v. Linton, 78 Va. 584, Rep. 381.

ist senior patentee.—Statute begins to run in favor of junior from time of his adverse possession, but he cannot show possesner back than senior grant. Overton's Heirs v. Davisson, 1 Grat. m. Dec. 544; Shanks v. Lancaster, 5 Grat. 110, 50 Am. Dec. 108; Rankin's Heirs, 11 Grat. 420.

ist remainderman.—The possession of a life tenant, as such, e adverse to the remainderman or reversioner. Duggins v. , 117 Va. 299, 84 S. E. 652.

ession under a claim of title for a period of fifteen years ripens rfect title as well against a life tenant as against others, and ossessor also has title to the remainder in fee, the fee merges r estate, and the statute begins to run against one claiming an as a remainderman from the time of the merger, and not from n of the life tenant. McCauley v. Grim, 115 Va. 610, 79 S. E.

rlocks.—As to adversary possession of part of interlock by tle holder, see 3 Va. Law Reg. 763, 843; Overton's Heirs v. 1 Grat. 224, 42 Am. Dec. 544; Taylor's Devisees v. Burnsides, 196; Koiner v. Rankin's Heirs, 11 Grat. 420; Shanks v. Lan- Grat. 110, 50 Am. Dec. 108; Anderson v. Harvey's Heirs, 10 6; Cline's Heirs v. Catron, 22 Grat. 392; Turpin v. Saunders, 32 ; Andrews v. Roseland Iron & Coal Co., 89 Va. 393, 16 S. E. eeden v. Haney, 95 Va. 622, 29 S. E. 328; Fry v. Stowers, 98 36 S. E. 482.

as to constructive seisin, Dawson v. Watkins, 2 Rob. 259; Overirs v. Davisson, 1 Grat. 211, 42 Am. Dec. 544; Sulphur Mines hompson's Heirs, 93 Va. 293, 25 S. E. 232; Sharp v. Shenandoah Co., 100 Va. 27, 40 S. E. 103.

erally.—That limitation applies which was in force when plainht of action first accrued. Hollingsworth v. Sherman. 81 Va.

s section will be applied in a suit in equity for land and an of rents and profits. Drumright v. Hite, 2 Va. Dec. 465, 26 3.

he possession of the tenant in possession was sufficient to bar n of the ancestor of the demandants at the time of his death, it ent to bar the action of his heirs. Overton's Heirs v Davisson, 211, 42 Am. Dec. 544.

tute is a source of title, and may be used by the plaintiff himprove his title, even in ejectment. Middleton v. Johns, 4 Grat. kerson v. Colgrove, 100 U. S. 578, 583, 25 L. Ed. 618; Norfolk e, 27 Grat. 430; Thomas v. Jones, 28 Grat. 383. See 6 Va. g. 712.

tute of limitations is a personal plea, and as a general rule third

Digitized by Google

person cannot take advantage of it, but where it forms a chain to property this may be done. Blair v. Carter's Adm'r, 78 Ayre's Adm'r v. Burke, 82 Va. 338, 4 S. E. 618; Tazewell's Whittle's Adm'r, 13 Grat. 329, 345; Smith v. Pattie, 81 Va. Cartney v. Tyrer, 94 Va. 198, 26 S. E. 419; 3 Va. Law Reg. 64,

Where one claims title by open, notorious. and adverse p for a period sufficient to give good title, it is competent for him not only that he had possession, but that the possession was unde of right, and that his claim and the character of his possess such that he was generally reputed in the neighborhood to owner. Lusk v. Pelter & Co., 101 Va. 790, 9 Va. Law Reg. note, 45 S. E. 333.

The finding of the commissioner establishing title by advers sion will not, as a rule, be disturbed where the evidence is co and it appears that the commissioner had the advantage of no demeanor of witnesses, and their intelligence and manner of t Id.

Cited but not construed in McMurray v. Dixon, 105 Va. 6 E. 481.

Quaere, does section 5455 affect this section? See 6 Reg. 705, 805.

See 2 Min. (4th Ed.) 520, 574; Barton, L. Pr. (2d Burks' Pl. & Pr. p. 194.

For W. Va. decisions on similar statute, see Justis' Ann chapter 104, section 1.

Sec. 5806. Right not saved by claim.—No continual claim upon or near any land shall preserve any right of ma entry or of bringing an action. (Code 1887, § 2916.)

A continual claim will not stop the running of the statute. poverty any excuse for failure to bring suit. Voight v. Raby 799, 20 S. E. 824.

See note of Collins v. Riley, 104 U. S. 322, 26 L. Ed. 75 section 5805; 2 Min. (4th Ed.) 575, 519; Barton, L. Pr. (2d

For W. Va. decisions on similar statute, see Justis' Ann chapter 104, section 2.

Sec. 5807. Further time allowed persons under disability the time at which the right of any person to make entr bring an action to recover any land shall have first accru person was an infant or insane, then such person, or the claiming through him, may, notwithstanding the said peri tioned in section fifty-eight hundred and five, shall have make an entry on or bring an action to recover such land ten years next after the time at which the person to wh right shall have first accrued as aforesaid shall have ceas under such disability as existed when the same so accrued have died, whichever shall first have happened. (Code 1887, 1902-3-4, p. 723.)

Disabilities cannot be tacked, and a person claiming adve this section can only avail himself of disability existing at time t of action accrued. Mercer v. Selden, 1 How. 37, 11 L. Ed. 38.

It seems, if the party claimed the benefit of the saving fo and femes covert in the statute, no other disability is available one which existed when the right of action accrued. Parsons v. Mc 9 Leigh 495. The saving in favor of married women does appear in the section. It was stricken out by Acts 1902-3-4,

This section bars action if not brought within ten years moval of disabilities. Mercer v. Selden, 1 How. 37, 11 L. Ed. 3

Instruction suggesting that this section curtails infant's

Digitized by Google

atry or of suing for land from fifteen to ten years is erroneous. on enlarges such time by giving fifteen years in any event, ars from disability removed. Birch v. Linton, 78 Va. 584, ep. 381.

cy of one joint tenant will not prevent the running of the to other joint tenants not under disability. Redford v. Clarke, 15, 40 S. E. 630.

r the provisions of this section, a party who is an infant at the right to have a partition of land accrues, has ten years ining his majority in which to institute his suit for partition. Jefferies, 118 Va. 81, 86 S. E. 844.

Beattie v. Wilkinson (C. C.), 36 Fed. 646, 648; Caperton v. 11 Grat. 505.

note of Collins v. Riley, 104 U. S. 322, 26 L. Ed. 752, under 305.

, but not construed, in Harman v. Ratliff, 93 Va. 249, 24 3.

Barton, L. Pr. (2d Ed.) 64; 2 Min. (4th Ed.) 573; 4 Min. (3d Burks' Address, 2 Barton L. Pr. (2d Ed.) 1387.

W. Va. decisions on similar statute, see Justis' Annotations, 04, section 3.

308. Provisos as to the preceding section.—The preceding subject to these provisos: that no such entry or action shall or brought by any person who at the time at which his make or bring the same shall have first accrued, shall be y such disability, or by any person claiming through him, in twenty years next after the time at which such right ve first accrued, although the person under disability at e may have remained under the same during the whole of enty years, or although the term of ten years from the t which he shall have ceased to be under any such disabil- ave died, shall not have expired; and when any person shall any such disability at the time at which his right to make or bring an action shall have first accrued, and shall depart without having ceased to be under any such disability, no make an entry or to bring an action beyond the time pre- n section fifty-eight hundred and five, next after the right person shall have first accrued, or the ten years next after od of his death, shall be allowed by the reason of the dis- f any other person. (Code 1887, § 2918.)

re the proof is clear that a married woman purchased land in d there is no proof tending to show that it was her equitable estate, it is harmless error to tell the jury, in an instruction, e purchased the land prior to 1878 it was her common-law land, rst act creating statutory separate estates was not passed until 1877. McMurray v. Dixon, 105 Va. 605, 54 S. E. 481.

Barton L. Pr. (2d Ed.) 64; 2 Min. (4th Ed.) 573; 4 Min. (3d); notes to preceding sections.

W. Va. decisions on similar statute, see Justis' Annotations, 104, section 4.

809. Period to be excluded from computation of the time which, by operation of any statute or rule of law, any civil ing must be commenced.—The period of one year from the f any party shall be excluded from the computation of time

Digitized by Google

within which, by the operation of any statute or rule of l
may be necessary to commence any proceeding to preserve o
vent the loss of any right or remedy. (Code 1887, § 2919; 1
p. 345; 1895-6, p. 331.)

**Revisors' Note.—The first part of this section as it formerl
pertaining to the stay law period has been omitted.**

The one year from the death of a party is not applicable to
for death by wrongful act. Manuel v. N. & W. R. Co., 99 Va. 1
S. E. 957, note 6 Va. Law Reg. 776. See 6 Va. Law Reg. 583
2 Va. Law Reg. 386.

The following cases had to do with the stay law period,
provision no longer appears in the section: Johnston v. Gill, 27
587-595; Danville Bank v. Waddill, 27 Grat. 448; Hill v. Rix
Grat. 72; Borst v. Nalle, 28 Grat. 423; Norvelle v. Little, 79 Va
Virginia Min. & Imp. Co. v. Hoover, 82 Va. 449, 4 S. E. 689; Ju
English, 30 Grat. 565; Updike's Adm'r v. Lane, 78 Va. 132; Fa
Adm'r v. Williams' Am'r, 96 Va. 399, 31 S. E. 515; Bashaw's Ad
Wallace's Adm'r, 101 Va. 733, 45 S. E. 290.

Sec. 5810. Limitation of personal actions generally.—Eve
tion to recover money which is founded upon an award, or o
contract, other than a judgment or recognizance, shall be br
within the following number of years next after the right to
the same shall have first accrued, that is to say: If the ca
upon any contract by writing under seal, whether made by a
officer, a fiduciary or private person within ten years; if it be
an award or upon a contract in writing signed by the party
charged thereby, or by his agent, but not under seal, withi
years; and if it be upon any other contract express or implied
in three years, unless it be an action by one partner again
co-partner for a settlement of the partnership account, or up
counts concerning the trade of merchandise between merchan
merchant, their factors, or servants, in either of which case
action may be brought until the expiration of five years fro
cessation of the dealings in which they are interested togethe
not after; provided that the right of action against the est
any person hereafter dying, or upon any such award or con
which shall have accrued at the time of his death, or the rig
prove any such claim against his estate in any suit or proce
shall not in any case continue longer than five years from the
fication of his personal representative, or if the right of action
not have accrued at the time of the decedent's death, it sha
continue longer than five years after the same shall have so acc
and provided further that the limitation to an action or othe
ceeding for money on deposit with a bank or any person o
poration doing a banking business shall not begin to run until
quest in writing be made, therefor by check, order, or othe
(Code 1887, § 2920; 1912, p. 38.)

**Revisors' Note.—The words "express or implied" appearing i
ten of the text are new. The second proviso is new.**

Right to plead statute as vested right.—It seems that the ri
plead the statute is not always a vested right. Save where t
(2556)

Digitized by Google

rty is vested by reason of the statute, General Assembly may alter me either by shortening or lengthening, or by taking away alto-, provided, if shortened, the plaintiff is given a reasonable oppor- to enforce his claim. 13 Am. & Eng. Enc. of L. (1st Ed.) 696; v. Vance, 108 U. S. 514. 2 Sup. Ct. 854, 27 L. Ed. 808; Hill v. 26 Grat. 72; Johnston v. Gill, 27 Grat. 587, 595; Campbell v. 115 U. S. 620, 6 Sup. Ct. 209, 29 L. Ed. 483. Full discussion, s, Vested Rights, 106, 112, 328.

t is within the power of the legislature to prolong the period of tion when the right to plead has not accrued. To declare invalid se in a policy stating that suit thereon must be brought within six is after date is within the scope of legislative authority when the to plead the statute had not accrued. Smith v. Northern Neck 112 Va. 192, 70 S. E. 482. See section 4227; Acts 1918. chapter . 539.

Contract in writing signed by the party to be charged thereby."— xpression used in this statute "a contract in writing signed by the to be charged thereby," held to apply to a case where a husband personal property owned by himself and wife jointly and took a. herefor payable to himself, and then rendered to his wife a state- in writing over his signature showing the amount of her share in ale and stating that said amount would be due out of the note collected. Lurty v. Lurty, 107 Va. 466, 59 S. E. 405.

As to sureties.—Limitation of right of action of a surety who calls a co-surety for a contribution is three years. Tate v. Winfree, . 255, 37 S. E. 956.

Store accounts.—"Store accounts" has reference only to the accounts ail merchants. Tomlin v. Kelly, 1 Wash. 190; Beall v. Edmondson, 1 514 (2d Ed.) 446; Wortham v. Smith, 15 Grat. 487, 494; Moore uro, 4 Rand. 488.

Statute applies only when it is necessary for the plaintiff to produce ely on his accounts, and does not embrace the case of an express se to pay upon which a suit might be maintained without the ac- . Beall v. Edmondson, 3 Call 514 (2d Ed.) 446; Wortham v. , 15 Grat. 487, 494.

Merchant and merchant—Trade between, etc.—The clause "where ction of account would lie" applies only to cases where the accounts etween merchant and merchant, and relate actually to merchandise, ot merely to mercantile contracts connected with it, and are current mutual. Wortham v. Smith, 15 Grat. 487, 494. See Moore v. o, 4 Ran. 488. The words in quotation marks no longer appear in ection.

On a replication to plea that the accounts concern the trade of handise between merchant and merchant, evidence must be adduced ove that the parties were merchants during the time of the dealings een them, and of the character of those dealings. Watson v. Lyle's r, 4 Leigh 236.

An account stated which is not supported by a writing signed by debtor or his agent will not prevent the running of the statute of ation against previously existing items of indebtedness included in. Magarity v. Shipman, 93 Va. 64, 24 S. E. 466, overruling Rad- v. Fowlkes, 85 Va. 823, 8 S. E. 817, note 2 Va. Law Reg. 272.

Creditors' suits, decree in.—When a decree is entered to take an nt of debts against the estate of a decedent, the suit becomes a tors' suit, and the statute of limitations then ceases to run against reditors of the estate, who come in under the decree or otherwise ne parties to the suit. As to all others the statute continues to run. way v. Saunders, 99 Va. 350, 38 S. E. 182; Craufurd's Adm'r v. h's Ex'r, 93 Va. 623, 23 S. E. 235, 25 S. E. 657; Harvey's Adm'r v. oe's Adm'r, 17 Grat. 289; Bank v. Allen. 76 Va. 200; Norvell v. e, 79 Va. 141; Richmond v. Irons, 121 U. S. 27, 7 Sup. Ct. 788, . Ed. 864; Ewing's Adm'r v. Ferguson's Adm'r, 33 Grat. 548;

Digitized by Google

Houck's Adm'r v. Dunham, 92 Va. 211, 23 S. E. 238; Bell v. Wood Va. 677, 27 S. E. 504.

Partner against copartner.—The words, "cessation of the dea in which they are interested together," refer to the time when the a of the partnership are wound up, and not to the cessation of a operations, yet the parties may have a partial settlement of the par ship account before or may bring a suit for such settlement. Fos Curator v. Rison, 17 Grat. 321.

Upon a bill filed by a surviving partner against the administr of a deceased partner, the plea of the statute cannot be sustained w it appears that there were good debts due to the firm outstanding w five years before the suit was brought. Marsteller v. Weaver's Ad 1 Grat. 391; Jordan v. Miller, 75 Va. 442. See Coalter v. Coalte Rob. 79 (2d Ed.) 85.

Where one partner, for himself and another, settles the partner accounts with the acting partner, and receives payments of money himself and the other, the statute will run from the time he receiv as to the money so received. Foster's Curator v. Rison, 17 Grat.

When statute begins to run.—Statute only begins to run from time when the liability sought to be enforced arises. Cookus v. Peyt Ex'r, 1 Grat. 431. See McAlexander v. Montgomery, 4 Leigh Walker's Adm'r v. Tyler, 94 Va. 534, 27 S. E. 434.

Where defendant covenants to execute bonds at a stated t statute begins to run at that time. Davis' Adm'r v. McMullen's Ad 86 Va. 256, 9 S. E. 1095.

If a daughter has a valid claim to compensation for services dered the mother, it accrues during the mother's lifetime, and the sta then begins to run. Harshberger's Adm'r v. Alger, 31 Grat. 53.

Where estate of supposed intestate was distributed, and afterw his will was found, it was held that the limitation of the right to rec from distributee, who was not a legatee, the amount handed ove him, did not begin to run until the recovery of the will. Craufu Adm'r v. Smith's Ex'r, 93 Va. 623, 23 S. E. 235, 25 S. E. 657.

Where legacy is limited upon a future event, cause of action ca accrue, nor statute begin to run, nor laches be imputed, until such e occurs. Effinger v. Hall, 81 Va. 94.

Ignorance of rights—Fraud.—Limitation runs notwithstan plaintiff's ignorance of his rights, save in cases of fraud or concealn Bickle v. Chrisman's Adm'x, 76 Va. 678; Foster's Curator v. Rison Grat. 321; Craufurd's Adm'r v. Smith's Ex'r, 93 Va. 623, 23 S. E. 25 S. E. 657; Vashon v. Barrett, 99 Va. 344. 38 S. E. 200.

See following section and notes.

Upon a demand payable by a debtor at his death, the statut limitations only begins to run from the happening of that event. Du v. Duncan, 117 Va. 487, 85 S. E. 485.

Against stock assessment.—Upon a stock subscription, no wr contract having been established, the limitation is three years from date of the call on the stock. Liberty Sav. Bank v. Otter View Co., 96 Va. 352, 31 S. E. 511. See Lewis' Adm'r v. Glenn, 84 Va. 6 S. E. 866; Gold v. Paynter, 101 Va. 714, 44 S. E. 920.

The statute begins to run against assessments made by decre the suit wherein the corporation is a party from the date of the de laying the assessment. Vanderwerken v. Glenn, 85 Va. 9, 6 S. E.

In favor of trustee.—Trustee cannot take advantage of the ac limitations against the claim of the cestui que trust or persons clai under him until the trust is concluded. Redwood v. Riddick, 4 M 222; Rankin v. Bradford, 1 Leigh 163; Rowe v. Bentley, 29 Grat. Lomax v. Pendleton, 3 Call 538 (2d Ed.) 465; Redford v. Clarke, Va. 115, 40 S. E. 630; Bargamin v. Clarke, 20 Grat. 544.

Against bank deposits.—The statute of limitations on a claim ag a bank for the proceeds of a note discounted by it, and which it f to credit on the customer's check account, does not begin to run the date of the discount of the note, but from the close of the acc

Digitized by Google

the bank and the customer. Culpeper Nat. Bank v. Tidewater ment Co., 119 Va. 73, 89 S. E. 118. See revisors' note above.

e institutions.—See section 5829 and notes.

ether municipal corporations bound by statute, see 1 Va. Law .

ute suspended by agreement.—B. having become the surety of elivers to B. B.'s note, who was to hold it until the liability of ll was ended, and then he was to redeliver it to E. Statute did n to run against the note until the liability of B. as bail ceased. Ex'r v. Elmore's Adm'x, 7 Grat. 385. Compare Sutton v. Bur- Leigh 381, 33 Am. Dec. 246; Holladay v. Littlepage, 2 Munf. e section 5821.

lication of statute in equity.—Court of equity follows the law ing the statute. Spotswood v. Dandridge, 4 Hen. & M. 139; Ex'rs v. McClure, 1 Rand. 284; Rankin v. Bradford, 1 Leigh ppard v. Turpin, 3 Grat. 373; Livesay v. Helms, 14 Grat. 441; Bentley, 29 Grat. 756; Harshberger's Adm'r v. Alger, 31 Grat. 's Adm'r v. Ballard, 78 Va. 139; Harvey's Adm'r v. Steptoe's 7 Grat. 289; Bank v. Allen, 76 Va. 200; Norvel v. Little, 79 Va. hmond v. Irons, 121 U. S. 27, 7 Sup. Ct. 788, 30 L. Ed. 864; v. Noffsinger, 82 Va. 518; Redford v. Clarke, 100 Va. 115, 40).

statute applies as well to a suit in equity for an account of s to an action at law for its recovery. Foster's Curator v. 7 Grat. 345.

ity will aid in enforcing payment of stock subscriptions which n conveyed to secure debts which, though barred by limitation, xtinguished. Hamilton v. Glenn, 85 Va. 901, 9 S. E. 129.

to when the act of limitations will not bar a right in equity, ter's Ex'rs v. Spotswood, 1 Wash. 145.

ere suit is not barred by the statute, laches and lapse of time e no such bar. Foster's Curator v. Rison, 17 Grat. 335; Rowe y, 29 Grat. 759; Cole's Adm'r v. Ballard, 78 Va. 149; Cottrell ns, 89 Va. 801, 17 S. E. 328, 19 L. R. A. 754, 37 Am. St. Rep. 897.

statute of limitations has in terms no application to suits in ut as a general rule courts of equity act upon the statute by and refuse relief to cases in which, if it were an action at law, te would forbid it, for courts of equity always discountenance Bassett's Adm'r, &c., v. Cunningham, 7 Leigh 407.

to laches and stale demands, see Carr's Adm'r v. Chapman's , 5 Leigh 164; Hayes v. Goode, 7 Leigh 452; Caruthers' Adm'rs gton's Trustees, 12 Leigh 610; Smith v. Thompson's Adm'r, 112, 54 Am. Dec. 126; West's Adm'r v. Thornton, 7 Grat. 177, Dec. 134; Tazewell's Ex'r v. Whittle's Adm'r, 13 Grat. 329; 's Ex'r v. Saunders' Ex'r, 13 Grat. 354; Harrison v. Gibson, 23 2; Carter v. McArtor, 28 Grat. 356; Stamper's Adm'r v. Garnett. 550; Hatcher v. Hall, 77 Va. 573; Updike's Adm'r v. Lane, 32; Nelson's Adm'r v. Kownslar's Ex'r, 79 Va. 468; Morrison's Householder's Adm'r, Id. 627; Wissler v. Craig's Adm'r, 80 Va. gan v. Fisher's Adm'r, 82 Va. 417; Turner's Adm'r v. Dillard's Va. 536; Rowe v. Bentley, 29 Grat. 756; Cole's Adm'r v. Ballard's 39; Cottrell v. Watkins, 89 Va. 801, 17 S. E. 328, 19 L. R. A. Am. St. Rep. 897; Jeffries v. Southwest Va. Imp. Co., 88 Va. S. E. 661; Eubank v. Barnes, 93 Va. 153, 24 S. E. 908; Bell v. 4 Va. 677, 27 S. E. 504; Jackson's Adm'r v. King's Adm'r, 12 9.

ading- *At law.*—Statute cannot be taken advantage of by de- nless it affects the right as well as the remedy. In this case ration should show on its face that the action is brought within utory period. Lambert v. Ensign Mfg. Co., 42 W. Va. 813, 431; 3 Va. Law Reg. 63; Manuel v. Norfolk & W. R. Co., 99 Va.

Digitized by Google

188, 37 S. E. 957; Herrington v. Harkins' Adm'rs. 1 Rob. 591 (
624.

The defence of the statute is a personal privilege, and r
pleaded by defendants. The court has no power to interpose a
its own motion. Smith v. Hutchinson, 78 Va. 683; Taylor's A
Richards, 3 Munf. 8; Hudson v. Hudson's Ex'r, 3 Rand. 117; G
Green's Adm'r, 89 Va. 524, 16 S. E. 661, 37 Am. St. Rep. 888.
Callaway's Adm'r v. Saunders, 99 Va. 350, 38 S. E. 182; Smith v.
81 Va. 654.

One creditor may plead statute against another in a suit
minister the assets of a debtor or to enforce liens on his p
Callaway's Adm'r v. Saunders, 99 Va. 350, 38 S. E. 182.

Where creditor brought suit against a corporation to sub
lands to a debt, a party claiming same land adversely to the corp
cannot plead the statute against the debt. Clayton v. Hen
Grat. 66.

Plea of the statute must refer to the time of the institution
suit. Smith v. Walker, 1 Wash. 135; Backhouse's Adm'x v. Jone
5 Call 462. See, as to pleading statute to set-off which accru
suit brought, Trimyer v. Pollard, 5 Grat. 460.

Where the defendant does not file the plea of set-off, but
account, and gives notice of set-off, the plaintiff cannot reply the
and he may therefore rely upon it in evidence. Trimyer v. Po
Grat. 460. See Bell v. Crawford, 8 Grat. 110.

A plea of the statute should state on what act the defendan
Wortham v. Smith, 15 Grat. 487, 494.

The plea of the statute is an issuable plea, and sometimes an
plea. Presumption of payment arises from staleness of the
and will excuse delay in pleading the statute, especially in fav
personal representative. Tomlin's Adm'r v. How's Adm'r, Gil

A plea of the statute which is not interposed in a chance
until after the evidence is closed, may well be rejected as com
late, where no excuse is offered for the delay. Herrell v. Supe
113 Va. 594, 75 S. E. 87.

It is too late to plead the statute eight years after a plea
assumpsit. Clopton's Adm'r v. Clarke's Ex'r, 7 Leigh 325. As
in pleading the statute, see Martin v. Anderson, 6 Rand. 19; Bac
Adm'x v. Jones' Ex'r, 5 Call 462.

On motion for judgment, though plea in form applies to o
out of three claims sued on, but it is clear that both parties
court treated it as applicable to all the claims sued on, and all
fact barred, its judgment will not be reversed. Liskey v. Paul,
764, 42 S. E. 875.

A personal representative is bound to plead the statute in a
to which it applies to protect the decedent's estate. Tunstall v. P
Adm'r, 11 Leigh 1.

If there be several partners, and one of them after dissolu
sumes a partnership debt, but afterwards pleads the statute of
tions jointly with the other partners, the assumpsit may be g
evidence, for the plea of non-assumpsit admits that the defend
once assume. Brockenbrough v. Hackley, 6 Call 51.

That defendant did not within twenty years next before th
ing of this suit break his covenant is a good plea of the statute.
Adm'r v. McMullen's Adm'r, 86 Va. 256, 9 S. E. 1095.

The statute may be pleaded in bar to an action against a
carrier for fraudulently embezzling goods entrusted to his care
v. Darby, 4 Munf. 444, 6 Am. Dec. 529.

In equity.—The statute of limitations cannot be taken adva
in a court of equity by demurrer to the bill. Hubble v. Poff,
646, 37 S. E. 277; Hickman v. Stout, 2 Leigh 10; Tazewell's
Whittle's Adm'r, 13 Grat. 344; Colvert v. Millstead's Adm'x, 5 Le
Smith v. Pattie, 81 Va. 665; Gibson v. Green's Adm'r, 89 Va.
S. E. 661, 37 Am. St. Rep. 888. Must be pleaded or in son

Digitized by Google

on as a defence in the pleadings. Hickman v. Stout, 2 Leigh 6; rt v. Millstead's Adm'x, 5 Leigh 88.

Anything in an answer which will apprise the plaintiff that the de- nt relies on the statute is sufficient if necessary facts are stated. ell's Ex'r v. Whittle's Adm'r, 13 Grat. 329.

f the defendant in equity plead the statute, and the complainant within any of the exceptions within the act, he will not be entitled benefit thereof unless he sets it forth by replication. Lewis' Ex'r v. 's Legatee, 3 Hen. & M. 89.

Where the statute is pleaded, plaintiff, to bring himself within its g, must set forth the facts relied on either by replication or by ding his bill. Switzer v. Noffsinger, 82 Va. 518; Lewis' Ex'r v. 's Legatee, 3 Hen. & M. 89.

Defence of the statute to a claim asserted before a commissioner be made by an exception to his report. Cole's Ex'r v. Martin, 99 23, 37 S. E. 907; Smith v. Pattie, 81 Va. 654; Leith's Adm'r v. r's Adm'r, 83 Va. 889, 5 S. E. 584.

Burden of proof on plea of statute is on parties pleading the statute. on v. Barrett, 99 Va. 344, 38 S. E. 200; Goodell's Ex'rs v. Gibbons, a. 608, 22 S. E. 504; 1 Va. Law Reg. 340, and note. In England wise.

f a creditor relies upon a charge in a will to prevent the opera- of the statute, it is for him to show that the testator died before ebt was barred. Tazewell's Ex'r v. Whittle's Adm'r, 13 Grat. 329. The burden is on the pleader to make out a case to which the e clearly applies. Virginia Ry. & P. Co. v. Ferebee, 115 Va. 289, E. 556.

Part payment will not remove the bar of the statute. Gover v. berlain, 83 Va. 286, 5 S. E. 174.

Generally.—Where a contract by a common carrier to carry an tate shipment of freight was void because the rate given was less the published rate and hence in violation of an act of Congress, on as the goods were left with the carrier an implied contract arose part to transport them to their destination, and on the part of ipper to pay the published rate. In an action of assumpsit by the r to recover the difference between the undercharge and the pub- rate, it was held that, inasmuch as Congress had not prescribed ime within which the action should be brought, the limitation of years prescribed by this section would be applied. Atlantic C. L. . v. Va. Mfg. Co., 119 Va. 5, 89 S. E. 103.

A suit to enforce a judgment against a decedent, brought eleven after the qualification of his representative, was barred, where in eantime the judgment had not been revived. Spencer v. Flanary, Va. 395, 51 S. E. 849.

Where a right of action against a decedent's estate as surety on d accrued January 15, 1894, and a decree for this liability ren- on the 10th day of December, 1895, and on the 15th day of July, three and one-half years after the decree for this liability, and the cause was not only still pending and undetermined, but the against the estate not fully ascertained and the estate not dis- ed, obligee intervened in a suit to enforce her decree, held that nd of obligee is not barred by statute of limitations. The demand upon the original cause of action which became payable January 894, but the decree of December 10, 1895, into which the right of on the original demand was merged. Turk v. Ritchie, 104 Va. 52 S. E. 339, 342.

The limitation of this section held not to apply to the circumstances e case of Sipe v. Taylor, 106 Va. 231, 55 S. E. 542.

The three-year limitation of this section is inapplicable to a debt nced by writing under the signature and seal of the debtor. If the edent debt was mere assumpsit, it was merged into the specialty. v. Lurty, 107 Va. 466, 59 S. E. 405.

Digitized by Google

This section does not apply to an action against bank directo neglect of duty as such directors. Winston v. Gordon, 115 Va. 8 S. E. 756; see notes to section 5818. See section 3816.

Where plaintiff has two causes of action open to him, and one, and adapts his pleading and proofs thereto, the act of limi applicable will be the one appropriate to the cause of action se Noell v. Noell, 93 Va. 433, 25 S. E. 242.

As to whether a contract implied by law from a written instr is a contract by writing, within the meaning of the statute, see Law Reg. 458, 538.

The limitation of three years, "upon any other contract," do apply to a suit on a treasurer's bond in which case the limita ten years. Jennings v. Taylor, 102 Va. 191, 45 S. E. 913.

When money allowed to a county treasurer in a settlement wi board of supervisors regularly made as compensation for his servi received by him in good faith, he is not a trustee as to the san the statute of limitations applies. Supervisors v. Vaughan, 11 146, 83 S. E. 1056.

In a suit by a board of supervisors against a county treasur the settlement of his accounts, the treasurer's answer, uniting prayer for an account, and specifically praying for an inquiry in settlements made by him "from the time he became such treasure the present moment," is a waiver of the statute of limitations. H v. Supervisors, 113 Va. 594, 75 S. E. 87.

Demands arising three years before the institution of a suit supervisors against a county treasurer for a settlement and adjustm the county funds received by him, are not barred by the statute of tions. Herrell v. Supervisors, 113 Va. 594, 75 S. E. 87.

For article commenting upon this section, see 9 Va. Law Rev As to promise not to plead the statute, see section 5821.

As to new promise and promise to settle and pay the balan section 5812.

Certain claims against the state barred in ten years, see 2179.

See 1 Min. (4th Ed.) 580; Barton, L. Pr. (2d Ed.) 79, 94-1 Min. (4th Ed.) 374, 839; 3 Min. (2d Ed.) 155, 160, 575; 4 Min Ed.) 612; Barton, C. Pr. (2d Ed.) 125; Burks' Pl. & Pr., pp. 38 404, 405.

Form of plea of statute of limitations to a specialty, 4 Mi Ed.) 1748; of plea of statute of limitations to a simple contrac of plea of statute of limitations to a store account, Id.

Applied in Newport News, etc., Co. v. Newport News, etc., Co., 22, 32 S. E. 789; Kesterson v. Hill, 101 Va. 739, 45 S. E. 288. C Embrey v. Jemison, 131 U. S. 349, 9 Sup. Ct. 776, 33 L. Ed. 172

For W. Va. decisions on similar statute, see Justis' Annot chapter 104, section 6.

For monographic note on Limitations to Actions, see Herring Harkins' Adm'rs, 1 Rob. 591, Va. Rep. Anno.

Sec. 5811. When right of action upon bonds of fiduciaries d to have first accrued; limitation of suits against fiduciaries selves.—The right of action upon the bond of an executor, a istrator, guardian, curator, or committee, or of a sheriff, o geant acting as such, shall be deemed to have first accrued a lows: upon a bond of a guardian or curator of a ward, fro time of the ward's attaining the age of twenty-one years, or the termination of the guardian's or curator's office, whichever happen first; and upon the bond of any personal representat a decedent or committee of an insane person, the right of act a person obtaining execution against such representative or

Digitized by Google

e, or to whom payment or delivery of estate in the hands of representative or committee, shall be ordered by a court acting his account, shall be deemed to have first accrued from the n day of such execution, or from the time of the right to re- payment or delivery upon such order, whichever shall happen and as to any suit against such fiduciary himself, or his rep- tative, which could have been maintained if he had given no there shall be no other limitation than would exist if the pre- g section was not passed; except, that where any such fiduciary ettled an account under the provisions of chapter two hundred wenty-one, a suit to surcharge or falsify the same, or to hold fiduciary or his sureties liable for any balance stated in such unt to be in his hands, shall be brought within ten years after ccount has been confirmed. The right to recover money paid r fraud or mistake shall be deemed to accrue, both at law and uity, at the time such fraud or mistake is discovered, or by xercise of due diligence ought to have been discovered. (Code § 2921; 1877-8, p. 221.)

Revisors' Note.—The second exception contained at the end of n 2921 of the Code of 1887 relating to Confederate currency has omitted as having served its purpose. The last sentence of the d section is new. See Grove v. Lemley, 114 Va. 202, 76 S. E. 305.

Running of statute in favor of sureties.—Statute begins to run when efault of the principal and its amount are ascertained. Howards v. n (C. C.), 5 Fed. 465, 470.

There is no other limitation applicable to the surety upon the of- bond of an executor or an administrator other than that prescribed is section. Leake's Ex'r v. Leake, 75 Va. 792.

D. having settled his administration accounts finally and given a for the balance, statute begins to run in favor of his surety from of its execution and delivery. Tilson v. Davis, 32 Grat. 92.

Action on fiduciary's bond is barred only after ten years from ac- g of cause of action; that is, from the return day of execution st fiduciary or from time of right to require payment or delivery fiduciary. Sharpe's Ex'r v. Rockwood, 78 Va. 24; Morrison v. ll, 81 Va. 519; Robertson v. Gillenwaters, 85 Va. 116, 7 S. E. 371.

In 1850 there was a decree against the executor in favor of the es interested in the estate for their respective shares; the statute n to run in favor of the surety of the executor upon the entry of decree. Franklin's Adm'r v. Depriest, 13 Grat. 257; White v. d, 90 Va. 336, 18 S. E. 436.

In 1865 E. sued out distress warrant against the estate of J. rant was never levied, but was returned to and remained effete in 's office until 1880, when E.'s administrator brought chancery suit st the administrator and his sureties. Held, the claim of E.'s ad- strator was barred as to the surety, though not against J.'s admin- tor himself. Ashby v. Bell's Adm'r, 80 Va. 811.

A plea of the statute by one surety which is not purely personal to enures to the benefit of all. Ashby v. Bell's Adm'r, 80 Va. 811.

Right to recover money paid under fraud or mistake.—In cases of al mistake and fraud, courts of law and courts of equity apply rent rules with respect to the defense of the statute of limitations. w the statute runs from the date of settlement and payment, but uity, if the plaintiff is without fault, the statute runs only from liscovery of the fraud or mistake. In the latter case, however, the laimant must have acted in good faith, and with reasonable caution

Digitized by Google

and diligence. Grove v. Lemley, 114 Va. 202, 76 S. E. 305. Cra
Adm'r v. Smith's Ex'r, 93 Va. 623, 23 S. E. 235, 25 S. E. 657; Rag
Owen, 84 Va. 227, 5 S. E. 91. But see last sentence of present s

Generally.—As to laches in asserting claim against personal
sentative, see Carr's Adm'r v. Chapman's Legatees, 5 Leigh 164;
v. Goode, 7 Leigh 452; Hudson v. Hudson's Ex'r, 3 Rand. 117.

Until the adoption of above statute as to fiduciaries them
there was no limitation except what result from the staleness of d
or presumption of payment; otherwise as to their sureties. McCo
Ex'rs v. Wright's Ex'rs, 79 Va. 524; Peale's Adm'r v. Thurmond.
753; Leake's Ex'r v. Leake, 75 Va. 792.

The stay period was applicable to demands against fiduciarie
other cases. Morrison's Ex'r v. Householder's Adm'r, 79 Va. 627.

Payment of a legacy by an executor cannot be presumed fr
mere lapse of time during which there is no representative of the
entitled to demand and receive it. Burwell's Ex'rs v. Anderson, 3
348.

Where a receiver has settled his account, as required by
221, no suit to surcharge and falsify the account, or to hold him
sureties liable for any balance stated by his account to be in his
can be brought, in the absence of fraud or mutual mistake, except
ten years after the account has been confirmed. Senseny v. Boy
Va. 308, 76 S. E. 280.

See, generally, as to demands against fiduciaries, Nelson's Ad
Cornwell, 11 Grat. 724; Cookus v. Peyton's Ex'r, 1 Grat. 431; I
Ex'r v. Leake, 75 Va. 792.

See 1 Min. (4th Ed.) 494; 4 Min. (3d Ed.) 610; Barton.
(2d Ed.) 82; Burks' Pl. & Pr., p. 393.

For W. Va. decisions on similar statute, see Justis' Annot
chapter 104, section 7.

**Sec. 5812. Limitation of action, when there is a new prom
writing; how plaintiff to sue in such case.**—If any person a
whom the right shall have so accrued on an award, or any
contract, shall, by writing signed by him or his agent, promis
ment of money on such award or contract, the person to wh
right shall have so accrued may maintain an action for the
so promised, within such number of years after such promi
it might be maintained under section fifty-eight hundred an
if such promise were the original cause of action. The pl
may sue on such promise or on the original cause of action,
that where the promise is of such a nature as to merge the o
cause of action, then the action shall be only on the promis
the action be on the original cause of action, and the defe
files a plea under section fifty-eight hundred and ten, the pl
shall be allowed to reply specially such promise, or he may, w
replying specially, show such promise in evidence to repel th
of the plea, provided he shall have given the defendant reas
notice before the trial of his intention to rely on such promis
acknowledgment in writing, from which a promise of paymen
be implied, shall be deemed to be such promise in the mean
this section. (Code 1887, § 2922.)

**Revisors' Note.—Where the original cause of action is sued o
the defendant files a plea under section 5810, the third sentence
revised section allows the plaintiff to reply specially the new pr

Digitized by Google

may, without replying specially, show the new promise in evidence. erly, he was restricted to the latter procedure.

New promise or acknowledgment—*Essentials.*—A new promise, to ve the bar of the statute, must be determinate and unequivocal; to imply a promise of payment from a subsequent acknowledgment, acknowledgment must be an unqualified admission of a subsisting which the party is liable for and willing to pay. Cole's Ex'r v. n, 99 Va. 223, 37 S. E. 907; Shepherd v. Thompson, 122 U. S. 231, p. Ct. 1229, 30 L. Ed. 1156; Bell v. Crawford, 8 Grat. 110. Must ade by one against whom the right to maintain an action has accrued. er v. Noffsinger, 82 Va. 518.

For discussion of an acknowledgment of a debt in a deed of trust new promise, see 8 Va. Law Reg. 401.

When account stated, is not a new promise. Magarity v. Ship- 93 Va. 64, 24 S. E. 466.

For note upon essentials of the "promise" mentioned herein, see a. Law Reg. 310.

cknowledgments held sufficient.—The deposition of the maker of te (in a case in which the payee was not a party), for the purpose otaining a credit for it as a debt to be paid by him, and for which as allowed such a credit, is a sufficient acknowledgment to remove ar of the statute. Diuguid v. Schoolfield, 32 Grat. 803.

M. held bonds of R., which were barred by the statute. R. obtained ssion of and destroyed them. He afterwards acknowledged in ng that he destroyed the bonds, and that they were unpaid. and d their amounts. The acknowledgment implied a promise to pay. e v. Marchant, 86 Va. 177, 9 S. E. 995.

cknowledgments held insufficient.—An instrument which contains romise of the defendant personally to pay the debt, and no acknowl- ient or mention of it as an existing liability, but merely provides for application of certain pledged property to its payment, does not int to a new promise, express or implied. Shepherd v. Thompson, U. S. 231, 7 Sup. Ct. 1229, 30 L. Ed. 1156.

A letter asking for an account, and promising to pay it, will not be to apply to old accounts which are barred, when the writer owes romisee an account then current and another of recent date. Coles v. Martin, 99 Va. 223, 37 S. E. 907.

That the creditor has furnished the executor at his request with a ment of his debt, which the executor does not object to, will not ve the bar of the statute. Tazewell's Ex'r v. Whittle's Adm'r, 13 329.

A promise to settle and pay the balance found due on a settlement not stop the running of the statute. Liskey v. Paul, 100 Va. 764, E. 875; Bell v. Crawford, 8 Grat. 110; Aylett's Ex'r v. Robinson, igh 45; Sutton v. Burruss, 9 Leigh 381, 33 Am. Dec. 246

A denial, in a deposition, that the debt stated in an inventory filed the bill in the case, is a correct statement of what the deponent , cannot be considered as containing an unqualified and direct ac- rledgment of a subsisting indebtedness, from which a promise to could be inferred. Walter v. Whitacre, 113 Va. 150, 73 S. E. 984.

A bill in chancery filed for the construction of a testator's will and administration of his estate, which is signed by counsel only, and an gned inventory filed therewith, which lists a debt due by the com- ant to the testator, are not such acknowledgments as will take the out of the bar of the statute, in the absence of any evidence that the sel was authorized to make an admission of indebtedness. Walter hitacre, 113 Va. 150, 73 S. E. 984.

Part payment will not take the case out of the statute. Cover v. nberlain, 83 Va. 286, 5 S. E. 174.

Insolvency.—New promise may be made though debtor be insolvent, other creditors cannot set up the statute against the debt so renewed. nson v. Bass' Adm'r, 100 Va. 190, 40 S. E. 660.

Digitized by Google

Pleading and evidence.—If new promise does not specify amount, extrinsic evidence is admissible to ascertain the amount Cole's Ex'r v. Martin, 99 Va. 223, 37 S. E. 907.

Where plaintiff relies upon new promise without pleading it, dence of new promise cannot be received in the absence of the n required. Noell v. Noell, 93 Va. 433, 25 S. E. 242; Kesterson v. 101 Va. 739, 45 S. E. 288. See revisors' note above.

In an action of detinue, where defendant pleaded the statu replication that within five years defendant acknowledged the articl tained to be plaintiff's property is insufficient in not averring a pro to deliver the possession. Morris v. Lyon, 1 Va. Dec. 615, 2 S. E.

Generally.—Limitation does not make claim invalid. It m cuts off legal remedy; hence a claim barred is a good consideratio a new promise. Robinson v. Bass' Adm'r, 100 Va. 190, 40 S. E. 66

But where a statute gives a right and limits the time within w action must be brought the limitation affects the right itself. 3 Law Reg. 63, 64.

As to whether new promise made to third person is sufficient 1 Va. Law Reg. 782; 4 Min. (3d Ed.) 616.

Exceptions to the operation of the statute must be found in statute itself. Clark v. Nave, 116 Va. 838, 83 S. E. 547.

See Barton, L. Pr. (2d Ed.) 85, 92, 96; 3 Min. (2d Ed.) 167, 4 Min. (3d Ed.) 801; Burks' Pl. & Pr., p. 406. For case before statute, see Butcher v. Hixon, 4 Leigh 519.

For W. Va. decisions on similar statute, see Justis' Annotat chapter 104, section 8.

Sec. 5813. Effect of promise of personal representative or contractor.—No acknowledgment or promise by any personal resentative of a decedent, or by one of two or more joint con tors, shall charge the estate of such decedent, or charge any oth such contractors, in any case in which but for such acknowledg or promise, the decedent's estate or another contractor could been protected under section fifty-eight hundred and ten. (1887, § 2923.)

Administrator cannot revive debts barred by statute by any pro In writing or otherwise, but is bound to plead the statute against debts. Smith v. Pattie, 81 Va. 654; Seig v. Acord's Ex'r, 21 Grat. 8 Am. Rep. 605.

Administrator is sole heir and distributee of intestate. There debts against the intestate which are barred by the statute. There judgments against the administrator. The administrator cannot r those debts against the intestate, but must plead the statute, and refuses or fails so to do the judgment creditors may do so. Smi Pattie, 81 Va. 654.

Cited in Switzer v. Noffsinger, 82 Va. 525. See Kayser v. Di 9 Leigh 357; Tazewell's Ex'r v. Saunders' Ex'r, 13 Grat. 354; 3 (2d Ed.) 205-6; Burks' Pleading and Practice, p. 416.

For W. Va. decisions on similar statute, see Justis' Annotat chapter 104, section 9.

Sec. 5814. Effect, on right of action, of devise for payme debts.—No provision in the will of any testator devising his estate, or any part thereof, subject to the payment of his debt charging the same therewith, shall prevent this chapter from ating against such debts, unless it plainly appear to be the testa intent that it shall not so operate. (Code 1887, § 2924.)

For cases before the statute, see Chandler's Ex'x v. Hill, 2 He M. 124; Lewis' Ex'r v. Bacon's Legatees, 3 Hen. & M. 89; Bro Adm'r v. Griffiths, 6 Munf. 450.

Digitized by Google

he devise is not of itself sufficient evidence of the intention; it appear from some provision or phrase independent of the devise, indicates the purpose of the testator. Johnston v. Wilson's , 29 Grat. 379.

devise of real estate for the payment of debts will not affect the ion of the statute upon such debts, whether they be barred at the r's death or not, unless the contrary intention on his part plainly s. Id.

ee Barton, L. Pr. (2d Ed.) 85.

or W. Va. decisions on similar statute, see Justis' Annotations, r 104, section 10.

5815. Limitation of action, etc., on a recognizance.—Every or scire facias upon a recognizance shall be commenced, if cognizance be not of bail in a civil suit, within ten years next the right to bring the same shall have first accrued; and if the nizance be of such bail, within three years after the right to t execution upon the judgment in such suit shall have accrued, ng in the computation of time such part of said three years right to sue out such execution shall have been suspended by tion, supersedeas, or other legal process. (Code 1887, §

ee Barton, L. Pr. (2d Ed.) 106; 3 Min. (2d Ed.) 160; 4 Min. (3d 13.

or W. Va. decisions on similar statute, see Justis' Annotations, r 104, section 11.

5816. Of motion against officer for failure to return execu-
-A motion against an officer or his sureties, or his or their rep- atives, for a failure to return an execution, shall be made ten years from the return day thereof, and not after. (Code § 2927.)

he reference to the Code of 1887 should be to section 2926, not

ee notes to sections 2826, 2835-2837.

5817. Ground rents.—No action shall be brought for the re- of any ground rent heretofore or hereafter reserved upon state after the expiration of ten years from the time such d rent becomes due and payable. (1916, p. 724.)

5818. Of actions not before specified.—Every personal ac- for which no limitation is otherwise prescribed, shall be ht within five years next after the right to bring the same have accrued, if it be for a matter of such nature that in case y die it can be brought by or against his representative; and, e for a matter not of such nature, shall be brought within one ext after the right to bring the same shall have accrued. (Code § 2927.)

bstance of action and not its form determines what limitation is ble.—The object of the action, and not its form, determines what limitation is applicable. If the thing complained of is an injury person, the limitation in assumpsit is the same as if the action were n ex delicto. Birmingham v. C. & O. Ry. Co., 98 Va. 548, 37 7.

evivability.—Whether an action is revivable depends not so much s form as its substance. Where cause of action is tort in con-

Digitized by Google

nection with contract, and affects the person only, and not the the action dies with the person; otherwise where the action, nominally ex delicto, is founded on contract. Lee's Adm'r v. H Va. 500, 12 S. E. 1052, 24 Am. St. Rep. 666.

An action against a defendant for maliciously and without p cause suing out an injunction against a plaintiff, whereby the op of his mill was suspended, is barred after one year from the diss of the injunction, as the cause of action did not survive. Mump Bristol, 94 Va. 737, 27 S. E. 581.

A claim for indirect and incidental damages to a plaintiff's arising from an injury to the person, does not cause the action t to recover for such injury to survive. Birmingham v. C. & O. R 98 Va. 548, 37 S. E. 17.

An action to recover damages for personal injury caused wrongful act, neglect, or default of another must be brought with year from the time of injury. Anderson v. Hygeia Hotel Co., 687, 24 S. E. 269, note 2 Va. Law Reg. 21.

An action for wrongful discharge, being founded on contr revivable. Lee's Adm'r v. Hill, 87 Va. 500, 12 S. E. 1052, 24 A Rep. 666.

Upon the revivability of actions for personal injuries and up period of limitation of such actions, see notes to sections 5790 4 Va. Law Reg. 772.

See section 5385.

When statute begins to run— *Against remainderman.*—Life of a slave sells her interest and dies; the statute begins to run the remainderman at her death in favor of the purchaser. La Norris' Adm'r, 16 Grat. 236; Duncan v. Wright, 11 Leigh 542 (2 567; Lynch v. Thomas, 3 Leigh 682; Ball v. Johnson's Ex'r, 8 Gra

Plaintiff's interest in an estate on partition thereof was assig purchaser of her husband's life interest therein, who had also bou interest. Held, that her right of action, arising out of nullity deed and of partition proceedings, did not arise until the death husband. Beattie v. Wilkinson (C. C.), 36 Fed. 646.

In case of deceit.—Where deceit is practiced in a sale of the cause of action accrues at the time of the deceit practiced. White, 4 Leigh 474.

Against vendee.—Where K. executed to R. a bill of sale for but retains them in his possession, the possession of K. was subo to the deed, and not adversary, and therefore the claim was not by the statute. Roberts v. King, 10 Grat. 184.

In case of seduction.—Where daughter lived away from her house at the time of the seduction, but returned and was confine and nursed, the statute will only begin to run from that time. Holmes, 33 Grat. 722, 36 Am. Rep. 793.

In case of fraud or violence.—If a chattel be taken from the sion of its owner by fraud or violence unaccompanied by any bo claim of property, no length of time will bar the action of true Kitty v. Fitzhugh, 4 Rand. 600.

In favor of widow.—Where widow, after husband's death, h slaves, claiming them as her own, the statute did not begin to her favor until the appointment of a personal representative. C Hardiman, 2 Leigh 347.

In favor of trustee.—Trustee cannot take advantage of the limitation against the claim of cestui que trust or persons claiming him. Redwood v. Riddick, 4 Munf. 222.

Injury to water rights.—Where a plaintiff is injured for t time by the increased quantity of water taken from a stream defendant, his right of action accrues from that date, although fendant long before erected a tank and pumping station on its ow and took smaller quantities of water from the stream. Norfolk & Co. v. Allen, 118 Va. 428, 87 S. E. 553.

Bank directors.—See section 3816.

Digitized by Google

The cause of action against the directors of a bank for neglect of y as such directors grows out of their breach of duty, and the limita- applicable thereto is five years. Winston v. Gordon, 115 Va. 899, S. E. 756.

Where fraud is not alleged against bank directors and no conceal- nt on their part is shown, the statute begins to run in an action against m for neglect of duty, from the time the alleged wrongs, if any, were mitted. Winston v. Gordon, 115 Va. 899, 80 S. E. 756.

Bank directors may plead the statute of limitations when sued for lect of duty as such directors. Winston v. Gordon, 115 Va. 899, S. E. 756.

Nuisances.—The limitation to an action for damages for injury to plaintiff's property by reason of cesspools maintained by the de- dant on his adjacent land is five years. Hawling v. Chapin, 115 792, 80 S. E. 587.

A cause of action for emptying sewage in a stream accrues when discharge of sewage is in sufficient quantities to pollute the stream constitute a nuisance. McKinney v. Trustees, 117 Va. 763, 86 E. 115.

Limitation applicable to a permanent nuisance is five years. Worley Mathieson Alkali Works, 119 Va. 862, 89 S. E. 880.

When statute is a bar—Adverse possession.—Where person has had re than five years' adverse possession of a chattel, such a possession is omplete bar to plaintiff's title. Spotswood v. Dandridge,, 4 Hen. & 139; Garland v. Enos, 4 Munf. 504. As to subsequent acknowledg- nt, see Morris v. Lyon, 84 Va. 331, 4 S. E. 734. Such possession is source of title, see infra, "Pleading."

Property conveyed in deed of trust is taken under execution and l, and the purchaser remained in peaceable possession thereof for five rs before suit is instituted by the trustee or cestui que trust to over it; the statute is a bar to the recovery. Sheppard v. Turpin, Grat. 373.

A widow qualified as administratrix of her husband, and takes session of and holds certain slaves in which she claims a life estate having been given to her by her father's will. She is afterwards re- ved from her office of administratrix. The statute will protect her inst any claim by the administrator d. b. n. and next of kin to her band. Livesay v. Helms, 14 Grat. 441. See note supra, "In Favor Widow."

If a widow, holding, by virtue of her husband's will, certain slaves life, with power to dispose of them afterwards among her children, ueath them to one child only, such child must be considered as hold- the slaves under her will adversely to the other children, and there- e may be protected by the statute. Hudson v. Hudson's Ex'r, 3 nd. 117.

A frauduent bill of sale is made of slaves absolute on its face, with ecret trust for the grantor's daughters after they become of age. 1829 they set up a claim to the property, which the grantee denies be just. In 1837 they file a bill to establish the secret trust. Held, statute is a bar to the bill. Owen v. Sharp, 12 Leigh 427.

A person having had five years' peaceable possession of a chattel uired without force or fraud, who loses possession, may regain it on mere ground of his previous possession, but such recovery will not ect the right of others not parties to the suit. Newby's Adm'rs v. key, 3 Hen. & M. 57.

Pleading.—Statute is a source of title, and may be shown under general issue. Layne v. Norris' Adm'r, 16 Grat. 236; Spotswood v. ndridge, 4 Hen. & M. 139; Elam v. Bass' Ex'rs, 4 Munf. 301; Shelby Guy, 11 Wheat. 371, 6 L. Ed. 495; 13 Am. & Eng. Enc. of L. (1st) 694.

Where the declaration in an action for death by wrongful act shows its face that the death occurred more than twelve months before

Digitized by Google

action brought, advantage may be taken of the limitation by demur
Manuel v. N. & W. R. Co., 99 Va. 188, 37 S. E. 957. See section 5

Where an action for the destruction of a house by fire caused
the negligence of the defendant is brought within the statutory per
and a fire insurance company intervenes and requests that it be paid
losses out of any damages the plaintiffs may recover. Held, it is
material whether the intervening petition was filed before or after
five-year limit, since the insurance company claims through the plaint
whose action was instituted in time. Norfolk & W. R. R. Co. v. Thor
110 Va. 622, 66 S. E. 817.

Generally.—See Vaiden v. Bell, 3 Rand. 448; Lynch v. Thoma
Leigh 682; Merrit v. Smith, 6 Leigh 486; Colvin v. Menefee. 11 Grat.

See Barton, L. Pr. (2d Ed.) 62; 4 Min. (3d Ed.) 614; Burks'
& Pr., pp. 385, 395. Cited in Embrey v. Jemison, 131 U. S. 34
Sup. Ct. 776, 33 L. Ed. 172, sections 5384-5.

For W. Va. decisions on similar statute, see Justis' Annotati
chapter 104, section 12.

Sec. 5819. Actions on judgments, etc., of another State.—Ev
action upon a judgment or decree rendered in any other State
country shall be barred, if by the laws of such State or coun
such action would there be barred, and the judgment or decree
incapable of being otherwise enforced there; and whether so bar
or not, no action against a person who shall have resided in
State during the ten years next preceding such action, shall
brought upon any such judgment or decree, rendered more t
ten years before the commencement of such action. (Code 1
§ 2928.)

As to limitation on domestic judgments, see section 6477.

See Barton, L. Pr. (2d Ed.) 103; 3 Min. (2d Ed.) 146, 160.

For W. Va. decisions on similar statute, see Justis' Annotati
chapter 104, section 13.

Sec. 5820. Limitation of suits to avoid voluntary deeds, etc.—
gift, conveyance, assignment, transfer, or charge, which is not
consideration deemed valuable in law, or which is upon consid
tion of marriage, shall be avoided in whole or in part for that ca
only, unless within five years from its recordation, if recorded un
a law providing for its recordation, and if not so recorded wit
five years from the time the same was or should have been
covered, suit be brought for that purpose, or the subject thereof
some part of it, be distrained or levied on by or at the suit o
creditor, as to whom such gift, conveyance, assignment, transfer
charge, is declared to be void by section fifty-one hundred
eighty-five. (Code 1887, § 2929.)

**Revisors' Note.—The words "or which is upon consideration
marriage" appearing in lines three and four of the text are new.
their insertion would seem to be manifestly proper in view of sec
5185.**

**Under the former language of this section, the limitation upon
right to avoid the transaction was stated to be "five years after the r
to avoid the same has accrued." Under this language the question
when did the right accrue? See in this connection Vashon v. Barr
99 Va. 347, 38 S. E. 200. It should be observed that the limitation
is "five years from its recordation, if recorded under a law providing
its recordation, and if not so recorded within five years from the t**

Digitized by Google

ame was or should have been discovered." The object of this change nguage is to make more definite the time of the accrual of the right oid the transaction. The subject of the gift, conveyance, etc., may eal estate or either tangible or intangible personal property, and the uage is sufficiently comprehensive to cover all classes.

When right accrues.—See revisors' note above, and Vashon v. Bar- 99 Va. 344, 38 S. E. 200, note 7 Va. L. Reg. 36, 596; Matthews v. Progress Co., 108 Va. 777, 62 S. E. 924.

Husband and wife—Fraud.—In the absence of fraud, suits by credi- to annul conveyance to a husband in trust for his wife, on the nd that the consideration was paid by him, is barred by five years. h v. Solenberger, 85 Va. 441, 8 S. E. 91. See, as to marriage settle- t, McCue's Trustees v. Harris, 86 Va. 687, 10 S. E. 981.

There is no limitation in cases of actual fraud. Bumgardner v. is, 92 Va. 188, 23 S. E. 229, note 1 Va. Law Reg. 590; Snoddy v. kins, 12 Grat. 363; Flook v. Armentrout's Adm'r, 100 Va. 638, . E. 686.

Section has no application to fraudulent conveyances.—The limita- prescribed by this section, within which to bring suit to set aside a ntary conveyance, has no application to attack on a conveyance on ground of fraud. Kinney v. Craig, 103 Va. 158, 165, 48 S. E. 864.

This section has no application to a fraudulent conveyance, but only cribes limitation for attack on voluntary conveyance. Atkinson v. lberger, 112 Va. 667, 72 S. E. 727.

For the statute of fraudulent conveyances, see section 5185.

Burden of proof that transfer alleged to be voluntary was made than five years before the institution of the suit to have it set is on the party pleading the statute. Vashon v. Barrett, 99 Va. 38 S. E. 200, note 7 Va. Law Reg. 36.

Generally.—For history of the distinction between the legislation iding for the running of the statute against suits to avoid conveyances on considerations deemed valuable in law, and of that providing he running of the statute in other cases, see opinion of Staples, J., ickle v. Chrisman's Adm'x, 76 Va. 678, for a rule which is changed his section.

A suit to avoid a gift, conveyance, etc., which is not on consideration deemed valuable in law, if for that cause only, must be brought with- e years after the right to avoid the same has accrued. This changed provision of the Code of 1849, under which a case had arisen (Bickle hrisman, 76 Va. 678; McCue's Trustees v. Harris, 86 Va. 687.) s' Address, 2 Barton L. Pr. (2d Ed.) 1395.

This section refers to suits by creditors to annul voluntary con- nce by their debtors to third person in fraud of such creditors' s, and not to suits by commissioner to vacate a deed executed by upon the ground of fraud or the misrepresentation of the grantee. iams v. Blakey, 76 Va. 254.

This section applies only to gifts inter vivos, and not to devises or ies. Lewis v. Overby's Adm'r, 31 Grat. 616-618.

Does not protect from liability for decedent's debts his property, h has passed into distributees' hands. Cole's Adm'r v. Ballard, 78 139.

Limitation does not cease to run simply because no settlement has had between parties. Vashon v. Barrett, 99 Va. 344, 38 S. E. 200.

No inherent equity will create an exception to the statute. Bickle hrisman's Adm'x, 76 Va. 678; Matthews Co. v. Progress Co., 108 777, 62 S. E. 924.

For case before the statute, see Wilson v. Buchanan, 7 Grat. 334-344.

See 4 Min. (3d Ed.) 615; 2 Min. (4th Ed.) 586, 684; Barton, L. (2d Ed.) 862; Barton, C. Pr. (2d Ed.) 82, 101, et seq.; Burks' Pl. r., pp. 386, 387.

For W. Va. decisions on similar statute, see Justis' Annotations, ter 104, section 14.

Digitized by Google

Sec. 5821. Promise not to plead the statute.—Whenever the
ure to enforce a promise, written or unwritten, not to plead
statute of limitations would operate a fraud on the promisee
promisor shall be estopped to plead the statute. In all other
an unwritten promise not to plead the statute shall be void, a
written promise not to plead it shall have the effect of a promi
pay the debt or discharge the liability.

**Revisors' Note.—This section is new. For a general discussi
the subject, see Burks' Pl. & Pr., section 225, p. 417.**

See Sutton v. Burruss, 9 Leigh 381, 33 Am. Dec. 246; Bowles
v. Elmore's Adm'x, 7 Grat. 385.

Sec. 5822. To repeal a grant.—A bill in equity to repeal, in w
or in part, any grant of land by the Commonwealth, shall be bro
within ten years next after the date of such grant. (Code 18
2930.)

See Goodwin v. McCluer, 3 Grat. 298; Barton, C. Pr. (2d Ed.

In Goodwin v. McCluer, 3 Grat. 298, it was decided that alth
the patent may have been obtained on false suggestions, yet no p
can be repealed after the lapse of ten years.

Sec. 5823. Saving as to persons under disability.—If any p
to whom the right accrues to bring any such personal actio
scire facias, or any such bill to repeal a grant, shall be at the
the same accrues, an infant, or insane, the same may be bro
within the like number of years after his becoming of full
or sane, that is allowed to a person having no such impedime
bring the same after the right accrues, or after such acknow
ment as aforesaid, except that it shall in no case be brought
twenty years from the time when the right accrued. (Code
§ 2931.)

**Revisors' Note.—The portion of this section relating to ma
women has been omitted as no longer necessary.**

Tacking.—No other disability is available than the one whic
isted when the right of action accrued, and no disability subsequ
arising can be tacked on to the one so existing. Parsons v. McCra
9 Leigh 495; Blackwell's Adm'r v. Bragg, 78 Va. 529; Hudso
Hudson's Adm'r, 6 Munf. 352.

Infancy.—Being infants at the time the right accrued, statut
not begin to run until they became twenty-one years of age. Bai
Bland, 3 Munf. 570; Hudson v. Hudson's Adm'r, 6 Munf. 352.

Coverture.—See revisors' note above, Blakey v. Newby's Ad
6 Munf. 64; Livesay v. Helms, 14 Grat. 441.

Generally.—Persons under disability may prosecute any re
in equity they are entitled to by prochein ami, at any time whil
disability continues. Hansford v. Elliott, 9 Leigh 79.

As to disabilities co-existing when the right of action accrues,
is not obliged to act until the last is removed. Blackwell's Adm
Bragg, 78 Va. 529.

Applied in Morrison's Ex'r v. Householder's Adm'r, 79 Va. 6

See Barton, L. Pr. 793; 4 Min. (3d Ed.) 986; Burks' Pl. &
pp. 394, 395, 404.

For W. Va. decisions on similar statute, see Justis' Annota
chapter 104, section 16.

See Gregory's Forms No. 196.

Sec. 5824. As to persons dead, when right accrues.—If a p

Digitized by Google

before the time at which any right mentioned in this chapter
d have accrued to him, if he had continued alive, and there be
terval of more than two years between the death of such person
the qualification of his personal representative, such personal
esentative shall, for the purposes of this chapter, be deemed to
qualified on the last day of the said two years. (Code 1887,
32.)

Revisors' Note.—The interval stated in this section was formerly years; now it is two.

Though a widow obtains possession of personal property left by husband at his death, claiming the same as her own, and holds the for more than five years, during which time no administrator was inted, such possession will not give her title, as the statute did not to run in her favor until the appointment of the administrator. v. Hardiman, 2 Leigh 347. The interval is now two years.

Statute does not begin to run against a claim asserted for a de-nt's estate until a qualification of a personal representative of the dent. Hansford v. Elliott, 9 Leigh 79; Lyon's Adm'r v. Magagnos' r, 7 Grat. 377; 4 Min. (3d Ed.) 986; Barton, L. Pr. (2d Ed.) 93.

For W. Va. decisions on similar statute, see Justis' Annotations, ter 104, section 17.

c. 5825. As to plaintiff when suit prevented by defendant; when t of action on foreign contract barred.—Where any such right mentioned in this chapter shall accrue against a person who before resided in this State, if such person shall, by departing out the same or by absconding or concealing himself, or by any r indirect ways or means obstruct the prosecution of such right, time that such obstruction may have continued shall not be puted as any part of the time within which the said right might ught to have been prosecuted. But this section shall not avail nst any other person than him so obstructing notwithstanding her might have been jointly sued with him if there had been uch obstruction. Nor shall it apply to such grantees for value those claiming under them as are mentioned in section sixty-hundred and seventy-four. Upon a contract which was made was to be performed in another State or country by a person then resided therein, no action shall be maintained after the t of action thereon is barred either by the laws of such State or ntry or of this State. (Code 1887, § 2933; 1897-8, p. 441.)

Revisors' Note.—Section 2933 of the Code of 1887 was amended cts 1897-8, p. 441. The revised section above is based on the Code 887 and not on the amendment. The third sentence is new. The tation prescribed by section 6474 is intended to be absolute. The sentence of the section has been so changed as to provide that in case mentioned "no action shall be maintained after the right of on thereon is barred EITHER by the laws of such State or country BY THIS STATE." The capitalized words remove a doubt which e under the former language.

Residence, within the meaning of the statute, is the permanent abid-or dwelling in a place for a length of time as contradistinguished a mere temporary locality of existence. Griffin v. Woolford, 100 473, 41 S. E. 949.

Digitized by Google

The continued non-residence of the maker of a note, who was a resident of this State, did not prevent the running of the stat it existed prior to the amendment 1897-8, p. 441. Griffin v. Wo 100 Va. 473, 41 S. E. 949; Dorr's Adm'r v. Rohr, 82 Va. 359, 3 A Rep. 106; Embrey v. Jemison, 131 U. S. 336, 9 Sup. Ct. 776, 33 172. Observe what is stated in the revisors' note above as to the a ment of 1897-8.

Obstruction— *Promise as.*—Promise to settle and pay a b found due on a settlement is not an obstruction of plaintiff's within the meaning of this section, nor does the mere failure to c with such promise amount to a fraud on the plaintiff. Liskey v. 100 Va. 764, 42 S. E. 875. See Bickle v. Chrisman's Adm'x, 76 Va Sutton v. Burruss, 9 Leigh 381, 33 Am. Dec. 246; Foster's Cura Rison, 17 Grat. 345.

Removal as.—The removal of slaves to a distant county, thus ing the owners in ignorance where they were, was an obstruction, the meaning of this section. Rankin v. Bradford, 1 Leigh 163.

The removal of judgment debtor from State is of itself an ob tion of a suit to enforce the judgment, and the statute of limitatio not run against the judgment while the debtor remains out of the Cheatham's Adm'r v. Aistrop's Adm'r, 97 Va. 457, 34 S. E. 57 Clanahan v. Norfolk & W. R. Co., 118 Va. 388, 87 S. E. 731.

Removal out of the State after contracting the debt is its obstruction to the prosecution of the suit. Ficklin's Ex'r v. Carri 31 Grat. 219. See Brown v. Butler, 87 Va. 621, 13 S. E. 71; L Adm'r v. Perry, 98 Va. 604, 37 S. E. 33.

This section does not apply where defendant, although once a dent of the State, removed therefrom before any right of action a against him, and before the transactions occurred out of which pla claim arose. Embrey v. Jemison, 131 U. S. 349, 9 Sup. Ct. 776, Ed. 172.

The removal must be with intention to change the domicil party's home is in this State, statute continues to run. Brown v. 87 Va. 621, 13 S. E. 71.

If this section has any application to the estates of deceased pe it cannot apply where the administrator never was a resident o State. Prior to amendment (1897-8) this section applied only t sons who were once residents of this State, and who obstructe remedy by departing. Kesterson v. Hill, 101 Va. 739, 45 S. E See Templeman's Adm'r v. Pugh, 102 Va. 441, 46 S. E. 474, wher expressly decided that statute has no application to estates of de persons. As to the amendment of 1897-8 see revisors' note above.

Suspension of statute by agreement.—Where parties agree th suit shall be brought during the absence of the debtor from the it seems that such agreement will stop the running of the stat equity. Holladay v. Littlepage, 2 Munf. 316.

B., having become the surety of E., E. delivers to B. B.'s note was to hold it until the liability of B. as bail was ended, and th was to redeliver it to E. Statute did not begin to run against th until the liability of B. as bail ceased. Bowles' Ex'r v. Elmore's A 7 Grat. 385. Compare Sutton v. Burruss, 9 Leigh 381, 33 Am. Dec See section 5821.

In case of fraud.—The concealment of a cause of action whic prevent the running of the statute of limitations under this section consist of some trick or artifice preventing inquiry, or calculat hinder a discovery of the cause of action by the use of ordinary dili Mere silence is not sufficient. The fraud which will relieve the the statute must be of that character which involves moral tur and must have the effect of debarring or deterring the plaintiff his action. Culpeper Nat. Bank v. Tidewater Improvement Co. Va. 73, 89 S. E. 118. See, in this connection, revisors' note to s 5811.

Generally.—This section applies to indirect ways and mea

Digitized by Google

uct the suit wherein the statute is pleaded, and is not applicable is case where the obstruction was by defendant to the suit against the conclusion whereof was a necessary preliminary to the suit to ach the assignment. Bickle v. Chrisman's Adm'x, 76 Va. 678.
A parol debt was contracted in 1819, when the debtor lived in Vir- . He shortly removed from the State, never returned, and died. In a proceeding by foreign attachment was instituted to recover the The statute of limitations is a good defence to the proceeding. le's Adm'r v. Burch's Adm'r, 11 Grat. 26.
The second clause of this section (beginning "But this section") intended to apply to a case where two or more were jointly liable, some one or more of them obstructed the plaintiff in the prosecu- of his suit in some of the methods mentioned in the statute while s did not. McClanahan v. Norfolk & W. R. Co., 118 Va. 388, 87 731.
Cited but not construed in Dowell v. Cox, 108 Va. 460, 62 S. E. 272.
See Burks' Pleading and Practice, pp. 384, 399, 403, 405.
For W. Va. decisions on similar statute, see Justis' Annotations, ter 104, section 18.

c. 5826. Further time given; when suit abates or is defeated on nd not affecting the right to recover.—If an action or suit com- ced within due time in the name of or against one or more ntiffs or defendants abate as to one of them by the return of nhabitant or by his or her death or marriage, or if in an action uit commenced within due time judgment or decree for the ntiff shall be arrested or reversed upon a ground which does not lude a new action or suit for the same cause, or if there be oc- on to bring a new action or suit by reason of the loss or destruc- of any of the papers or records in a former suit or action which in due time; in every such case, notwithstanding the expira- of the time within which a new action or suit must otherwise been brought, the same may be brought within one year after abatement, or such arrest, or reversal of judgment or decree, uch loss or destruction, but not after. (Code 1887, § 2934; -4, p. 789; 1897-8, p. 252.)

Revisors' Note.—This section is identical in language with section of the Code of 1887, except that it expressly includes suits in ty as well as actions at law. The amendments made by the acts at the end of the section have been omitted, because they were ied unwise. They authorized an extension of one year if any kind of on were brought against a wrong defendant, which would include defendant.

Nonsuit.—This section does not apply when plaintiff is nonsuited his own motion. Manuel v. N. & W. Ry. Co., 99 Va. 188, 37 S. E. note 6 Va. Law Reg. 776.

"Suit."—The "suit" which may be brought within one year in con- ence of the loss or destruction of papers or records in a former suit, h was in due time, includes both actions at law and suits in equity. es v. N. Y., etc., Co., 96 Va. 733, 735, 32 S. E. 778, 5 Va. Law Reg. The present section expressly includes suits and actions.

"Action."—As the statute formerly read, the word "action" did not y to suit in equity; therefore a party who first brought a suit in ty, which was dismissed, and then within one year institutes his on, was not entitled to the benefit of this section. The rule would to be otherwise, as the statute now reads. Dawes v. N. Y., etc., 96 Va. 733, 735, 32 S. E. 778, 5 Va. Law Reg. 23. See, also, 8 Va.

Digitized by Google

Law Reg. 761; Gray's Adm'x v. Berryman, 4 Munf. 181; Elan Bass' Ex'rs, Id. 301. The present revision makes the section expr apply to suits and actions.

Pleading.—If, in assumpsit, the defendant pleaded the act of li tion and the plaintiff would avoid the plea by former suit having brought in time, he must reply the former suit specially. He ca give it in evidence under a general replication of the plea. Bog Conway's Ex'rs, 3 Call 1.

It is no reply to a plea of the statute that the former suit wen the docket for want of formality. Callis v. Waddy, 2 Munf. 511.

Generally.—This section has no application unless there be than one year between the abatement or judgment or loss or destruc of paper and the bar of the statute. Brown's Ex'rs v. Putney, 1 W 302.

The year under this section does not run from judgment of appe court, but from that of lower court, excluding time that action was p ing in appellate court. Bradley Salt Co. v. Norfolk Importing & porting Co., 101 Fed. 681, 41 C. C. A. 600.

Where parties to probate proceedings under section 2639a Pollard's Code, instead of appealing under that section, bring a under section 2544 of Pollard's Code to impeach the will, and such is dismissed, an appeal in the probate proceedings, afterwards taken u section 2939a of Pollard's Code is not a "new suit" within the mea of this section. Tyson v. Scott, 116 Va. 243, 81 S. E. 57; 20 Va Reg. 70 and note. See section 5259 and revisors' note.

See Norfolk & A. T. Co. v. Rotolo (Circuit Court of Appeals, Circuit), 179 Fed. 639, and note thereto, 16 Va. Law Reg. 173. case was under the former reading.

4 Min. (3d Ed.) 987; Barton, L. Pr. (2d Ed.) 76, 793; 3 Va. Reg. 532.

For W. Va. decisions on similar statute, see Justis' Annotati chapter 104, section 19.

Sec. 5827. Limitation of enforcement of deeds of trust and m gages.—No deed of trust or mortgage heretofore or hereafter gi to secure the payment of money, and no lien heretofore or herea reserved to secure the payment of unpaid purchase money, s be enforced after twenty years from the time when the right to force the same shall have first accrued; but the limitations scribed by this section may be extended by an endorsement to t effect, entered upon the margin of the page of deed book on wh the same is recorded, when such endorsement is duly executed the grantor or his duly authorized attorney in fact, and attested the clerk of the court in which such lien is recorded, which endo ment shall be held to extend the limitation of the right to enfo said lien for twenty years from the date of such endorsement. clerk of the said court shall index said extension in both names the index of the deed book and on the general index in his off and give reference to the book and page in which the original w ing is recorded. This section shall not be construed to embrace a deed of trust or mortgage executed by a corporation or any vestment or loan of funds arising fr. m the sale or other disposit of glebe lands in the several counties of the State. (Code 1887 2935; 1897-8, p. 516; 1904, p. 271.)

Revisors' Note.—The time limit fixed by this section as it st

Digitized by Google

e the revision having expired, the phraseology has been changed ut intention to change the law.

See remarks of Judge E. C. Burks, giving reasons for this section. s' Address, 2 Barton L. Pr. (2d Ed.) 1395.

Prior to the Code of 1887 there was no statute of limitation to the cement of the vendor's lien on the lien for owelty of partition. these liens continue to exist until waived, released, satisfied, or sufficient time elapsed to raise the presumption of payment. Jame-. Rixey, 94 Va. 342, 26 S. E. 861, 64 Am. St. Rep. 726.

Does not affect presumption of payment of a debt secured by deed ust arising from the lapse of twenty years. Turnbull v. Mann, 99 1, 37 S. E. 288.

Though action at law to recover purchase money be barred, yet er's lien or trust deed may be enforced, within the statute. Tun-s Adm'r v. Withers, 86 Va. 892, 11 S. E. 565; Gibson v. Green's r, 89 Va. 524, 16 S. E. 661, 37 Am. St. Rep. 888; Smith's Ex'x v. ington City, V. M. & G. S. R. Co., 33 Grat. 617; 1 Va. Law Reg. Hamilton v. Glenn, 85 Va. 901, 906, 9 S. E. 129; Bowie v. Poor ol Soc., 75 Va. 300.

The former section applied as to the limitation of May 1, 1903, in 's Adm'x v. Highland Development Co., 104 Va. 551, 52 S. E. 209. See editorial, 20 Va. L. Reg. 945.

As to mode of marking satisfied deeds of trust, etc., section 6456. See 4 Min. (3d Ed.) 612, 615; Barton, L. Pr. (2d Ed.) 81; Barton, . (2d Ed.) 117, 122; Burks' Pl. & Pr., p. 397.

c. 5828. Repeal of limitation not to remove bar of statute.—If, a right of action or remedy is barred by a statute of limitations, statute be repealed, the bar of the statute as to such right or dy shall not be deemed to be removed by such repeal. (Code , § 2936.)

By this section it was intended to prescribe a rule different from which had been declared by the Supreme Court of the United States ampbell v. Holt, 115 U. S. 620, 6 Sup. Ct. 209, 29 L. Ed. 483; s' Address, 2 Barton L. Pr. (2d Ed.) 1395. See Johnston v. Gill, rat. 587; Kesterson v. Hill, 101 Va. 739, 45 S. E. 288.

See Barton L. Pr. (2d Ed.) 79; 4 Min. (3d Ed.) 605; section 6569 notes.

c. 5829. State not within statute of limitations.—No statute of ations, which shall not in express terms apply to the Common-th, shall be deemed a bar to any proceeding by or on behalf ne same. This section shall not, however, apply to agencies of State incorporated for charitable or educational purposes. (Code , § 2937.)

Revisors' Note.—The last sentence is new. See Eastern State Hos- v. Graves, 105 Va. 151, 52 S. E. 837.

Time does not run against the Commonwealth. Levasser v Wash-, 11 Grat. 572; Shanks v. Lancaster, 5 Grat. 110, 50 Am. Dec. 108; s v. Board, 10 Grat. 400; Wild's Lessee v. Serpell, Id. 405.

Title to a public highway cannot be acquired by adverse possession. does not bar the right of the public. Bellenot v. Richmond City, Va. 314, 61 S. E. 785.

The statute of limitations runs against counties and other subdivi- of the State, in suits brought by them to recover debts, in the manner and to the same extent as against natural persons. John-v. Black, 103 Va. 478, 49 S. E. 633.

As to state institutions, see revisors' note above; McClanahan v. tern Asylum, 88 Va. 466, 13 S. E. 977; Phillips v. U. Va., 97 Va.

Digitized by Google

472, 34 S. E. 66; Eastern State Hospital v. Graves, 105 Va. 52 S. E. 837; notes 5 Va. L. Reg. 470, 543.

As to municipal corporations, see 1 Va. L. Reg. 547.

Section 174 of the Constitution provides that no limitation shal against the State for taxes.

Sec. 5830. As to rights and remedies existing when this takes effect.—No action, suit, scire facias, or other proceeding, may be pending on the day before this Code takes effect, o right to prosecute which, under the laws in force on that day, have accrued before that day, shall be barred by this chapter farther or otherwise than as follows: the same, if pending on day, shall be subject to such limitation as it would have been su to if this Code had not been enacted, and where not so pendi the right to prosecute the same shall exist on that day, for a ce number of years prescribed by any statute, the same, or such action as may be substituted therefor by this Code, may be p cuted within such time as the same might have been prosecut this chapter had not been enacted, and not after; and where n pending, if the right to prosecute the same shall exist on that in a case in which no certain number of years shall have been scribed therefor by statute, the same, or such other action as be substituted therefor by this Code, may be prosecuted w such time as the same would have to be prosecuted if the rig bring it had accrued on the next day after this Code takes e (Code 1887, § 2938.)

Under the provisions of this section of the Code of 1887, the li tion to an action on a bond dated and due prior to May 1, 1888, and which no action was then pending, is twenty years from its mat notwithstanding the death of the obligor in 1889. Davis Admx. v. 104 Va. 65, 51 S. E. 216.

A case in which there has been a final decree is not a pending in the sense of this section. Yarborough v. Deshazo. 7 Grat. 374.

Plaintiff who was formerly entitled to recovery in a writ of may recover in ejectment under this section. Mitchell v. Baratt Grat. 445.

Section 5827 was enacted long after the creation of the lien s to be enforced in this case (for owelty of partition), and it is very that the statute does not bar the plaintiff from enforcing his Jameson v. Rixey, 94 Va. 345, 346, 26 S. E. 861, 64 Am. St. Rep.

See Barton, L. Pr. (2d Ed.) 77, 79, 793; 4 Min. (3d Ed.) 625

Digitized by Google

TITLE 58

ndamus, Prohibition, Quo Warranto, and Habeas Corpus.

9. Writ of mandamus and writ of prohibition.
0. Writ of quo warranto and information in the nature of a writ of quo warranto.
1. Writ of habeas corpus.

CHAPTER 239.

Writ of Mandamus and Writ of Prohibition.

Sec.
Application for mandamus or prohibition.
What petition to state; where presented.
When writ awarded.
Defense, how made.
Adjournment.
Trial by jury; what judgment to be rendered.
5837. The proceedings, where application is to Court of Appeals.
5838. Suspension of proceedings, where prohibition applied for.
5839. How proceedings in vacation certified and entered.
5840. Service of writ; how obedience enforced.

5831. Application for mandamus or prohibition.—Applica- or a writ of mandamus or a writ of prohibition shall be on n verified by oath, after the party against whom the writ is l has been served with a copy of the petition and notice of ended application, a reasonable time before such application e. (Code 1887, § 3011.)

is chapter of the Code originated with the revision of 1887. oceedings at common law in mandamus and prohibition were very y and complicated. Former statutes concerning these writs, while some improvement, were very inadequate. They were omitted revision and an entirely new procedure substituted, which would o be clear, simple, and expeditious. Burks' Address, 2 Barton (2d Ed.) 1387.

andamus lies against the superintendent of a lunatic asylum in of a lunatic claiming to have been discharged as restored to Starham v. Blackford, 89 Va. 771, 17 S. E. 233.

efusal to allow person to be made party to a suit, or allowing him made party is ground for appeal, but not mandamus. Moon's v. Wellford, Judge, 84 Va 34, 4 S. E. 572.

andamus does not lie to compel the board of supervisors to levy for the payment of a claim which it has no authority to pay.

Digitized by Google

even though the claim has passed into a judgment. The writ that to be done which is the defendant's duty to do without it. of Supervisors v. Catlett's Ex'rs, 86 Va. 163, 9 S. E. 999.

Allegations in petition for mandamus are not admitted as failure to answer or traverse same. Supervisors of Cumberland v. Randolph, 89 Va. 614, 16 S. E. 722.

A writ of prohibition will be granted to restrain a justi giving a new trial after thirty days. Burroughs v. Taylor, 90 17 S. E. 745.

The writ of prohibition is only a proper proceeding to re judge from exceeding his jurisdiction, and does not lie to correc eous decision where he has jurisdiction. Ellyson's Case, 20 G

Court of appeals under this section has power, by manda compel judge of inferior court to sign bill of exceptions. C Christian, 92 Va. 731, 24 S. E. 472.

For monographic note on Mandamus, see Dawson v. Thu Hen. & M. 132, Va. Rep. Anno.

For W. Va. decisions on similar statute, see Justis' Anno chapter 109, section 1.

See Gregory's Forms Nos. 252, 253, 359, 360, 382, 383, 4 451, 512.

Sec. 5832. What petition to state; where presented.—T tion shall state plainly and concisely the grounds of the tion, concluding with a prayer for the writ, and shall be pr to the court having jurisdiction or to the judge thereof in v (unless the application be to the Supreme Court of Appeals) 1887, § 3012.)

Judge of circuit court under this section has in vacation tion to compel by mandamus one county to contribute to maintai or causeway connecting it with another county. Gloucester Co. dlesex Co., 88 Va. 843, 14 S. E. 660.

See section 88, Const. 1902.

See Gregory's Forms Nos. 252, 253, 382, 383, 449, 450, 4

Sec. 5833. When writ awarded.—When the application i on proof of notice and service of the copy of the petition a said, if the defendant fail to appear, or appearing fail to m fense, and the petition states a case proper for the writ, emptory writ shall be awarded with costs. (Code 1887, § 3

See Gregory's Forms Nos. 252, 253, 449, 450.

Sec. 5834. Defense; how made.—If the defendant appe make defense, such defense may be by demurrer, or answer to the petition, or by both, such answer to be subject to a exceptions by the petitioner. The court may permit amen to said petition, as in other cases, should the demurrer be su (Code 1887, § 3014.)

Revisors' Note.—The last sentence is new.

See Gregory's Forms Nos. 252, 253, 449, 450.

Sec. 5835. Adjournment.—When the case is before the j vacation, he may adjourn it from day to day, or from time until finally disposed of. (Code 1887, § 3015.)

See Gregory's Forms Nos. 252, 253, 449, 450.

Sec. 5836. Trial by jury; what judgment to be rendere writ peremptory shall be awarded or denied according to

Digitized by Google

cts of the case, and with or without costs, as the court or may determine. (Code 1887, § 3016.)

visors' note.—This section formerly provided that, "Upon the and answer, if either party demand a jury, the court or judge rect such issues of fact as may be proper, to be tried in term." vision in some instances, if allowed to remain, would cause con- e delay, and it was deemed best to omit it altogether.

e words "trial by jury" should have been stricken out of the of this section.

e proceeding by writ of petition, whether in the inferior or su- ourt, is not a part or continuation of the prohibited proceeding, wholly collateral to it, and is intended to arrest it and prevent g further prosecuted in a court having no jurisdiction of the and is the means whereby the superior exercises due superin- e over the inferior, and keeps it within the bounds and limits urisdiction. Mayo v. James, 12 Grat. 25; Barton, L. Pr. (1st 2; Collins v. Christian, 93 Va. 1, 24 S. E. 472.

Gregory's Forms Nos. 252, 253, 449, 450.

5837. The proceedings, where application is to Court of Ap-

-If the application be to the Supreme Court of Ap- the case shall be heard and determined without a jury, tnesses shall not be allowed to testify viva voce before the out their testimony, if desired, may be used in the form of ions taken by either party on reasonable notice to the other, attorney, of the time and place of taking the same. (Code 3017.)

Gregory's Forms Nos. 252, 253, 449, 450.

5838. Suspension of proceedings, where prohibition applied

n petition for a writ of prohibition, the court, or judge in n, may, at any time before or after the application for the made, if deemed proper, make an order, a copy of which served on the defendant, suspending the proceedings sought rohibited until the final decision of the cause. (Code 1887,)

Gregory's Forms Nos. 252, 253, 449, 450.

5839. How proceedings in vacation certified and entered.—

the proceedings on the petition are had before the judge in n, he shall certify the same and any judgment, or order, made in the case, to the clerk of the court, and they shall be en- y the clerk in the order book on the law side of the court, ve the same force and effect as if had or made and entered in (Code 1887, § 3019.)

Gregory's Forms Nos. 252, 253, 449, 450.

5840. Service of writ; how obedience enforced.—Service of of the order awarding the writ shall be equivalent to service writ, and obedience to the writ or order may be enforced by of contempt in vacation in like manner as in term. (Code 3020.)

Gregory's Forms Nos. 252, 253, 449, 450.

Digitized by Google

CHAPTER 240.

Writ of Quo Warranto and Information in the Nature of a Writ of Quo Warranto.

Sec.
5841. In what cases writ of quo warranto awarded.
5842. When, where, how, and by whom the writ to be applied for.
5843. When awarded; where returnable; how signed and attested; when bond required.
5844. When, where, how, and by whom leave may be asked to file information or writ of quo warranto; when leave granted and summons issued.
5845. How writ or summons directed and served.
5846. Trial of writ or information; how defense made; what to be taken as true; when reheard.
5847. Verdict; judgment; attorney's fee.

Sec. 5841. In what cases writ of quo warranto awarded.—A writ of quo warranto may be awarded and prosecuted in the name of the State of Virginia in any of the following cases, to-wit:

First. Against a domestic corporation (other than a municipal corporation) for a misuse or non-use of its corporate privileges or franchises, or for the exercise of a privilege or franchise not conferred upon it by law, or where a charter of incorporation has been obtained by it for a fraudulent purpose, or for a purpose not authorized by law.

Second. Against a person for the misuse or non-use of any privilege and franchise conferred upon him by or in pursuance of law.

Third. Against any person or persons acting as a corporation (other than a municipal corporation) without authority of law.

Fourth. Against any person who shall intrude into or usurp any public office. But no such writ shall be awarded or prosecuted against any person now in office for any cause which would have been available in support of a proceeding to contest the election of such person to such office. (Code 1887, § 3022; 1906, p. 16.)

History of chapter.—This chapter, which corresponds to chapter 145 of the Code of 1887, was new with the revision of 1887, and has been taken, with few important changes, from amended Code of Virginia (1884), chapter 109, and defines cases in which the writ of information may be sued, and regulates the procedure. Burks' Pl. & Pr. 2 Barton L. Pr. (2d Ed.), 1387.

Information in nature of writ of quo warranto.—An information in the nature of quo warranto, though in form a criminal proceeding, is in substance a civil proceeding for trial of a civil right, and actions or prosecutions on informations under penal laws does not apply. Commonwealth v. Birchett, 2 Va. Cas. 51.

Against corporation for misuse of franchise.—An information in the nature of quo warranto is proper remedy to try and decide whether a canal company has forfeited its privilege of receiving tolls, and whether its charter ought to be vacated, and such information will lie eo nomine, to try whether the said company has forfeited its fra-

Digitized by Google

a corporation as well as its other franchises and liberties. Com. sident, etc., James River Co., 2 Va. Cas. 190.

Quo warranto to annul charter is proper remedy to restrain navigacompany from collecting tolls on rivers on which by their charter were entitled to collect tolls when they should have completed ation on them, but had not done so. Pixley v. Roanoke Nav. Co., a. 320; Banks v. Poitiaux, 3 Rand. 136; Crump v. United States Co., 7 Grat. 352, 56 Am. Dec. 116.

Title to office.—Object of chapter 145 of Code of 1887 (correspond- this chapter) was to simplify procedure, and not to narrow writ make it less comprehensive in trying title to office than at common where title thereto could be tested if incumbent were not de jure, h he might be full de facto, officer. Provisions of that chapter are estricted to cases in which incumbent is mere trespasser without or pretence of title. Watkins v. Venable, 99 Va. 444, 39 S. E. 147, Law Reg. 571.

Quo warranto is remedy to controversy where title to office is in- l. Kilpatrick v. Smith, 77 Va. 347.

Under Constitution and statute of Virginia, a party who has assisted duel fought with deadly weapons may be removed from office by a eding by quo waranto, or, if that be not in use, by information in e of quo warranto, though he has not been convicted of the of- in any criminal proceeding against him. Royall v. Thomas, 28 130, 26 Am. Rep. 335.

When not adequate remedy.—Quo warranto is not adequate remedy mpel one not entitled to public office to refrain from exercising its ons, and to deliver to rightful claimant property belonging to of- nor does chapter 145 of Code of 1887 (corresponding to this chapabolish by implication the established procedure of trying title to by mandamus. Sinclair v. Young, 100 Va. 289, 40 S. E. 907.

Waiver of writ.—Where, upon application for a writ of quo warranto title to judgeship, respondent waives issuance of writ, he cannot vard object that writ was not filed. Bland v. Giles, 33 Grat. 443.

Generally.—See Wylie v. Easley and note, 5 Va. Law J. 43. See, also, . L. Reg. 336; Burks' Pl. & Pr., p. 781.

The Supreme Court of Appeals is not given original jurisdiction to writs of quo warranto, but that court has original jurisdiction in of mandamus, prohibition and habeas corpus. See Const., section

For W. Va. decisions on similar statute, see Justis' Annotations, er 109, section 6.

See Gregory's Forms, Nos. 384, 452.

c. 5842. **When, where, how, and by whom the writ to be applied** -Whenever the Attorney-General or attorney for the Commonh of any county or city, the circuit or corporation court where- s jurisdiction of the proceeding, is satisfied that a cause for the exists, he may, except where otherwise provided, at his own nce, or at the relation of any person interested, apply by peti- to the said circuit or corporation court or to the judge thereof cation, to have such writ issued, and shall state the reasons for in the petition. If the Attorney-General or the attorney for ommonwealth, upon being requested as aforesaid, refuse or fail ply for the writ, any person whose individual or public interest ected may present his petition to such court or judge asking he same. (Code 1887, § 3023.)

Revisors' note.—The words, "except where otherwise provided," ap- g in line four of the text, are new. Their insertion is necessary

Digitized by Google

to avoid a conflict with section 3757. See South & W. R. Co. v. 104 Va., 314, 51 S. E. 824.

The words, "any person whose individual or public interest fected," found in the last sentence, are used in lieu of "the per interested."

See sections 5890, 5928, 6052.

Cited, but not construed in Stultz v. Pratt, 103 Va. 537, 49 S.

See Gregory's Forms Nos. 384, 452.

Sec. 5843. When awarded; where returnable; how signed a tested; when bond required.—If, in the opinion of the court or the reasons so stated in the petition are sufficient in law, th writ shall be awarded by the court or judge, returnable to th term of the court, and the same shall be signed by the judg attested by the clerk of such court. But if the writ be awar the relation of any person, it shall not be issued until the r shall have given bond with sufficient surety (if such bond quired by the court or judge), to be approved by the clerk, i penalty as the court or judge shall prescribe with conditio the relator shall pay all such costs and expenses as may be in by the State in the prosecution of the writ, in case the same sh be recovered from and paid by the defendant therein. (Cod § 3024.)

Under our statute the first notice that defendant has of qu ranto proceedings is the writ itself, and he is not party until it is a Watkins v. Venable, 99 Va. 440, 39 S. E. 147.

Applicant is not entitled to writ as matter of right. It lies sound judicial discretion of court to grant or refuse it. Id.

The words "next term" are construed to mean next regula fixed by law, and do not include special terms. Stultz v. Pra Va. 538, 49 S. E. 654.

Cited but not construed in Southern and West Ry. Co. v. Co Va., 314, 51 S. E. 824.

For W. Va. decisions on similar statute, see Justis' Anno chapter 109, section 8.

See Gregory's Forms No. 452.

Sec. 5844. When, where, how, and by whom leave may be to file information in nature of writ of quo warranto; when granted and summons issued.—In any case in which a writ warranto would lie, unless otherwise provided, the Attorne eral or attorney for the Commonwealth of the county or ci circuit or corporation court whereof has jurisdiction of th ceeding, at his own instance, or at the relation of any person ested, or any person interested may, in the name of the S Virginia, apply to the said circuit or corporation court, or judge thereof in vacation, for leave to file an information nature of a writ of quo warranto for any of the causes and any corporation, officer, or person mentioned in section fift hundred and forty-one, and he shall, at the time of the appli present to the court or judge the information he proposes to f in the opinion of the court or judge, the matters stated in the mation are sufficient in law to authorize the same to be filed, a

Digitized by Google

be made directing it to be filed, and awarding a summons
t the defendant named therein to answer the same, returnable
vided in the preceding section. But if the leave to file the
ation be asked on the relation of any person, or by any per-
his own instance, the summons thereon shall not be issued by
erk until such relator or person shall have given bond with
(if such bond be required by the court or judge), as provided
said section. (Code 1887, § 3025.)

**evisors' note.—The words, "unless otherwise provided," appear-
line two of the text are new. See revisors' note to section 5842.
nsertion is for the same reason.**

ee sections 5890, 5928, 6052.

or an information in the nature of quo warranto, see Com. v. Bush
Ry. Co., 116 Va. 48, 81 S. E. 66.

or W. Va. decisions on similar statute, see Justis' Annotations,
r 109, section 9.

. 5845. How writ or summons directed and served.—Every
writ or summons may be directed to the sheriff of any county
sergeant of any city, and shall be served as a notice is served
sections six thousand and forty-one and six thousand and for-
ee; unless it be against a corporation, in which case it shall
ved as provided in sections six thousand and sixty-three and
ousand and sixty-four. (Code 1887, § 3026.)

**. 5846. Trial of writ or information; how defense made; what
taken as true; when case reheard.**—If the defendant named in
writ or information fail to appear after the service of the
or summons, the court may hear proof of the allegations of
tition or information, and, if the allegations be sustained, shall
udgment accordingly. But if the service be made by publica-
the defendant against whom the judgment is rendered, may, at
ext term of the court, on petition filed for the purpose and
giving bond with good security, in a penalty to be prescribed
e court, with condition to pay all such costs as shall be award-
the cause against such defendant, have the said judgment set
and make such defense to the petition or information as such
dant might have made, and in the same manner, before the
nent was rendered. If the defendant appear before the end
term next after the service of the writ or summons, or there-
before judgment is rendered against such defendant, such de-
nt may demur or plead "not guilty," or both, to such writ, or
r or answer in writing, or both, to such information; and every
tion contained in the information which is not denied by the
er shall be taken as true, and no proof thereof shall be required.
1887, § 3027.)

. 5847. Verdict; judgment; costs; attorney's fee.—If the de-
nt appear, and on the trial of the writ or information, be
guilty, or not guilty, of any of the charges therein, the ver-

Digitized by Google

dict shall be "guilty," or "not guilty," as the case may b
the defendant be found guilty as to a part only of such
the verdict shall be "guilty" as to such part, and shall par
specify the same, and, as to the residue of said charges, the
shall be "not guilty." Against the defendant so found g
court shall give such judgment as is appropriate and autho
law, and for the costs incurred in the prosecution of the
information, including an attorney's fee, of not less than
more than fifty dollars, to be fixed by the court. (Code
3028.)

Judgment on writ of quo warranto or on information i
thereof is final as to all parties. Shumate v. Fauquier Count
84 Va. 574, 5 S. E. 570; Howison v. Weedon, 77 Va. 704.

CHAPTER 241.

Writ of Habeas Corpus.

Sec.
5848. When and by whom the writ granted.
5849. How directed and returnable.
5850. Bond may be required of petitioner.
5851. How writ served.
5852. Penalty for disobeying it.
5853. Judgment of court or judge trying it.
5854. When affidavits may be read.
5855. Facts proved may be made part of record.
5856. Judge to have same power as court, and his ... same effect.
5857. Judgment, conclusiv
5858. How and when Cou... peals summoned t... peal therefrom.
5859. When prisoner rema... ecution of judgme... be suspended; whe... er admitted to bail
5860. Writ de homine abo
5861. When and by whom ... habeas corpus ad t... dum granted.

Sec. 5848. When and by whom the writ granted.—The habeas corpus ad subjiciendum shall be granted forthwith circuit court or corporation court, or any judge of either tion, to any person who shall apply for the same by petition, by affidavits or other evidence probable cause to believe th detained without lawful authority. (Code 1887, § 3029; 190 576.)

Petition for writ of habeas corpus to obtain possession of may be in name of infant by next friend or in name of person possession. Where it is mother of child who is claiming po and she is married, it may be in name of herself and husband strong v. Stone, 9 Grat. 102.

Where the proceedings, either civil or criminal, under party is detained in custody, are void, as where the court has diction, or where statute under which proceedings are inaugu unconstitutional, habeas corpus will lie to discharge party. Marx, 86 Va. 40, 9 S. E. 475; Ex parte Rollins, 80 Va. 314; Meredith, 33 Grat. 129, 36 Am. Rep. 771.

When prisoner has been taken to penitentiary before re

Digitized by Google

nt against him, habeas corpus lies to bring him before court of in order that he may be discharged. Leftwich's Case, 20 Grat. nes' Case, Id. 848.

ice of writ of habeas corpus is not to determine guilt or inno- f prisoner, but the legality of imprisonment. Lacey v. Palmer, 153, 24 S. E. 930, 31 L. R. A. 822, 57 Am. St. 795.

nen a person entitled to but not having custody of child is claim- recover it, the court will consult interest of child. Caffee v. 82 Va. 567; Myers v. Myers, 83 Va. 806, 6 S. E. 630.

scussed, 8 Va. Law J. 311.

r monographic note on Habeas Corpus, see Ex parte Pool, 2 Va. 6.

r article upon "Habeas Corpus Jurisdiction of State and Federal " see 20 Va. L. Reg. 241.

e, also, 14 Va. L. Reg. 596.

r W. Va. decisions on similar statute, see Justis' Annotations, 111, section 1.

e Gregory's Forms Nos. 254, 255, 256, 385, 386, 387, 388, 453.

5849. How directed and returnable.—The writ shall be di- to the person in whose custody the petitioner is detained, and eturnable as soon as may be before the court or judge order- e same, or any other of the said courts or judges. (Code 1887, .)

e Gregory's Forms Nos. 453, 513.

5850. Bond may be required of petitioner.—The court or granting the writ may previously require bond, with surety, in onable penalty, payable to the person to whom the writ is d, with condition that the petitioner will not escape by the nd for the payment of such costs and charges as may be award- ainst him. It shall be filed with the other proceedings on it, and may be sued on for the benefit of any person injured breach of its condition. (Code 1887, § 3031.)

5851. How writ served.—The writ shall be served on the to whom it is directed, or, in his absence from the place the petitioner is confined, on the person having the imme- custody of him. (Code 1887, § 3032.)

e Gregory's Forms No. 513.

5852. Penalty for disobeying it.—If any person on whom writ is served shall, in disobedience to such writ, fail to the body of the petitioner, with a return of the cause of tention, before a court or judge before whom the writ is re- le, for three days after such service, he shall forfeit to the ner three hundred dollars. (Code 1887, § 3033.)

evisors' Note.—The portion of this section as it stood before the n dealing with a distance of more than twenty miles has been l in view of modern facilities for travel.

5853. Judgment of court or judge trying it.—The court or before whom the petitioner is brought after hearing the mat- th upon the return and any other evidence, shall either dis- e or remand him, or admit him to bail, as may be proper, djudge the cost of the proceeding, including the charge for

Digitized by Google

transporting the prisoner, to be paid as shall seem to be right 1887, § 3034; 1895-6, p. 350.)

Revisors' Note.—The words "or admit him to bail" appearing four of the text are new.

For W. Va. decisions on similar statute, see Justis' Ann chapter 111, section 6.

See Gregory's Forms No. 331.

Sec. 5854. When affidavits may be read.—In the discre the court or judge, the affidavits of witnesses taken by either on reasonable notice to the other, may be read as evidence 1887, § 3035.)

This section refers only to the illegality and not the irregu the prisoner's detention, and does not authorize a review of ficiency. Ex parte Marx, 86 Va. 40, 9 S. E. 475.

Sec. 5855. Facts proved may be made part of record.— material facts proved shall, when it is required by either pa made a part of the proceedings, which, when they are had i tion, shall be signed by the judge and certified to the clerk circuit court of the county, or the circuit or corporation c the corporation, in which the judgment is rendered, and be by him among the records of the court. (Code 1887, § 3036 3-4, p. 576.)

Sec. 5856. Judge to have same power as court, and his ju same effect.—The judge issuing any such writ in vacation, judge before whom it is tried, shall have the same power force obedience to the writ, to compel the attendance of wi or to punish contempts of his authority, as a court has; judgment on the trial of the writ, when entered of record a said, shall be considered and be enforced as if it were a ju of the court, among whose records it is entered. (Code 3037.)

Sec. 5857. Judgment, conclusive.—Any such judgment of record shall be conclusive, unless the same be reversed, that the petitioner shall not be precluded from bringing th matter in question in an action for false imprisonment. 1887, § 3038.)

Sec. 5858. How and when Court of Appeals summoned appeal therefrom.—If, during the recess of the Supreme C Appeals, the Governor or the president of the court shoul the immediate revision of any such judgment to be proper, summon the court for that purpose, to meet on any day to by him. (Code 1887, § 3039.)

Sec. 5859. When prisoner remanded, execution of judgm to be suspended; when prisoner admitted to bail.—When t oner is remanded, the execution of the judgment shall not pended by a writ of error, or for the purpose of applying f writ; but where he is ordered to be discharged, and the ex of the judgment is suspended for the purpose of applyin

Digitized by Google

of error, the court or judge making such suspending order, in its or his discretion, admit the prisoner to bail until the ration of the time allowed for applying for the writ of error, n case the writ of error be allowed, until the decision of the eme Court of Appeals thereon is duly certified. (Code 1887, 0.)

Where county court delivers persons convicted of murder to jailor chmond City for safe keeping until time for execution, fact that ircuit court of that city has granted prisoners a writ of habeas s will justify keeper in refusing to deliver them upon order of committing them. Cardozo v. Epps, 2 Va. Dec. 133, 23 S. E. 296.
For an article on "Supersedeas in Habeas Corpus Proceedings," see a. L. Reg. 81.
For W. Va. decisions on similar statute, see Justis' Annotations, er 111, section 12.

c. 5860. Writ de homine abolished.—The writ de homine giando is abolished. (Code 1887, § 3041.)

c. 5861. When and by whom writs of habeas corpus ad testificandum granted.—Writs of habeas corpus ad testificandum may ranted by any circuit or corporation court, or any judge thereof vacation, in the same manner and under the same conditions provisions as are prescribed by this chapter, as to granting writ of habeas corpus ad subjiciendum, so far as the same applicable. (Code 1887, § 3042.)
See Gregory's Forms Nos. 255, 256, 388, 454, 514.

Digitized by Google

TITLE 59.

Courts and Juries in Civil Cases, and Justices of the Peace and Jurisdiction.

Ch. 242. Supreme Court of Appeals and reports of its decis
243. Circuit courts.
244. Corporation courts.
245. Courts of the city of Richmond.
246. Court of Law and Chancery of the city of Norfol
247. Court of Law and Chancery of the city of Roano
248. General provisions relating to courts.
249. Juries in civil cases.
250. Justices of the peace and their jurisdiction, an
rants for small claims.

CHAPTER 242.

Supreme Court of Appeals and Reports of Its Decisions.

Sec.
5862. How court constituted; president; quorum; one judge to reside at seat of government.
5863. When president absent, who presides.
5864. Jurisdiction of writs of mandamus and prohibition.
5865. Also, of cases of habeas corpus, appeals, writs of error, and supersedeas.
5866. Times and places of session.
5867. Business to be done at Richmond.
5868. At Wytheville.
5869. At Staunton.
5870. How appoint and take bonds of its clerks; where exercise its criminal jurisdiction.
5871. Transfer of cases from one place to another; orders and decrees, where made; how certified.
5872. Prohibition and mandamus; where issued and tried.
5873. Special Court of Appeals; when and how formed; where held; and how judges

Sec.
appointed to fill va
under section eight
of the Constitution.
5874. Its clerk.
5875. Its decisions, how c
and executed.
5876. Pay of judges.
5877. Tipstaff and crier; the
ties and pay.
5878. Law library; how cont
and used; librarian.
5879. Reporter of Court of
peals; his appointment
salary.
5880. His duti
5881. Correction
5882. Court may c
5883. Clerks to deli
him.
5884. Special sessions o
5885. May be also held
quested by Gove
deemed proper by i
dent.
5886. What may be tried
cial session; effect
cisions.

Digitized by Google

5862. How court constituted; president; quorum; one judge de at seat of government.—The Supreme Court of Appeals onsist of five judges, any three of whom may hold a court. id judges shall appoint one of their number president of the and also select by lot or otherwise one of their number, who eside at the seat of government. (Code 1887, § 3084.)

hen suit may be brought to correct an error of the Court of Ap- Byrne and wife v. Edmonds, 23 Grat. 200.

5863. When president absent, who presides.—In the absence president, the eldest judge in commission present shall be esiding judge; but if no one of the judges present be older mission than the rest, then the judges present shall appoint ne of their number to preside. (Code 1887, § 3085.)

5864. Jurisdiction of writs of mandamus and prohibition.— id Supreme Court of Appeals, besides having jurisdiction of h matters as are now pending therein, shall have jurisdic- issue writs of mandamus and prohibition to the circuit and ourts, and to the State Corporation Commission, and in all cases where such writs, respectively, would lie according to inciples of the common law: provided, that no writ of man- , prohibition, or any other summary process whatever, shall in any case of the collection of revenue, or attempt to col- ne same, or to compel the collecting officers to receive any- in payment of taxes except gold or silver coin, United States ry notes, or national bank notes, or in any case arising out of llection of revenue in which the applicant for the writ of s has any other remedy adequate for the protection and ement of his individual right, claim, and demand, if just. 1887, § 3086; 1902-3-4, p. 641.)

rovisions of article 6, section 2, Constitution 1869, were not self- ing, but gave General Assembly power to carry them into effect. of Appeals had no jurisdiction to award writ of prohibition to court. Gresham v. Ewell, 84 Va. 784, 6 S. E. 134; Board of isors of Culpeper Co. v. Gorrell, 20 Grat. 484. See Const. 1902, 1 88.

ourt of Appeals has jurisdiction of mandamus to compel clerk of n to allow party interested to inspect pollbooks and to make notes rom, under provision enabling it to issue mandamus in all cases ch it may be necessary to prevent a failure of justice. Keller v. 96 Va. 669, 32 S. E. 454.

his section was intended to define the remedy of mandamus as it at common law, and the fact that the section gives similar au- to circuit courts does not restrict the jurisdiction of Court of ls to award the writ in cases in which it may be necessary to pre- failure of justice. Clay v. Ballard, 87 Va. 787, 13 S. E. 262.

he jurisdiction conferred upon the Court of Appeals by section et seq. in mandamus cases is no more left to the discretion of the than is the exercise of its jurisdiction generally. Clay v. Ballard, . 787, 13 S. E. 262; Ex parte Meredith, 33 Grat. 119, 36 Am. 771.

nder sections 3454-5 of the Code of 1887, Court of Appeals had iction in mandamus cases, though less than $500 be involved. Price ith, 93 Va. 14, 24 S. E. 474, note 2 Va. Law Reg. 352.

Digitized by Google

See 1 Barton, L. Pr. (2d Ed.) 22, 1216, 1230; 4 Min. (383, 395; Const. section 88.

For W. Va. decisions on similar statute, see Justis' Ann chapter 113, section 4.

Sec. 5865. Also, of cases of habeas corpus, appeals, writ ror, and supersedeas.—The said court shall also have juri to award writs of habeas corpus, and of such appeals, writ ror, and supersedeas, as may be legally docketed in or tra to the said court. (Code 1887, § 3087.)

4 Min. (3d Ed.) 396; 1 Barton, L. Pr. (2d Ed). 39, 124

Sec. 5866. Times and places of session.—The said cou hold a session annually, at Wytheville, in the county of and at Staunton, in the county of Augusta, to commence time as the court may, from time to time, direct, and to c at least sixty days, if the business be not sooner dispatch another in the city of Richmond, to commence at such ti to be divided into such terms, as the court has directed, from time to time direct, and to continue at least one hund sixty days, unless the business be sooner dispatched. (Co § 3088.)

Sec. 5867. Business to be done at Richmond.—The said c its session in Richmond, shall hear and determine all appeal of error, or supersedeas pending therein, or which may be to the court from or to decrees, judgments, sentences, or o any courts held on the eastern side of the Blue Ridge, exc counties of Albemarle, Amherst, Nelson, and Bedford. (Co § 3089; 1899-00, p. 1239.)

Sec. 5868. At Wytheville.—The court, at its session at ville, in the county of Wythe, shall hear and determine all writs of error, or supersedeas which may be brought court, from or to decrees, judgments, sentences, or orders of from the following counties: Roanoke, Montgomery, Floy roll, Pulaski, Giles, Bland, Wythe, Grayson, Smyth, Tazewell ington, Russell, Buchanan, Wise, Dickinson, Scott, Lee, and B and the cities of Bristol, Radford and Roanoke. (Code 1887, 1887-8, p. 17; 1899-00, p. 1239; 1902-3-4, p. 233.)

Revisors' Note.—The last words "and the cities of Bristol, and Roanoke" are new. A portion of this section which had se purpose has been omitted.

Sec. 5869. At Staunton.—The court at its session at Staun the county of Augusta, shall hear and determine all appeal of error, or supersedeas which may be brought to the court to decrees, judgments, sentences, or orders of courts from the of the counties west of the Blue Ridge and from the cities of Vista, Charlottesville, Clifton Forge, Staunton and Winches also from the counties of Albemarle, Amherst, and Nelson. 1887, § 3091; 1887-8, p. 17.)

Digitized by Google

evisors' Note.—The words "Buena Vista, Charlottesville, Clifton " are new.

. 5870. **How appoint and take bonds of its clerks; where ex- its criminal jurisdiction.**—The court, at one place of session, if it see fit, appoint and take bond from the clerks of the court other places, and the appellate jurisdiction of said court in riminal case, may be exercised at any place of session, no r where the court may have been held which rendered the ient in such case. (Code 1887, § 3092.)

. 5871. **Transfer of cases from one place to another; orders decrees, where made; how certified.**—By consent of parties, eir counsel, or for reasons appearing to the court, any cause ng in said court at one place of session may be transferred other place of session, there to be heard and determined. court at any place of session may enter any order or decree in se docketed at any other place of session which it could enter session at that place. When any such order or decree is made ourt shall have the same certified by the clerk at the place it is then sitting to the clerk at the place where the cause keted, to be by him entered in the proper order book of the . All orders and decrees so made and entered shall have the force and effect as if made and entered in term. (Code 1887, 3; 1902-3-4, p. 641.)

Under this section Court of Appeals has right when sitting at one places of session to transfer to such place of session any case pend- one of its other places of session. Lillienfeld's Case, 92 Va. 818, E. 882. May also no doubt transfer application for mandamus is regularly on the docket. Hotchkiss v. Grattan, 90 Va 642, E. 165. See next section.

. 5872. **Prohibition and mandamus; where issued and tried.**— of prohibition or mandamus from the Supreme Court of Ap- shall issue and be tried at any place of session of the said . (Code 1887, § 3094; 1895-6, p. 143.)

Reversing Hotchkiss v. Grattan, 90 Va. 642, 19 S. E. 165.

. 5873. **Special Court of Appeals; when and how formed; e held; and how judges appointed to fill vacancies under sec- eighty-eight of the Constitution.**—If at any time there shall be e docket of the Supreme Court of Appeals a case in which a rity of the judges of the said court are so situated as to make proper for them to sit on the hearing thereof, or if the court d be so situated in the re-hearing of a case involving a con- tional question, according to the provisions of section eighty- of the Constitution, that a full court cannot be secured, on nt of any one or more of the judges being unable, unwilling, squalified to sit, the fact shall be entered of record. The said may thereupon have summoned from among the judges of ircuit courts, or judges of the city courts of record of cities of irst class, as many as, with the judges of the Supreme Court

Digitized by Google

of Appeals not so situated, will make the number five, wh
together form and hold a Special Court of Appeals to hear
termine any case in which a majority of the judges of the S
Court of Appeals shall be so situated as to make it impro
them to sit, or to hear any case involving a constitutional q
under section eighty-eight of the Constitution, in which
more of the judges of the said court shall be so disqualifie
upon which said question a majority of the court shall not
The said special court shall be held at Richmond, Wythev
Staunton, as the case may be. (Code 1887, § 3095; 1902
641.)

This subject is dealt with in section 89, Const. 1902.

Sec. 5874. Its clerk.—The clerk of the Supreme Court
peals, at the place at which a Special Court of Appeals i
shall, in person or by deputy, attend such special court, w
records and papers in the case which it is to hear and dete
and act as its clerk. (Code 1887, § 3096.)

Sec. 5875. Its decisions, how certified and executed.—Th
sions of such special court shall be certified and carried into
tion as if made by the Supreme Court of Appeals. (Code
§ 3097.)

Sec. 5876. Pay of judges.—Each circuit judge, sitting o
special court, shall have ten dollars a day for every day's
ance on such court, and in addition thereto, his actual exp
payable out of the treasury. (Code 1887, § 3098.)

Revisors' Note.—The provision allowing actual expenses i

Sec. 5877. Tipstaff and crier; their duties and pay.—Th
preme Court of Appeals, at each place of session, and such
court, may appoint a tipstaff and a crier, who shall perform
duties as the court may require, and shall receive out of the
ury such reasonable compensation as the court may allow, a
removable at its pleasure. (Code 1887, § 3099.)

Sec. 5878. Law library; how controlled and used; librar
The law books belonging to the State Library, or such of th
the Supreme Court of Appeals may at any time direct, shall
up in the court room or conference room, and, together wit
books already in such room, shall form a library for the
the court, and under its control, and shall be subject to such
ileges to other persons as may be allowed by law, or by the
established by the court. The court shall appoint one of its o
to perform the duties of librarian. (Code 1887, § 3100.)

See, also, section 368 et seq.

Sec. 5879. Reporter of Court of Appeals; his appointmen
salary.—The Supreme Court of Appeals shall have authori
contract with some suitable person to report such of the dec
of said court as the judges thereof shall direct, at a rate of

Digitized by Google

ation not exceeding fifteen hundred dollars a year, payable in thly instalments. (Code 1887, § 3101.)

c. 5880. **His duties.**—The said reporter shall prepare and de- from time to time to such printer as the Superintendent of ic Printing may direct manuscript reports of such of the de- ns made by the Supreme Court of Appeals as the judges of court shall direct, with an abstract of the points decided in case and an index to the contents of the volume, a table of reported, a table of cases cited, and a table of Virginia statutes and construed in said volume. (Code 1887, § 3102; 1893-4, 0.)

c. 5881. **Correction of proof-sheets.**—He shall examine and ct the proof-sheets thereof as they shall be furnished him by printer. (Code 1887, § 3103.)

c. 5882. **Court may change reporter.**—The said court may at ime put an end to the said contract, and contract with another n for performing the service, upon the same terms. (Code § 3104.)

c. 5883. **Clerks to deliver opinions to him.**—In those cases the reporter is directed to report, copies of the reasons, stated riting, under section ninety of the Constitution, shall be de- d by the clerks of the court to the reporter. (Code 1887, 5.)

c. 5884. **Special sessions of the court.**—The Supreme Court of als, by an order entered of record, may direct a special ses- o be held at either of the places designated by law for holding ular session, and at such time as it may deem proper. (Code § 3106.)

. 5885. **May be also held when requested by Governor, or ed proper by its president.**—A special session may also be held, her of the places referred to in the preceding section, by order e president in vacation, on the written request of the Gov- to him, or whenever in the president's opinion it is proper. ime and place of holding the special session shall be desig- in the order, which shall be directed to the clerk at such who shall enter the same in his record book and give notice of to each judge of the court, except the president. (Code § 3107.)

. 5886. **What may be tried at special session; effect of de- s.**—At any such special session, the court, by consent of par- r their counsel, may hear and determine any cause then ready hearing, or, without such consent, upon twenty days' previ- otice in writing, given by a party desiring a hearing to the se party, of his intention to insist on the same. The court, h special session, shall, after notice to the parties or their coun- om the clerk of the court, hear any cause pending at either

Digitized by Google

place of session which, in its opinion, the public interests r to be heard and determined. Any judgment, decree, or ord tered or made at such special session shall have the same effe may be reviewed and reheard in like manner and subject same rules as a judgment, decree, or order entered or mad regular session. (Code 1887, § 3108.)

Revisors' Note.—The words "after notice to the parties o counsel from the clerk of the court," appearing in the second se are new.

CHAPTER 243.

Circuit Courts.

Sec.
5887. Circuit courts established for counties and cities.
5888. Judicial circuits.
5889. Vacancies in office of judge; new circuits; how judges elected; duration and commencement of term of office.
5890. Jurisdiction of circuit courts.
5891. Vesting in circuit courts and judges the jurisdiction formerly vested in the county courts or judges under the laws or under any will or other instrument.
5892. Civil and criminal cases; removal from county courts to circuit courts; proceedings to be had.
5893. The commencement and number of their terms.
5894. Special terms; when, how and by whom appointed.
5895. Adjournment thereof to a future day.
5896. What tried at a special term; who may hold it.
5897. Where judges to resi
5898. Power of judges t courts other than the and their pay.
5899. Judges pro tempore.
5900. Their appointmen powers.
5901. Compensation.
5902. When term of a cou to end on death of its
5903. Authorizing the coun cities of the first cla ing over forty thousa ulation and a separat for the circuit court t an annual allowan such clerk, payable the treasury of said
5904. Territorial jurisdictio Circuit Court for the Lynchburg; validati judgment, order, or heretofore made b court within the j tion.

Sec. 5887. Circuit courts established for counties and ci For the city of Williamsburg and the county of James City, fo part of the county of Henrico which is without the corporate of the city of Richmond, and for every other county, and fo of the cities of Alexandria, Danville, Lynchburg, Newport Norfolk, Petersburg, Portsmouth, Richmond, Roanoke, Sta Charlottesville, and Hopewell; and the cities of Clifton Forge risonburg, Hampton and Suffolk, there shall be a circuit

Digitized by Google

h shall be called the circuit court of such county or city, or city and county, as the case may be. (Code 1887, § 3056; -6, p. 499; 1902-3-4, p. 764.)

Revisors' Note.—The cities of Staunton, Charlottesville and Hope- and the cities of Clifton Forge, Harrisonburg, Hampton and Suffolk ar in this section for the first time. As to Hopewell, see Acts 1916, ; as to Clifton Forge and Suffolk, see Acts 1914, p. 544. To this t the section does not affect the law. But as to Staunton, Charlottes- Harrisonburg and Hampton, it creates new circuit courts for those .

For monographic note on Courts, see Cropper v. Com., 2 Rob. 842, Rep. Anno.

c. 5888. Judicial circuits.—The State shall be divided into y-one judicial circuits as follows:

The county of Norfolk shall constitute the first circuit.

The counties of Nansemond, Southampton, city of Suffolk and ity of Norfolk shall constitute the second circuit.

The counties of Prince George, Surry, Sussex, Greensville and swick and the city of Hopewell shall constitute the third cir-

The counties of Chesterfield, Dinwiddie, Nottoway, Amelia, hatan and the city of Petersburg shall constitute the fourth it.

The counties of Prince Edward, Cumberland, Appomattox, lotte and Buckingham shall constitute the fifth circuit.

The counties of Lunenburg, Mecklenburg, Halifax, Campbell, the city of Lynchburg shall constitute the sixth circuit.

The counties of Pittsylvania, Henry, Patrick, and the city of ville shall constitute the seventh circuit.

The counties of Madison, Greene and Albemarle, and the city harlottesville shall constitute the eighth circuit.

The counties of Culpeper, Orange, Louisa and Goochland shall itute the ninth circuit.

The county of Henrico and the city of Richmond shall con- te the tenth circuit.

The county of Elizabeth City and the cities of Newport News Hampton shall constitute the eleventh circuit.

The counties of Richmond, Northumberland, Westmoreland, aster and Essex shall constitute the twelfth circuit.

The counties of Gloucester, Mathews, King and Queen, King iam and Middlesex shall constitute the thirteenth circuit.

The counties of New Kent, Charles City, York, Warwick, es City, and the city of Williamsburg shall constitute the four- th circuit.

The counties of King George, Stafford, Spotsylvania, Caro- and Hanover shall constitute the fifteenth circuit.

The counties of Prince William, Fairfax and Alexandria, the city of Alexandria shall constitute the sixteenth circuit.

Digitized by Google

17. The counties of Frederick, Clarke, Warren and Shenan shall constitute the seventeenth circuit.

18. The counties of Augusta, Highland and Rockbridge, an city of Staunton shall constitute the eighteenth circuit.

19. The counties of Bath, Alleghany, Craig and Botetourt, the city of Clifton Forge shall constitute the nineteenth circu

20. The counties of Roanoke, Montgomery, Floyd, and the of Roanoke shall constitute the twentieth circuit.

21. The counties of Pulaski, Carroll, Wythe and Grayson constitute the twenty-first circuit.

22. The counties of Bland, Tazewell and Giles shall const the twenty-second circuit.

23. The counties of Washington, Smyth and Scott shall const the twenty-third circuit.

24. The counties of Lee and Wise shall constitute the tw fourth circuit.

25. The counties of Rockingham and Page, and the city of H sonburg shall constitute the twenty-fifth circuit.

26. The counties of Rappahannock, Fauquier and Loudoun constitute the twenty-sixth circuit.

27. The counties of Buchanan, Russell and Dickenson shall stitute the twenty-seventh circuit.

28. The counties of Isle of Wight and Princess Anne an city of Portsmouth shall constitute the twenty-eighth circuit.

29. The counties of Amherst, Nelson and Fluvanna shall stitute the twenty-ninth circuit.

30. The counties of Bedford and Franklin shall constitut thirtieth circuit.

31. The counties of Accomac and Northampton shall const the thirty-first circuit. (Code 1887, § 3057; 1891-2, pp. 578, 1895-6, p. 499; 1902-3-4, p. 764; 1906, p. 191; 1908, pp. 144. 1910, p. 152; 1912, p. 146; 1914, p. 544.)

Revisors' Note.—Hopewell has been inserted in the third ci However, Acts 1916, p. 89, provides for a Circuit Court of Hope hence the insertion of this city does not affect the existing law. present section enumerates the cities of Charlottesville, Hampton, S ton and Harrisonburg as parts of the Eighth, Eleventh, Eighteenth Twenty-fifth circuits, respectively. See revisors' note to the prec section.

Sec. 5889. Vacancies in office of judge; new circuits; how ju elected; duration and commencement of term of office.—Whe a vacancy occurs in the office of judge his successor shall be el for the unexpired term, and, upon qualification, shall enter at upon the discharge of the duties of his office. If a new or tional circuit be created, a judge shall be chosen therefor by joint vote of the two houses of the General Assembly for a of eight years, commencing on the first day of February next lowing his election, and the Governor may either appoint a j

Digitized by Google

uch circuit for the time elapsing from the date of its creation
ne commencement of such term, or designate one or more cir-
udges or judges of city courts of the first class to act as judge
several counties and cities composing such new circuit for the
aforesaid. (1906, p. 189.)

Revisors' Note.—This section is based on the act cited. The act led that the judge should be elected by the General Assembly at ame session at which the new circuit was created. This being a r wholly in the discretion of the General Assembly may be changed l, and as it might not always be convenient, this provision has been ed. It will be observed that the revised section provides that the nor may either appoint a judge for the interval between the date of eation of the new circuit and the commencement of the term of the rly elected judge, or designate one or more circuit or city judges during this interval. Under the act the Governor was restricted appointment to fill the vacancy.

. 5890. **Jurisdiction of circuit courts.**—The circuit courts shall jurisdiction of proceedings by quo warranto, or information nature of quo warranto, and to issue writs of mandamus, pro- on and certiorari, to all inferior tribunals created or existing the laws of this State, and to issue writs of mandamus in atters or proceedings arising from or pertaining to the ac- of the board of supervisors of the several counties for which courts are respectively held, or other cases in which it may cessary to prevent the failure of justice, and in which man- s may issue according to the principles of common law. They have jurisdiction of all cases, both civil and criminal, which existing or pending in the respective county courts for the ies on the thirty-first day of January, nineteen hundred and and shall have appellate jurisdiction in all cases, civil and nal, where an appeal may, as provided by law, be taken from dgment or proceedings of any inferior tribunal.

y shall have original and general jurisdiction of all cases in ery and civil cases at law, except cases at law to recover per- property, or money, not of greater value than twenty dollars. sive of interest, and except such cases as are assigned to some tribunal; and also in all cases for the recovery of fees, in of twenty dollars, penalties, or any cases involving the right y and collect tolls or taxes, or involving the validity of an ance or by-law of any corporation; and also of all cases, civil minal, where an appeal may be had to the Supreme Court of ls. They shall also have original jurisdiction of all in- ents for felonies, and of presentments, informations, and in- ents for misdemeanors.

y shall have appellate jurisdiction of all cases, civil and crim- where an appeal, writ of error or supersedeas may, as pro- by law, be taken to or allowed by the said courts, or the s thereof, from or to the judgment or proceedings of any

Digitized by Google

inferior tribunal. They shall also have jurisdiction of al matters, civil and criminal, made cognizable therein by la where a motion to recover money is allowed in said tribunal than under section six thousand and forty-six, they ma and determine the same, although it be to recover less than dollars; but no circuit court shall have any original or ap jurisdiction in criminal cases arising within the territorial li any city wherein there is established by law a corporation c ings court. (Code 1887, § 3058; 1902-3-4, p. 765.)

Revisors' Note.—The act of 1912 (Acts 1912, p. 76,) fron this section is taken defined the jurisdiction of circuit and cor courts. The revised section omits corporation courts. See sectio

The second paragraph of the revised section restricts the juri in cases involving the recovery of fees to those in excess of twenty

The last sentence of the second paragraph of the revised confers original jurisdiction in all misdemeanor cases. See in t nection section 4987 and revisors' note.

The third and fourth paragraphs of the act of 1912 perta jurisdiction to remove clouds on title have been omitted from tion. This subject is provided for by section 6248.

See Gresham v. Ewell, 85 Va. 1, 6 S. E. 700; Barton, L. Pr. (1214; 4 Min. (3d Ed.) 384.

For article upon "Certiorari as a Remedial Writ," see 13 Reg. 839.

Sec. 5891. Vesting in circuit courts and judges the juri formerly vested in the county courts or judges under the law der any will or other instrument.—The jurisdiction and which were vested in the county courts and the judges and thereof, respectively, on the thirty-first day of January, n hundred and four, by the laws of this State, or under any other instrument of writing, shall be vested in, exercised imposed upon the circuit courts and the judges and officers except when otherwise specially provided.

All such acts and proceedings of the circuit courts, judg officers thereof, respectively, whether de jure or de facto done or had since January thirty-first, nineteen hundred a as may hereafter be done under this section, are hereby rati made valid. (1902-3-4, p. 626; 1904, p. 13.)

Under the provisions of the schedule of the present Con and of this section the Circuit Courts succeeded to all the po County Courts had under section 95 of the act of December 1 Chadduck v. Burke, 103 Va. 700, 49 S. E. 976.

When motion was made in county court for judgment on forthcoming bonds taken on distress warrants issued for rent by the tenant could rely upon set-offs to the extent to which it wa sary to make complete defence, regardless of the amount of such Hancock v. Whitehall Tobacco Warehouse Co., 100 Va. 443, 860, 8 Va. Law Reg. 265.

A court may rightfully obtain jurisdiction, and yet its deci be void because in the progress of the cause it has exceeded its tion. Seamster v. Blackstock, 83 Va. 232, 2 S. E. 36, 5 Am. R

Sunday was not to be counted as one of the days of the ter court. Read v. Com., 22 Grat. 924.

Digitized by Google

See 4 Min. (3d Ed.) 262; Burks' Pl. & Pr. p. 47; Nicholas' Case, Va. 741, 21 S. E. 364.

ec. 5892. **Civil and criminal cases; removal from county courts ircuit courts; proceedings to be had.**—All actions at law, and presentments, informations and indictments heretofore removed the circuit courts from the former county courts of this Com- wealth and remaining undetermined, shall stand in all respects hey stood in such county courts and like proceedings shall be and process issued as if they had been originally commenced he circuit courts. (1902-3-4, p. 830.)

Revisors' Note.—Most of the act from which this section is taken served its purpose, hence omitted.

ec. 5893. **The commencement and number of their terms.**—Un- otherwise provided, there shall be held in each of the s of the Commonwealth two terms of the circuit court of such in each year, and in each of the counties there shall be held onthly terms of the circuit court of such county, four of which is in those counties in which more than four terms are provided, e designated by the judge thereof, shall be known as quarterly is, at which all civil cases for which juries may be required shall ried, unless the judge of any circuit shall enter of record that es shall be summoned to other than the quarterly terms for the l of civil cases. At any of the said terms all criminal and chan- causes shall be tried, but the judge of the court may, in any nty in which more than five terms are provided, by an order to ntered on the common law order book of said court, omit one of terms thereof during each year, unless the public business shall ire that all of the said terms be held for the proper transaction usiness. The number of terms of said courts and the days for commencement of the same shall be as fixed by law at the time Code takes effect, but the judge of every such court may, from to time, change the day for the commencement of the terms eof, or any of them. The clerks of such courts within thirty after such change, shall send a copy of the order making it to clerk of the House of Delegates, and, for failure so to do, shall eit fifty dollars.

ny term of a circuit court for any of the counties or cities of circuit may be continued by the judge thereof by adjournment l after the beginning of the term of the court for any other nty or city of such circuit. And when such adjournment is until r the beginning of a term of the court for another county, the ge of said court shall have the same power during said recess erform any duty and to transact any business which is author- by law to be done by judges of the circuit courts in vacation; no term of the court shall be so continued beyond the day fixed aw for the beginning of the next regular term of the court for county or city of the circuit whose term is so extended. (Code 2601)

Digitized by Google

1887, § 3059; 1902-3-4, p. 766; 1904, p. 335; 1908, p. 501; 1910, p. 152; 1912, p. 146; 1914, p. 544.)

Revisors' Note.—The commencement and number of the regular terms of circuit courts has been a subject of frequent legislation in order to meet the changing conditions in the various circuits. This legislation has been for the purpose of changing the time for the commencement of the terms as well as for the purpose of changing the number of the terms. The revised section provides (see third sentence) that the number of terms and the days for their commencement shall be as fixed by law at the time this Code take effect, but it gives the judges power, in their discretion, to change the DAYS FOR THE COMMENCEMENT OF THE TERMS—not the number. This power given to judges of circuit courts conforms to the like power given to judges of corporation courts. Section 5909. In order that the public may be informed of the days for the commencement of the terms, the revised section provides that whenever a judge changes the days for the commencement of the terms of any court, the clerk of the court shall, within thirty days thereafter, send a copy of the order making the change to the Clerk of the House of Delegates. Under section 806 the latter officer is required to publish with the acts of assembly of each session a table showing the time for the commencement of the regular terms of all courts of record. For a table showing the number of terms of the circuit courts and the days for their commencement as fixed by law at the time this Code takes effect, see Acts 1918, p. 791.

Three acts were passed at the session of 1918 relating to as many circuits: Eighth circuit, Acts 1918, p. 277; Twenty-second circuit, 1918, chapter 7, p. 6; Twenty-fifth circuit, 1918, chapter 242, p. 424.

While a judge may, under the provisions of this section, continue the term of a court by adjournment until after the beginning of the term of the court for any other county of his circuit, he is expressly prohibited from continuing the term for a county or city beyond the day fixed by law for the beginning of the next regular term for that county or city. Va. Beach D. Co. v. Murray, 113 Va. 692, 75 S. E. 81.

Where an order of court made in 1904 provided for omitting the September term of a certain circuit court, and thereafter an Act of Assembly fixed the months for the holding of said court, and made September one of them, with liberty to the judge to omit one of them, the act of Assembly operated as a repeal of the order of 1904, and the judge could not, after September, enter a nunc pro tunc order omitting the September term for that year. Va. Beach D. Co. v. Murray, 113 Va. 692, 75 S. E. 81.

Cited but not construed, Gring v. Land Co., 110 Va. 754, 67 S. E. 360.

Sec. 5894. Special terms; when, how and by whom appointed.—If any term of a circuit court is to end, or has ended, without the dispatch of all its business, or if there be a failure to hold any term, or it is expedient in the opinion of the judge of such court to hold a special term for the trial of any cause pending in such court, or of issues made up in any cause by consent of parties, or if the situation of a person confined in jail for trial in such circuit court makes it proper that his case should be disposed of before the next regular term thereof, or necessity, in his opinion requires it, the judge of such circuit court, or, if he is dead, or is unable from any cause to hold his court, the judge of any other circuit court, or judge of a corporation or hustings court of a city of the first class, who has been designated by the Governor to hold such terms, may, by order

Digitized by Google

ered in such court, or by a warrant directed to the clerk, ap-
nt a special term thereof and prescribe in such order or warrant
ether any venire is to be summoned to attend the said term.
clerk shall inform the attorney for the Commonwealth and
sheriff or sergeant of such appointment, post a copy of the
rant or order at the front door of the courthouse, and issue all
per process to such special term, and the sheriff or sergeant
l execute the process. (Code 1887, § 3060; 1902-3-4, p. 772.)

Revisors' Note.—The words, "or necessity in his opinion requires it," earing in line eight of the text are new. Cases of emergency, other those enumerated in the section, may arise.

The word "term" in some instances may include both regular and ial terms. But as a general rule, when a statute speaks of terms ourt, the regular terms as fixed by law are meant, and not the ial terms appointed by the courts or judges. Stultz v. Pratt, 103 538, 49 S. E. 654.

When the judge's warrant is duly posted, the presumption is that f the provisions of this section have been complied with. Harman penhaver, 89 Va. 836, 17 S. E. 482.

Failure of clerk to notify attorney for the Commonwealth and the iff or sergeant does not affect the validity of the proceedings. Id. See Patton v. Hoge, 22 Grat. 443; notes to section 5896.

For W. Va. decisions on similar statute, see Justis' Annotations, ter 112, section 5.

ec. 5895. Adjournment thereof to a future day.—Whenever any ge of a circuit court shall have appointed a special term of any uit court, by adjournment or warrant in the manner directed he preceding section, and he shall afterward ascertain that he not hold the said special term on the day appointed for it, he , by warrant under his hand, directed to the clerk of the court, urn it to such other day as he may deem proper. Such war- shall be transmitted by the judge to the clerk, who shall im- iately enter the said warrant in the order book of the court, as to the said special term thereafter to be held under the said inuance, proceed in all other respects in the manner directed by section aforesaid. (Code 1887, § 3061.)

ec. 5896. What tried at a special term; who may hold it.—At such special term any civil case may be tried which could law- have been but was not tried at the last preceding term that or should have been held; and any motion for a judgment, or r motion cognizable by such court, may be heard and deter- ed, whether it was pending at the preceding term or not, and criminal case may be tried at such special term as if it were gular term, although at the preceding regular term the same not have been pending in said court or may have been con- ed; and any cause or matter of controversy, at law or in chan- , then ready for hearing or which may be made ready by con- of parties, may, with the consent of the parties to such cause ontroversy, be heard and determined, although it could not fully have been heard at the preceding term that was or should

Digitized by Google

have been held. Every such special term may be held by the judge of the circuit court, or if he be dead or absent, or be so situated in respect to any cause pending in said court as in his opinion to make it improper for him to try it, by such other circuit or city judge as may be selected or designated in the manner prescribed by law. It shall be the duty of the judge so selected or designated to hold such special term, and it may be held part of its session by one judge and part of it by another, and such special terms may be adjourned from time to time during intervals between the regular terms as to the judge may seem necessary for the dispatch of the business of the court. A judge selected or designated to hold a special term shall have all the powers and be authorized to discharge all the duties of the judge of said circuit court. (Code 1887, § 3062; 1897-8, p. 371; 1901-2, p. 631; 1902-3-4, p. 772.)

Court cannot, without consent, hear demurrer to bill or dissolve injunction which could not have been heard at preceding term. Fowler v. Mosher, 85 Va. 421, 7 S. E. 542.

No error to confirm report of sale filed before preceding regular term. Harman v. Copenhaver, 89 Va. 836, 17 S. E. 482.

Court may hear any cause that lawfully could have been tried at preceding regular term. Patton v. Hoge, 22 Grat. 443.

A notice of motion upon a forfeited forthcoming bond given to a regular term, which is not held, may be heard at special term Wooten v. Bragg, 1 Grat. 1.

As a general rule, when a statute speaks of terms of court, the regular terms fixed by law are meant, and not the special terms appointed by the courts or judges. Stultz v. Pratt, 103 Va. 539, 49 S. E. 654.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 112, section 8.

See Burks' Pleading and Practice, p. 182.

Sec. 5897. Where judges to reside.—Each circuit judge, during his continuance in office, shall reside in the circuit of which he is judge. (Code 1887, § 3064; Const. § 96.)

Sec. 5898. Power of judges to hold courts other than their own and their pay.—The judge of any circuit court, or of any city court of a city of the first class, may hold any other circuit or city court, in any county or city, at the request of the judge of said circuit or city court, and any judge of a court of a city of the second class may hold a court of any other city of the second class at the request of the judge of said court, and in case of the disqualification or the inability of the judge thereof to serve, and upon the request of the Governor, shall do so.

For any service rendered by any such judge, for another judge, under this section, where the judge for whom the service is rendered is prevented from sitting by sickness, during a part or the whole of a term, or be so situated in respect to any cause pending in said court as, in his opinion, to make it improper for him to try it, he shall receive mileage and ten dollars per day, for the time he is actually engaged in holding court; such mileage and compensation to be paid out of the treasury of the county or city in which said

Digitized by Google

t is held. (Code 1887, § 3049; 1893-4, p. 814; 1902-3-4, pp. 40, 534, 666, 945; 1904, p. 334; 1916, p. 833.)

Revisors' Note.—See Acts 1918, p. 576.

There is no statute prohibiting a judge from sitting in a case in a he is or has been counsel. Common law forbids his so doing, but acts his acts are not void, but are binding until reversed or annulled proper proceeding. Louisville v. Taylor, 93 Va. 227, 24 S. E. 1013, Law Reg. 376.

The record must show that the regular judge was, in his opinion, cuated as to make it improper for him to preside, else the judgment id. Gresham v. Ewell, 85 Va. 1, 6 S. E. 700.

This section is constitutional. Smith v. Com., 75 Va. 904.

The entry of record of the inability of the judge to sit is not an or decree in the case, and the failure of the transcript of the record n appeal to disclose such an entry is no evidence that the entry was nade. Smith v. White, 107 Va. 616, 59 S. E. 480.

The objection that a judge of a Circuit Court of a circuit adjoining in which the suit was brought, or that a city judge presiding at the ng of a cause, without being designated by the Governor as re- d by law, cannot be made for the first time in the appellate court. n v. White, 107 Va. 616, 59 S. E. 480.

A judge designated by the Governor to hold the court of another e, who has been rendered permanently unable to act, is clothed with function that pertained to the judge of the court, and is competent ss upon every case then remaining upon the docket, including a on to set aside a verdict upon the ground that it is contrary to the nce. Southall v. Evans, 114 Va. 461, 76 S. E. 929.

See 4 Min. (3d Ed.) 266; Nicholas' Case, 91 Va. 741, 21 S. E. 364. Discussed, 15 Va. Law J. 429; Id. 161.

c. 5899. Judges pro tempore.—Any cause pending in a circuit ty court, where the judge of said court is disqualified, or un- for any reason, to try the same, may be tried by a judge pro ore, who shall be a citizen of this State and shall have qualified ractice law in the Supreme Court of Appeals of this State.

Revisors' Note.—This and the two following sections are sub- ially new, and in consequence of their enactment, section 3131 of Code of 1887, as amended by Acts 1902-3-4, p. 608, on the same ct, has been omitted and thereby repealed.

The "Id." reference at the end of this section should be stricken out

c. 5900. Their appointment and powers.—When all the parties ny cause pending in a circuit or city court, or their attorneys ecord, shall enter into a written stipulation, appointing a judge tempore for the trial of the cause, and the person appointed take and subscribe an oath to faithfully try and determine the s joined between the parties, it shall be the duty of the clerk ne court in which such action or suit is pending to attach to- er said stipulation and oath, and to place them on file, and also ecord them at length upon the minutes of the court; whereupon, person appointed shall be vested with the same power and au- ity, and shall be charged with the same duties as to the cause, nd as to which he is appointed, as though he were the regularly ed and qualified judge of said court; but the parties may, by terms of their stipulation, limit the power of the judge pro

Digitized by Google

tempore to the trial and determination of any specified issue or issues, either of law or fact, and in such cases, the oath of the person appointed shall correspond to the terms of the stipulation.

The provisions of this and the preceding section shall be in addition to the provisions of section fifty-eight hundred and ninety-eight. (Id.)

Revisors' Note.—See revisors' note to section 5899.

The "Id." reference at the end of this section should be stricken out.

Sec. 5901. Compensation.—Judges pro tempore shall serve without compensation from any public treasury, but it shall be lawful for the parties to agree upon and express in their written stipulation, any mode or amount of compensation, together with any further agreement as to the taxing of the same as costs. (Id.)

Revisors' Note.—See revisors' note to section 5899.

The "Id." reference at the end of this section should be stricken out.

Sec. 5902. When term of a court not to end on death of its judge.—The death of a judge of any court during a term thereof being held by another, shall not put an end to the term, but it shall continue, notwithstanding such death, until ended in due course. (Code 1887, § 3127.)

Sec. 5903. Authorizing the councils of cities of the first class having over forty thousand population and a separate clerk for the circuit court to make an annual allowance for such clerk, payable out of the treasury of said city.—It shall be lawful for the council of any city of the first class, having over forty thousand population and a separate clerk for the circuit court, to allow to the clerk of said court such sums, not exceeding the sum of twelve hundred dollars per annum, payable out of the treasury of the city as may be approved by said council. (1904, p. 23; 1906, p. 225.)

Revisors' Note.—The act from which this section is taken permitted the judge of the circuit court in the case mentioned to make the allowance, payable out of the city treasury on approval by the city council.

Sec. 5904. Territorial jurisdiction of the Circuit Court for the city of Lynchburg; validating any judgment, order, or decree heretofore made by said court within the jurisdiction.—The territorial jurisdiction of the Circuit Court for the city of Lynchburg shall hereafter be the same with that of the corporation court for the said city, and shall extend to the corporate limits of the said city and to a space of one mile without and around the city limits, except that the same shall not extend further into the county of Amherst than the corporate limits. Any judgment, order, or decree of the said Circuit Court for the city of Lynchburg heretofore made in any case in which the said court would have had jurisdiction had this section then been in operation shall have the same effect as if it had been at that time in force. (1897-8, p. 223.)

Digitized by Google

CHAPTER 244.

Corporation Courts.

Sec.
5. Corporation courts; cities first and second class.
6. Terms of judges, Bristol, Radford, and Buena Vista.
7. Statutes creating corporation courts and defining their powers continued in force.
8. Terms of city and corporation courts.
9. Terms of said court; judges may change.
5910. Jurisdiction of corporation courts.
5911. Concurrent jurisdiction of circuit courts with corporation courts of cities, which have undergone a transition since the present Constitution went into effect, from cities of the second class to cities of the first class.

ec. 5905. Corporation courts; cities first and second class.— the purpose of a judicial system, the following cities, which as wn by the United States census of nineteen hundred and ten, ther census provided by law, contain ten thousand inhabitants nore, to-wit: Alexandria, Danville, Lynchburg, Newport News, folk, Petersburg, Portsmouth, Richmond, Roanoke, Staunton, ewell and Charlottesville, are declared to be cities of the class; and all other cities in the State are declared to be cities he second class.

he corporation or hustings courts established and existing the before this Code takes effect in each of the above named cities he first class, are continued with the same name under which had been previously known, and shall be taken and deemed to he corporation courts required by the Constitution to be estabed in said cities.

he corporation courts established and existing the day before Code takes effect, in each of the following named cities of the nd class, to-wit: Fredericksburg, Winchester, Bristol, Radl, and Buena Vista, are continued under the name of the coration court of such city, and shall be so known and held until same shall be abolished by a vote of the people of such city, as vided in the Constitution. Each of such courts shall be held by dge with like qualification and elected in the same manner as ges of the Supreme Court of Appeals. (Code 1887, § 3050; 2-3-4, p. 667.)

Revisors' Note.—This section is based on Acts 1902-2-4, p. 667, nding section 3050 of the Code of 1887. Since that act was passed rlottesville and Staunton have become cities of the first class; the of Hopewell has been created as a city of the first class (Acts 1916, 9); and the former city of Manchester has been consolidated with city of Richmond. The revised section simply conforms to the law existed on the date the Code was enacted. Staunton was proclaimed ty of the first class March 28, 1906 (Report of Secretary of Com-

Digitized by Google

monwealth, 1906, p. 267,) and Charlottesville was so proclaimed August 1, 1916 (Report of Secretary of Commonwealth, 1916, p. 363). The last paragraph of the act pertaining to certain city courts other than corporation or hustings courts has been omitted because covered by other sections of this Code.

Sec. 5906. Terms of judges, Bristol, Radford, and Buena Vista.—The terms of the judges of the corporation courts for the cities of Bristol, Radford, and Buena Vista, to be elected in accordance with the provisions of the Constitution, shall be eight years, beginning February first, nineteen hundred and twenty, unless the said courts shall be sooner abolished. (1902-3-4, p. 313.)

Sec. 5907. Statutes creating corporation courts and defining their powers continued in force.—All statutes in force on the day before this Code takes effect creating corporation courts of any cities of this Commonwealth and defining or regulating their jurisdiction, or in any manner relating to them, so far as such statutes may not be inconsistent with any of the provisions of this Code, shall continue and have the same force and effect, as if the said statutes were herein expressly enacted. (Code 1887, § 3052; 1902-3-4, p. 666.).

Revisors' Note.—This section is taken from section 3052 of the Code of 1887, with language more comprehensive. It is inserted out of abundant caution.

Sec. 5908. Terms of city and corporation courts.—For every corporation in which is established by law a corporation court, or other city court, there shall be held monthly terms of the said courts, unless otherwise expressly provided by law; but a judge of any such court may, in his discretion, omit the holding of the term for the month of July or the month of August in each year, as he may deem best. (Code 1887, § 3053; 1887-8, p. 17; 1902-3-4, p. 667.)

The term ends only with the commencement of the succeeding term, unless sooner closed by order. Moses v. Cromwell, 78 Va. 671. See Hill's Case, 2 Grat. 612.

Sec. 5909. Terms of said court; judges may change.—The term of all corporation or city courts shall commence on the days now fixed for the same; but the judge of every such court may, from time to time, change the day for the commencement of the terms thereof, or any of them. The clerk of such court, within thirty days after such change, shall send a copy of the order making it to the Clerk of the House of Delegates, and, for the failure to do so, shall forfeit fifty dollars.

The judge of such court may designate four or more terms of such court for the trial of civil cases in which juries are required, and thereafter, until otherwise ordered, all cases cognizable in such court in which juries are required, except criminal cases, and cases of forcible entry and unlawful detainer, which may be tried at any term, shall be tried only at such terms as are so designated: provided, however, that the said court shall at any term hear and determine any action or motion ex contractu where the defendant

Digitized by Google

s not appear and demand a trial by jury. (Code 1887, § 3054; 7-8, p. 571; 1902-3-4, p. 667.)

Corporation courts have authority to continue a term from day to into the next succeeding month, and to change accordingly the day the commencement of the succeeding term. Cluverius' Case, 81 Va.

See Barton, L. Pr. (2d Ed.) 32; 4 Min. (3d Ed.) 265.

ec. 5910. Jurisdiction of corporation courts.—The several cor- ation courts shall, within the territorial limits of the cities for ich they are established, have the same jurisdiction which the uit courts have in the counties, for which they are established, l for the appointment of electoral boards, as provided by sec- n thirty-one of the Constitution, and concurrently with the cir- t courts they shall also have jurisdiction to enforce police regula- ns and jurisdiction over all offenses committed in any county hin one mile of such city, and such other jurisdiction, as may conferred upon them by law.

But the provisions of this section shall not apply to the Hustings rt of the city of Richmond. (Code 1887, § 3055; 1902-3-4, p. ; 1904, p. 12.)

Revisors' Note.—This section is taken from Acts 1904, p. 12. ch of the act has been omitted as having served its purpose. The sdiction of the Hustings Court of the city of Richmond is fully defined hapter 245, as is also the jurisdiction of the various other courts of t city. The jurisdiction of the Court of Law and Chancery of the of Norfolk is defined in chapter 246, and that of the Court of Law Chancery for the city of Roanoke, in chapter 247. As to the mean- of the words "corporation court" see section 5, sub-division seven- nth. For jurisdiction of circuit courts, see section 5890.

This section was not intended to restrict, but to enlarge, the jurisdic- of corporation courts, and to elevate them to the grade and dignity ircuit courts. It was therefore competent for the Legislature to give n jurisdiction to try cases of felony. Chahoon's Case, 21 Grat. 822. See, also, Tremaine v. Com., 25 Grat. 987; Crafts' Case, 24 Grat. , 613.

See 4 Min. (3d Ed.) 264, 384; 2 Barton, L. Pr. (2d Ed.) 1214; rks' Pl. & Pr., pp. 46, 47.

ec. 5911. Concurrent jurisdiction of circuit courts with corpora- n courts of cities, which have undergone a transition since the sent Constitution went into effect from cities of the second class ities of the first class.—The circuit court of any county, within ich is situated any city which has undergone transition from a of the second class to a city of the first class since the present nstitution went into effect, shall have concurrent jurisdiction h the corporation court of such city in all actions at law and ts in equity until a separate circuit court for such city shall be ablished. (1912, p. 19.)

Digitized by Google

CHAPTER 245.

Courts of the City of Richmond.*

Sec.
5912. Courts of the city of Richmond; their judges; how elected.
5913. Jurisdiction of the Hustings Court of the city of Richmond.
5914. Jurisdiction of the Hustings Court of the city of Richmond, Part II.
5915. Terms of Hustings Court and Hustings Court, Part II.
5916. Custody of public property; records, etc.
5917. Who to execute process of Hustings Court and Hustings Court, Part II.
5918. Who to summon its jurors and witnesses.
5919. Its grand and petit jurors.
5920. The Chancery Court; its jurisdiction.
5921. Its terms.
5922. The Law and Equity Court; its jurisdiction.
5923. Terms of said court.
5924. Officer of said court; clerk; rules; salary of judge.
5925. Chancery Court, Law and Equity Court, and the Hustings Court, Part II, to keep in clerks' offices a register of the securities under the control of the courts.
5926. Circuit Court; its jurisdiction.
5927. Power of removal to equalize work given to Chancery Court, Circuit Court, Law and Equity Court, and Hustings Court, Part II, of the city of Richmond.
5928. Jurisdiction of Chancery Court, Hustings Court, Hustings Court, Part II, and Law and Equity Court, and judges thereof, of injunction, habeas corpus, mandamus, etc.
5929. Appeals, etc., from Chancery Court, Hustings Court, Hustings Court, Part II, and Law and Equity Court.
5930. Clerks of said courts; how elected, etc.; their fees; special compensation of clerk of Hustings Court.
5931. Compensation of certain officers of former city of Manchester.
5932. Defining effect as constructive notice of the records of the Chancery Court and Hustings Court, Part II, of the city of Richmond.
5933. Statutes applicable to corporation courts generally to embrace Hustings Court, Part II, of the city of Richmond.

Sec. 5912. Courts of the city of Richmond; their judges; how elected.—The consolidation of the cities of Richmond and Manchester having been lawfully effected under the name of the city of Richmond, there shall be for said city the following courts:

1. The Hustings Court of the city of Richmond, the Hustings Court of the city of Richmond, Part II.

*Revisors' Note.—Some changes have been made in this chapter by the present revision, but as the chapter is mainly of local interest, it is not considered necessary to point out these changes in detail. Suffice it to say that the cities of Richmond and Manchester having been consolidated, the prime object of the revision was to make the jurisdiction of the various courts conform to the annexation proceedings, consolidation ordinance, and consolidation acts of the General Assembly.

Digitized by Google

The Chancery Court of the city of Richmond.
The Law and Equity Court of the city of Richmond.
The Circuit Court of the city of Richmond. (Code 1887, 8; 1902-3-4, p. 665.)

The words "their judges; how elected" should have been stricken the headline of this section.

§ 5913. **Jurisdiction of the Hustings Court of the city of Rich-**.—The Hustings Court of the city of Richmond shall have jur-ion of all presentments, indictments, and informations for of-s committed within the corporate limits of the city of Rich- (except prosecutions against convicts in the penitentiary); rrent jurisdiction with the other courts having jurisdiction of of all presentments, indictments, and informations for of-s committed within the space of one mile of the limits of said concurrent jurisdiction with the Circuit Court of the city of nond of actions of forcible or unlawful entry and detainer; liction of all appeals allowed by any State law or ordinance of city from the judgments of the police justice's court; juris-n of all proceedings for the condemnation, for public use, y land or property within the corporate limits of the said city; urisdiction of all motions to correct erroneous assessments on state within the said limits. (Code 1887, § 3072.)

Hustings Court has the right to close street if the administration tice requires it. Belvin v. City of Richmond, 85 Va. 574, 8 S. E.

§ 5914. **Jurisdiction of the Hustings Court of the city of Rich-, Part II.**—The Hustings Court of the city of Richmond, Part all have the jurisdiction conferred on the Hustings Court by receding section and in addition thereto, shall have, within the rate limits of the city of Richmond, concurrent jurisdiction the Chancery Court of said city of all suits and proceedings in cery cognizable by law in the circuit courts of the Common-h, except such as are specially cognizable in the Circuit Court e city of Richmond, and shall also have concurrent jurisdiction the Law and Equity Court and the Circuit Court of all com-law cases of which these courts have concurrent jurisdiction; within that part of the city of Richmond south of James river, not including the islands in said river, it shall have such juris-on, as a court of probate and registry, as is exercised by the cery Court of the city of Richmond. This section shall not be rued as conferring appellate jurisdiction on the Hustings t of the city of Richmond, Part II, except from judgments of Police Court of the city of Richmond, Part II. (1912, p. 656; p. 298.)

§ 5915. **Terms of Hustings Court and Hustings Court, Part II.** ere shall be a term of the Hustings Court and of the Hustings t, Part II, held for each month in the year, except the months

Digitized by Google

of August and September. The terms for the months of January, February, March, April, May, June, July, October, November and December, shall begin on the first Monday in each of said months. Each term shall continue as long as the business of the court may require. Any cause or matter cognizable by the court may be heard and disposed of at any term thereof. (1899-00, p. 118; 1908, p. 265.)

The Hustings Court of the City of Richmond has authority to continue a term from day to day into the next succeeding month, and to change accordingly the day for the commencement of the next term. Cluverius' Case, 81 Va. 787.

Sec. 5916. Custody of public property, records, etc.—The clerk of the Hustings Court shall have the custody of all public property, records, books and papers formerly appertaining and belonging to the Hustings Court or magistrates of the said city, and the Hustings Court formerly held by the judge thereof, except such property, records, books, and papers as have been by law, transferred to the circuit and chancery courts of the said city; and the said clerks shall have all the powers and perform all the duties, which heretofore devolved on the clerks of the said Hustings Court, formerly held in the said city, except such powers and duties, as have been by law, transferred to the clerks of other courts of said city. (Code 1887, § 3074.)

Sec. 5917. Who to execute process of Hustings Court and Hustings Court, Part II.—The sergeant of the city of Richmond shall be the officer to attend on the Hustings Court and execute its process and orders, and his assistant on the south side of James river shall attend on the Hustings Court, Part II, and execute its process and orders. (Code 1887, § 3076.)

Sec. 5918. Who to summon its jurors and witnesses.—The officers designated by the preceding section shall summon grand juries, selected in the mode prescribed by law, to attend the first day of each term of the said courts, and also on any other day that the said courts or the judges thereof shall direct, and the said grand juries shall be charged by the judge. They shall also summon all other jurors and witnesses required in the said court. (Code 1887, § 3077.)

Sec. 5919. Its grand and petit jurors.—The provisions of law concerning grand and petit jurors applicable to other courts, shall, so far as they are not inconsistent with this chapter, apply to the grand and petit juries in the said Hustings Court and Hustings Court, Part II. (Code 1887, § 3078.)

Sec. 5920. The Chancery Court, its jurisdiction.—The Chancery Court, within the territorial limits of the city of Richmond, lying north of James river and including the islands in said river, shall have exclusive jurisdiction concerning the probate and recordation of wills, the appointment, qualification, and removal of fiduciaries,

Digitized by Google

the settlement of their accounts; the docketing of judgments; the recordation in the mode prescribed by law of deeds and r papers, authorized, or required by law to be recorded.

shall also, within the corporate limits of the city of Richmond, jurisdiction of all suits and proceedings in chancery cognizby law in the circuit courts of the Commonwealth, except such re specially cognizable in the Circuit Court of the city of Richd; and any duty devolved, or power or jurisdiction conferred, hich may hereafter be devolved or conferred by law, on the uit courts of the Commonwealth, or the judges thereof, retively, shall, unless otherwise expressly provided, be deemed to lso devolved or conferred on said Chancery Court of the city ichmond, or the judge thereof, respectively, except as to matof common law and criminal jurisdiction. (Code 1887, § 3070.)

Under the law as it then stood, where cause pending in Chancery t was by consent submitted to the judge thereof for decree in vacaand a decree was entered in vacation by the judge of the Hustings t, sitting as the judge of the Chancery Court, the decree was valid. iss v. Virginia Ins. Co., 85 Va. 588, 8 S. E. 383.

c. 5921. Its terms.—The said Chancery Court shall hold four s in each year, commencing on the first Monday in January, l, June, and October, and the terms shall continue as long as business in the court shall require; but the court shall be als open as a court of probate, and the clerk thereof shall at all s exercise such powers and perform such duties as to docketjudgments and recording deeds and other papers as are con-ed and imposed by law upon clerks of other courts in similar ers. (Code 1887, § 3071.)

c. 5922. The Law and Equity Court; its jurisdiction.—The Law Equity Court shall within the corporate limits of the city of mond have original jurisdiction concurrent with the Chancery t of the city of Richmond to hear and determine all suits and eedings which are cognizable by law in the Chancery Court of City of Richmond, except the probate and recordation of wills, appointment and qualification of fiduciaries, (save when it may me necessary to appoint a fiduciary in the progress of a suit ing in said court, and the ex parte settlement of their accounts,) locketing of judgments, the recordation in the mode prescribed aw of deeds and other papers authorized or required by law to ecorded; and shall within the same limits have original jurisdicconcurrent with the Circuit Court of the city of Richmond of uch causes, motions, matters and things as are cognizable by in the Circuit Court of the city of Richmond, except all such s, motions, prosecutions, matters and things as are specially izable by the Circuit Court of the city of Richmond, or the ge thereof, under chapters one hundred and one, one hundred two, one hundred and three, two hundred and fifty-two, and hundred and two, and section sixty-three hundred and fourteen

Digitized by Google

of this Code; and all statutes now in force or which may be hereafter enacted devolving any duty or conferring any power or jurisdiction upon the circuit courts of this Commonwealth or the judges thereof, respectively, shall be construed as embracing the Law and Equity Court of the city of Richmond, and the judge thereof, respectively, except as to matters of criminal jurisdiction.

The said Law and Equity Court of the city of Richmond and the judge thereof, respectively, shall have the same power as a circuit court or a circuit judge to admit to bail and award injunctions, and the same jurisdiction of proceedings by writ of habeas corpus, writ of quo warranto, or information in the nature of a writ of quo warranto, writ of mandamus, and writ of prohibition; and appeals and writs of error and of supersedeas, from and to orders, decrees, and judgments of the said Law and Equity Court, shall be taken and allowed as if they were from and to those of a circuit court or of a circuit judge. (1893-4, p. 223.)

Sec. 5923. Terms of said court.—The said Law and Equity Court shall hold four terms a year, beginning on the second Monday in February, May, September and December, and continuing so long as the business before the court may require. (Id.)

Sec. 5924. Officer of said court; clerk; rules; salary of judge.—The sheriff of the city of Richmond shall be the officer of said Law and Equity Court; he shall attend the same, and do and perform the duties, have and exercise the powers, receive the compensation, and be liable to the penalties of a sheriff in relation to a circuit court.

There shall be a clerk of said Law and Equity Court who shall perform similar duties, be liable to the same penalties and be governed by the same general laws, as a clerk of a circuit court, and receive the like fees and emoluments, and the same compensation as the clerk of the Circuit Court of the city of Richmond. A commissioner in chancery of the Chancery Court of the city of Richmond may be appointed a commissioner in chancery of the said Law and Equity Court.

The rules in the clerk's office of said Law and Equity Court shall be held in the same manner and governed by the same general laws as rules in a circuit court are or may hereafter be held or governed, and the clerk of said court shall put upon the docket thereof, as soon as matured at rules, and in the order in which they are matured, all cases and motions matured during the terms of said court.

The salary of the judge of said Law and Equity Court shall be paid in the manner prescribed by law. (Id.; 1902-3-4, p. 586.)

Sec. 5925. Chancery Court, Law and Equity Court, and the Hustings Court, Part II, to keep in clerks' offices a register of the securities under the control of the courts.—There shall be kept in the clerk's office of the Chancery Court of the city of Richmond and

Digitized by Google

e clerk's office of the Law and Equity Court of said city, and
e clerk's office of the Hustings Court, Part II, of said city, a
in which shall be kept complete and accurate accounts of all
ities of whatever nature and money deposited in any bank, or
ie hands of any officer or depository, of the said courts, or
rwise under the control or subject to the order of the said
ts, and also of all notes or bonds given for the deferred pay-
s of the purchase money for real estate sold under orders of the
courts.

shall be the duty of each of the clerks of the said courts to
in said books, under appropriate accounts, all the money,
s or bonds, which shall be deposited to the credit of the court,
any such bank, officer, or depository, and also all the money,
s, or bonds, which shall be thereafter paid out or withdrawn
r orders of the court, so that the said book shall at all times,
the true amount of money, notes or bonds so under the con-
or subject to the order of the court. And the said books shall
en for inspection to the public.

r their services under this section, each of said clerks shall be
led to a fee of one dollar per year for each account so kept on
books for each year to which any entry is made in said account,
h fee shall be taxed in the costs of the suit to which said money,
s or bonds belong, but only one account of the money, notes, or
s, belonging to any one suit, shall be kept in said book, unless
rwise ordered by the court, and no fee shall be charged for any
nt for any year in which no entry is made therein.

Source: 1897-8, pp. 443, 444; 1902-3-4, p. 357.

c. 5926, **Circuit court; its jurisdiction.**—The Circuit Court of
ity of Richmond shall, within the corporate limits of the said
have original jurisdiction of all such causes, motions, matters,
things, whether now pending or hereafter brought therein, as
ognizable by law in other circuit courts of the Commonwealth,
the jurisdiction whereof is not vested exclusively in the said
cery Court or the said Hustings Court. The said Circuit Court,
judge thereof, respectively, shall also have jurisdiction of all
suits, motions, prosecutions, and matters and things as are spe-
cognizable by the said court or judge under chapters one
red and one, one hundred and two, one hundred and three,
hundred and two, and two hundred and fifty-two, and section
-three hundred and fourteen, or any other section of this Code.
e 1887, § 3069.)

Had jurisdiction to appoint a trustee in place of trustees in a deed
ded in the clerk's office in Richmond who have died, removed from
, or refused to act. Hunter's Ex'x v. Vaughan, 24 Grat. 400.
This court alone has jurisdiction to enjoin or affect any judgment in
f of the Commonwealth, under Code 1873, chapter 165, section 1
section 6049, sub-section 6). Com. v. Latham, 85 Va. 632, 8
488.

Digitized by Google

Sec. 5927. Power of removal to equalize work given to Chancery Court, Circuit Court, Law and Equity Court, and Hustings Court, Part II, of the city of Richmond.—The said Chancery Court, Circuit Court, Law and Equity Court, and Hustings Court, Part II, of the city of Richmond, or either of them, may for good cause shown, or to equalize the work of said courts with one another, remove to either or any of said courts having jurisdiction thereof, any case or cases pending in the court or courts making such removal.

The original papers in every case removed under the provisions of this section, together with a certified copy of the order of removal shall be forthwith transferred by the clerk of the court to which the cause is removed, and thereupon the said cause shall, without any further formality, be placed upon the docket of the court as if it had been brought and the previous proceedings had therein. (1893-4, p. 223.)

Sec. 5928. Jurisdiction of Chancery Court, Hustings Court, Hustings Court, Part II, and Law and Equity Court and judges thereof of injunction, habeas corpus, mandamus, etc.—The said Chancery Court, Hustings Court, Hustings Court, Part II, and Law and Equity Court, and the judges thereof, respectively, shall have the same power as a circuit court or circuit judge to admit to bail and award injunctions, and the same jurisdiction of proceedings by writ of habeas corpus, writ of quo warranto or information in the nature of a writ of quo warranto, writ of mandamus and writ of prohibition. (Code 1887, § 3080.)

Sec. 5929. Appeals, etc., from Chancery Court, Hustings Court, Hustings Court, Part II, and Law and Equity Court.—Appeals, writs of error and supersedeas, from and to judgments, decrees and orders of the said Chancery Court, Hustings Court, Hustings Court, Part II, and Law and Equity Court, and the judges thereof, respectively, shall be taken and allowed, as from and to judgments, decrees and orders of a circuit court or judge. (Code 1887, § 3081.)

Sec. 5930. Clerks of said courts; how elected, etc.; their fees; special compensation of clerk of Hustings Court.—There shall be a clerk of the said Hustings Court, of said Hustings Court, Part II, of said Chancery Court, and of said Law and Equity Court, each of whom shall be elected by the qualified voters of said city on Tuesday after the first Monday in November for terms of eight years. The terms of the clerks so elected shall begin on the first day of February of the second year following the year of their election. They shall each receive the same fees and emoluments that are allowed by law to clerks of circuit courts. The clerk of said Hustings Court shall also receive out of the treasury of the city of Richmond, for his services to the public of said city, such sum as the judge may allow, not exceeding the sum of eighteen hundred dollars in one year, and he shall be allowed the sum of one thousand

Digitized by Google

ars a year for public services rendered the Commonwealth, pay- in monthly instalments, from the public treasury out of any ney not otherwise appropriated. (Code 1887, § 3082; 1902-3-4, 65.)

ec. 5931. Compensation of certain officers of former city of Man-ster.—The compensation provided for officers by the consolida- ordinance recited in the decree of the corporation court of the ner city of Manchester, dated April fifteenth, nineteen hundred ten, shall be as provided in said ordinance.

ec. 5932. Defining effect as constructive notice of the records of Chancery Court, and Hustings Court, Part II, of the city of Rich-nd.—The records of the Chancery Court of the city of Richmond ll not be effective as constructive notice to purchasers for value hout notice of any land in said city lying south of the south k of James river; nor shall the records of the Hustings Court, t II, of the city of Richmond, be effective as constructive notice urchasers for value without notice of any land in said city lying th of the south bank of James river. (1914, p. 382.)

ec. 5933. Statutes applicable to corporation courts generally to race Hustings Court, Part II, of the city of Richmond.—When- r jurisdiction or a right or power is conferred, or a duty is osed by any statute upon corporation courts generally, the same sdiction, right and power shall be exercised and the same duty performed by the Hustings Court, Part II, of the city of Rich-nd, within the territorial jurisdiction of said last mentioned rt, unless otherwise expressly provided.

CHAPTER 246.

Court of Law and Chancery of the City of Norfolk.

Sec.

4. Court of Law and Chancery of the city of Norfolk.
5. Jurisdiction of such court.
6. Matters excluded from jurisdiction of such court.
7. Terms of such court.
8. Appeals from, and writs of error to, decrees and judgments of such court.
9. Continuing in force § 6 of the act establishing court.
5940. Commissioners in chancery of such court.
5941. Sergeant of the city of Norfolk to attend such court.
5942. Juries in such court; provisions of law as to circuit courts applicable.
5943. Absence of judge or inability to sit.
5944. Clerk of such court.
5945. Salary of judge of such court.

ec. 5934. Court of Law and Chancery of the city of Norfolk.— re shall be in the city of Norfolk a court of probate and record, arate and apart from the corporation court of said city, to be

Digitized by Google

called and known as the "Court of Law and Chancery of the city of Norfolk," and there shall be an additional judge, with like qualifications and to be elected in the same manner and for the same term as the judge of the corporation court of the said city, to hold the said court and perform such other duties as shall be prescribed by law. (1893-4, p. 244; 1895-6, p. 272.)

Sec. 5935. Jurisdiction of such court.—The said Court of Law and Chancery shall have concurrent jurisdiction with the circuit court and the corporation court of the said city of Norfolk in all matters concerning the probate and recordation of wills, the appointment, qualifications and removal of fiduciaries and the settlement of their accounts, and in granting and hearing writs of mandamus, prohibition and quo warranto, or information in the nature of quo warranto, and original and general jurisdiction, concurrent with the circuit court and exclusive of the corporation court in said city, of all suits and proceedings in chancery and of all such civil cases at law, within said city, as are cognizable by the circuit court of the city of Norfolk, including motions to recover money, and excepting actions of forcible or unlawful entry and detainer, and appeals from justices.

And the said court, or the judge thereof in vacation, shall have the same power to award injunctions and writs of habeas corpus, and to admit to bail, as are now or may hereafter be conferred upon the circuit courts in this Commonwealth, or the judges thereof respectively.

And any duty devolved or power or jurisdiction conferred, or which may hereafter be devolved or conferred by law on the circuit courts of this Commonwealth, or the judges thereof respectively, shall, unless otherwise expressly provided, be deemed to be also devolved or conferred on the said Court of Law and Chancery of the city of Norfolk, or the judge thereof respectively, except as to matters of which the corporation court of the said city shall have exclusive jurisdiction. (Id.)

Sec. 5936. Matters excluded from jurisdiction of such court.—The said Court of Law and Chancery shall have no jurisdiction of the following matters, which shall remain as heretofore in the Corporation Court of the said city:

Presentments, indictments and informations for offenses, actions and proceedings to enforce the payment of fines and penalties, except those conferred by law exclusively upon the police justice of said city or justices of the peace; appeals allowed by any State law or ordinance of said city from the courts of justices of the peace and police justice, both in civil and criminal matters; causes removable from said justices, including distress warrants and attachments for rent; proceedings for the condemnation of land or other property; questions, powers and duties arising out of the laws for

Digitized by Google

e assessment and collection of taxes; questions, powers, duties d proceedings arising out of the election laws and contested elec- ons; the docketing of judgments and the recordation, in the mode escribed by law, of deeds and other papers authorized or required law to be recorded; actions of forcible or unlawful entry and de- iner.

And the said Corporation Court, and the judge thereof in vaca- on, shall retain all the powers and jurisdiction possessed by the orporation Court of the city of Norfolk, and discharge all the duties evolving upon the said Corporation Court of the city of Norfolk the day before the first day of January, in the year eighteen hun- ed and ninety-five, except such as are herein expressly conferred on the Court of Law and Chancery. (Id.)

Sec. 5937. Terms of such court.—There shall be a term of the id Court of Law and Chancery held for each month in the year, cept that the judge may omit the term to be held for the months August and September or either of them. The said term shall gin on the third Monday in each month, except the October term hich shall begin on the first day of October.

The said terms shall continue so long as the business of the court ay require, and shall be for the trial of all causes, both at law and chancery, but the chancery docket shall be called before the law cket at the terms to be held in February, April, June, October and ecember.

The rules for the said court shall be the same as are now or may reafter be prescribed for the circuit courts of this Commonwealth d.)

Sec. 5938. Appeals from, and writs of error to, decrees and judg- ents of such court.—Appeals, writs of error and supersedeas from id to judgments, decrees and orders of the said Court of Law and hancery of the city of Norfolk and the judge thereof shall be ken and allowed as from and to judgments, decrees and orders of circuit court or circuit judge. (Id.)

Sec. 5939. Continuing in force section six of the act establishing urt.—Section six of the act approved February twelfth, eighteen undred and ninety-four, establishing the Court of Law and Chan- ry of the city of Norfolk is continued in force until all the objects said section shall have been fully accomplished.

Sec. 5940. Commissioners in chancery of such court.—The Court Law and Chancery shall have five commissioners in chancery, to appointed by the judge of said court, one of whom shall be desig- ated as the commissioner of accounts for said court. (Id.)

Sec. 5941. Sergeant of the city of Norfolk to attend such court.— he sergeant of the city of Norfolk shall be the officer to attend n the said Court of Law and Chancery and to execute its process id orders. (Id.)

Digitized by Google

Sec. 5942. Juries in such court; provisions of law as to circuit courts applicable.—All the provisions of law now in force, or hereafter to be enacted, relating to juries in civil cases, applicable to the circuit courts in this Commonwealth, shall apply to the said Court of Law and Chancery of the city of Norfolk; and all provisions of law now in force, or hereinafter enacted, relating to courts, judges or other officers of courts, shall apply to the said Court of Law and Chancery whenever applicable as if the said court were specially named therein; and any provisions which apply in terms to the corporation or circuit courts shall also apply to the said court as if it were specially named therein, whenever necessary or proper to enable it to exercise the powers and jurisdiction herein conferred, or when relating to matters whereof the said court is given jurisdiction. (Id.)

Sec. 5943. Absence of judge or inability to sit.—During the absence of the judge of the said Court of Law and Chancery or of the said Corporation Court of the said city of Norfolk, or the inability of either from any cause to hold a term of his court, or to sit during the whole term, or to sit in any particular case or to discharge any official duty required by law, the said term or any part thereof may be held, or the said case be heard or tried and decided, or the said duty may be discharged, if it be the judge of the said Court of Law and Chancery of the said city of Norfolk, by any circuit or corporation judge, and if it be the judge of the Corporation Court of said city of Norfolk, by any circuit or corporation judge or the judge of the said Court of Law and Chancery: provided, however, that no extra compensation shall be allowed therefor when either of the judges of the said Court of Law and Chancery and Corporation Court of the said city of Norfolk shall sit or discharge duties for the other. (Id.)

Sec. 5944. Clerk of such court.—The clerk of the Corporation Court of the said city shall also be the clerk of the Court of Law and Chancery. He shall qualify as now provided by law and give bond for the faithful discharge of his duties in both courts; and if he qualify before a judge in vacation, the bond shall be certified to the Corporation Court and the Court of Law and Chancery, to be recorded in both courts. It shall be his duty as the clerk of the Corporation Court to forthwith docket, in the manner provided by law, all judgments, decrees or orders for the payment of money rendered in the said Court of Law and Chancery, or the clerk's office thereof, or by the judge thereof in vacation.

Source: 1893-4, p. 244.

Sec. 5945. Salary of judge of such court.—The salary of the judge of the Court of Law and Chancery of the city of Norfolk shall be as prescribed by section thirty-four hundred and sixty-eight. (Id.)

Digitized by Google

CHAPTER 247.

Court of Law and Chancery of the City of Roanoke.

Sec.
5946. Court of Law and Chancery of the city of Roanoke.
5947. Jurisdiction of such court.
5948. Matters excluded from jurisdiction of such court.
5949. Terms of such court.
5950. Appeals from, and writs of error to, decrees and judgments of such court.
5951. Removal of causes from Corporation Court to Court of Law and Chancery.
5952. Commissioners in chancery of such court.
5953. Sergeant of the city of Roanoke to attend such court.
5954. Juries in such court; provisions of law as to circuit courts applicable.
5955. Absence of judge or inability to act.
5956. Clerk of this court.
5957. Salary of judge of such court.

c. 5946. Court of Law and Chancery of the city of Roanoke.—
e shall be in the city of Roanoke a court of probate and
rd, separate and apart from the corporation court of said
to be called and known as the "Court of Law and Chancery
he city of Roanoke," and there shall be an additional judge
like qualification and to be elected in the same manner as
judge of the corporation court. The term of the judge of said
t in office when this Code takes effect shall end January thirty-
nineteen hundred and nineteen, and his successor shall be
ed for a term of eight years, beginning February first, nine-
hundred and nineteen. (1910, p. 161.)

c. 5947. Jurisdiction of such court.—The said Court of Law
Chancery shall have concurrent jurisdiction with the circuit
t and corporation court of Roanoke in all matters concerning
probate and recordation of wills, the appointment, qualification
removal of fiduciaries and the settlement of their accounts,
in granting and hearing writs of mandamus, prohibition and
warranto, or information in the nature of quo warranto, and
inal and general jurisdiction with the circuit and corporation
ts of said city of all suits and proceedings in chancery, of all
civil cases at law within said city as are cognizable by the
uit court or corporation court of Roanoke, including motions
recover money, actions of forcible or unlawful entry and de-
er, distress warrants and attachments for rent.

nd the said court, or the judge thereof in vacation, shall have
same power to award injunctions and writs of habeas corpus,
admit to bail, as are now or may hereafter be conferred upon
circuit or corporation courts of this Commonwealth, or the
ges thereof in vacation, and shall have the same jurisdiction
uch matters and of all other matters cognizable in said court

Digitized by Google

which are now or may hereafter be granted to the judges of the circuit or corporation courts in vacation in like matters.

Any duty devolved, or power of jurisdiction conferred, or which may hereafter be devolved or conferred by law on the circuit courts of this Commonwealth, or the judges thereof, respectively, shall, unless otherwise provided, be deemed to be also devolved or conferred on the said Court of Law and Chancery of the city of Roanoke, or the judge thereof, respectively, except as to matters of which the corporation court of the said city shall have exclusive jurisdiction. (Id.)

Revisors' Note.—See, as affecting this section, Acts 1918, p. 754.

Sec. 5948. Matters excluded from jurisdiction of such court.—But the said Court of Law and Chancery shall have no jurisdiction of the following matters, which shall remain as heretofore in the corporation court of said city:

Presentments, indictments and informations for offenses, actions and proceedings to enforce the payment of fines and penalties, except those conferred by law exclusively upon the police justice of said city or justices of the peace; questions, powers and duties arising out of the laws for the assessment and collection of taxes; questions, powers, duties and proceedings arising out of the election laws and contested elections; appeals and removals from the trial justice of said city; the appointment and removal of officers conferred by law upon the corporation court; the docketing of judgments and recordation in the mode prescribed by law of deeds and other writings authorized or required by law to be recorded. And the said corporation court, and the judge thereof in vacation, shall retain all the powers and jurisdiction possessed by the corporation court of the city of Roanoke, and discharge all the duties devolving upon said corporation court of said city as of March tenth, nineteen hundred and ten, except such as are herein conferred upon the Court of Law and Chancery. (Id., 1914, p. 475.)

Sec. 5949. Terms of such court.—There shall be a term of said Court of Law and Chancery for each month in the year, except that the judge may omit the term to be held in the month of August by order entered of record. The terms of said court shall begin on the first Monday in each month, and shall continue so long as the business of the court may require. The rules for the said court shall be the same as are now or may hereafter be prescribed for the circuit courts of this Commonwealth. (1910, p. 161.)

Sec. 5950. Appeals from and writs of error to decrees and judgments of such court.—Appeals, writs of error and supersedeas from and to judgments, decrees and orders of the said Court of Law and Chancery of the city of Roanoke, and the judge thereof, shall be taken and allowed, as from and to judgments, decrees and orders of a circuit court or a circuit judge. (Id.)

Digitized by Google

ec. 5951. Removal of causes from corporation court to Court of and Chancery.—In all cases removed to the Court of Law and ncery from the said corporation court under this chapter the Court of Law and Chancery shall execute and enforce by prop- rocess and in the manner provided by law every judgment, de- or order entered therein prior to the first day of April, nine- hundred and ten, and shall supervise, correct and enforce in manner any rules taken or order, entry or endorsement made he clerk or any return made by the sergeant of the said cor- tion court before the said first day of April, nineteen hundred ten. (Id.)

ec. 5952. Commissioners in chancery of such court.—The Court aw and Chancery shall have six commissioners in chancery, to ppointed by the judge of said court, one of whom shall be gnated as the commissioner of accounts for said court, except it shall be permissible for the judge of the said Court of Law Chancery, in his discretion, to appoint as such commissioner ccounts the same person who is commissioner of accounts for said corporation court. (Id.)

ec. 5953. Sergeant of the city of Roanoke to attend such court. ne sergeant of the city of Roanoke shall be the officer to attend he said Court of Law and Chancery, and to execute its process orders. (Id.)

ec. 5954. Juries in such court; provisions of law as to circuit ts applicable.—All provisions of law now in force or hereafter e enacted relating to juries in civil cases, applicable to the cir- courts of this Commonwealth, shall apply to the said Court of and Chancery in the city of Roanoke, and all provisions of now in force or hereafter enacted relating to courts, judges fficers of courts, shall apply to the said Court of Law and ncery whenever applicable, as if the said Court of Law and ncery was specifically named therein, and any provisions which y in terms to the corporation or circuit courts shall also apply ne said Court of Law and Chancery as if it were specifically ed therein, whenever necessary or proper, to enable it to exer- the powers and jurisdiction herein conferred or when relating atters where the said court is given jurisdiction. (Id.)

ec. 5955. Absence of judge or inability to sit.—During the ab- e of the judge of the said Court of Law and Chancery, or of said corporation court of the city of Roanoke, or the inability ither, from any cause, to hold a term of his court or to sit ng the whole term, or to sit in any particular case or to dis- rge any official duty required by law, the said term, or any part eof, may be held, or the said case be heard or tried and decided, he said duty may be discharged, if it be the judge of the said rt of Law and Chancery, by any circuit or corporation judge,

Digitized by Google

and if it be the judge of the corporation court of said city, by any circuit or corporation judge, or the judge of said Court of Law and Chancery: provided, however, that no extra compensation shall be allowed therefor when either of the judges of said Court of Law and Chancery and corporation court of said city of Roanoke shall sit or discharge duties for the other. (Id.)

Sec. 5956. Clerk of this court.—The clerk of the corporation court of said city shall also be the clerk of the Court of Law and Chancery, and shall receive for his compensation such reasonable salary as may be allowed him by the council of the city of Roanoke, to be paid out of its treasury; and in the event the council fail or neglect to allow a reasonable salary to said clerk for the services rendered by him under this chapter, the judge of this court shall by order of record, fix the salary to be paid said clerk, and the same shall be paid to him out of the treasury of the city of Roanoke.

He shall qualify as now provided by law and give bond for the faithful discharge of his duties in both courts, and if he qualify before the judge in vacation, the bond shall be certified both to the corporation court and the Court of Law and Chancery, to be recorded in both courts. It shall be his duty as the clerk of the corporation court to forthwith docket, in the manner provided by law, all judgments, decrees or orders for the payment of money rendered in the said Court of Law and Chancery, or the clerk's office thereof, or by the judge thereof in vacation. (Id.)

Sec. 5957. Salary of judge of such court.—The salary of the judge of the Court of Law and Chancery of the city of Roanoke shall be as prescribed by section thirty-four hundred and sixty-eight. (Id.)

Revisors' Note.—Section 12 of the act gave the council of the city of Roanoke power to increase the salary of the judge. This subject is fully covered by a general section. (See section 3469.)

CHAPTER 248.

General Provisions Relating to Courts.*

Sec.		Sec.	
5958.	Jurisdiction of courts of counties and cities over water courses.	5960.	Court of Appeals may prescribe forms of writs and regulate practice of courts.
5959.	Courts of record may adjourn from day to day or take a recess for a period not exceeding thirty days.	5961.	In election by court, votes to be viva voce and recorded.

*For monographic note on Courts, see Cropper v. Com., 2 Rob. 842, Va. Rep. Anno.

Digitized by Google

Sec.
How proceedings of court are drawn up, read and signed.
Who attends a court as its officer.
Places of holding courts.
When and how changed.
How order or warrant making change posted.
When and how place of session of Court of Appeals changed, or time of holding the court postponed.
Court must be held in its county or corporation.
Acts of courts heretofore held at improper places confirmed.
Provision for opening a court, or for its sitting, where it fails to meet on day appointed or to which it is adjourned.
Provision to prevent cases from being discontinued, when place or day changed, or court fails to sit.
Matters not determined to stand continued.
If term of court is to end during trial of case, etc., trial may go on until concluded; if case be in corporation court, judge may postpone commencement of next term.
5974. Execution of judgments and decrees of courts no longer existing.
5975. Judges not permitted to practice law.
5976. Judges may not hold any other office.
5977. Removal of judge from circuit, etc., vacates his office; exception for cities of less than 5,000 inhabitants.
5978. Time within which a judge may qualify; failure to do so vacates office.
5979. Circuit and corporation courts to have land books bound.
5980. Books, etc., in clerks' offices, and offices of county surveyors, may be rebound or transcribed; the credit to be given to transcripts.
5981. Books may be taken from clerk's office to be rebound.
5982. How costs thereof certified and paid.
5983. How name of person may be changed.

c. 5958. **Jurisdiction of courts of counties and cities over water ses.**—Where any river, water course, or bay lies between any ties or any cities, or any county and city in this State, the it courts for the counties and the circuit or corporation courts e cities, on each side, respectively, shall have concurrent juris- on over so much thereof as shall be opposite to said counties cities. And the circuit courts for counties and the circuit or oration courts of the cities lying on the waters bounding the e shall have jurisdiction respectively over such waters op- e said counties and cities, as far as the jurisdiction of this e extends, provided that this section shall not apply to the s of Richmond and Norfolk. (Code 1887, § 3110; 1908, p. 661.)

c. 5959. **Courts of record may adjourn from day to day or take cess for a period not exceeding thirty days.**—Any court of re- may at any term, whether regular or special, adjourn from to time for a period not exceeding thirty days until the busi- before it is dispatched, or until the end of its term; the judge aid court shall, during the period of such adjournment, have er and authority to hold regular or special terms at any other

Digitized by Google

place as if there had been a final adjournment of such term. (Code 1887, § 3111; 1902-3-4, p. 943.)

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 114, section 2.

Sec. 5960. Court of appeals may prescribe forms of writs and regulate practice of courts.—The Supreme Court of Appeals may, from time to time, prescribe the forms of writs and make general regulations for the practice of all the courts of record, civil and criminal; and may prepare a system of rules of practice and a system of pleading and the forms of process to be used in all the courts of record of this State, and put the same into effect. (Code 1887, § 3112; 1916, p. 939.)

Revisors' Note.—This section is taken from the act of 1916 cited at the end of the section, without change, except that the word "may" appearing in lines one and four of the text is used in lieu of "shall" in both instances.

Discussed in 19 Va. L. Reg. 329.

Sec. 5961. In election by court, votes to be viva voce and recorded.—In every appointment or election by a court to fill any office or post, the votes shall be given viva voce in open court, and the vote of each judge voting thereon shall be recorded in the order or minute book. (Code 1887, § 3113.)

Sec. 5962. How proceedings of court are drawn up, read and signed.—The proceedings of every court shall be entered in a book kept for the purpose to be known as the order book. The proceedings of each day shall be drawn up at large, and read in open court, by the clerk thereof, at the next session of the said court, except those of the last day of a term, which shall be drawn up and read the same day. After being corrected where it is necessary, the record shall be signed by the presiding judge. (Code 1887, § 3114.)

Revisors' Note.—Under this section as it now stands, the proceedings of each day are required to be read in open court by the clerk at the next session of the court, which in most instances would be the day following.

Not necessary to read the court orders in court each day; it is sufficient if they are drawn up and read at the conclusion of the trial during the term. Snodgrass' Case, 89 Va. 679, 17 S. E. 238. But see present section.

Though only the orders of the last day of the term are signed, this is sufficient authentication of all the orders of the term which precedes the signature of the judge upon the record, but each day's proceedings should be separately signed. Weatherman's Case, 91 Va. 796, 22 S. E. 349. See present section.

Accused need not be present when orders are signed. Id.

During the term of a court at which a judicial act is done the record remains in the breast of the court, and may be altered or amended; but after the adjournment amendments can only be made in cases in which there is something in the record by which they can be safely made. Barnes' Case, 92 Va. 795, 23 S. E. 784.

The court has an undoubted right to correct any error made by the clerk in the proceedings of the preceding day. Levi Gibson v. Com., 2 Va. Cas. 111.

Digitized by Google

For W. Va. decisions on similar statute, see Justis' Annotations, pter 114, section 4.

Sec. 5963. Who attends a court as its officer.—The Supreme Court Appeals shall not be attended by any sheriff; and a circuit or er court, held only for a city, shall, except where otherwise spe-lly provided, be attended by the sergeant of such city, who ll act as its officer. In all other cases, the sheriff of the county which any court is held, shall attend it, and act as its officer. ode 1887, § 3115.)

Sec. 5964. Places of holding courts.—Every circuit or corpora-n court, for any county or city, shall be held at the court-use of such county or city, except where some other place is scribed by law, or lawfully appointed. (Code 1887, § 3116; 2-3-4, p. 607.)

As no place of session of a court (section 5968) can be held out-e of county or corporation it follows that the courthouse must be in county or corporation. Court for a county may be held in a city ated in that county. Supervisors v. Cox, 98 Va. 273, 36 S. E. 380.

Sec. 5965. When and how changed.—Whenever, in the opinion a circuit or corporation court, or the judge thereof, the court-use or other place wherein it is required to hold its session, can , or should not, from any cause, be occupied by it, or if the ne shall be destroyed, the court may hold its session at such ces as may be appointed by its order, or by the warrant of the dge thereof in vacation, directed to its clerk, until the court-use or its lawful place of session can or should be thereafter oc-pied, or until another shall be built and fitted for its occupation, until some other place be appointed by the court. (Code 1887, 3117; 1902-3-4, p. 607.)

Sec. 5966. How order or warrant making change posted.—A copy every order of court, or warrant of a judge under the preceding tion, shall, if practicable, be posted by the clerk of the court at door of his office, and at the courthouse door, and also at the ce so appointed. (Code 1887, § 3118.)

Sec. 5967. When and how place of session of Court of Appeals nged, or time of holding the court postponed.—Whenever, by son of the destruction of any building in which the Supreme urt of Appeals or a Special Court of Appeals is appointed to be d, or by reason of the place of session being in possession of a pub-enemy, or infected with contagious disease, it shall seem to the vernor necessary, he shall, by proclamation, appoint a place at ich such court shall be held, so long as such reason may continue, l when the circumstances require it, may postpone the time for ding the court. A copy of such proclamation shall be sent to clerk and to each of the judges of such court, and published in ne newspaper at the seat of government, and near the regular ce of session of such court. (Code 1887, § 3119.)

Digitized by Google

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 114, section 7.

Sec. 5968. Court must be held in its county or corporation.—No such place of session, for a circuit or corporation court, shall be without the limits of the county or corporation of which it is the court. And when such place is appointed because of the destruction of the building in which the Supreme Court of Appeals or Special Court of Appeals was held, the new place of session shall be within the same city or town with the old. (Code 1887, § 3120; 1902-3-4, p. 608.)

Courthouse may be situated and court may be held in city which is in county. Supervisors v. Cox, 98 Va. 273, 36 S. E. 380.

Sec. 5969. Acts of courts heretofore held at improper places confirmed.—Where any court has at any time heretofore been held at a place not authorized by law, in consequence of the destruction of the courthouse, or other unavoidable cause, the acts and proceedings of such court shall be as valid as if the court had been held at the proper place. (Code 1887, § 3121.)

Sec. 5970. Provision for opening a court, or for its sitting, where it fails to meet on day appointed or to which it is adjourned.—Though a court be not held on the first day of a term, it may nevertheless be opened on any subsequent day, if, in the case of a circuit or corporation court, the same is done before four o'clock in the afternoon of the third day. After a court is opened it shall, during the term, adjourn from day to day, unless the court shall order otherwise, and if it fail to sit on any day to which it is adjourned, it may nevertheless sit on any subsequent day of the term; provided, in the case of a circuit or corporation court, there be not more than three consecutive days of such failure. (Code 1887, § 3122; 1891-2, p. 806; 1893-4, p. 236; 1902-3-4, p. 608; 1904, p. 98.)

Court adjourned from 20th to 23d of December, on which day cause was set for trial, but did not sit on 23d; it had a right (under this section as it formerly stood) to sit and try and determine the cause before 4 o'clock on the 26th. Langhorne v. Waller's Ex'r, 76 Va. 213.

Cited in Nicholas' Case, 91 Va. 744, 21 S. E. 364. See, also, Hill's Case, 2 Grat. 612.

Discussed, 13 Va. Law J. 169; 8 Va. Law J. 1.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 114, section 10.

Sec. 5971. Provision to prevent cases from being discontinued, when place or day changed, or court fails to sit.—When the place for holding any court or the day for commencing any term is changed, or when a court fails to sit on any day appointed for it or to which it may have adjourned, there shall be no discontinuance, but every notice, recognizance, or process given, taken, or returnable to the day on which the failure occurred, or to any day between that day and the next that the court may sit, or to the day and place as it was before such change, and all matters ready for the court to act upon if it had been held on any such day, shall be in the same condition and have the same effect as if given,

Digitized by Google

n, or returnable, or continued to the substituted term or place, the next day of the same term that the court may sit, or to next court in course, as the case may be. (Code 1887, § 3123.)

When a court fails to sit on any day to which it may have adjourned, atters ready for the court to act upon had it been held on that day be in the same condition and have the same effect as if continued e next day of the same term that the court may sit. Langhorne v. er's Ex'r, 76 Va. 213. See Nicholas' Case, 91 Va. 741, 21 S. E. Wootten v. Bragg, 1 Grat. 1.

For W. Va. decisions on similar statute, see Justis' Annotations, er 114, section 11.

c. 5972. Matters not determined to stand continued.—All es upon the docket of any court, and all other matters ready ts decision, which shall not have been determined before the of a term, whether regular or special, shall, without any order ntinuance, stand continued to the next term. (Code 1887, 24.)

A motion continued, without defendant's consent, from June term ugust term, passing by July term, is discontinued, and judgment quently rendered for the plaintiff on same motion is erroneous. v. Koger, 7 Leigh 221; but see Harrison v. Com., 81 Va. 493. Where there is a verdict against a prisoner, but no judgment is ed at that term nor is the case continued, judgment on the verdict be rendered at next term. Cleek v. Com., 21 Grat. 777. County , in action of unlawful detainer, may enter judgment nunc pro tunc July term upon verdict rendered at April term. Van Gunden v. , 88 Va. 591, 14 S. E. 334.

Failure to enter order of continuance does not work discontinuance. ison v. Com., 81 Va. 492.

See Wilkinson v. Hendrick, 5 Call 12; Moss v. Barham, 94 Va. 14, E. 388.

For W. Va. decisions on similar statute, see Justis' Annotations, er 114, section 12.

c. 5973. If term of court is to end during trial of case, etc., may go on until concluded; if case be in corporation court, e may postpone commencement of next term.—If the term of urt is to end pending the trial therein of any case, civil or inal, it shall nevertheless be lawful for such court to continue rial until the same is concluded and the case disposed of; and ch case be in a corporation or hustings court, the judge there- all have the power, by an order entered in court, to postpone commencement of the next term of the said court to some day nated by him. (Code 1887, § 3126.)

See Cluverius' Case, 81 Va. 787; Hill's Case, 2 Grat. 612.

c. 5974. Execution of judgments and decrees of courts no long- isting.—Every judgment, decree, or order entered in a court h shall have ceased to exist, shall be executed by the court in ody of whose clerk the record of such judgment, decree, or or- may be. And to such court shall be certified every judgment, ee, or order of the court of appeals touching any judgment, de- or order so entered, and the case shall be proceeded in as if court had rendered the same. (Code 1887, § 3128.)

c. 5975. Judges not permitted to practice law.—No one hold-

Digitized by Google

ing the office of judge in this State shall practice law therein during his continuance in office. (Code 1887, § 3129; 1902-3-4, p. 608; 1904, p. 228.)

Revisors' Note.—The latter part of the act from which this section is taken has been omitted as having served its purpose. See Const., section 105; schedule, section 7.

See Louisville & N. R. Co. v. Taylor, 93 Va. 226, 24 S. E. 1013, note 2 Va. Law Reg. 376.

Sec. 5976. Judges may not hold any other office.—No person holding the office of judge shall hold any other office or public trust during his continuance in office; except that the judge of a corporation court in a city of the second class may hold the office of commissioner in chancery of the circuit court for the county in which the city is located. (Code 1887, § 3130; 1902-3-4, p. 608.)

Sec. 5977. Removal of judge from circuit, etc., vacates his office, exception for cities of less than five thousand inhabitants.—Each judge of a circuit, corporation, or city court shall, during his continuance in office, reside within the jurisdiction of the court over which he presides, and his removal therefrom shall vacate his office, except in the case of the judge of a corporation court of any corporation having a city charter and less than five thousand inhabitants, who may reside outside the corporate limits of such city. (Code 1887, § 3132; 1902-3-4, p. 609.)

Revisors' Note.—Under the act from which this section is taken no provision was made for allowing the judges of small cities to reside outside of the corporate limits. This is allowed by section 99 of the Constitution, and in order to provide for this case and come within the constitutional limitation, the section has been changed to read as above.

Sec. 5978. Time within which a judge may qualify; failure to do so vacates office.—Any judge of this Commonwealth may qualify at any time after receiving his commission, and before the expiration of thirty days after the commencement of his term of office; but if he fail to receive his commission until after the commencement of his term of office, he may qualify within thirty days from the date of receiving the same. A failure on the part of any judge to qualify as above provided shall vacate his office. (Code 1887, § 3133.)

Sec. 5979. Circuit and corporation courts to have land books bound.—It shall be the duty of the several circuit and corporation courts to cause to be bound, in volumes of convenient size, all books in their respective clerks' offices, not now bound, showing the assessments of lands since the year eighteen hundred and fifty, and to cause to be bound in like volumes such books to be hereafter filed in their said clerks' offices at intervals of not more than five years. (Code 1887, § 3134; 1902-3-4, p. 609.)

Sec. 5980. Books, etc., in clerks' offices, and offices of county surveyors, may be rebound or transcribed; the credit to be given to transcripts.—Any court of record may cause any of the books or

Digitized by Google

ls in its clerk's office, which may be in need thereof, to be re-
l or transcribed; and the circuit court of any county may also
any of the books or records in the office of the surveyor of
county to be rebound or transcribed. The same faith and
shall be given to such transcript as the book or record
ribed would have been entitled to. (Code 1887, § 3135;
-4, p. 609.)

. 5981. **Books may be taken from clerk's office to be rebound.**
court directing any book or books to be bound or rebound
resaid, may allow the same to be taken from the clerk's office
ich such book or books may be on file, but shall take all
sary and proper precautions, by requiring bonds or otherwise,
ure the preservation and return and to prevent the mutila-
hereof. (Code 1887, § 3136.)

. 5982. **How costs thereof certified and paid.**—The cost in-
l shall be certified by such court to the board of supervisors
county or to the council of the city in whose clerk's office
ooks or records so bound, rebound, or transcribed are on file,
paid as a charge on such county or corporation. (Code
§ 3137.)

. 5983. **How name of person may be changed.**—Any person
ng to change his own name, or that of his child or ward, may
therefor to the circuit court of the county, or the circuit or
ration court of the corporation in which he resides; or if
a citizen of this State, without a fixed residence in any one
y or corporation, his application may be to the Circuit Court
city of Richmond; or, if the parent or guardian reside in an-
State, then to the circuit court of the county or the circuit or
ration court of the corporation in which the child or ward re-
In case of a minor who has no parent or guardian, the ap-
ion may be made by his next friend. On any such application
ourt, in its discretion, may order a change of his name, and
eforth the new name shall be in place of the former, and the
of the court, when the name of such person has been changed
oresaid, shall enter the order upon the current deed book in
ffice and shall index the same therein, in both the old and
names of such persons. But if any person residing in this
shall change his name, or assume another name, unlawfully,
all be guilty of a misdemeanor, and upon conviction thereof
be fined not less than ten dollars nor more than one hun-
dollars, and upon a repetition thereof, shall be confined in
ot exceeding sixty days. (Code 1887, § 3138; 1908, p. 587.)

Form of a Petition for Change of Name.

To the Circuit Court of the City of Richmond, Virginia: Your peti-
, John Blackburn Smith, respectfully represents that he is a resi-
of the City of Richmond, Virginia; that he is a son of the late
as I. Smith and Nannie Branch Smith, whose maiden name was
e Branch Taylor; that your petitioner was born on the 4th day of

Digitized by Google

August, 1871; that from his early childhood he has been known as John Blackburn, having been thus called in order to prevent confusion with the names of other members of his father's family; that he is now known among his friends and in his business relations as John Blackburn, and that in order to prevent confusion and difficulty in the transaction of his lawful affairs he desires to change his name from John Blackburn Smith to John Blackburn, and to this end hereby makes application to this honorable court in accordance with the statute in such cases made and provided, to-wit: Section 5983 of the Code of Virginia.

And your petitioner will ever pray, etc.

.....

Form of Order Changing Name.

In the Circuit Court of the City of Richmond, Virginia, (date).

In the matter of the change of the name of John Blackburn Smith.

This day came John Blackburn Smith and by leave of court filed his petition setting forth that he is a resident of the City of Richmond, and that he is a son of Thomas I. Smith and Nannie Branch Smith, whose maiden name was Nannie Branch Taylor; that he was born August 4, 1871; and that he desires to change his name to John Blackburn.

And the court having considered said petition, and being of the opinion that the application made therein should be granted, proceeding under the statute in such cases made and provided, to-wit: Section 5983 of the Code of Virginia, doth hereby change the name of John Blackburn Smith to John Blackburn.

And the Clerk of this court is hereby directed to deliver a certified copy of this order to the Clerk of the Chancery Court of the City of Richmond, who shall, in accordance with said statute, enter this order upon the current deed book in his office and shall index the same both in the name of John Blackburn Smith and John Blackburn.

Note.—The granting of such a petition is in the discretion of the court. This discretion was probably given to prevent a fraudulent change of name to evade creditors, etc. Hence the reasons for change of name should be given in the petition. The names of the parents of the petitioner and the date of his birth are given for the purpose of identification.

CHAPTER 249.

Juries* in Civil Cases.

Sec.
5984. Who liable to serve as jurors.
5985. Who are exempt from jury service.
5986. Appointment of jury commissioners.
5987. Notification of jury commissioners; their oath.
5988. List of jurors to be prepared by the jury commissioners.
5989. Lists to be delivered to clerks, and by them safely kept.
5990. Names of jurors to be written on separate ballots; ballots to be folded and deposited with list in a box.
5991. Jurors to be selected by drawing ballots from box.
5992. When and how ballots drawn, and what number;

*For monographic note on Juries, see Chahoon v. Com 20 Grat. 733, Va. Rep. Anno.

Digitized by Google

when venire facias issued and persons drawn summoned; return by officer; when ballot drawn to be destroyed and another juror drawn.
93. When and how court or judge may order greater number of jurors; duty of clerk in such case; issue of venire facias.
94. What endorsed on ballot, when drawn; what entered on list.
95. No person liable to serve as juror more than once during same year.
96. How juries selected from the jurors.
97. Fine of juror for non-attendance.
98. The court may discharge jurors or dispense with their attendance. No person eligible for whom request is made.
99. When not enough jurors, how deficiency supplied.
00. Examination of juror as to interest, prejudice, etc.; if not indifferent another to be supplied.
01. When exception to juror not allowed.
02. Irregularity cured by verdict.

Sec.
6003. Trial judge not to direct verdicts.
6004. Fine of officers, etc., for neglect of duty.
6005. How special juries formed.
6006. Whence jurors obtained for trial of case to which a city, town, or county is a party; how the venire facias directed and executed; how jury formed.
6007. Pay and mileage of jurors.
6008. Juror departing without leave, etc., not entitled to pay.
6009. Clerks to enter amount due each juror and how same to be paid.
6010. Clerk to transmit to Auditor list of allowances to jurors against the State, and to deliver to jurors copies of allowances made them; treasurers to pay jurors; how reimbursed; when payment of such allowances barred.
6011. When a person not to serve as juror.
6012. Waiver of trial by jury; number of jurors for trial of civil cases.
6013. Views by juries.
6014. Disclosure by juror.

Sec. 5984. Who liable to serve as jurors.—All male citizens over enty-one years of age who shall have been residents of this State o years, and of the county, city, or town in which they reside e year next preceding their being summoned to serve as such, d competent in other respects, except as hereinafter provided, all remain and be liable to serve as jurors; but no officer, soldier, aman, or marine of the United States army or navy shall be conlered a resident of this State by reason of being stationed here, nor shall an inmate of any charitable institution be qualified to rve as juror. The following persons shall be disqualified from rving as jurors:

First, Idiots and lunatics;

Second, Persons convicted of bribery, perjury, embezzlement of blic funds, treason, felony, or petit larceny;

But no male citizen over sixty years of age shall be compelled

Digitized by Google

to serve as a juror. (Code 1887, § 3139; 1891-2, p. 209; 1895-6, p. 49; 1902-3-4, pp. 10, 288, 602.)

Persons over sixty years of age not disqualified though not compellable to serve. Booth's Case, 16 Grat. 519.

Sec. 5985. Who are exempt from jury service.—The Governor and Lieutenant-Governor of the State, the members of the General Assembly while actually in session, practicing attorneys, licensed practicing physicians, registered practicing pharmacists, officers of any court, telegraph operators actually employed as such, all pilots licensed under the laws of the United States or of this State, active members of the fire department of a city or town, and the active officers and active members of any fire company therein, not exceeding one hundred members in any one company; the President and Vice-President of the United States, the members of both houses of Congress and their respective officers, but only while such houses of Congress are actually in session; all custom-house officers, with their clerks; all postmasters, postofficers, postriders and stage-drivers, and all other persons employed in the care and conveyance of the mails of the United States; all mariners actually employed in the service of any citizen or merchant within the United States, the Secretary of the Commonwealth, the Attorney-General, the Treasurer, the two auditors, Register of the Land Office, members, officers and clerks of the State Corporation Commission, the Commissioner of Agriculture and Superintendent of Public Instruction, and their respective clerks, the doorkeeper of the executive, the clerk of both houses of the General Assembly, the judge of any court, all professors, tutors, and pupils of public seminaries, while such public seminaries are actually in session; all ministers of the gospel licensed to preach according to the rules of their sect, undertakers who pay license tax as such, sheriffs, constables, all persons while actually engaged in harvesting or securing grain or hay or in cutting or securing tobacco, keepers of the county and corporation jails, superintendents and servants of the public hospitals and lunatic asylums, Superintendent of the Penitentiary, his assistants and the persons composing the guard; one cashier and two tellers of the several banks established by law, the police in cities and towns, the tipstaff and crier of the Court of Appeals during its sittings, all millers actually employed in the mechanical operation of any grist mill, all ferrymen necessary and personally employed in or at any ferry established by law, the six lock keepers of the Dismal Swamp Canal Company, and the active non-commissioned officers and the active members of the Virginia volunteers, together with the contributing members of said volunteer companies, who have contributed not less than twenty-five dollars per annum, shall be exempt from serving on juries in civil and criminal cases; and the citizens of Tangier, Syxas and Chincoteague islands, in the county of Accomac, and Hogg's and Cobb's islands,

Digitized by Google

county of Northampton, shall be exempt from jury service, t service on grand juries. But to entitle the active officers ctive members of the Virginia volunteers, as well as such buting members of said volunteer companies, or the active s and members of a fire department, not exceeding one hun- members for one company, to this exemption, the captain or officer of any company of the Virginia volunteers, or of such tment, shall, annually, on the first day of May, furnish to the of the circuit court of the county or corporation court of the ration wherein such company or department is, a list con- g the name of each active officer and active member of his ny or department and, where there are contributing members company, the name of each contributing member who has for receding year contributed not less than twenty-five dollars be likewise furnished. (Code 1887, § 3140, 3141; 1887-8, p. 891-2, p. 1084; 1893-4, p. 380; 1902-3-4, pp. 602, 944; 1906, p. 08, p. 677; 1910, p. 68.)

evisors' Note.—The words, "the members of the General Assembly actually in session," appearing in lines two and three of the text, w. The provision exempting licensed undertakers is taken from 1902-3-4, p. 944, amending Acts 1887-8, p. 124. The provision ting persons while actually engaged in harvesting or securing grain or in cutting or securing tobacco is taken from section 3141 of ode of 1887. The provision exempting sheriffs as such and con- s is new.

the list of the military company is filed as required, the members f are exempt from summons for jury duty, and, if summoned, ot attend to make their excuses. Miller's Case, 80 Va. 33.

or further provisions as to the exemption of contributing members unteer companies, see Acts 1912, p. 622; also, this Code, section

5986. Appointment of jury commissioners.—The judge of rcuit court of each county and city, and the judge of every ourt where juries are empaneled, shall, prior to the first day nuary in each year, appoint for the next calendar year two ns as jury commissioners, who shall be competent to serve as s under the provisions of this chapter, and shall be men of gence, morality, and integrity. Such appointment shall be ed by the judge to the clerk of the court for which the ap- ment is made, who shall enter the same on the common law book of such court. Every jury commissioner shall have a five dollars a day for the time actually engaged in making he list of jurors mentioned in section fifty-nine hundred and y-eight, to be paid out of the treasury of the city or county hich he is appointed on the certificate of the judge making ppointment, or in case of his death, removal, or inability to n a certificate of his successor in office or of the judge desig- to hold his courts. No jury commissioner shall be eligible to pointment for at least two years after the expiration of the

Digitized by Google

year for which he was appointed. For the purpose of this section, the two parts of the Hustings Court of the city of Richmond shall be deemed to be separate courts. (Code 1887, § 3142.)

Revisors' Note.—Under section 3142 of the Code of 1887 (amended 1899-00, p. 997; 1902-3-4, p. 603), the judges of the circuit and corporation courts were required to prepare annual lists of jurors. The discharge of the duties placed upon the judges by this section was very burdensome. It was ofttimes most difficult for them to get the proper information and to make out the jury lists. After due deliberation the revisors agreed upon a plan to relieve the judges of this task by providing for the appointment of jury commissioners and prescribing their duties and compensation in the manner stated in sections 5986, 5987 and 5988. It will be observed that the jury commissioners must be men of intelligence, morality and integrity; and by restricting their terms of service to one year and providing that they shall be ineligible to reappointment for at least two years after the expiration of the year for which they were previously appointed, it was thought that they would be kept free from any undesirable influence that could possibly affect the lists. The General Assembly, however, at its session of 1918 (Acts 1918, p. 505), passed an act amending and re-enacting section 3142 of the former Code. Apparently the only end in view was to add the last seventeen words of the act concerning the city of Newport News; but the effect of the re-enactment of that section of the Code of 1887 was to repeal sections 5986, 5987, 5988 and probably 5989 and 5990 of this Code (see section 6568). The revisors, being of opinion that the General Assembly did not intend to repeal these sections, are constrained to recommend, if the sections meet with its approval, that it re-enact them at its session of 1920, with such amendment of section 5988 to provide for particular cities as may appear proper.

See section 4895 and notes; Thurman's Case, 107 Va. 912, 60 S. E. 99.

Sec. 5987. Notification of jury commissioners; their oath.—Such commissioners shall be immediately notified of their appointment by the clerk, and before entering upon a discharge of their duties shall take and subscribe an oath or affirmation before the clerk of said court in the following form: "I do solemnly swear (or affirm) that I will honestly, without favor or prejudice, perform the duties of jury commissioner during the year .....; that in selecting persons to be drawn as jurors, I will select none but persons whom I believe to be of good repute for intelligence and honesty; that I will select none whom I have been requested to select, and that in all my selections I will endeavor to promote only the impartial administration of justice."

Revisors' Note.—See revisors' note to the preceding section.

Sec. 5988. List of jurors to be prepared by the jury commissioners.—Such commissioners shall, as soon as may be, not later than the fifteenth day of January after their appointment, prepare a list of such of the inhabitants of that county or city as are well qualified to serve as jurors and are not excluded or exempt by sections fifty-nine hundred and eighty-four and fifty-nine hundred and eighty-five of this Code. The whole number of persons se-

Digitized by Google

in the county or city shall not be less than one hundred nor than three hunderd, except that for the city of Richmond umber shall not exceed one thousand, and for the city of Nor- he number shall not exceed six hundred. The same percent- f population shall be taken from each magisterial district or The inhabitants of a city, however, which is situated in or in part within the bounds of a county shall not be placed e lists for such county.

evisors' Note.—See revisors' note to section 5986.

. 5989. Lists to be delivered to clerks, and by them safely —The list so prepared shall be delivered to the clerk of the to be safely kept by him. To such list the commissioners may, time to time, add the names of any persons liable to serve, and therefrom the names of any who have become disqualified or ot from such service, but the number on the list shall not at any exceed the number prescribed by the preceding section. (Code § 3143; 1902-3-4, p. 603.)

evisors' Note.—This section now conforms to the preceding sections s chapter.

. 5990. Names of jurors to be written on separate ballots; bal- o be folded and deposited with list in a box.—When such list de out, the commissioners shall cause all the names thereon to irly written, each on a separate paper or ballot, and shall so or roll up the ballots that they will resemble each other as y as may be, and the names written thereon not be visible on utside, and shall deposit the ballots with the said list in a e box prepared for that purpose, and the said box shall be d and safely kept by the clerk of such court and opened only e direction of the judge thereof, as hereinafter provided. (Code § 3144; 1899-00, p. 1012; 1902-3-4, p. 603.)

Revisors' Note.—This section now conforms to the preceding sections s chapter.

lee Thurman's Case, 107 Va. 912, 60 S. E. 99.

Cited but not construed in Looney's Case, 115 Va. 921, 78 S. E. 625.

. 5991. Jurors to be selected by drawing ballots from box.— urors required for the trial of civil cases in any circuit or city shall be selected by drawing ballots from the said box in the ner prescribed in this chapter; and the persons whose names vritten on the ballots so drawn shall be returned to serve as s; the said jurors for the county to be paid out of the county and those for the city to be paid by the council out of the nues of the city. (Code 1887, § 3145; 1902-3-4, p. 603.)

Revisors' Note.—The last sentence of this section as it appears in ct from which it is taken has been omitted.

For W. Va. decisions on similar statute, see Justis' Annotations, er 116, section 3.

. 5992. When and how ballots drawn, and what number; when re facias issued and persons drawn summoned; return by offi-

Digitized by Google

cer; when ballot drawn to be destroyed and another juror drawn.—The clerk of each circuit, corporation, and city court shall, at least ten days before any term of such court at which a jury may be necessary, to be designated by the judge of such court, proceed to draw the jury by lot from the ballots deposited in the said box in the following manner, in the presence of the judge of such court, if present; if not, then in the presence of the Commonwealth's attorney, or a commissioner in chancery of his own court, if there be one, and if none, of some other court of his city, which commissioner shall have been previously designated by the court in which the jury is to sit, upon an order entered of record. In the event of the absence, for good cause, of the Commonwealth's attorney, or the said commissioner in chancery, or both of them, the clerk shall call upon one or two citizens, as the case may be, to witness the drawing of the ballots from the jury box. The clerk of each court shall give reasonable notice, in writing, to the Commonwealth's attorney and said commissioner in chancery of the time and place of drawing the jury, and shall openly draw from said jury box in the clerk's office. After shaking and mixing together the ballots in said box, nine ballots (without inspecting the names written on any until the proper number is drawn) shall be drawn and listed by the clerk, and he shall forthwith issue and deliver a writ of venire facias to the proper officer of the county or city requiring him to summon the persons thus drawn, whose names shall be stated in the writ, together with the day of the term and the court at which their attendance is required; and it shall be the duty of the officer, at least three days before the time of such attendance, to summon each person who is drawn to attend the court at the time and place mentioned in the writ, and to make due return thereof at the opening of such court. If any person whose name is so drawn is known to be unable by reason of sickness, absence from home or other cause to attend as a juror, his name shall be returned to the box, or if he is exempt by law or his name has been stricken from the jury list, the ballot shall be destroyed, and another juror shall be drawn in his stead. (Code 1887, § 3146; 1887-8, p. 124; 1889-90, p. 143; 1899-00, p. 1252; 1902-3-4, p. 604; 1904, p. 123.)

Revisors' Note.—The phraseology of this section has been somewhat changed, the chief object being to provide by general language for the various city courts in the larger cities of the Commonwealth.

See note of Ashlock's case, cited under section 4895.

Cited but not construed in Patrick's Case, 115 Va. 933, 78 S. E. 628; Looney's Case, 115 Va. 921; 78 S. E. 625.

Sec. 5993. When and how court or judge may order greater number of jurors; duty of clerk in such case; issue of venire facias.—Whenever, in the opinion of any such court, or the judge thereof in vacation, a greater number of jurors than nine is necessary for the

Digitized by Google

ch of the business of such court, such opinion shall be entered ord. together with the number of jurors deemed necessary. pon such order it shall be the duty of the clerk of said court ify the Commonwealth's attorney and the said commissioner ncery, as provided by law, and draw from the jury box of urt the number of names designated by the court or judge, case may be, and the clerk of said court shall issue a venire accordingly. (Code 1887, § 3147; 1889-90, p. 144; 1899-00, p. 1902-3-4, p. 604; 1904, p. 122.)

5994. What endorsed on ballot, when drawn; what entered.—When any person is drawn and returned to serve as a juror resaid, the judge, if present, if not, the Commonwealth's at- or commissioner in chancery, shall cause to be endorsed on llot containing his name, the word "drawn," and shall return he box; and the date of the draft shall be entered on the list ors opposite his name. (Code 1887, § 3148.)

5995. No person liable to serve as juror more than once dur- me year.—No person, who, in pursuance of such draft, has ly attended any court and served as a juror, shall be liable drawn again during the same year, unless all the persons names are in the jury box have been drawn to serve during ear. (Code 1887, § 3149.)

5996. How juries selected from the jurors.—On the day the jurors are summoned to attend at any court, the clerk write the name of each one who shall be in attendance and xcused, on a separate paper or ballot, and place the same in to be kept for that purpose; and juries for the trial of cases be selected therefrom by lot. (Code 1887, § 3150.)

5997. Fine of juror for non-attendance.—If any person, duly oned to attend as a juror in any court, shall neglect to at- without sufficient excuse, he shall pay a fine not exceeding y dollars, to be imposed by the court. (Code 1887, § 3151.)

5998. The court may discharge jurors or dispense with their dance; no person eligible for whom request is made.—Any shall have power to discharge persons summoned as jurors n, or to dispense with their attendance on any day of its sit- No person shall be eligible to service on any jury where he, y person for him, solicits or requests a jury commissioner to his name in a jury box, or in any way designates such person juror. (Code 1887, § 3152; 1899-00, p. 1126.)

Revisors' Note.—Formerly, this section provided that no person l be required to serve more than ten days as a juror at any term urt. This provision sometimes subjected courts to inconvenience. s frequently last more than ten days, and it was not deemed un- nable to deprive a juror of the right to be discharged solely because d already served ten days, hence this provision has been omitted. ast sentence of the revised section conforms to section 5986. The

Digitized by Google

residue of the section as it stood before the revision has been o view of the following section.

Sec. 5999. When not enough jurors, how deficiency su When, by reason of challenge or otherwise, a sufficient nu jurors summoned, cannot be obtained for the trial of any court may cause a sufficient number to be returned from standers, or issue a writ of venire facias for jurors from th or corporation at large; and whenever the court deems i for the convenient dispatch of business, it may cause a venire facias to be issued for so many jurors as may be n All of said jurors shall be summoned from a list of persons serve as jurors to be furnished the officer by the court. venire facias issued under this section shall be executed turned as the court shall direct. (Code 1887, § 3153.)

See sections 4895-6 and notes.

Sec. 6000. Examination of juror as to interest, prejudice not indifferent another to be supplied.—The court shall, o of either party in any suit, or may of its own accord, exa oath any person who is called as a juror therein to ascertai er he is related to either party, or has any interest in th or has expressed or formed any opinion, or is sensible of an prejudice therein; and the party objecting to any juror troduce any competent evidence in support of the objecti if it shall appear to the court that the juror does not sta ferent in the cause, another shall be drawn or called and p his stead for the trial of that cause. And in every case the and defendant may each challenge one juror peremptorily the jury consists of seven. (Code 1887, § 3154; 1902-3-4, 1904, p. 73.)

Revisors' Note.—The words, "or may of its own accord," line two of the text, are new.

A juror cannot be asked on his voir dire whether he is p against corporations. Atlantic & D. Ry. Co. v. Reiger, 95 28 S. E. 590.

Where a question is asked a juror on his voir dire which permitted to answer, the action of the trial court will not be in the appellate court, unless the bill of exceptions shows wha was expected on what the parties proposed to prove by the juro

The mere fact that a juror is indebted to one of the par not render him incompetent. Richardson v. Planters' Bank, 94 26 S. E. 413.

The fact that a juror had been deputy sheriff when the kil place, and had pursued the prisoner, did not disqualify the furnish ground for a new trial; certainly not when the objec not brought to the attention of the court until after the verdict. Case, 92 Va. 772, 22 S. E. 858.

The fact that a juror who was a carpenter was at the tim summoned engaged on a temporary job for the defendant, v thought was terminated by the summons, is not sufficient aside the verdict, the plaintiff having known the facts, but not o and it appearing that he has suffered no injury by the service a juror. Reynolds v. Richmond & M. Ry. Co., 92 Va. 400, 23 S

The fact that one of the jurors in a civil case is a friend of t

Digitized by Google

nd that he is his family physician, does not per se disqualify him. peake & O. R. Co. v. Smith, 103 Va. 326, 49 S. E. 487.
Where party had opportunity to question jurors before sworn, and l no objection, he cannot be heard after the verdict. Simmons v. nnell, 86 Va. 494, 10 S. E. 838.
t is not assignable error that a proper juror was improperly ex- d, where it is shown that the prisoner has had a fair and impartial by jury free from exception. Fishburne's Case, 103 Va. 1023, E. 443.
Cited in Hodges v. Com., 89 Va. 267, 15 S. E. 513. See notes to n 6001.
See 4 Min. (3d Ed.) 820; Barton, L. Pr. (2d Ed.) 597; Burks' Pl. , pp. 471, 472, 473.
For W. Va. decisions on similar statute, see Justis' Annotations, er 116, section 17.

c. 6001. **When exception to juror not allowed.**—No exception y juror on account of his age or other legal disability, shall lowed after he is sworn, unless by leave of the court. (Code § 3155.)

The principle of this section is applicable alike to civil and criminal Poindexter's Case, 33 Grat. 766, 791; Hite's Case, 96 Va. 489, 496, 31 S. E. 895.
Too late to object to juror after verdict (Poindexter's Csae, 33 Grat. 791), even though disability created by the Constitution (Puryear m., 83 Va. 51, 1 S. E. 512); but it has been decided that after t any objection is addressed to the sound discretion of the Court ges v. Com., 89 Va. 267, 268, 15 S. E. 513).
Where trial court overrules motion to exclude jurors, and exception e ruling is not made till after verdict, it comes too late. Town of k v. Parker, 79 Va. 660, 52 Am. Rep. 640.
See next section and notes.
For W. Va. decisions on similar statute, see Justis' Annotations, er 116, section 18.

c. 6002. **Irregularity cured by verdict.**—No irregularity in writ of venire facias or in the drawing, summoning, returning, mpanelling of jurors shall be sufficient to set aside a verdict ss the party making the objection was injured by the irregu- y or unless the objection specifically pointing out such irregu- ies was made before the swearing of the jury; and no judg- shall be arrested or reversed for the failure of the record to that there was a venire facias unless made a ground of ex- on in the trial court before the jury is sworn. (Code 1887, 56; 1893-4, p. 494.)

Revisors' Note.—The words, "specifically pointing out such irregu- es" are new. The last sentence of the act (cited at the end of ection) provided that, "This act shall apply to jurors and juries in ases, criminal as well as civil." This sentence has been omitted. section 4895.

Objection must be made before swearing of the jury, unless party own to be injured by the irregularity. Parsons v. Harper, 16 64.
After verdict it is too late to take advantage of an error in the ge of the clerk to the jury. Rogers' Case, 1 Va. Dec. 798, 19 162.
This section cured the irregularity where county judge failed to e the annual jury list, but gave the clerk a list of twenty-eight names rsons who were summoned as jurors, and from whom the jury was

Digitized by Google

regularly chosen without exception. Town of Suffolk v. Pa Va. 660, 52 Am. Rep. 640.

An exception to the regularity of summoning and consti jury comes too late after verdict where it does not appear that was injured thereby. Charlottesville v. Failes, 103 Va. 53, 57, 511; Reynolds v. Richmond & M. Ry. Co., 92 Va. 400, 23 S. E

The question of irregularity in the manner of summoning stituting a special jury is not reviewable on error, where the was not taken until after the verdict. Charlottesville v. Failes, 53, 48 S. E. 511, 10 Va. Law Reg. 536.

See last paragraph of section 4895, which is applicable to cases, and notes thereon.

For W. Va. decisions on similar statute, see Justis' Ann chapter 116, section 19.

Sec. 6003. Trial judge not to direct verdicts.—In no acti before a jury shall the trial judge give to the jury a per instruction directing what verdict the jury shall render. p. 52.)

See articles on the subject of directing verdicts, 16 Va. L 241, 384, 401.

Sec. 6004. Fine of officers, etc., for neglect of duty.—W neglect of any of the duties required in this chapter to be pe by any of the officers or persons mentioned therein, the juro returned shall not be duly drawn and summoned to att court, any person guilty of such neglect, shall pay a fine ceeding twenty dollars, to be imposed by the court. (Co § 3157.)

See 4 Min. (3d Ed.) 823.

Sec. 6005. How special juries formed.—Any court, in a cas a jury is required, may allow a special jury, which s formed in the following manner: The court shall order su sons to be summoned, as it shall designate for the purpo from those summoned, a panel of twenty qualified jurors, fr just cause of exception, shall be made, from which sixteen chosen by lot. Thereupon, the parties or their counsel, be with the plaintiff, shall alternately strike off one from the so chosen, until the number is reduced to twelve, who sha pose the jury for the trial of the cause. If the parties or the sel decline or fail to strike off any from the sixteen, or i one or more has been stricken off and the number remai greater than twelve, the party or his counsel, entitled next i to strike off, decline or fail to do so, then a jury of twelve trial of the cause shall be chosen by lot from the sixteen number remaining as aforesaid, as the case may be. (Co § 3158.)

Revisors' Note.—See, as affecting this section, Acts 1918, 146, p. 265.

The allowance or refusal of a special jury is a matter restin sound judicial discretion of the court. Atlantic & D. R. Co. v. 87 Va. 130, 12 S. E. 348. That discretion will not be interfer where there was no showing that the facts alleged were true, a

Digitized by Google

nade to appear on appeal that any injury resulted from refusal. ern Ry. Co. v. Oliver, 102 Va. 710, 47 S. E. 862.
See note of Charlottesville v. Failes, 103 Va. 53, 48 S. E. 511, section 6002.
In selecting a special jury by lot it is immaterial whether four are n by lot from the panel of twenty, leaving sixteen, or sixteen are n by lot, leaving four who are to be discharged; either method lies with the letter and the spirit of the law. Duke v. Norfolk & ern R. R. Co., 106 Va. 152, 55 S. E. 548.
Cited but not construed in Ches. & O. R. Co. v. Carnahan, 118 Va. 5 S. E. 863.
See Barton, L. Pr. (2d Ed.) 597; 4 Min. (3d Ed.) 822; Burks' Pl. , p. 473.
For W. Va. decisions on similar statute, see Justis' Annotations, er 116, section 21.

c. 6006. **Whence jurors obtained for trial of case to which a town, or county, is a party; how the venire facias directed and ited; how jury formed.**—If, in any case which is to be tried by y, a county, city, or town be a party, and the trial is to be n a court of said county or city, the said court, or the judge of in vacation, shall, upon the application of either party, or- uch number of persons (not less than twenty), qualified to on juries, as the court or judge may prescribe, to be sum- d from an adjacent county, city, or town. A writ of venire shall be issued for the purpose, directed to the sheriff or ser- , to summon the number of persons specified, from a list to rnished either by the trial judge or by the judge of the cir- r corporation court of the county or city from which the jurors be summoned, and from those summoned, a panel of twenty fied jurors, free from just cause of exception, shall be made, which a jury of twelve for the trial of the case shall be chosen manner prescribed by the preceding section. A writ of venire awarded under this section may be directed to and executed e sheriff or sergeant of the county or corporation in which ial is to be had, or from which the jurors are to come. (Code § 3159.)

Revisors' Note.—The provision that the jurors shall be summoned a list furnished either by the trial judge or by the judge of the or corporation court of the county or city from which the jurors be summoned is new, and seems desirable in order to have the properly selected. For a similar provision applicable to criminal see section 4901.
See Barton, L. Pr. (2d Ed.) 597.

. 6007. **Pay and mileage of jurors.**—Every person summoned juror shall be entitled to one dollar and fifty cents for each f attendance upon the court, and at the rate of five cents per for each mile of travel by most direct route in going to and ning from court; such mileage, however, in no case to exceed ollar per day, except when summoned for the trial of cases ded for in the preceding section, in which cases the court may them their actual expenses in addition to their per diem,

Digitized by Google

such pay and mileage to be paid out of the county or corp
levy.

And when during the same day a person has served as
for which he is entitled to be paid out of the public treasu
has also served as a juror, for which he is entitled to be p
of the county or corporation levy, the court shall divide
and mileage for such day between the State and the county
poration; and it shall be the duty of the sheriff or sergeant
term of the court during which an allowance is made or h
made under this section, to furnish the clerk of such court
statement, showing the number and names of the jurors in
ance upon the court, and the number of miles respectively o
as aforesaid. In every case the claim of the juror, for att
and for mileage, as aforesaid, shall be verified by his affid
cities, where the jurors are summoned to attend courts held
cities such jurors shall only receive one dollar for each da
tendance upon said court without serving upon a jury. (Co
§ 3160; 1895-6, p. 827; 1908, p. 27.)

Revisors' Note.—See, as affecting this section, Acts 1918,

Sec. 6008. Juror departing without leave, etc., not entitled
—No person shall be entitled to receive any compensation
vice as a juror, if he shall depart without the leave of th
or, being summoned as a witness for the Commonwealt
charge for his attendance as such. (Code 1887, § 3161.)

See 4 Min. (3d Ed.) 823.

**Sec. 6009. Clerks to enter amount due each juror and ho
to be paid.**—The clerk of any court in which juries are im
shall, before its final adjournment at each term, and under
rection of the court, make an entry upon its minutes, stat
amount to which each juror is entitled for his services or
ance during the term, and specifying how much is payable
Commonwealth, and how much by the county or corporation
1887, § 3163.)

**Sec. 6010. Clerk to transmit to Auditor list of allowa
jurors against the State, and to deliver to jurors copies of
ances made them; treasurers to pay jurors; how reimbursed
payment of such allowances barred.**—It shall be the duty
clerk immediately after the adjournment of the court to t
to the Auditor of Public Accounts a list of all orders under
ceding section, making allowances against the Commonweal
to the treasurer of the county or city a list of all such orde
ing allowances against the city or county, with a certificat
correctness of the list and the aggregate amount thereof si
the judge of the court and himself annexed thereto, and
deliver to each juror certified copies of any orders making
lowance to him, whether the same be payable by the Commo

Digitized by Google

y the county or corporation; and the treasurer of such county orporation shall upon demand pay to such juror the amount ved him, which shall be repaid to the said treasurer out of public treasury or out of the county or corporation levy, as ase may be, upon the production of satisfactory proof that the has been actually paid by him, but the said treasurer shall not epaid any allowance made against the Commonwealth unless ppears on the list herein directed to be sent to the Auditor of ic Accounts; no such allowance shall be paid unless presented in two years from the time of rendering the service. (Code , § 3164; 1895-6, p. 484.)

c. 6011. When a person not to serve as juror.—No person shall dmitted to serve as a juror at a term of a court during which as any matter of controversy, which has been or is expected to ied by a jury during the same term. (Code 1887, § 3165.)

See 4 Min. (3d Ed.) 823; Barton, L. Pr. (2d Ed.) 598.
For W. Va. decisions on similar statute, see Justis' Annotations, ter 116, section 28.

c. 6012. Waiver of trial by jury; number of jurors for trial of cases.—In any case, unless one of the parties demand that the be tried by a jury, the whole matter of law and of fact may eard and determined, and judgment given by the court. In cases the jury shall consist of five persons in cases now cog- ble by justices of the peace, and of seven in cases not so cog- ble. And in any case in which the consent of the plaintiff and ndant shall be entered of record it shall be lawful for the plaint- o select one person, who is eligible as a juror, and for the de- ant to select another, and for the two so selected to select a l of like qualifications, and the three so selected shall consti- a jury in the case. They shall take the oath required of jurors, hear and determine the issue, and any two concurring shall er a verdict in like manner and with like effect as a jury of n: provided, this section shall not be so construed as to affect ny way the empanelling of special juries as provided in section thousand and five. (Code 1887, § 3166; 1902-3-4, p. 605.)

Where a jury is waived, and whole matter of law and evidence is itted to and determined by the court, and, its judgment being ex- ed to, the evidence is certified, the bill of exceptions will be treated his court as on a demurrer to the evidence. Randolph v. Longdale Co., 84 Va. 457, 5 S. E. 30. In this connection, see section 6363 revisors' note.

If record shows that parties agreed to a jury of eleven, the verdict at number is valid. Roach v. Blakey. 89 Va. 767, 17 S. E. 228.

In enforcing a liability arising under the Federal Employers' Liability of which the State courts are expressly given jurisdiction, the de- ant has no right to demand a jury of twelve, or one composed of other manner than that prescribed by the laws of this State. Chesa- e & Ohio Ry. Co. v. Carhahan, 118 Va. 46, 86 S. E. 863.

Under the Constitution of 1869, this section did not apply to criminal s. Mays' Case, 82 Va. 550; Ford's Case, Id. 553.

Digitized by Google

Cited in note to article on the enforcement of rights un Federal Law in State Court, 1 Va. L. R. N. S. 734.

See 4 Min. (3d Ed.) 823, 926; Barton, L. Pr. (2d Ed.) 59 714, 1250.

For W. Va. decisions on similar statute, see Justis' Anno chapter 116, section 29.

Sec. 6013. Views by juries.—The jury may, in any case, criminal, at the request of either party, be taken to view the ises or place in question, or any property, matter or thing, r to the controversy between the parties, when it shall app the court that such view is necessary to a just decision: pr that in a civil case the party making the motion shall adv sum sufficient to defray the expenses of the jury, and the who attend them in taking the view, which expenses shall b wards taxed like other legal costs. (Code 1887, § 3167; 190 605.)

The general rule is that motions for views by juries are ad to the sound discretion of the trial court, and the ruling of the tri thereon will not be reversed by the appellate court, unless it appea the record that a view was necessary to a just decision. B & O v. Polly, Woods & Co., 14 Grat. 447, 470; Stonegap Co. v. H 119 Va. 271, 89 S. E. 305.

This section was made to apply expressly to criminal cases. fo the opinion in Litton's Case, 101 Va. 833, 44 S. E. 923, where the of the statute will be found.

See Barton, L. Pr. (2d Ed.) 1322; 4 Min. (3d Ed.) 731; Pl. & Pr., p. 588.

For W. Va. decisions on similar statute, see Justis' Anno chapter 116, section 30.

Sec. 6014. Disclosure by juror.—A juror, knowing anythi tive to a fact in issue, shall disclose the same in open court 1887, § 3168.)

A new trial ought not to be granted on the affidavits of tw jurors that they were influenced in their verdict by one of th body in the jury room. Price's Ex'r v. Warren, 1 Hen. & M. 3

For a juror to say upon hearing a fact testified by a witnes sir; I know all about it; that's so"—is only in obedience to this Atlantic & D. R. Co. v. Peake, 87 Va. 130, 12 S. E. 348.

For W. Va. decisions on similar statute, see Justis' Ann chapter 116, section 31.

CHAPTER 250.

Justices of the Peace and Their Jurisdiction, and Warrants fo Claims.

Sec.	
6015.	Of what a justice to have jurisdiction.
6016.	Procedure when plaintiff swears to his claim.
6017.	Removal to court.
6018.	Trial in court; defective or irregular warrants.
6019.	In what cases justic peace shall not ha diction in a suit or
6020.	How warrant issued ed, and returnable executed; how se corporation.

Digitized by Google

1. How witnesses summoned and compelled to attend.
2. How and when warrant tried and judgment given; when justice shall associate with himself other justices.
3. Judgment to be endorsed on papers.
4. Justice's record book; what to be entered therein; when delivered to clerk.
5. Justice to deliver abstract of judgment.
6. When and by whom new trial awarded.
7. How appeal allowed or execution stayed.
8. When and by whom writ tax to be paid in cases appealed from justices of the peace or civil justices.
9. When and how execution issued.
10. How directed and returnable; how renewed.
11. Clerk to docket and index executions; his fee; how further executions issued and directed.
12. In proceedings against officer for failure to pay over

Sec.
money, etc.; what to be evidence; duty of justice.
6033. Officer fined for failure to return execution; motion before, and judgment by justice against officer and sureties for amount of execution.
6034. Officer and sureties liable for money collected after, as well as before, return day of execution; also for moneys received for claims; when receipt therefor evidence of collection.
6035. Proceedings before a justice to try the title of property levied on under distress warrant or execution from justice; when and how appeal allowed.
6036. Duty of justice and clerk; when appeal allowed.
6037. Where appeal cognizable.
6038. How tried; judgment.
6039. Notice to try appeal; preference over other cases.
6040. To give circuit courts jurisdiction of scire facias or action to revive judgments of justices of the peace.

ec. 6015. Of what a justice to have jurisdiction.—Any claim to ific personal property, or to any debt, fine, or other money, or damages for breach of any contract, or for any injury done to perty, real and personal, which would be recoverable by action aw or suit in equity, shall, when the claim is to a fine, if the unt of such claim does not exceed twenty dollars, and in all er cases, if the claim do not exceed three hundred dollars (exive of interest), be cognizable by a justice, even though the m be for or against the city, town, or county in which such jus- resides. Justices shall also have jurisdiction of actions of awful entry or detainer in cases provided by section fifty-four dred and forty-five. (Code 1887, § 2939; 1891-2, p. 975; 1902- p. 670; 1916, p. 758.)

Revisors' Note.—This and the three following sections are based he same act (Acts 1916, p. 758). The last sentence of section 6015 ew. Section 6016 takes the place of the second and third sentences he act. Section 6017 makes material changes in the law. Formerly, he amount or thing in controversy exceeded the sum or value of ENTY dollars, upon application of the defendant, and upon affidavit he had a substantial defense thereto, the justice was required to ove the case to the court. It will be observed that under section

Digitized by Google

6017 the sum or value of the subject of the controversy must FIFTY dollars before a removal may be had, but that no affida substantial defense is required. The affidavit is dispensed with reason that under the former law such affidavits were ofte promiscuously, and when the cases were called in court, no whatever were set up. Under the revised section 6017, the j not required to remove the case until the accrued costs and the have been paid, and on removal the justice is to transmit to t the writ tax received by him. As to the writ tax in cases of ap section 6028. Formerly, also, it was provided that the remo should not be tried at any term except by consent of the parties it shall have been docketed ten days previous thereto. This p is omitted, and now the trial may be had when the case is rea the docket, unless a postponement or continuance be granted as cases.

A writ of prohibition will be awarded to prevent a justi taking jurisdiction of a debt in excess of one hundred dolla three hundred) which has been split up into notes, each less t hundred dollars, all of which are due, and for which separate are being prosecuted. But if these proceed to judgment with sent or acquiescence of the defendant, such judgments cannot b after collaterally assailed by third persons. Consent cannot gi diction, but in this case the justice had jurisdiction over the a each judgment. Adams v. Jennings, 103 Va. 579, 49 S. E. 98

A claim due under a contract exceeding the jurisdiction of of the peace cannot be split up into several amounts to bring the his jurisdiction. Adams v. Jennings, 103 Va. 579, 10 Va. L 1079, 1084, and note, 49 S. E. 982.

When the cause of action is not within the jurisdiction gr law to the tribunal, the court will dismiss the suit at any time w fact is brought to its notice. W. U. Tel Co. v. Pettyjohn, 88 13 S. E. 431.

The penalty imposed by section 1292 of the Code of 1887 fine, justice has no jurisdiction of a claim to recover the same, ceeds twenty dollars. Id. See section 4042.

For note of case in which justice's jurisdiction was denied of personal injury, see 10 Va. Law Reg. 828.

For notes as to jurisdiction of justice of the peace to recov see 10 Va. Law Reg. 239, 941.

See note to N. & W. Ry. Co. v. Overton, 3 Va. Law Reg.

Sufficiency of the evidence whereon judgment is founded ca inquired into on habeas corpus where the justice had jurisdiction conduct of the case has been in strict conformity with the procedure in such cases. Ex parte Marx, 86 Va. 40, 9 S. E. 47

A judgment against an infant defendant seems to be unless the infant's interests were represented by a guardian a duly appointed (22 Cyc. p. 641), and it seems that a justice peace has inherent power to appoint a guardian ad litem. Id. 6

See section 4987 and following, relating to what criminal police justices and justices of the peace may try.

Concerning justices of the peace for cities and police justi chapter 123; civil and police justices and civil justices, chap trial justices in counties having a population in excess of three persons per square mile, section 4988.

See Barton, L. Pr. (2d Ed.) 38, note; 4 Min. (3d Ed.) 1 973; Burks' Pl. & Pr., pp. 10, 40, 44, 785; Gregory's Forms N 462, 620, 621.

Sec. 6016. Procedure when plaintiff swears to his claim.— warrant be upon an account or contract express or implied

Digitized by Google

nent of money, affidavits may be made and like proceedings as is provided by section sixty-one hundred and thirty-three, n action of assumpsit. (Id.)

Revisors' Note.—See revisors' note to the preceding section.

c. 6017. Removal to court.—In every case cognizable by a jus- where the amount or thing in controversy exceeds the sum or e of fifty dollars, the justice shall, at any time before trial, upon application of the defendant, and upon the payment by him of costs accrued and writ tax, remove the case, and all the papers eof, to the circuit court of the county or to the corporation t of the city wherein the warrant has been brought and transmit he clerk the writ tax received by him, and the clerk of the court shall forthwith docket the case. On the trial of the case proceedings shall conform to proceedings under section six thou- and forty-six. (Id.)

Revisors' Note.—See revisors' note to section 6015.

See 14 Va. L. R. 810, where the opinion is expressed that unlawful and detainer cases are not removable.

c. 6018. Trial in court; defective or irregular warrants.—Ap- s under section six thousand and twenty-seven from justices warrants removed under the preceding section shall be tried ac- ing to the principles of law and equity, and where the same lict the principles of equity shall prevail. No warrant shall be issed by reason of the mere defects, irregularities, or omissions e proceedings before the justice, or in respect to the form of the rant, where the same may be corrected by a proper order of the t; but the court to which the appeal is taken, or the warrant oved shall retain the same, with full power to direct all neces- amendments, to enter such orders and direct such proceed- as will tend to correct the defects, irregularities, and omissions esaid, to promote substantial justice to all parties, and to bring t a trial of the merits of the controversy. This statute shall be rally construed, to the end that justice be not delayed or de- by reason of errors in the warrant or in the form of the pro- lings; and the court may make such provision as to costs and inuances as may be just. (Id.)

Revisors' Note.—See revisors' note to section 6015.

c. 6019. In what cases justices of the peace shall not have juris- ion in a suit or warrant.—If a justice of the peace be a party to it or warrant, or be interested in the result thereof, otherwise as a resident or taxpayer of the district or county, or be re- d to either of the parties as grandfather, father, father-in-law, son-in-law, brother, brother-in-law, nephew, uncle, first cousin, rdian, or ward, or be a material witness for either party, or has such claim in his hands for collection for compensation, he l not take cognizance thereof, unless all parties to the suit con- thereto in writing. To any judgment entered by a justice in

Digitized by Google

such case, without such consent, an appeal may be taken reg
of amount in controversy as other appeals are taken, and suc
ment shall be annulled and set aside; but unless an appeal
taken the judgment shall be valid and binding. But when a
is under such disabilities, any other justice in the same distr
exercise jurisdiction in the case, or if there be no other disint
justice in the same district, then any other justice in the same
may exercise jurisdiction, if there be no other objection. I
in this section shall be construed as permitting or authorizi
tices of the peace to receive claims or evidences of debt for
tion. (1912, p. 574.)

Sec. 6020. How warrant issued, directed, and returnable executed; how served on corporation.—A justice, when app
by any person, shall issue a warrant directed to a constable
sheriff or sergeant of the county or corporation wherein
fendant resides, together with a copy thereof, requiring
summon the person against whom the claim is to appear bef
or some other justice on a certain day, not exceeding thirt
from the date thereof, to answer such claim. It shall be m
turnable to some place within the magisterial district in wh
defendant, or, if there be more than one, either defendant
unless the justice, for good cause, direct it to be returned t
other place within his county or corporation. If a public
corporation be defendant, the warrant may be issued and t
the county or corporation in which the cause of action or a
thereof arose. The warrant may be executed in any part
county or corporation. The warrant shall be served as provi
in sections six thousand and forty-one, six thousand and sixt
and six thousand and sixty-four. (Code 1887, § 2940; 188
57; 1893-4, p. 579; 1897-8, p. 942; 1899-00, p. 445.)

**Revisors' Note.—The change in the language of lines two an
of the text to "a constable or the sheriff or sergeant of the co
corporation" was made in order to conform to the language
sections 6030 and 6031. The words, "or in which the cause o
arose" appear in section 2940 of the Code of 1887, but this sect
afterwards amended so as to restrict the venue of the warrant
county or corporation in which the defendant or one of the def
resides. In making this change, the draftsman failed to strike
the section the words "or in which the cause of section arose,"
creating confusion. They no longer appear in this part of the
The words, "But in no case shall a warrant be made returnab
county or corporation other than that in which the defendant or
them resides," formerly appear in this section, are unnecessary
is provided above that the warrant should be returnable to som
in the magisterial district of the defendant, unless the justice fo
cause shown direct it to be returned to some other place wit
county or corporation. It should be observed that under the
section the good cause need not be shown ON OATH, as was t
before the revision. The words in the section as it formerly rea
ing a corporation reside in any county or corporation through wh**

Digitized by Google

f transportation runs, or in which it does business, were likely to rouble in the matter of service of process. The object, no doubt, o give jurisdiction where the cause of action arose, and the third nce of the revised section provides that, "if a PUBLIC SERVICE ration be defendant, the warrant may be issued and tried in the y or corporation in which the cause of action or any part thereof ."

See 4 Min. (3d Ed.) 157, 247, 575, 648, 9 Va. L. Reg. 241; Greg- Forms No. 430; Burks' Pl. & Pr., p. 40.

There is a special act making Henrico County Courthouse, in the f Richmond, a part of each of the four magisterial districts of the y. Acts 1912, p. 489. It would seem therefore, that all warrants st residents of said county may be made returnable to the court-.

c. 6021. How witnesses summoned and compelled to attend.— oenas for witnesses may be issued by a justice directed to a able, sheriff, or sergeant of any county or corporation. Any on summoned to attend as a witness before a justice who shall so to attend shall, unless he show a reasonable excuse therefor in ten days after being summoned to state such excuse, be fined e justice before whom the failure occurred a sum not exceeding dollars for the use of the party on whose behalf he was sum- ed. (Code 1887, § 2941; 1889-90, p. 57.)

Revisors' Note.—The word "sergeant" in line two of the text is See first sentence of revisors' note to the preceding section.

Discussion of this section as applied to oral summoning of witnesses, a. Law Reg. 624.

c. 6022. How and when warrant tried and judgment given; when ce shall associate with himself other justices.—The justice shall uch warrant according to the principles of law and equity, and judgment for the sum due to either party, with interest, or he property to which the plaintiff is entitled (or its value), with ages. Costs shall be awarded or refused to either party on like ciples. In the trial of all warrants, both civil and criminal, upon ication of the defendant, at any time before trial, to the jus- of the peace, who issued said warrant and before whom it is rnable, such justice shall associate with himself two other jus- of the peace of the county, who shall try said warrant, and in of disagreement in opinion, the opinion of the majority shall ail; but no such trial of any civil warrant shall be had within days after the service of the warrant, except with the consent of parties. (Code 1887, § 2942; 1904, p. 98; 1914, p. 44.)

If tried in less than five days without consent, error is jurisdictional. nton Perpetual Bldg. & Loan Co. v. Haden, 92 Va. 201, 23 S. E.

See 4 Min. (3d Ed.) 248, 249.

c. 6023. Judgment to be endorsed on papers.—The justice ren- ng any such judgment shall endorse on the face of the writing, unt, or other paper, on which the warrant issued, or on any ing, account, or other paper, allowed as a set off, the date and

Digitized by Google

amount of the judgment and costs, and affix his name there
(Code 1887, § 2943.)

See 4 Min. (3d Ed.) 249.

Sec. 6024. Justice's record book; what to be entered therein; wh delivered to clerk.—He shall also, in a book kept for the purpose, e ter the date of the judgment, the name of the person for, and the person against, whom it is, and its amount; also the date any execution issued thereon, and to whom delivered. If he f to do so, he shall forfeit twenty dollars. The cost of said bo shall be chargeable on the county or corporation. When the sa book is completed, or in case of a vacancy in his office by deat resignation, removal, or otherwise, it shall be delivered to the cle of the circuit court of his county or the corporation court of l city by the justice, if alive, and by his personal representative, he be dead, to be kept by said clerk among the records of his offi if it be completed, but otherwise to be delivered to his success in office. (Code 1887, § 2944.)

Revisors' Note.—The last sentence of this section is substitut for the last sentence of the section as contained in the Code of 18 There would seem to be no necessity for multiplying these books, a for having a new book every time there is a new justice. If the book h been completed, it ought to be kept in the clerk's office; if it has n been completed, it should be turned over to the succeeding justice, a be a continuing record of the office.

Sec. 6025. Justice to deliver abstract of judgment.—The just rendering any such judgment shall certify and deliver an abstra thereof at any time during his continuance in office to any p son interested therein who may desire to have the same dockete but if the justice rendering said judgment be absent from his cou ty or corporation or his office be vacant such abstract of judgme may be made and certified by his successor in office or any oth justice of the county or corporation. (Code 1887, § 2945.)

Sec. 6026. When and by whom new trial awarded.—After thi days from any such judgment, no new trial shall be granted the case, nor shall it be granted within the thirty days, unless opposite party be present at the time of the application, or unl after five days' notice to him (if in the county or corporation) the time and place of the application for such new trial. The j tice, who rendered the judgment, shall alone have power to gra such new trial, while he is in office; if he die, resign, be abse from the county, or be removed, it may be granted by anot justice. If the warrant be tried by three justices under sect six thousand and twenty-two, a new trial may be granted by a two of them while in office. (Code 1887, § 2946.)

Revisors' Note.—The last sentence is new.

A writ of prohibition will be granted to restrain a justice from lowing a new trial after more than thirty days after judgment, and

Digitized by Google

estrain defendant from proceeding after such new trial is allowed. Burroughs v. Taylor, 90 Va. 55, 17 S. E. 745.

See 4 Min. (3d Ed.) 249.

Sec. 6027. How appeal allowed or execution stayed.—If the judgment be for a sum exceeding ten dollars the justice may stay execution on it sixty days from its date on such security being given for its payment as he may deem sufficient. From any such judgment the justice rendering it may, within ten days, on such security being given as he approves for the payment of such judgment as may be rendered on appeal by the appellate court against the defendant and all costs and damages, allow an appeal where the case involves the constitutionality or validity of a statute of this State or of an ordinance or by-law of a corporation, or where the matter in controversy exclusive of interest is of greater amount or value than ten dollars. Where the appeal is by a party against whom there is no recovery except for costs the security shall be for such costs and damages as may be awarded against him on the appeal if the judgment of the justice be affirmed. The verbal acknowledgment of any surety taken under this section shall be sufficient, and the endorsement by the justice of the name of the surety upon the warrant on which the judgment is rendered shall be conclusive evidence of such acknowledgment. The court in which the appeal is cognizable may on motion for good cause shown require the appellant to give new or additional security, reasonable notice of such motion having been given to said appellant, and if he fail to give such security the appeal shall be dismissed with costs, and the court shall award execution on the judgment rendered by the justice, with costs, against the appellant and his surety. (Code 1887, § 2947; 1893-4, p. 558.)

Revisors' Note.—Formerly, if the judgment was for more than ten and not over twenty dollars, the justice was permitted to stay execution forty days; if for more than twenty and not over thirty dollars, he was allowed to stay execution sixty days; and if for more than thirty dollars, ninety days. No good reason being seen for these variations, the revised section makes the law uniform, and under it if the judgment be for a sum exceeding ten dollars, the justice may stay execution on it sixty days from its date.

The words, "of a statute of this State or," appearing in the second sentence, are new, and would seem to be necessary in order to meet the objection raised in Southern Ry. Co. v. Hill, 106 Va. 501, 56 S. E. 278.

No appeal lies to the county court from a judgment of a justice for ten dollars and costs. Costs are no part of the matter in controversy. N. & W. R. Co. v. Clark, 92 Va. 118, 22 S. E. 867; Shafer v. C. & O. R. Co., 2 Va. Dec. 252, 23 S. E. 221.

Although the fine imposed was less than $10 an appeal lay from a judgment of a justice to the Circuit Court for a penalty imposed under sections 2071 and 2073 of the Code of 1887. Jernigan v. Com., 104 Va. 850, 52 S. E. 361.

As to appeals from justices in cattle-guard cases, see section 3954; unlawful entry and detainer, section 5449.

See 4 Min. (3d Ed.) 250; Barton, L. Pr. (2d Ed.) 1176.

Digitized by Google

Sec. 6028. When and by whom writ tax to be paid in ca pealed from justices of the peace or civil justices.—When peal is taken from the judgment of a justice of the peac civil justice, the party taking such appeal shall, within thirt from the date of such appeal, pay to the clerk of the co which such appeal has been taken the amount of the writ fixed by law, and in the event of his failure to do so, the shall stand dismissed, and the judgment of the justice of the or civil justice affirmed, and the original papers shall be re to the said justice or civil justice, who shall enter judgment any surety given at the time of appeal as a matter of (1910, p. 510.)

Revisors' Note.—The act of 1910 cited at the end of this applied to cases removed as well as cases appealed. The revised above is restricted to appealed cases. As to the writ tax in c removal, see section 6017 and revisors' note to section 6015.

Sec. 6029. When and how execution issued.—The justi dering any judgment may issue a writ of fieri facias there mediately, if there be not a new trial granted, nor an app lowed, nor a stay of execution; and where there is such s execution, if the judgment be not paid within the sixty d writ of fieri facias shall thereupon be issued by a justice the party and his surety jointly, on which no security sh taken. When the judgment is for personal property, the p may, at his option, have a writ of possession for the recov the specific property and a writ of fieri facias for the da and costs; and, if the writ of possession prove ineffectual, of fieri facias for the alternative value; said writ of posses be directed to, executed, and returned by the same office would execute the writ of fieri facias. (Code 1887, § 294

Revisors' Note.—This section now conforms to section 602

This section is qualified by section 2549 as to fines imposed tices. See Ex parte Marx, 86 Va. 40, 9 S. E. 475.

See 4 Min. (3d Ed.) 251.

Sec. 6030. How directed and returnable; how renewed.— of fieri facias issued by a justice may be directed to any con and be executed by him in any part of his county or corpo or may be directed to the sheriff or sergeant of any county poration, but in any case shall be returnable in sixty days. wholly satisfied, it may, within one year from the date of the ment, be returned to and renewed by a justice, notwithst the provisions of chapter one hundred and twelve. But eve ecution issued by a justice which is not so returned and re shall be returned by the officer to the clerk's office of the court of the county or corporation court of the city in whi execution issued. The said justice shall also return to th office an abstract of the judgment in each case tried by h gether with all of the papers in the case. For docketing and

Digitized by Google

executions, and for filing such abstracts of judgment with the mpanying papers, the clerk's fees, to be paid by the plaintiff embraced in the judgment for costs in each case, shall be col- d by such constable, sheriff, or sergeant when collecting his fees, and paid over to the clerk at the time of returning such rs to the clerk's office as hereinbefore provided. (Code 1887, 49; 1897-8, p. 637; 1901-2, p. 371.)

See 4 Min. (3d Ed.) 251; 12 Va. Law Reg. 332.

c. 6031. Clerk to docket and index executions; his fee; how her executions issued and directed.—The clerk shall docket all utions returned by the officer and index the same in the name oth plaintiff and defendant, and file them alphabetically, in a rate bundle for each year, for which services the clerk shall be tled to a fee, to be paid by the plaintiff in each case, of twenty s. Such further executions may be issued for the recovery of amount due on any execution so returned, as if the judgment vhich it issued had been rendered in court. The same may, at option of the plaintiff, be directed to and executed either by a table, or by a sheriff or sergeant; and the same proceedings l be had upon executions issued under this section as upon utions issued upon judgments of courts. (Code 1887, § 2950.)

See 4 Min. (3d Ed.) 252; 12 Va. Law Reg. 332.

c. 6032. In proceedings against officer for failure to pay over ey, etc.; what to be evidence; duty of justice.—A copy from entry in the justice's book of the date of any execution issued im, and to whom delivered, shall be evidence in any proceed- against the officer to whom it is entered as delivered, for fail- to make due return thereof, or for failing to pay over money ived thereon. If a justice, upon being applied to for a copy ny entry, refuse it, and afterwards, upon being summoned to luce the book in which such entry is or ought to have been e, fail to produce such entry, he shall forfeit twenty dollars to person on whose behalf he is summoned. (Code 1887, § 2951.)

See 4 Min. (3d Ed.) 249.

c. 6033. Officer fined for failure to return execution; motion re, and judgment by justice against officer and sureties for unt of execution.—If an officer fail to make due return of any ution issued by a justice, he may, after ten days' notice, be l from time to time by a justice, on the motion of the plaintiff ch execution, in like manner as a court may fine an officer who to make due return of an execution issued from such court. l if an officer make such return upon an execution issued by a ice as would, on a motion against the officer, authorize judg- t to be entered against him for the amount of such execution, ny part thereof, if the execution had issued from a court, the litor on whose behalf such execution issued, or his personal esentative, may, on a motion before a justice, after like notice,

Digitized by Google

obtain such judgment against the officer, his sureties, and o could be given by a court, if the execution had issued from This section shall not prevent a motion in court under one hundred and twelve, or under section six thousand an five. (Code 1887, § 2952.)

A justice has jurisdiction to hear a motion and to give j against a constable and his sureties for failure of the constabl money collected on an execution. Hendricks v. Shoemaker, 3 G

One joint notice to the constable and his sureties upon de the constable in several cases is sufficient, and the justice shoul separate and distinct judgment in each case. Id.

The jurisdiction of the justice in such case is not dependent amount of the execution or of the judgment on which the exec sued, nor is it affected by the fact that the party prosecuting th is at the same time prosecuting other motions of the same kind, the same parties, before the same or any other justice, whatever the number or aggregate pecuniary amount of the several de the constable. Id.

See 4 Min. (3d Ed.) 252.

See, also, section 2835.

Sec. 6034. Officer and sureties liable for money collecte as well as before, return day of execution; also for moneys r for claims; when receipt therefor, evidence of collection.—I ficer, after the return day, collect money mentioned in an tion issued by a justice, he and his sureties shall be liable money so collected in like manner as if the collection had b fore the return day. And if a constable receive money on of any claim entrusted to him to warrant for, and recover warrant, he and his sureties shall be liable for the money ceived, as for money collected under execution; and a months from the date of any receipt for such claim, signe official character, such receipt shall be prima facie evidence receipt of the money. (Code 1887, § 2953.)

Oral testimony is not admissible to show that receipt wa by the constable in his official character; it must appear from th the paper. Smith v. Governor, 2 Rob. 229; McNeale v. Governor, 299.

If properly signed, the receipt is prima facie evidence of re money as well against the surety as against the constable. S Governor, 2 Rob. 229.

The receipt is evidence against the constable and his surety debt has come to his hands, though such receipt does not purpo given in his official character. McNeale v. Governor, 3 Grat. 299.

The debt, claim, or execution must be placed in the constable to be warranted for and must be such as may be recovered u warrant. This will be presumed unless the contrary appears w receipt is in the constable's official character, and is for a debt other than an execution. Id.

If it does not appear from the receipt who is the creditor en maintain the warrant, it will be presumed prima facie that th to whom the receipt was given was such creditor. Id.

A receipt signed by the constable with initials appended to h which stand for constable of his county, sufficiently indicates cial character of the receipt. Id.

See 4 Min. (3d Ed.) 252.

Digitized by Google

ec. 6035. Proceedings before a justice to try the title to property ed on under distress warrant or execution from justice; when how appeal allowed.—When an execution on a judgment of a ice, or warrant of distress, is levied upon property which is med by any person other than the party against whom it is- l, and affidavit is made either by the claimant, the officer hav- such process, or the party issuing the same, that to the best of affiant's belief the said property is not of greater value than nty dollars, the party making said affidavit may apply to a ice of the county or corporation in which the levy is for a war- t to a constable requiring him to summon both the creditor and tor to show cause why such property should not be discharged n the levy, a copy of which warrant shall be served upon the mant of said property, unless said warrant is sued out at his ance. The justice shall issue such warrant returnable in not than five days, and if an earlier day shall have been fixed for sale of the property, he shall make an order on the warrant uiring the postponement of the sale until after the return day. on hearing the parties, or such of them as may attend after be- summoned, and such witnesses as may be introduced by either ty, he shall order the officer to deliver the property to the mant, if he be of opinion that the same belongs to said claim- ; but if he be of opinion that the property belongs to the per- against whom the execution or warrant of distress issued, he ll order the officer who levied on the same to sell said property atisfy said execution, or warrant of distress, and may give such gment for costs as he may deem just. If the property be of the ue of ten dollars or more, the justice shall, within five days, w an appeal (if applied for) from such order and judgment on urity being given as in the appeals before mentioned in this pter. (Code 1887, § 2954; 1895-6, p. 308.)

See 4 Min. (3d Ed.) 252, 432, 433, 1013.

ec. 6036. Duty of justice and clerk when appeal allowed.—The tice from whose judgment an appeal is allowed shall immedi- ly deliver to the clerk of the court which has the cognizance the appeal the original warrants with the judgment and the ne of the surety endorsed thereon, together with all the exhibits ore him shown at the trial, and the clerk shall forthwith docket same, and the justice granting the appeal shall not nor shall appellant without the leave of court after due notice to the pellee withdraw said papers from the clerk's office. (Code 1887, 955; 1893-4, p. 486.)

This and the following section are both remedial, and hence should construed liberally so as to effectuate the purposes of their enactment. thern Ry. Co. v. Hill, 106 Va. 501, 56 S. E. 278.

The papers to be delivered by the justice to the clerk constitute case and are the essential ground work for intelligent proceeding

Digitized by Google

in the appellate court. Wygal v. Wilder and Coleman, 117 V
86 S. E. 97.

Sec. 6037. Where appeal cognizable.—When an appeal
lowed from any order or judgment of a justice, it shall b
nizable by the circuit court of the county or the corporation
of the city in which the order was made or judgment ren
except when the order is made or judgment rendered in a c
a case involving the constitutionality or validity of an ord
or by-law of said city, in which case it shall be cognizable
circuit court having jurisdiction over said city. (Code 1887, §
1902-3-4, p. 671.)

The language of this section is broad enough to cover the
of appeal to the Circuit and Corporation Courts from a justice
peace involving the constitutionality of a statute. Southern Ry.
Hill, 106 Va. 501, 56 S. E. 278. See section 6027 and revisors' n

Where neither the constitutionality nor the validity of an ord
is drawn in question the appeal is to the corporation court, thou
constitutionality of the charter provision under which the ord
was passed is in question. Ragsdale v. Danville, 116 Va. 484, 8
77.

Where a circuit court had jurisdiction of an appeal under th
tion, such appeal was direct and original, and could not come by
removal from the county court. Valley Turnpike Co. v. Moore, 1
702, 42 S. E. 675.

See 4 Min. (3d Ed.) 250; 2 Va. L. Reg. 244.

Sec. 6038. How tried; judgment.—Every such appeal sh
tried by the court in a summary way, without pleadings in
ing, or, if the amount in controversy exceed twenty dollars,
jury, if either party requires it. All legal evidence produc
either party shall be heard, whether the same was produc
not before the justice from whose decision the appeal is take
the case shall be determined according to the principles o
and equity. If judgment be recovered by the appellee, exe
shall issue against the principal and his surety, jointly o
arately, for the amount of such judgment, including interes
costs, with damages on the aggregate at the rate of ten per ce
per annum, from the date of that judgment until payment, a
the costs of the appeal; and the execution shall be endorsed
security is to be taken." If the decision be reversed, the
substantially prevailing shall recover his costs; and such ord
judgment shall be made or given as ought to have been ma
given by the justice. Where the appeal is from an order or
ment, under section six thousand and thirty-five, the court
give such judgment respecting the property, the expense of
ing it, and any injury done to it, as may be equitable amon
parties. (Code 1887, § 2957; 1893-4, p. 558; 1902-3-4, p. 672.)

See 4 Min. (3d Ed.) 250, 251.

Sec. 6039. Notice to try appeal; preference over other ca
Either party to an appeal may give ten days' notice to the
party that a motion will be made to try the appeal, and the

Digitized by Google

l, on the day named in the notice, if the business of the court permit, try the appeal, without regard to its place on the ket, unless good cause be shown by the adverse party for a inuance, and, if so continued, shall try it as soon as may be eafter. (Code 1887, § 2958.)

See 4 Min. (3d Ed.) 251.

ec. 6040. **To give circuit courts jurisdiction of scire facias or on to revive judgments of justices of the peace.**—Upon a judgt rendered by a justice, a scire facias or action may be brought, in the time prescribed by sections sixty-four hundred and sev--seven and sixty-four hundred and seventy-eight, in the circourt of the county in which the judgment was rendered, when- there is an abstract of such judgment entered on the lien ket in the clerk's office of said court, or in the clerk's office he former county court of said county, or where a fieri facias ed upon such judgment has been returned to either of such k's offices, and entered on the execution book. (1899-00, p.

Revisors' Note.—It was necessary to redraft the act from which section is taken to fit the present system of courts, and to make er than is done by section 6030 how judgments of justices, ren- l since the abolition of county courts, are to be revived.

See section 5891.

Digitized by Google

TITLE 60.

Proceedings in Civil Cases.

Ch. 251. Notices and motions.
252. The county or corporation, and court, in which p
ings are commenced.
253. Process, and the order of publication.
254. Rules, pleadings generally, and judgments in th
255. Payment and set-off.
256. Interpleader.
257. Awards.
258. Death or change of parties, and the discontinu
causes not prosecuted.
259. Removal of causes pending in one court to ano
260. Appointment of commissioners in chancery, refe
accounts to them, and proceedings thereon.
261. Evidence.
262. Loss of a record or paper in a cause; actions on
dences of debt.
263. Court docket; inquiry of damages; trial by ju
judgments and decrees of the court for mo
264. Decrees of sale, and receivers; orders for ex
deeds, appointing trustees and requiring them
security; reservation for infants; decrees and
in vacation; disposition of money in custody
unclaimed; copies of decrees and orders to b
and filed by clerks.
265. Injunctions and bills of review.
266. Errors insufficient in an appellate court.
267. Appeals, writs of error, and supersedeas.
268. General provisions as to civil cases.

CHAPTER 251.

Notices and Motions.

Sec.
6041. Mode of serving notice; evidence of service.
6042. Notice in divorce cases; how served.
6043. Service as to non-residents.
6044. Ten days' notice generally required of motion for judgment.
6045. Remedy by motion on certain bonds taken or given by officers.
6046. Remedy by motion
teen days' notice, i
action at law; whe
to be returned to
office; rules applica
6047. Against whom of t
ble, judgment may
on motion.
6048. When, on a motio
may be trial by jur

Digitized by Google

c. 6041. Mode of serving notice; evidence of service.—A no- no particular mode of serving which is prescribed, may be ed by delivering a copy thereof in writing to the party in on; or, if he or she be not found at his or her usual place of le, by delivering such copy and giving information of its port to any person found there, who is a member of his or her ily, (not a temporary sojourner, or guest) and above the age ixteen years; or if neither he nor she, nor any such person be d there, by leaving such copy posted at the front door of said e of abode. Any sheriff, sergeant, or constable thereto re- ed, shall serve a notice in his county or city, and make return he manner and time of service; for a failure so to do he shall eit twenty dollars. Such return, or a similar return by any r person, not a party to or otherwise interested in the subject ter in controversy, who verifies it by affidavit, shall be evi- e of the manner and time of service. A notice in writing, ever, which has reached its destination within the time pre- ed by law, if any, shall be sufficient, although not served in manner above mentioned. (Code 1887, § 3207; 1902-3-4. p.)

Revisors' Note.—It was doubtful, under the former language of section, whether substituted service on a married woman was valid. Burks' Pl. & Pr., p. 301; 1 Va. Law Reg. (N. S.) 787; Union Bank Ferguson, 2 Va. Law Reg. (N. S.) 338; 2 Va. Law Reg. (N. S.) art. The revised section is intended to apply alike to married en and married men, placing them on the same footing as to sub- ted service. If husband and wife are living apart, and, it may be, vorce suit pending, service on one for the other should not be and is allowed.

The clause in parentheses settles a question which has been raised than once in Virginia and elsewhere. See Burks' Pl. & Pr., p. 300; uine v. Auditor, 4 Munf., 398; Fowler v. Mosher, 85 Va. 421, 7 S. E. 10 Va. L. Reg. 362.

The words, "not a party to or otherwise interested in the subject er in controversy," appearing in the next to the last sentence of section, are new, and conform to section 6071, which is on the sub- of non-residents.

The last sentence of the revised section is new and is intended to ge the law as announced in Park L. & I. Co. v. Lane, 106 Va. 304, . E. 690, holding that service on a wife was not sufficient where the rn did not show that the purport of it had been explained to her, ough the husband received the summons in ample time to have nded the action; and also to change the holding in King & Co. v. cock, 114 Va. 596, 77 S. E. 510, holding that notice by mail to take ositions was not sufficient although received by the party in ample to have attended the taking. As to depositions, see, also, section 8.

Strict compliance necessary.—This statute must be strictly complied . Crockett v. Etter, 105 Va. 679, 54 S. E. 864.

Service of summons or scire facias.—Any summons or scire facias be served in the same manner and by the same person as is pre- ed in this section, except that when such process is against a cor-

Digitized by Google

poration the mode of service shall be as prescribed in sectio and 6064. See section 6062.

Personal service.—A return "executed in person" shows summons was actually served on the defendants. Barksdale v. Grat. 314.

Acceptance of service.—"Legal service" of summons aga fendant was accepted by his son without his knowledge or a Held insufficient. Finney v. Clark, 86 Va. 354, 10 S. E. 569.

Substituted service— *Boarders.*—It was held in Segouine v. of Public Accounts, 4 Munf. 368, that a notice was sufficient if d to a free white person above sixteen years of age, in whose h party for whom it was intended was a boarder though not a pe resident. Segouine v. Auditor of Public Accounts, 4 Munf. 398.

Subsequently, however, it was decided that a delivery for d to a mere boarder at his house, "a stranger to his blood," was ficient. Fowler v. Mosher, 85 Va. 421, 7 S. E. 542. See the section and revisors' note on the words in parentheses—"not porary sojourner or guest." See note 10 Va. L. Reg. 362.

Usual place of abode.—A return stating that person to be noti "not at home" is sufficient to warrant service upon a membe family. Fowler v. Mosher, 85 Va. 421, 7 S. E. 542.

Where process is returned executed by leaving copy at the place of abode" of the defendant, it cannot be assailed by show in fact the defendant never lived there, except in the case of collusion. Sutherland v. Bank, 111 Va. 515, 69 S. E. 341, a thereon, 16 Va. Law Reg. 751 and 949.

Return held sufficient.—Upon a return, "S. not being found at place of abode, a true copy of the within rule was left with hi ter at his residence, who is over the age of sixteen years, and explained to her, this 28th day of August, 1871," it will be presu word "residence" was used as synonymous with "his usual abode," and that the daughter was a member of defendant's fa the notice is sufficient. Smithson v. Briggs, 33 Grat. 180. But v. Davis, 137 Fed. 198, 11 Va. L. Reg. 179, 180, it was held return showing service by leaving a copy with defendant's w not stating that she was a member of defendant's family, wa ficient. This was a case in the Circuit Court of United States Western District of Virginia.

A return "executed August 28, 1884, by delivering a cop within summons at the usual place of abode of S. to his daughter, person over the age of sixteen years, a member of the family S., and explaining to her the purport of said summons, he n found at his usual place of abode," was held sufficient. Stotz v. C Va. 423, 2 S. E. 737.

Insufficient return.—A return showing service by posting up ing "on the door" of defendant's usual dwelling house does not valid service. King v. Davis, 137 Fed. 198, 11 Va. L. Reg. 17

Service by person other than an officer.—A plea alleging person making the service was the paid agent of the plaintiff, e to compromise with diverse claimants of the land sued for an plaintiff in recovering the land, etc., is insufficient. This section izes service by any person if the return be verified by affidavit. Davis, 137 Fed. 198, 11 Va. Law Reg. 179, 180, and note. present section provides that the "other person" must not be a or otherwise interested in the subject matter in controversy.

What service by private persons must show by affidavit. Otterback, 89 Va. 645, 16 S. E. 933.

As to service of process by private person, when the par whom the process or notice is served refuses to receive the sa note, 10 Va. Law Reg. 271.

Difference between return on summons and notice.—There is fest difference between a return on a summons and a return on

Digitized by Google

mmons is directed to an officer, and contains a mandate, to which eturn of executed is a response that the thing commanded has been . A notice is not directed to an officer, but to the party on whom it rved. It contains no mandate, and therefore a return of executed ly is no response, but unmeaning. The manner of service, whether n officer or another person, must be stated, the only difference being the simple statement of an officer is sufficient, while the statement nother person must be upon affidavit. Barksdale v. Neal, 16 Grat.

Generally.—It the return of the sheriff does not bring the defendant r the jurisdiction of the court, its judgment is void. Staunton etual Bldg. & Loan Co. v. Haden, 92 Va. 206, 23 S. E. 285.
For the effect of judgment rendered upon faulty service, see Goolsby t. John, 25 Grat. 146; Staunton Perpetual Bldg. & Loan Co. v. n, 92 Va. 206, 23 S. E. 285.
Does not apply to a notice of dishonor of negotiable paper. Mc- n v. Bank, 26 Grat. 785.
Cited but not construed in Carr v. Bates, 108 Va. 371, 61 S. E. 754; v. Gwatkin, 108 Va. 6, 60 S. E. 749; Price v. Cole, 83 Va. 343, 2 200; Clay v. Walter, 79 Va. 92.
For note upon legality of service by trickery, see 19 Va. L. Reg. 475.
As to amendment of sheriff's return, see Stotz v. Collins, 83 Va. 2 S. E. 737; Shenandoah Val. R. Co. v. Ashby's Trustees, 86 Va. 9 S. E. 1003, 19 Am. St. Rep. 898.
As to notice to constable and his surety under section 6033, see to that section.
See sections 2825, 6062, and notes; 4 Min. (3d Ed.) 1319; Barton, . (2d Ed.) 264, 270, 1043; Burks' Pl. & Pr., pp. 162, 295, 296, 298,

For W. Va. decisions on similar statute, see Justis' Annotations, er 121, section 1.
See Gregory's Forms Nos. 337, 485, 486, 487.

c. 6042. **Notice in divorce cases, how served.**—In a suit for rce the summons to commence the suit and notices for the ng of depositions, or for any other purpose, shall be served by the sheriff of the county, or the sheriff or sergeant of the or the deputies of either, in which the service is sought to be except that, where, for any reason it is improper for the ff or sergeant, or the deputies of either, to act, the service be made by the coroner. In a suit for divorce against one has been sentenced to the penitentiary of this State, the sum- and notice shall be served on the Superintendent of the Pen- iary at least ten days before the return day of the summons ne time at which any action is to be taken under the notice, it shall be the duty of such superintendent to forthwith de- such summons or notice to the convict. If alimony is sought e recovered a copy of such summons or notice shall also be ed on the committee of the convict. If no alimony be sought, there be no committee of such convict, in either event a guar- ad litem shall be appointed by the court, judge, or clerk of court in which the suit is pending, who shall defend the suit ehalf of such convict. (Id.)

Revisors' Note.—This section is based in part on the proviso added ction 3207 of the Code of 1887 by Acts 1902-3-4, p. 632. That so simply read that "in divorce proceedings notices for the taking

Digitized by Google

of depositions, or for any other purpose, shall be served only sheriff of the county or the sergeant or sheriff of the city in w service is sought to be had." It will be noted that this part of tion has been made more comprehensive. The second, third an sentences of the revised section are new. Section 4999 prov suits by or against convicts upon all claims in favor of or again but no provision is there made for suits for divorce. Under 3230 of the Code of 1887, an order of publication could be obt suits for a divorce from the bond of matrimony where the d was under sentence to confinement in the penitentiary, but t vision has been omitted from the present Code, and the above of service substituted as preferable.

Sec. 6043. Service as to non-residents.—Any such noti mentioned in the two preceding sections to a person not res Virginia may be served by the publication thereof once a w four successive weeks, in a newspaper published in the county where the proceedings, about which the notice is gi to be held, or if no newspaper is published in such city or then in a newspaper published in some convenient city or Code 1887, § 3208; 1902-3-4, p. 632.)

See 4 Min. (3d Ed.) 1319.

Discussed, 9 Va. Law J. 385, 513; 4 Va. Law J. 325.

For W. Va. decisions on similar statute, see Justis' Ann chapter 121, section 2.

Sec. 6044. Ten days' notice generally required of mot judgment.—In any case wherein there may be judgment o for money on motion, such motion shall be after ten days unless some other time be specified in the section or statut such motion. (Code 1887, § 3209.)

Cited, but not construed, in Hall v. Ratliff, 93 Va. 327, 24 S. note 2 Va. Law Reg. 437. See 2 Va. Law Reg. 651; sections 9 4 Min. (3d Ed.) 1321; Barton, L. Pr. (2d Ed.) 975, 1040, 1307 (2d Ed.) 360, 429; Burks' Pl. & Pr., p. 184.

For W. Va. decisions on similar statute, see Justis' Ann chapter 121, section 4.

Sec. 6045. Remedy by motion on certain bonds taken or officers.—The court to which, or in, or to whose clerk or of bond taken by an officer, or given by any sheriff, sergeant, stable, is required to be returned, filed or recorded, may, on of any person, give judgment for so much money as he is by virtue of such bond, to recover by action. (Code 1887,

Remedy by motion on bonds of sheriffs, etc., under this sect not taken away from the county court by section 9, chapter 3 1872-3, and was in force in 1879. Carr v. Meade's Ex'x, 77 Va. 1 Cahoon v. McCulloch, 92 Va. 177, 23 S. E. 225.

See Barton, L. Pr. (2d Ed.) 975; 4 Min. (3d Ed.) 1324; 2 Reg. 526; Burks' Pl. & Pr., pp. 9, 47, 78, 183, 292.

For W. Va. decisions on similar statute, see Justis' Ann chapter 121, section 5.

Sec. 6046. Remedy by motion after fifteen days' notice, of action at law; when notice to be returned to cler fice; rules applicable to.—Any person entitled to maintain tion at law may, in lieu of such action at law, proceed by

Digitized by Google

e any court which would have jurisdiction of such action, not less than fifteen days' notice, which notice shall be in ng, signed by the plaintiff or his attorney, and shall be re- d to the clerk's office of such court within five days after e of the same, and when so returned shall be forthwith dock- But the notice shall not be sent out of the county or city in the judgment is to be asked except in those cases in which ss can be so sent out under the provisions of sections six thou- and fifty-five and six thousand and fifty-six.

e defendant may make the same defenses to the notice as to a ration in an action at law, and in the same manner, or he may his grounds of defense informally in writing, and in the lat- vent the parties shall be deemed to be at issue on the grounds d without replication or other pleading on the part of the tiff.

the motion be upon an account, the plaintiff shall file with otice an account, stating distinctly the several items of his , unless they be plainly described in the notice, and if the tiff file with such account an affidavit such as is prescribed by n sixty-one hundred and thirty-three, on the part of the tiff in an action of assumpsit, no plea in bar or defense to the s shall be received on the part of the defendant unless accom- d by such affidavit as is prescribed by the last mentioned sec- on the part of the defendant in an action of assumpsit. If plea or defense and affidavit be filed by the defendant, and the vit admits that the plaintiff is entitled to recover from the dant a sum less than that stated in the affidavit for the tiff, judgment may be taken by the plaintiff for the sum so tted to be due, and the case be tried as to the residue.

on any motion under this section the same rule shall apply reference to bills of particulars and grounds of defense, as ow provided by law in other actions or motions. (Code 1887, 1; 1895-6, p. 140; 1912, p. 651; 1914, p. 28; 1916, p. 760.)

Revisors' Note.—This section extends the right to proceed by mo- o all cases where an action at law OF ANY KIND would lie. See ce, ante, p. xii. This section omits the twenty-five day provision rning corporations because no necessity or propriety was seen for he notice is required to be docketed as soon as it is returned exe- differing from the former law in this respect. Attention is called tion 276 on the subject of affidavits by corporations and agents. Proceedings by way of motion, formerly and now.—Under the cor- ding section of the Code of 1849 (Code 1849, p. 640, chapter 167, n 5) the right to proceed by motion was restricted to "any per- ntitled to recover money by action on any contract." The same were used in the Code of 1887 (Code 1887, section 3211). By 1912, p. 651, the right to proceed by motion was extended, and person entitled to recover money by action on any contract, or over damages founded upon any contract, or for the breach thereof, recover any statutory penalty," could proceed by motion. At the session (Acts 1912, p. 15) an act was passed providing for remedy

Digitized by Google

by motion after thirty days' notice for any tort. In 1914 (Act p. 28), section 3211 of the Code of 1887 was again amended, right to proceed by motion was given to "any person entitled to money, damages or a penalty in an action at law." This langua sufficiently broad to permit motions for torts, and the act of 191 referred to, allowing motion after thirty days' notice for any to repealed (Acts 1914, chapter 123, p. 203). In 1916 (Acts 1916, section 3211 of the Code of 1887 was again the subject of amen and the language used in that act was the following: "Any per titled to recover money by action on any contract, or to recover d founded upon any contract, or for the breach thereof, or to damages for any tort, or to recover specific personal property recover damages in lieu thereof, or to recover any statutory pen to recover damages in an action at law, may," etc. The section a pears in this Code uses general language to include all actions and under it, in all cases, a plaintiff has the right to proceed by instead of bringing a regular action.

Under the language of the Code of 1887 above quoted it w that motion would not lie to recover damages for a breach of or the profits which the plaintiff would have made if he had be mitted to fill his contract, as such damages were not consid money due upon contract. Wilson v. Dawson, 96 Va. 690, 32 S. note 4 Va. Law Reg. 752. Nor would motion lie to recover the specified in section 1292 of that Code (see section 4042 of this Western U. Tel. Co. v. Bright, 90 Va. 778, 20 S. E. 146. But a could be maintained against a fire insurance company in the co which the property insured, and which was destroyed by fire, was s Morotock Ins. Co. v. Pankey, 91 Va. 259, 21 S. E. 487. See Gr National Life Maturity Ins. Co., 94 Va. 589, 27 S. E. 464, 3 Va. La 279; Union Central Life Ins. Co. v. Pollard, 94 Va. 151, 26 S. 36 L. R. A. 271, 64 Am. St. Rep. 715.

A motion may be made under this section to recover the work done and materials furnished in excavating for a sewer. Ri v. Burton, 115 Va. 206, 78 S. E. 560.

An unconditional and unqualified promise to pay for sto corporation as and when called for by the board of directors, may forced by motion under this section. Eichelberger v. Mann, 115 V 80 S. E. 595.

If a contract be one by which, upon the happening of certa tingencies, the defendants bound themselves to pay, it is, after t pening of the contingency, a contract to pay money within the m of this section (as it formerly read). Mundy v. Garland, 112 V 72 S. E. 713.

An agreement by which a defendant authorizes the plaintiff t land, theretofore purchased by him of the plaintiff at a stated pri binds himself to pay any deficiency arising under said sale, togeth interest and cost of resale, is a contract for the payment of mone since the amount is readily ascertainable after resale, may ceeded on under this section. Mundy v. Garland, 112 Va. 743, 7 713. (Decided under former language.)

It was not error for the trial court to refuse to instruct th that the terms of notice for a judgment were not such as to the plaintiff to recover on a note given by the defendants as co security for another's debt. Saunders v. Bank, 112 Va. 443, 71 S.

An assignee may proceed by motion against a remote as Long v. Pence's Committee, 93 Va. 584, 25 S. E. 593, note 2 V Reg. 612.

Nature of remedy.—This section is intended to furnish a s more expeditious and less expensive remedy for collection of debt by action and the court allows more leniency and greater laxity forms of procedure. Whitley v. Booker Brick Co., 113 Va. 4 S. E. 160.

Digitized by Google

Construction of notice.—The rule governing notices is that they are umed to be the acts of parties and not of lawyers. They are viewed great indulgence by the court, and if the terms of the notice be eral the court will construe it favorably, and will apply it according he truth of the case as far as the notice will admit of such application. be such that the defendant cannot mistake the object of the motion, ill be sufficient. Supervisors v. Dunn, 27 Grat. 608; Carr v. Meade's , 77 Va. 142, 158; Carr v. Clagett's Ex'rs, Id. 142, 143, 158; Union ral Life Ins. Co. v. Pollard, 94 Va. 151, 26 S. E. 421, 36 L. R. A. 271, m. St. Rep. 715; Graves v. Webb, 1 Call 443 (2d Ed.) 385.

But if the notice descend to particulars, it must be correct as to n. Drew v. Anderson, 1 Call 51 (2d Ed.) 44.

If the notice on a forthcoming bond be signed by the plaintiff it is cient, although it omit to state to whom the bond is made payable. oigne v. Montgomery, 5 Call 528.

Where the obligee in a forfeited forthcoming bond is also a co- gor in said bond, notice given by him to the principal obligor and the r sureties of a motion for award of execution upon the bond against is not defective for failing to mention the obligor as a co-obligor. h v. Kinsey, 8 Grat. 560.

In proceedings under this section, foreign statutes need not be ded, if it is necessary in any case. Union Central Life Ins. Co. v. ard, 94 Va. 151, 26 S. E. 421, 36 L. R. A. 271. 64 Am. St. Rep. 715.

A notice of motion under this section described paper sued on as a issory note when in fact it was a negotiable promissory note. While true that a promissory note does not necessarily possess the quality egotiability, yet the description in the notice was good as far as it , and as its incompleteness in no way affected the defendant to his udice, the notice is held sufficient. Colley v. Summers Parrott Co., Va. 439, 89 S. E. 906.

The notice for a judgment against an endorser of a negotiable note aining a waiver of notice of presentment and dishonor on its face ld allege that fact, but the fact being undisputed, an amendment e bar would have been proper, and the error of omitting it is harm- Colley v. Summers Parrott Co., 119 Va. 439, 89 S. E. 906.

Notice must set out good cause of action—Demurrer.—In notice and on under this section, the notice takes the place of the writ and aration in a regular action. The notice, while viewed with great lgence, must set out matter sufficient to maintain action. The tion as to whether this is done is raised by demurrer. Security and Trust Co. v. Fields, 110 Va. 827, 67 S. E. 342.

The notice takes the place of both the writ and the declaration, and murrer to the notice only raises the question whether there is matter e notice sufficient to maintain the action. Morotock Ins. Co. v. ey, 91 Va. 259, 21 S. E. 487. Tench v. Gray, 102 Va. 215, 46 S. E.

The notice of a motion for judgment against the endorser of a tiable note must contain such allegations of presentment for payment notice of dishonor to the endorser as will fix a liability upon him he payment of the note, else the notice will be bad upon demurrer. rity Loan Co. v. Fields, 110 Va. 827, 67 S. E. 342.

When notice returnable—Computation of time.—Execution of e.—Notice may be given to any day of the term provided it is served ast fifteen days before the day on which judgment is to be asked. is filed in the clerk's office ten days before the term begins. Hanks ons, 92 Va. 30, 22 S. E. 813, note 1 Va. Law Reg. 439 (decided r old statute). For discussion as to time when notice now must turned, see 2 Va. Law Reg. 647, 913.

Where action is brought under this section the question whether n was made in statutory time is one of fact, which may be deter- d by evidence, although date of return is not indorsed on notice; where it is shown that return was in fact made, and the cause duly

Digitized by Google

docketed, presumption is that sheriff complied with the law a return within the prescribed time. New River Mineral Co. v. Coal & Coke Co., 110 Fed. 343, 49 C. C. A. 78.

Notice served on October 13th, informing defendant tha would be made on first day of term, which was fixed by law on 27th, is insufficient, though court did not open until Octob Tench v. Gray, 102 Va. 215, 46 S. E. 287.

In computing the time in which notice must be returne clerk's office, the day of service is to be counted, as prescribed b 5—sub-section 8 of the Code, but not the date on which the returned, hence a notice served on February 21st and returned 26th, is not within the time prescribed, and judgment thereupo fault is invalid. Swift & Co. v. Wood, 103 Va. 495, 49 S. E. 64

The day of service of the notice is to be counted in comp fifteen days. Hence a judgment is valid, where the notice was June 9th and judgment taken June 24th. Anderson v. Unio 117 Va. 1, 83 S. E. 1080.

When notice may be sent out of county or city of venue the wording of the amendment of 1914 of section 3211 of th Code (Acts 1914, p. 28), it was held that the notice might b and served in any county or city in the State, although the onl of jurisdiction of the court in which the motion was to be m that a part of the cause of action arose there. The restrictive of section 3220 of that Code was held to apply only to pr technical actions at law and not to notices. Kain v. Ashwo Va. 605, 89 S. E. 857. But the amendment of 1916 (Acts 1916 changed the reading of the section in this respect and it will observed that the section as it now reads provides that the not not be sent out of the county or city in which the judgment is to except in those cases in which process can be so sent out under 6055 and 6056 (which sections correspond to section 3220 of of 1887).

Bills of particulars and grounds of defense.—A plaintiff to under this section may demand a statement of the grounds of d provided by section 6091. Whitley v. Booker Brick Co., 113 74 S. E. 160. See last paragraph of section which provides t same rules shall apply with reference to bills of particulars and of defense as are now provided by law in other actions or mo

Set-offs.—Under the plea of non-assumpsit to a motion, on account under this section, the defendant may prove set-offs, th list is filed. Whitley v. Booker Brick Co., 113 Va. 434, 74 S.

Strict rules of pleading do not apply to proceedings by mo to the defense of set-offs. Stimmel v. Benthall, 108 Va. 141, 765.

A special plea of set-off to a motion under this section formal and comply with the rules of pleading. Whitley v. Book Co., 113 Va. 434, 74 S. E. 160.

Pleadings on notice and motion hereunder are very informa where the statute requires otherwise, as for instance sectio Saunders v. Bank, 112 Va. 443, 71 S. E. 714.

See Briggs v. Cook, 99 Va. 273, 38 S. E. 148, 6 Va. L. R

Issue—Trial by jury.—In a proceeding by motion under this in order to entitle the defendants to a trial by jury, an issue made up. This issue may be tendered by a plea, or by an inform ment in writing of the grounds of defense. A mere oral stateme sufficient. Whitley v. Booker Brick Co., 113 Va. 434, 74 S. Preston v. Salem Imp. Co., 91 Va. 583, 22 S. E. 486, note 1 Va. 447.

See section 6048 and notes.

Plea in abatement.—A notice of motion for judgment on a served before liability of defendant has matured, is subject to a abatement, the same as a declaration prematurely filed would be field v. Palmer, 134 Fed. 752, 11 Va. Law Reg. 31.

Digitized by Google

Motion to dismiss.—If the defendant has appeared and pleaded to action, he cannot move to dismiss. Morotock Ins. Co. v. Pankey, a. 259, 21 S. E. 487.

Variance.—A notice of motion on a forthcoming bond describes bond ecuted by "John" when it was, in fact, by "George" M. Cook. Held, nce material and notice insufficient. Cookes v. Bank, 1 Leigh 433.

Attachment in motions.—A proceeding under this section cannot be rded as the institution of an action so as to warrant an attachment the notice has been served and filed in the clerk's office. Furst v. s, 101 Va. 208, 8 Va. Law Reg. 821, 43 S. E. 360.

Continuances.—When duly docketed according to the statute motion t discontinued by the failure of the term on account of the illness e judge. Dillard v. New York Life Ins. Co. (Circuit Court of Lynch-), 5 Va. Law Reg. 43.

Motion cannot be continued except by consent from June term to ist term, passing by the intermediate July term; such a continuance work a discontinuance. Amis v. Koger, 7 Leigh 221.

Federal courts.—Under the conformity act (Rev. St. section 914 3. Comp. St. 1901] an action may be instituted by notice under this on in a federal court in Virginia in accordance with the State prac- Leas & McVitty v. Merriman, 132 Fed. 510. See note, 10 Va. Reg. 739.

There seems no sufficient reason why procedure under this section ot be followed in Federal courts in Va., 14 Va. Law Reg. 339.

Generally.—See resume of cases affecting this section in 16 Va. Reg. 950.

For article upon a motion against a felon, which was instituted, but ried, before conviction, see 10 Va. Law Reg. 849.

When the demand is such that the homestead exemption cannot be ied against the same, it is well for the notice to so state. See section .

For motion against a sheriff and his surety for failure to pay the due the Commonwealth or levies due the county, see Monteith v. , 15 Grat. 172; Board of Supervisors v. Dunn, 27 Grat 608; section and notes.

Section 6333 applies to judgments by default under this section. s v. Com., 16 Grat. 134.

As to service of notice, see sections 6041, 6062, and notes.

Discussed, 20 Va. L. Reg. 68; 1 Va. L. R. N. S. 462.

Cited in Preston v. Salem Imp. Co., 91 Va. 583, 22 S. E. 486, note . Law Reg. 449; Clark v. Sleet's Adm'r, 99 Va. 382, 38 S. E 183; . Law Reg. 409; 2 Va. Law Reg. 437, 526; Citizens Bank v. Norfolk . R. Co., 115 Va. 45, 78 S. E. 568; Salem Loan Co. v. Kelsey, 115 382, 79 S. E. 329; McKee v. Bunting-McNeal Co., 114 Va. 639, . E. 515; Mundy v. Garland, 116 Va. 922, 83 S. E. 491; Scott's Ex'or nesterman, 117 Va. 584, 85 S. E. 502.

For W. Va. decisions on similar statute, see Justis' Annotations, ter 121, section 6 and chapter 125, section 52.

See Gregory's Forms Nos. 349, 605, 606.

ec. 6047. Against whom of those liable, judgment may be given motion.—A person entitled to obtain judgment for money on ion, may, as to any, or the personal representatives of any per- liable for such money, move severally against each, or jointly nst all, or jointly against any intermediate number; and when ce of his motion is not served on all of those to whom it is di- ed, judgment may nevertheless be given against so many of e liable as shall appear to have been served with the notice, the judgment against such personal representative shall, in ases, be several. Such motions may be made from time to time

Digitized by Google

until there is judgment against every person liable, or his per representative. (Code 1887, § 3212.)

This statute appears to be simply affirmatory of the pre-existin in relation to motions, except that before the statute it was not allo (it would seem) to join a natural person with a personal represent nor the representatives of several deceased persons in the same pr ings. 4 Min. (3d Ed.) 1320.

On a joint notice to all the obligors in a forthcoming bon plaintiff may take judgment against one of the defendants. Glas Delima, 2 Call 368 (2d Ed. 309).

A deputy sheriff gave bond with eight sureties, one of whom Held, a motion lies on the bond against the deputy and the sur sureties. Jacobs v. Hill, 2 Leigh 393.

Where the obligee in a forthcoming bond is one of the obligo may maintain a motion on the bond against the other obligors. Bo Kinsey, 8 Grat. 560, 565.

On a motion against a principal and his sureties a confessi judgment by the principal does not merge the cause of action a the surety, and judgment may be rendered against the latter at a su ing term of the court; nor are plaintiff's rights affected by suffering suit, but he may at a subsequent term renew his action or motion o same cause of action against any or all of the parties against wh has not already obtained judgment. Cahoon v. McCulloch, 92 Va. 23 S. E. 225.

As to separate motions against obligor and his sureties in a coming bond, see Winston v. Whitlocke, 5 Call 435.

As to joining representatives of two deceased persons in same a see Grymes v. Pendleton, 4 Call 130; Watkins' Ex'rs v. Tate, 3 521 (2d Ed. 451).

See section 6265 and revisors' note; also Report of Revisors pp. 237, 833.

Cited but not construed in Rocky Mount Trust Co. v. Price, 10 299, 49 S. E. 73.

See 4 Min. (3d Ed.) 1320, 1324; Barton, L. Pr. (2d Ed.) 1068, 3 Va. Law Reg. 807; Burks' Pl. & Pr., pp. 52, 53, 54, 180, 181

For W. Va. decisions on similar statute, see Justis' Annota chapter 121, section 7.

Sec. 6048. When, on a motion, there may be trial by jury. a motion, when an issue of fact is joined, and either party desi or, when in the opinion of the court, it is proper, a jury sha impaneled, unless the case be one in which the recovery is li to an amount not greater than twenty dollars, exclusive of i est. (Code 1887, § 3213.)

The issue—How made up.—On motion, under section 6046, in to entitle the defendant to trial by jury, an issue must be mad This issue may be tendered by a plea or by an informal stateme writing of the grounds of the defense. Mere oral statement i sufficient, and in cases where the statute requires the plea to be ve by affidavit that requirement must be complied with. Preston v. Imp. Co., 91 Va. 583, 22 S. E. 486, note 1 Va. Law Reg. 447; W v. Booker Brick Co., 113 Va. 434, 74 S. E. 160.

No formal issue need be joined on a motion on a forthcoming as the pleading may be ore tenus, and the court may pronounce judg on the evidence. McKinster v. Garrett, 3 Rand. 554.

On a notice of a motion against a sheriff and his sureties o official bond, the plea of non-damnificatus and nil debit are not the p pleas. Supervisors v. Dunn, 27 Grat. 608.

On a motion by a treasurer against his deputy and the sureti deputy's bond formal pleadings are not required. Any proper de

Digitized by Google

ɛy be made, as well without as with pleas. Hall v. Ratliff, 93 Va. 327, S. E. 1011, note 2 Va. Law Reg. 434.

Proceedings upon a plea of non est factum.—Upon a motion against deputy sheriff and his sureties upon a joint bond, if the principal plead n est factum this must be first tried and decided against the plea before dgment can be rendered against the sureties. Asberry v. Calloway, Wash. 72.

Where non est factum is pleaded to a motion on a forthcoming bond, e court may render judgment without the intervention of a jury, or may empanel jury to try the issue. Burke v. Levy's Ex'rs, 1 Rand. 1.

Trial by the court.—The court should hear and decide motion to ate an attachment where plaintiff declines to express any wish for a ry, and defendant expresses a wish that the jury might be dispensed th. Claflin v. Steenbock, 18 Grat. 842, 846.

See Barton, L. Pr. (2d Ed.) 983, 987, 1048; 4 Min. (3d Ed.) 1320; ırks' Pl. & Pr., pp. 9, 181, 475; Dunlap v. Dillard, 77 Va. 847, 855.

For W. Va. decisions on similar statute, see Justis' Annotations, apter 121, section 8.

CHAPTER 252.

ıe County or Corporation, and Court, in Which Proceedings Are Commenced.

ɔc.

049. The county or corporation in which actions at law or suits in equity may be brought.

050. Same.

051. In what courts actions or suits may be brought; when to be brought in, or transferred to, Circuit Court of Richmond; to what extent

Sec.

judgment or decree void, if action or suit not so transferred.

6052. Jurisdiction of writ of quo warranto, or information in nature of writ of quo warranto.

6053. Of mandamus, prohibition, and certiorari.

Sec. 6049. The county or corporation in which actions at law or uits in equity may be brought.—Any action at law or suit in equity, xcept where it is otherwise especially provided, may be brought ı any county or corporation—

First. Wherein any of the defendants may reside.

Second. If a corporation be a defendant, wherein its principal ffice is, or wherein its mayor, rector, president, or other chief officer resides.

Third. If it be to recover a loss under a policy of insurance, ther upon property or life, wherein the property insured was situated at the date of the policy, or the person whose life was insured resided at the date of his death or at the date of the policy.

Fourth. If it be to recover land, or subject it to a debt, where ı such land or any part thereof may be; or if it be against a foreign corporation, wherein its statutory agent resides, or it has any tate or debts owing to it within this State; or if it be against a

Digitized by Google

defendant who resides without this State, wherein he may
and served with process, or may have estate or debts due
Fifth. If it be on behalf of the Commonwealth, wheth
name of the Attorney-General or otherwise, it may be in
of Richmond.

Sixth. If it be an action or a suit in which it is nece
proper to make any of the following public officers a party
ant—to-wit, the Governor, Attorney-General, Treasurer,
of the Land Office, either auditor, Superintendent of P
struction, or Commissioner of Agriculture; or in which it
necessary or proper to make any of the following public
tions a party defendant—to-wit, the Board of Education
public corporation composed of officers of government, of t
and property of which the Commonwealth is sole owne
which it shall be attempted to enjoin or otherwise suspen
fect any judgment or decree on behalf of the Commonw
any execution issued on such judgment or decree, it shall
in the city of Richmond.

Seventh. If a judge of a circuit court be interested i
which, but for such interest, would be proper for the ju
of his court, the action or suit may be brought in any c
corporation in an adjoining circuit. (Code 1887, § 3214; 189
355, 769; 1902-3-4, p. 635; 1904, p. 320.)

**Revisors' Note.—The Fourth sub-division has been chang
what. The provision relating to the statutory agent of a for
poration is new. Under this provision ALL foreign corporati
be sued in Richmond, as the Secretary of the Commonwealth
made the statutory agent. See section 3845.**

Subsection 1.—The residence of a citizen of this State is no
by reason of his conviction and confinement in the penitentia
other State. Guarantee Co. v. First Nat. Bank, 95 Va. 480,
909. See Neale v. Utz, 75 Va. 480.

As to what is residence (within the meaning of the act
tion), see Griffin v. Woolford, 100 Va. 473, 41 S. E. 949.

See 4 Min. (3d Ed.) 1172, 1342.

Subsection 2.—See 1 Min. (4th Ed.) 570, 638; 4 Min.
1172, 1342.

In an action of tort against a railroad company, a plea to
diction is good which avers that the cause of action did no
any part thereof arise in the county in which the action is bro
that, at the time of the issuing of the writ in the cause, the
did not have its principal office in said county, and that it had
dent or other chief officer residing in said county, and whic
states in what county the cause of action, if any, did arise, and
city its principal office was at the time of issuing the writ an
The venue of all actions in this State, whether local or tran
fixed by statute, and the statute declares where actions aga
porations as well as individuals may be brought. Va. & S. W.
Hollingsworth, 107 Va. 359, 58 S. E. 572.

The declaration in the certificate of incorporation as to the
of the principal office is conclusive on that point. Loyd v. Ly
113 Va. 627, 75 S. E. 233.

Subsection 3.—Where corporation does business both as a
an insurance company, it may be sued as an insurance compa

Digitized by Google

section. Wytheville Ins. Co. v. Stultz, 87 Va. 629, 13 S. E. 77. See ion 6046 and notes; section 4345.

See 1 Min. (4th Ed.) 638; 4 Min. (3d Ed.) 1172.

Subsection 4.—Under contract made in S. county H. executed deed veying real estate therein situated to F. and T. Later H. brought in that county against F. and T. to rescind the contract and vacate deed. The court had jurisdiction, though the defendants resided another county, and summons was served in the county of their dence. Hull v. Fields, 76 Va. 594. As to where suit for specific formance of contract for sale of land may be brought, see 10 Va. Reg. 283.

See 1 Min. (4th Ed.) 638; 4 Min. (3d Ed.) 636. See, also, revisors' e above.

A non-resident may be sued upon a cause of action arising out of State wherever he may be found in this State. Beirne v. Rosser, Grat. 537.

For discussions of the locality of personal actions against a single -resident defendant, see 4 Va. Law Reg. 361; 5 Va. Law Reg. 46, 346.

Subsection 5.—A judgment in favor of the Commonwealth having n recovered in C. county, suit thereon may be brought in that county. ept in case where it is otherwise specially provided, Commonwealth y prosecute her suits in any of the courts in which other parties may secute suits of like character. And this case is not embraced in the ute, Code 1873, chapter 166. Com. v. Ford, 29 Grat. 683.

See 4 Min. (3d Ed.) 1172, 1342.

Circuit court of the city of Richmond alone has jurisdiction to en- or affect any judgment in behalf of the Commonwealth. Com. v. ham, 85 Va. 632, 8 S. E. 488. It only has jurisdiction of suits against te officers. See section 6051. Taylor v. Williams, 78 Va. 422.

Clauses five and six of this section do not confer jurisdiction on the cuit Court of the City of Richmond to entertain a suit in equity by public corporation created and existing for purely governmental poses and as an agency of the State, against another such corpora-, nor is this jurisdiction given by section 6051. Western State Hos- l v. General Board, 112 Va. 230, 70 S. E. 505.

Subsection 6.—Circuit court of the city of Richmond has chancery isdiction only in cases where it may be necessary or proper to make ain enumerated officers or corporations defendants. The Commis- ner of Agriculture was not one of these. Blanton v. Southern Fer- zing Co., 77 Va. 335. See Ragland v. Broadnax, 29 Grat. 401.

A policy holder in a foreign insurance company which has deposited ds with the State treasurer may sue the company in the city of Rich- nd, and make the treasurer a party defendant. Universal Life Ins. v. Cogbill, 30 Grat. 72. See section 4214.

Suit to enjoin judgment in favor of the Commonwealth must be ught in the Circuit Court of Richmond Com. v. Lathan, 85 Va. 632, . E. 488.

While the general board of directors of State hospitals for the insane y very properly be regarded as a quasi corporation, existing for ely governmental purposes, it cannot be brought within the category "public corporations, composed of officers of government, of the ds and property" of which the Commonwealth is sole owner, referred in this clause. Western State Hospital v. General Board, 112 Va. , 70 S. E. 505.

Subsection 7.—The word "may" in this clause is permissive only. e judge may also sue in the circuit court of any county or corporation his own circuit in which any of the defendants reside or in which the se of action arose. Harrison v. Wissler, 98 Va. 598, 36 S. E. 982, e 6 Va. Law Reg. 471.

Generally.—Does "may" mean "must"? See 4 Va. Law Reg. 361; a. Law Reg. 46; Harrison v. Wissler, 98 Va. 598, 36 S. E. 982.

As to taking advantage of the lack of jurisdiction of the court by

Digitized by Google

plea in abatement, see Warren v. Saunders, 27 Grat. 259; Rosser, 26 Grat. 537; section 6105 and notes.

Cited in Com. v. Ashlin's Adm'r, 95 Va. 147, 28 S. E. 177 Ry. Co. v. Rison, 99 Va. 18, 37 S. E. 320, note 6 Va. Law R Ward Lumber Co. v. Henderson-White Mfg. Co., 107 Va. 626, 476; Carr v. Bates, 108 Va. 371, 61 S. E. 754.

See 1 Min. (4th Ed.) 638; 4 Min. (3d Ed.) 1342; Barto (2d Ed.) 15, 18, 20, 243, 1112; Burks' Pl. & Pr., pp. 163, 282, 293, 317, 318, 917; 13 Va. Law J. 741, 756.

For monographic note on Jurisdiction, see Phippen v. D Grat. 457, Va. Rep. Anno.

For W. Va. decisions on similar statute, see Justis' Ann chapter 123, section 1.

Sec. 6050. Same.—An action or suit may be brought county or city wherein the cause of action, or any part arose, although none of the defendants reside therein. (Co § 3215.)

Revisors' Note.—Under the former language of this sectio doubtful if it applied to suits in equity. (4 Min. [3d Ed.] 134 L. Reg. 46.) Now it expressly applies to both actions at law in equity.

For article as to county or corporation wherein actions brought, see 9 Va. Law Reg. 681.

See full discussion 4 Va. Law Reg. 361; 5 Va. Law Reg. 3 also, notes to section 6049; Barton, L. Pr. (2d Ed.) 16, 1297 (4th Ed.) 570, 638; Burks' Pl. & Pr., pp. 163, 272, 282, 284, 311, 317, 322, 327, 917.

Cited in Raub v. Otterback, 89 Va. 645, 16 S. E. 933; Morc Co. v. Pankey, 91 Va. 259, 21 S. E. 487; Guarantee Co. v. Nat. Va. 487, 28 S. E. 909; 5 Va. Law Reg. 46; Harrison v. Wissle 598, 36 S. E. 982, note 6 Va. Law Reg. 471; Ward Lumbe Henderson-White Mfg. Co., 107 Va. 626, 59 S. E. 476; Carr 108 Va. 371, 61 S. E. 754; N. & W. Ry. v. Sutherland, 105 54 S. E. 465; Mundy v. Garland, 112 Va. 743, 72 S. E. 713; Reg. 472.

For W. Va. decisions on similar statute, see Justis' Ann chapter 123, section 2.

Sec. 6051. In what courts, actions or suits may be brougl to be brought in, or transferred to, Circuit Court of Richm what extent judgment or decree void, if action or suit not ferred.—Any action or suit mentioned in the two preceding may be in a circuit court of any county, or circuit or cor court of any city, wherein it is allowed or required therel brought; except that any such action or suit as is allowe fifth subdivision of section six thousand and forty-nine, or by the sixth subdivision of the said section, to be brough city of Richmond, shall be in the Circuit Court of the s And if any such action or suit as is mentioned in the said si division is now pending or be hereafter brought in any oth than the Circuit Court of the city of Richmond, it shall, of such other court, be transferred, together with all the and proceedings therein, to the Circuit Court of the city mond, to be proceeded in to a final decision in the said Court. And if such action or suit be not so transferred,

Digitized by Google

ed in to judgment or decree in the court wherein it is so
; or shall have been so brought, such judgment or decree,
s it may be against any of the public officers or public cor-
ns mentioned in the said sixth subdivision or against the
nwealth, shall be void. (Code 1887, § 3216.)

eems that when the Commonwealth by petition is made a party to a pending suit, it has no right to remove the case to the Cirrt of the city of Richmond. Com. v. Ashlin's Adm'r, 95 Va. S. E. 177.

ed in Harrison v. Wissler, 98 Va. 603, 36 S. E. 982; 4 Va. Law l.

note to section 6049(5).

3052. Jurisdiction of writ of quo warranto, or information in of writ of quo warranto.—Jurisdiction of a proceeding by quo warranto, or information in the nature of a writ of rranto, shall be in the circuit court of the county, or circorporation court of the city, or such city court as is inwith that jurisdiction in the city, wherein the defendant or he defendants resides; or, if the defendant be a corporation, its principal office is, or wherein its mayor, rector, presi- other chief officer resides; and, if there be no such office r, or none of the defendants reside in this State, the Circuit f the city of Richmond shall have jurisdiction. (Code 1887,

isors' Note.—The words, "or such city court as is invested with isdiction in the city," are new.

3053. Of mandamus, prohibition, and certiorari.—Jurisdicwrits of mandamus, prohibition, and certiorari (except such be issued from the Supreme Court of Appeals) shall be in the court of the county, or in the circuit or corporation court of or such city court as is invested with that jurisdiction in the erein the record or proceeding is, to which the writ relates. 887, § 3218; 1902-3-4, p. 635.)

isors' Note.—The words, "or such city court as is invested with isdiction in the city," are new.

s section has no application to a mandamus to compel a railway to issue a transfer to passenger within the limits of the city nond, although the obligation to perform that duty appears from of the county court of Henrico. Richmond Ry. & Electric Co. n, 97 Va. 26, 32 S. E. 775.

article upon "Certiorari as a Remedial Writ," see 13 Va. L. .

Barton, L. Pr. (2d Ed.) 22, 1208, 1236; 4 Min. (3d Ed.) 384. W. Va. decisions on similar statute, see Justis' Annotations, 123, section 3.

Digitized by Google

CHAPTER 253.

Process, and the Order of Publica tion.

Sec.
6054. Forms of writs.
6055. To whom process directed; when to issue; when returnable.
6056. When process not to be executed without the county or city of venue.
6057. Sheriff of county may execute process in city.
6058. Suits by and against unincorporated associations or orders.
6059. When new process may issue; if former process executed but not returned, what to be done.
6060. Officer's duty, after every rules, to get from clerk's office process, orders, and decrees.
6061. Process to commence a suit, a summons; how issued; not altered afterwards.
6062. How summons in scire facias served; copy to be made out for defendant.
6063. How process served on domestic corporation.
6064. How process served on a foreign corporation.
6065. On whom served when corporation operated by trustee, lessee, or receiver.
6066. How served; what return of officer to show; how long to

Sec.
be served in
before return
term "agent"
6067. On whom proce
notice to, a co
not a corpora
served.
6068. No judgment
nihil.
6069. On what affids
publication ma
when and by w
6070. What order of
state and requ
lished and p
publication i
dispensed with
6071. Within what ti
lication case t
no other pu
quired unless
court; when
what to be g
sel; provision
service of pro
non-residents;
of; the return
in such case.
6072. Within what
heard, and
corrected.
6073. When clerk of
peals to issue
lication; how
posted; when

Sec. 6054. Forms of writs.—Until the Supreme Cour shall alter the forms of writs, the same may be as heretof cept so far as is otherwise provided. (Code 1887, § 321

See Gregory's Forms Nos. 3, 4, 473, 485.

Sec. 6055. To whom process directed; when to issu turnable.—Process from any court, whether original final, may be directed to the sheriff or sergeant of an city. It shall, if returnable to rules, be issued before to which it is returnable, and may, except where ot vided, be executed on or before that day. If it appea served and good in other respects, it shall be deem though not directed to any officer, or if directed to an of

Digitized by Google

ed by some other person. It shall, unless otherwise specially ed, be returnable within ninety days after its date to some the term of a court, or in the clerk's office to the first day of les, except that a summons for a witness shall be returnable tever day his attendance is desired, and process awarded in nay be returnable as the court shall direct, and the return a summons in garnishment may be according to the provi- f section sixty-five hundred and nine. (Code 1887, § 3220.)

visors' Note.—Section 3220 of the Code of 1887 was somewhat ated. It involved exception within exception, and it was deemed divide it into two sections. This having been done, section 6055 tes the first and section 6056 the second. As to section 6055 th ng may be observed: Section 3220 of the Code of 1887 enacted l process should be returnable to the court on the first day of a r in the clerk's office to the first day of any rules. No good being seen for requiring process to be returnable to the first day rm, the revised section provides that it may be returnable to DAY of the term of a court, or in the clerk's office to the first any rules.

te of issuance—When returnable.—The summons to commence which is made returnable on the day of issue is a void summons, proceedings had thereon are likewise void. The provision that cess shall be issued before the rule day to which it is returnable latory. Noell v. Noell, 93 Va. 433, 25 S. E. 242.

ocess made returnable to a day which is not a legal return day is Kyles v. Ford, 2 Rand. 1.

writ returnable at rules "on the first day of the next term, June 889," that day being the second Monday in June, whereas there rules until the third Monday, was invalid. Raub v. Otterback, 645, 16 S. E. 933.

motion to quash a writ of capias ad respondendum which is made able to the next term generally, instead of the first day of the as the statute required, should be overruled where the writ is d before the term and returned to the first day, and an official nt entered at the rules. Hare v. Niblo, 4 Leigh 359. Process ger has to be returnable to the first day of a term.

here a recognizance was adjudged forfeited, and the court ordered e principal and sureties be summoned to appear on a certain d subsequently the clerk issued a scire facias returnable on that hich was more than ninety days from the date of the writ, it was the exception of the statute. Lewis v. Com., 106 Va. 20, 54 99.

scire facias by which it was sought to revive a judgment was ut on April 16th, 1902, returnable October 10th, 1902. This is a iolation of this section and a writ of fieri facias sued out on the nt will be quashed. Lowenbach v. Kelly, 111 Va. 439, 69 S. E.

writ issued on November 25, 1908, and made returnable to rules holden "on the third Monday in January" is sufficient, though it have been better to have said "third Monday in January next." ius Chem. Co. v. White, 112 Va. 250, 71 S. E. 637.

enerally.—A writ which purports to be a pluries capias, but which out date, and is not attested by the clerk, is void, and all proceed- ased thereon are illegal. Hickam v. Larkey, 6 Grat. 210.

s to execution by officer other than the one to whom directed, see v. Miller, 2 Leigh 545 (decided before present statute).

ted, but not construed, in Guarantee Co. v. Nat. Bank, 95 Va. 8 S. E. 909; Harrison v. Wissler, 98 Va. 599, 36 S. E. 982;

Digitized by Google

Norfolk & W. R. Co. v. Sutherland, 105 Va. 548, 54 S. E.
Bowling Alley v. Richmond, 116 Va. 429, 82 S. E. 97.

See, also, 5 Va. Law Reg. 46, 490; 6 Va. Law Reg. 7
C. Pr. (2d Ed.) 250; Barton, L. Pr. (2d Ed.) 262, 269, 79
1112, 1298; 4 Min. (3d Ed.) 644, 662, 756, 825, 990; Burk
pp. 260, 272, 282, 297, 312, 317, 322, 627, 637, 917; not
Reg. 624.

See sections 6063, 6064, 6071 and notes.

For W. Va. decisions on similar statute, see Justis'
chapter 124, section 2.

See Gregory's Forms Nos. 3, 4, 408, 409, 410, 411, 41
436, 455, 456, 457, 464, 466, 468, 470, 485.

**Sec. 6056. When process not to be executed without th
city of venue.**—Process against the defendant to answe
tion, suit, or motion brought under section six thousa
shall not be executed in any other county or city than t
the action, suit or motion is brought, unless it be:

An action against a corporation; or

An action upon a bond taken by an officer under a
some statute; or

An action to recover damages for a wrong; or

An action against two or more defendants on one of
process has been executed in the county or city in wh
tion is brought; or

Unless it be otherwise specially provided.

**Revisors' Note.—This section is based on a part of sec
the Code of 1887. See revisors' note to the preceding sect
6050 having been enlarged to include suits as well as actions
has been made equally comprehensive. A motion under se
an action at law. Gordon v. Funkhouser, 100 Va. 675, 4
Reed & McCormack v. Gold, 102 Va. 37, 45 S. E. 868; N
etc., Ry. Co. v. Bickford, 105 Va. 182, 52 S. E. 1011. Th
not so much one TO WHOM process may be directed as it
may execute the process, or WHERE it may be executed,
is expressed in the revised section.**

**The language of the second paragraph of the revised se
all corporations, and is not restricted to "a railroad, e
navigation, turnpike, telegraph or telephone company," as
formerly. This extension is in consequence of the chan
sections 6063 and 6064.**

**Under the law as it stood before the revision, if the p
answer in an action brought under section 6050, and was
the defendant without the county or city in which the action
it was required to be executed at least ten days before th
of such process. This provision no longer appears.**

Where a suit is brought under section 6050, but proc
in another county, and plea in abatement stating these facts
when the cause is called for trial a motion to dismiss th
the docket should be sustained. Warren v. Saunders, 27

Where defendants are non-residents, and the process is
on them in the county where the suit is brought, and the
executed at least ten days before the return day, the servic
Raub v. Otterback, 89 Va. 645, 16 S. E. 933. The ten-day
longer appears. See revisors' note above.

If summons directed to sheriff of county other than

Digitized by Google

ion is brought, and judgment goes by default, remedy is not by in-nction, but by motion under section 6333. Brown v. Chapman, 90 . 174, 17 S. E. 855.

A judgment by default against a corporation rendered on return summons, which shows that it was executed on an officer of the mpany in a county other than that wherein the suit was brought, and s not served ten days before the return day thereof, is void, and may assailed collaterally by third parties. All acts performed under it d all claims flowing out of it are void. Staunton Perpetual Bldg. & an Co. v. Haden, 92 Va. 201, 23 S. E. 285, note 1 Va. Law Reg. 661. e ten-day provision no longer appears.

Sec. 6057. Sheriff of county may execute process in city.—The eriff of any county in which is situated a city, or any part there-, may execute in such city or part, any process which he might ecute in any other portion of his county.

Revisors' Note.—This section is new.

Sec. 6058. Suits by and against unincorporated associations or ders.—All unincorporated associations or orders may sue and be ed under the name by which they are commonly known and called, under which they do business, and judgments and executions ainst any such association or order shall bind its real and per-nal property in like manner as if it were incorporated. Process ainst such association or order may be served on any officer or ustee of such association or order.

Revisors' Note.—This section is new.

Sec. 6059. When new process may issue; if former process exe-ted but not returned, what to be done.—If, at the return day of y process, it be not returned executed, it shall be the ex-officio ty of the clerk, unless otherwise directed by the plaintiff or his torney, to issue an alias, or other proper process, without waiting here the first process is returnable to a term) for the subsequent ocess to be awarded at rules; and where, for want of a return the first process against a defendant, any subsequent process is ued, if the former was executed, the officer shall not execute the tter, but shall return the former, if it be in his possession, and if has it not, shall return the latter with an endorsement of the ecution of the former, and the proceedings thereupon shall be as the first had been duly returned. (Code 1887, § 3221.)

Revisors' Note.—This section makes it the ex-officio duty of the erk, unless otherwise directed by the plaintiff or his attorney, to issue alias or other proper process if at the return day of any process it be t returned executed. Formerly, the statute simply provided that "an ias or other proper process, MAY BE ISSUED."

Where previous writs of summons have failed for ineffectual service other irregularities, plaintiff is entitled to an alias writ. Danville & . R. Co. v. Brown, 90 Va. 340, 18 S. E. 278.

Where for want of service of process judgment is void, collection of ecution should be enjoined, the judgment vacated, and the cause re-anded to be proceeded in at law by an alias summons properly served. nney v. Clark, 86 Va. 354, 10 S. E. 569.

See notes to section 2825; Barton, L. Pr. (2d Ed.) 269; Barton, Pr. (2d Ed.) 252; 4 Min. (3d Ed.) 663.

Digitized by Google

Sec. 6060. Officer's duty, after every rules, to get from cl fice process, orders, and decrees.—Every officer who attends shall, within five days after the end of any rules, go to the office and receive all process, orders, and decrees to be exec him, and give receipts therefor. For any failure so to do, forfeit fifty dollars. (Code 1887, § 3222.)

Cited 6 Va. Law Reg. 700.
See Gregory's Forms Nos. 3, 4.

Sec. 6061. Process to commence a suit, a summons; how not altered afterwards.—The process to commence a suit sh writ commanding the officer to whom it is directed to sum defendant to answer the bill or action. It shall be issued order of the plaintiff, his attorney or agent, and shall not, is issued, be altered, nor any blank therein filled up, excep clerk. It shall not be deemed to have been issued until d or placed in course of delivery to some officer or other p be executed. (Code 1887, § 3223.)

Revisors' Note.—The last sentence is new, and is intended the disputed question as to what is meant by "issued." See d and cases cited in Burks' Pl. & Pr., at p. 400.

A common-law action is commenced when the summons for the purpose of having it executed. Furst v. Banks, 101 8 Va. Law Reg. 821, 43 S. E. 360. See, also, 5 Va. Law R 6 Va. Law Reg. 700; 8 Va. Law Reg. 633. As to motions, s to section 6046. See revisors' note above.

Service of summons on defendant's agent having been mad ten days of the return day, and the suit having been remanded to be properly matured, an alias summons was issued and dul Held, the commencement of the suit was the issuance of the summons. Virginia Fire & Marine Ins. Co. v. Vaughan, 88 14 S. E. 754.

For note as to effect of process to stop the running of th of limitations, see 9 Va. Law Reg. 356.

Quaere: Can a deposition be taken after the issuance of a and before the filing of the bill? See note, 10 Va. Law Reg. 6

For article upon "When is Action Begun so as to Stop the of the Statute of Limitations," see 12 Va. Law Reg. 675.

See Barton, C. Pr. (2d Ed.) 242; 1 Min. (4th Ed.) 639 (3d Ed.) 631, 638, 1342.

For W. Va. decisions on similar statute, see Justis' Ann chapter 124, section 5.

See Gregory's Forms Nos. 1, 2, 3, 4.

Sec. 6062. How summons in scire facias served; copy to out for defendant.—Any summons or scire facias may be s the same manner and by the same person as is prescribed service of a notice under section six thousand and forty- cept that when such process is against a corporation the service shall be as prescribed by the two following secti clerk issuing such process unless otherwise directed shall or transmit therewith as many copies thereof as there are named therein on whom it is to be served. (Code 1887, 1891-2, p. 1083.)

The word "in" in the headline to this section should be "o

Digitized by Google

As the statute now stands, it seems process to commence a suit may erved by other than an officer. Price v. Cole's Ex'x, 83 Va. 343, 2 . 200.

Where process is returned executed by leaving copy at the "usual e of abode" of the defendant, it can not be assailed by showing that act the defendant never lived there, except in the case of fraud or sion. Sutherland v. Bank, 111 Va. 515, 69 S. E. 341.

Under this section before amended as above it was decided that onstable could not lawfully serve a process directed to the sheriff ss the office of coroner is vacant or the incumbent under disability. rews v. Fitzpatrick, 89 Va. 438, 16 S. E. 278.

Where service of process was accepted by an attorney, defendant ompetent witness to show that the attorney was not authorized to for him. Raub v. Otterback, 89 Va. 645, 16 S. E. 933.

As to service on wrong person, see 5 Va. Law Reg. 570.

As to acceptance of service, see Finney v. Clark, 86 Va. 354, 10 . 569.

See notes to section 2825; Barton, L. Pr. (2d Ed.) 265, 1034; ks' Pl. & Pr., pp. 162, 283, 295, 296, 298, 312; Barksdale v. Neal, Grat. 314; notes to section 6041.

Discussed, 13 Va. Law J. 169.

For W. Va. decisions on similar statute, see Justis' Annotations, ter 124, section 6.

See Gregory's Forms Nos. 485, 493.

ec. 6063. How process served on domestic corporation.—Pro- against, or notice to, a domestic corporation may, unless other- e provided, be served as follows: If the case be against a city own, on its mayor, recorder, or any alderman, councilman, or tee of such city or town; if it be against any other corporation ated by the laws of this State, on its president or other chief er, or on its cashier, treasurer, secretary, general superintend- or any one of its directors, or on any agent of such corpora- , or any person declared by the laws of this State to be such nt, if any such officer or agent be found in the city or county in ch the suit, action or proceeding is commenced, and whether so nd or not, it may be sent to the county or city in which is lo- ed the principal office of such company and be there served on officer or agent of such company found at such office. If, how- r, the case be against an insurance, guaranty, trust, indemnity, lity, or security company, created by the laws of this State, the cess or notice shall be directed to the sheriff or sergeant of the nty or city wherein the chief office of such company is located. de 1887, § 3225; 1893-4, p. 614; 1895-6, p. 445.)

Revisors' Note.—Section 3225 of the Code of 1887 was last amended Acts 1895-6, p. 445, and applied to both domestic and foreign cor- ations. This and the following section are taken from that act, sec- 6063 being applicable to domestic corporations and section 6064 to ign corporations. No special reason was perceived for making a inction in the service of process on a domestic corporation as between officer or any one of its agents. The preference of an officer to an nt, and of an agent to publication led to difficulty. Trouble also arose o whether process could be sent out of the county when an agent or cer resided in the county. It would seem immaterial whether the vice should be on an officer or agent, and certainly process served on

Digitized by Google

an officer or agent at the principal office of the company ought to effective and as beneficial to the company as if served on som ordinate agent in the county or city in which the suit is brought change made is to give to the plaintiff an option to serve either officer or an agent found in the county or city in which the suit or is brought, or upon an officer or agent found at the principal o the company. The defendant could not be prejudiced by this pr to the plaintiff, and it might be beneficial to the latter. No reas seen why banks should be put on a different footing from other do corporations. They are, therefore, included in the general class porations created by the laws of this State. The exception at t of the section with reference to insurance, etc., companies seems t met with approval and that provision is retained.

The present section omits all reference to publication. The r of service is regulated by section 6066, and no publication is per against domestic corporations except in those cases where a publ could be had against a natural resident. See section 6069, and 5, clause 13.

Under this section process against a city can be served o persons named herein, and process served on other officers, as a does not give court jurisdiction. Alexandria v. Fairfax, 95 U. S 24 L. Ed. 583.

Where the proceeding is to confiscate debts due from a mu corporation, notice to the debtor must be upon the mayor or other named in the statute; notice given to the auditor of the corporatio no effect, and a judgment based thereupon is void. Fairfax v. Alex 28 Grat. 16.

Service of process on the president of a corporation in the cou city wherein the action is brought and in which he resides may be at any time before or on the return day of such process. Jones & Hancock & Sons, 117 Va. 511, 85 S. E. 460.

Process against a corporation cannot be executed by a serv the wife of an agent. Water Front C. Co. v. Smithfield Co., 1 482, 76 S. E. 937, 18 Va. L. Reg. 939 and note.

The declaration in the certificate of incorporation as to the l of the principal office of a corporation is conclusive on that point. v. Lynchburg, 113 Va. 627, 75 S. E. 233.

The fact that this section provides for service of process up president, treasurer or other chief officer of the corporation can relied on as legislative recognition of the authority of the treasu a legal representative of the corporation in all court proceedings. v. Sutherlin-Meade Tobacco Co., 107 Va. 787, 60 S. E. 132.

Where one is notified of his appointment as director witho clining it, and afterwards receives a summons for the company out remonstrating, his acceptance may be presumed, and it is no d for the company that he, in the absence of collusion, failed to the summons. Danville & W. R. Co. v. Brown, 90 Va. 340, 18 S. E

A return showing proper service upon a director or cashie corporation is sufficient, though they disclaim in their answer the to answer officially. Lewis' Adm'r v. Glenn, 84 Va. 948, 6 S. E

As to insurance companies, see last sentence of section. case under the old law, see Wytheville Ins. Co. v. Stultz, 87 Va 13 S. E. 77.

In Ward Lumber Co. v. Henderson-White Mfg. Co., 107 Va 59 S. E. 476, it was held that the provision of section 3225 former Code authorizing the service of process on a domestic co tion by publication, where there was no officer or agent of the corpo in the county on whom process might be served, afforded due p and was constitutional. The situation that arose in that case arise under the present section 6063. See revisors' note above.

Digitized by Google

When domestic corporation to appoint attorney-at-law its attorney
agent upon whom all legal process against the corporation may be
ved, see section 3854.

ec. 6064. How process served on a foreign corporation.—Pro-
s against, or notice to, a foreign corporation shall be served on
statutory agent, if any, of such corporation. If there be no
tutory agent, the process or notice may be served on any other
nt of such corporation in the county or city in which he re-
es or in which his place of business is. Service upon either,
en duly made, shall constitute sufficient foundation for a personal
gment against such corporation when the other requisites there-
exist. If there be no such statutory or other agent found in
State upon whom service may be had as aforesaid, then on
davit of that fact an order of publication may be awarded as
vided by sections six thousand and sixty-nine and six thousand
seventy of this Code. (Id.)

Revisors' Note.—See revisors' note to the preceding section. This
ion applies to foreign corporations only and provides a very simple
hod of service where there is a statutory agent, as will be the case
most instances. For appointment of statutory agent, see section
5. If there be no statutory agent, service may be had on any other
nt of the foreign corporation in the county or city in which he resides,
in which his place of business is. Service is not permitted on any
er agent, if there be a statutory agent. An order of publication is
mitted only when there is neither a statutory agent nor any other
nt in the State upon whom process may be served. Sections 6069
6070 provide for a uniform order of publication in all cases in
ch such an order is desired.

In action in Virginia against West Virginia corporation and other
-residents, where defendants were laying pipes and constructing
erworks on ground most of which plaintiff conceded, and all of
ch defendant claimed to be in West Virginia, and process was
ved on defendants on a few feet only of ground, which plaintiff claims
e in this State, the court will hesitate to violate a citizen's privilege
being sued in the jurisdiction of his residence, and will earnestly
tinize service of process in such case. Bluefield Waterworks & Imp.
v. Sanders, 63 Fed. 333, 11 C. C. A. 232.

This section so materially changes the pre-existing law relating to
service of process on foreign corporations that it is not probable
decisions under the former statutes will aid in its construction to any
reciable extent; but references are given to the following cases:
stern U. Tel. Co. v. Williams, 86 Va. 696, 11 S. E. 106; Carr v.
es, 108 Va. 371, 61 S. E. 754; Norfolk & W. R. Co. v. Cottrell, 83
512, 3 S. E. 123; B. & O. R. Co. v. Gallahue's Adm'rs, 12 Grat. 655,
Am. Dec. 254; Norfolk & W. R. Co. v. Crull, 112 Va. 151, 70 S. E.
. See revisors' note above.

ec. 6065. On whom served when corporation operated by trustee,
ee, or receiver.—Where any corporation is operated by a trustee,
rustees, or by a lessee or lessees, or by a receiver or receivers ap-
nted by any court it shall be sufficient in any suit or proceeding
inst such corporation, its trustee or trustees, lessee or lessees, re-
ver or receivers to serve the process or notice on such trustee or
stees, lessee or lessees, receiver or receivers, or on any one of them

Digitized by Google

or any of their respective agents if none of said trustees or le receivers reside in the county or corporation wherein the commenced. If there be no such agent or other person in th ty or corporation in which the suit or other proceeding menced upon whom there can be service as aforesaid, then davit of that fact, an order of publication may be awarded vided by sections six thousand and sixty-nine and six th and seventy of this Code, and such publication shall be equ to personal service on such trustee or trustees, lessee or less ceiver or receivers. (Code 1887, § 3226; 1893-4, p. 515.)

Revisors' Note.—The words, "for its own benefit or for the of its creditors" formerly appearing near the beginning of this have been stricken out as immaterial. The latter part of the has been changed to conform to the provision for a uniform publication. See sections 6069 and 6070.

See 4 Min. (3d Ed.) 647, 648; 1 Min. (4th Ed.) 640; Barton (2d Ed.) 266; Gregory's Forms No. 493.

Sec. 6066. How served; what return of officer to show; h to be served in certain cases before return day; what term " includes.—Service on any person other than a statutory ag der either of the three preceding sections shall be by delive him a copy of the process or notice in the county or city he resides or his place of business is, or the principal office corporation is located; and the return shall show this, an on whom and when the service was; otherwise, it shall not b The term "agent" other than the statutory agent menti section six thousand and sixty-four) as employed in either three preceding sections shall be construed to include a d station agent of a railroad company, a telegraph or teleph erator of a telegraph, telephone or railroad company, and gatherer of a canal or turnpike company. (Code 1887, § 32

Revisors' Note.—The words "other than a statutory agent, in line one of the text, are new. For service on statutory ag sections 3845 and 3846. Formerly, it was provided that "If the or notice be served on an agent, or be served in any other co corporation than that wherein the suit or other proceeding is br had, it shall be served at least ten days before the return day process or notice." This sentence has been omitted in view changes made in sections 6063 and 6064, and of present day for communication, and of section 3845 (applicable to foreign tions), the last sentence of which enacts that "No judgment entered against a foreign corporation under this section until process has been served, as aforesaid, at least ten days."

The return made by the sheriff showing proper service director or cashier of such a corporation is sufficient, though t claim in their answer the right to answer officially. Lewis' A Glenn, 84 Va. 947, 6 S. E. 866.

If the return of the sheriff does not bring the defendant u jurisdiction of the court, its judgment by default is void. Staun petual Bldg. & Loan Co. v. Haden, 92 Va. 201, 23 S. E. 285, no Law Reg. 661; Dillard v. Central Va. Iron Co., 82 Va. 734, 1 S. (2684)

Digitized by Google

nandoah Val. R. Co. v. Ashby's Trustees, 86 Va. 232, 9 S. E. 1003, Am. St. Rep. 898; Blanton v. Carroll, 86 Va. 539, 10 S. E. 329.

A judgment by default against a corporation rendered on return ummons which shows that it was executed on an officer of the com- in a county other than that wherein the suit was brought, and was served ten days before the return day thereof, is void, and may be iled collaterally by third parties. All acts performed under it, and laims flowing out of it, are void. Staunton Perpetual Bldg. & Loan v. Haden, 92 Va. 201, 23 S. E. 285, note 1 Va. Law Reg. 661. The day provision no longer appears.

For other cases relating to the ten-day provisions, see N. & W. R. v. Carter, 91 Va. 587, 22 S. E. 517; Jones & Co. v. Hancock, 117 511, 85 S. E. 460; Raub v. Otterback, 89 Va. 645, 16 S. E. 933; inia Fire & Marine Ins. Co. v. Vaughan, 88 Va. 832, 14 S. E. 754.

An objection to a defective return of the service of process made he appellate court for the first time is too late. Shenandoah Val. R. v. Griffith, 76 Va. 913.

As to amending or controverting return, see Shenandoah Val. R. v. Ashby's Trustees, 86 Va. 232, 9 S. E. 1003, 19 Am. St. Rep. 898; a. Law Reg. 152; Lee v. Chilton, 5 Munf. 407.

Is the return "Executed" upon a summons sufficient? See 19 Va. Reg. 701.

See Barton, L. Pr. (2d Ed.) 272; 1 Min. (4th Ed.) 640: 4 Min. Ed.) 647, 648; 7 Va. Law Reg. 451; Gregory's Forms Nos. 493, 495, 496, 497, 498, 499; Burks' Pleading and Practice, pp. 284, 311, 312, 316, 322, 323, 324, 326.

Discussed, 13 Va. Law J. 744.

ec. 6067. On whom process against, or notice to, a common car- not a corporation, may be served.—In a case against any com- n carrier (other than a corporation) for a liability as such, any cess against or notice to the carrier, may be served on such rier, or on any agent, or on the driver, captain, or conductor any vehicle of such carrier in the county or corporation where- he case is commenced; and if the carrier be not in said county corporation and there be no such agent, driver, captain, or con- tor therein an order of publication may be awarded as pre- ibed by sections six thousand sixty-nine and six thousand and enty. (Code 1887, § 3228.)

See Barton, C. Pr. (2d Ed.) 250-252: Barton, L. Pr. (2d Ed.) 266; lin. (3d Ed.) 649; Gregory's Forms No. 492.

Sec. 6068. No judgment on returns of nihil.—No judgment shall rendered on a scire facias, or in any other case, on returns of il. (Code 1887, § 3229.)

On a writ of scire facias against a bail, a return by the sheriff that defendant is no inhabitant of his bailiwick, and is not found within same, is not a sufficient return of nihil; but it should be stated also t he has nothing in the bailiwick by which he could be summoned. v. Chilton, 5 Munf. 407.

Cited but not construed in Wayt v. Glasgow, 106 Va. 110, 55 S. E. .

For W. Va. decisions on similar statute, see Justis' Annotations, apter 124, section 11.

Sec. 6069. On what affidavit order of publication may be entered; en and by whom entered.—On affidavit that a defendant is a for- n corporation or not a resident of this State, or that diligence s been used by or on behalf of the plaintiff to ascertain in what

Digitized by Google

county or corporation he is, without effect, or that process, di to the officer of the county or corporation in which he resid is, has been twice delivered to such officer more than ten da fore the return day, and been returned without being execut order of publication may be entered against such defendant. A any suit in equity, where the bill states that there are or m persons interested in the subject to be divided or disposed of, names are unknown, and makes such persons defendants b general description of parties unknown, on affidavit of th that the said parties are unknown, an order of publication m entered against such unknown parties. And where in a s equity the number of the defendants upon whom process ha served, exceeds thirty, and it appears by the bill, or other ple or exhibits filed, that such defendants represent like interest parties who have not been served with process, the court or thereof in vacation may direct that such parties be proc against by order of publication. Every other order of publi under this section, except the last mentioned, may be entered in court or by the clerk thereof. In a proceeding by petition, may be an order of publication in like manner as in a suit in e Every affidavit for an order of publication shall state the last k post-office address of the defendant against whom publicat asked, or if such address is unknown, the affidavit shall stat fact. (Code 1887, § 3230.)

Revisors' Note.—The former law prescribed different for orders of publication in cases against individuals and corporations. and the following section provide for a uniform order of publicat all cases in which an order of publication is desired. The wor foreign corporation or," appearing in lines one and two of the te new, and their insertion is made necessary to conform to section The provision formerly appearing in this section allowing an or publication against convict defendants in suits for divorce ha omitted. This subject is fully covered by section 6042.

The next to the last sentence of this section formerly read: " other order of publication under this section may be entered in co by the clerk thereof IN VACATION." Suits are frequently b during the session of the court, and it was thought wise to stri the words "in vacation" in order to avoid error. Under the form orders of publication were sometimes awarded by the clerk, al the court was in session. This is now expressly permitted. Th sentence of the revised section is new, as to which see revisors' n the following section.

Where the word "person" is used in a statute, corporations a as natural persons are included for civil purposes. B. & O. R. Gallahue's Adm'rs, 12 Grat. 655, 65 Am. Dec. 254, and section 5 And a word importing the masculine gender only may extend a applied to females and to corporations. Section 5 (13).

The terms of a statute allowing the constructive service of p in lieu of personal service must be strictly followed or the servic be invalid and the judgment rendered thereon by default void. St Perpetual Bldg. & Loan Co. v. Haden, 92 Va. 201, 23 S. E. 285 1 Va. Law Reg. 661.

Digitized by Google

affidavit of the local attorney of a corporation that the names
in persons to be made defendants to a bill by such corporation
he affiant unknown is sufficient to authorize a proceeding by
on against such persons as "parties unknown." Fayette Land
ouisville & N. R Co., 93 Va. 274, 24 S. E. 1016, note 2 Va.
g. 356.

nts named as defendants to bill for sale of ancestor's lands to
s, against whom order of publication is made upon affidavit of
n-residence, must show falsity of affidavit, either then or after
ome of full age, in direct proceedings to avoid the decree entered
suit, and cannot attack it collaterally. Lawson v. Moorman,
80, 9 S. E. 150.

use, as the basis of an order for publication of an affidavit
the non-residence of the defendant upon information and be-
t be assumed to be in accord with the local State practice, where
of that State has adjudged such an affidavit to be sufficient, there
local law, excluding its use for such purpose. Thompson v.
n, 226 U. S. 551. See section 6129.

editorial upon this case, 18 Va. L. Reg. 780.

ile the language of this section and sections 6070 and 6071 is
it has been held that it comprehends quasi proceedings in rem,
ct of which is to reach and dispose of property within the State.
Given's Exr., 106 Va. 145, 55 S. E. 567.

d but not construed in Ward Lumber Co. v. Henderson-White
, 107 Va. 626, 59 S. E. 476.

discussion of time within which case can be heard on an order
cation where the court dispenses with publication in a news-
ee 16 Va. Law Reg. 715. See following section.

to proof of publication, see section 6224.

Barton, C. Pr. (2d Ed.) 243, 246, 252, 253; Barton, L. Pr. (2d
9, 1112; 4 Min. (3d Ed.) 649-651; 8 Va. Law Reg. 691; notes
n 6071.

W. Va. decisions on similar statute, see Justis' Annotations,
124, section 11.

Gregory's Forms Nos. 337, 432, 599.

6070. What order of publication to state and require; how ed and posted; when publication in newspaper dispensed Every order of publication shall give the abbreviated style suit, state briefly its object, and require the defendants whom it is entered, or the unknown parties, to appear en days after due publication thereof and do what is neces- protect their interests. It shall be published once a week for ccessive weeks in such newspaper as the court may pre- r, if none be so prescribed, as the clerk may direct, and shall ed by the clerk, at the front door of the courthouse of the or corporation wherein the court is held, on or before the cceeding rule day after it is entered; and shall also mail a ereof to each of the defendants to the post-office address n the affidavit required by the preceding section; and the all file a certificate of the fact in the papers of the case; but rt, or the judge thereof in vacation, may, in any case. if proper, dispense with such publication in a newspaper. 887, § 3231; 1902-3-4, p. 623.)

isors' Note.—Affidavits for orders of publication are now required the last known post-office address of the defendant, or if not the affidavit must state that fact (section 6069); and the above

Digitized by Google

section (6070) requires the clerk in addition to the public a copy to each of the defendants to the post-office address affidavit. The revised section reduces the time for appeara teen days to ten days after due publication.

It seems the jurisdiction of the court must appear affirm the proceedings, though the defendants summoned by public appear. Hunter's Ex'rs v. Spotswood, 1 Wash. 145. See S petual Bldg. & Loan Co. v. Haden, 92 Va. 201, 23 S. E. 28 Law Reg. 661.

An order of publication to commence a suit against previously served with process must state the names of the tra as to publication by a commissioner of the time and pla accounts. Martin v. South Salem, 94 Va. 28, 26 S. E. 591.

Under section 6180, where notice of taking an account be given by publication in a newspaper, there must be at eight days between the first insertion and the day of taking Dillard v. Krise, 86 Va. 410, 10 S. E. 430. It would th under this section there must elapse twenty-eight and ten thirty-eight days. See section 5.

A decree reciting that the cause came on to be hea absent defendant upon the bill, etc., an order of publication is conclusive that the order was duly made, published, Hunter's Ex'rs v. Spotswood, 1 Wash. 145, note; Craig v. Se 131. Same where the decree states that the order was du Moore v. Holt, 10 Grat. 284, 291.

Though the lower court orders that publication be mad tion of that order is not to be presumed unless there be evid the record. Hunter's Ex'rs v. Spotswood. 1 Wash. 145.

Proof that the order of publication was inserted in a not sufficient. It must also appear that a copy was pro Myrick v. Adams, 4 Munf. 366.

It would seem that the objection for want of due pub be made for the first time in the appellate court. Hunt Spotswood, 1 Wash. 145; cited in Craig v. Sebrell, 9 Grat

See note to 6069, taken from Clem v. Given's Exr., 55 S. E. 567.

As to what proof is required see section 6224.

For act validating certain orders made without com this section as amended, see 1904, p. 269.

See Barton, C. Pr. (2d Ed.) 250; Barton, L. Pr. (2 4 Min. (3d Ed.) 647, 649, 653. See section 6224; note Reg. 715.

For W. Va. decisions on similar statute, see Justis' chapter 124, section 12.

See Gregory's Forms Nos. 327, 432, 574.

Sec. 6071. Within what time after publication case tri no other publication required unless ordered by court; and of what to be given to counsel; provision for person process, etc., on non-residents; effect thereof; the return in such case.—When such order shall have been so execu a copy of any process, or of a notice beginning any have been published as provided by any section of this the defendants against whom it is entered, or publis unknown parties, shall not appear within ten days aft pletion of the execution of such order, or the expira four weeks required for the completion of such publ case may be tried or heard as to them, and no other pu notice, shall be thereafter required in any proceeding

Digitized by Google

e a commissioner, or for the purpose of taking depositions, specially ordered by the court as to such defendants or un- n parties, but if they shall be represented by counsel residing s State, of record or known to the plaintiff, reasonable notice y proceeding before a commissioner, or of the taking of depo- s, shall be given to such counsel, or any of them, if there be than one. Personal service of the summons, scire facias, or e, may be made by any person not a party to or otherwise in- ed in the subject matter in controversy, on a non-resident de- nt out of this State, which service shall have the same effect, o other, as an order of publication duly executed, or the pub- on of a copy of process or of notice under this chapter, as the nay be. In such case the return shall be made under oath, and show the time and place of such service, and that the defend- o served is a non-resident of this State. Upon any trial or ng under this section such judgment, decree or order shall be ed as may appear just. (Code 1887, § 3232; 1906, p. 47.)

Revisors' Note.—This section conforms to the preceding, and the "fifteen days" have been changed to "ten days."

f the defendants summoned by order of publication appear, they ntitled to notice in all the subsequent proceedings in the suit. ell v. Burwell's Guardian, 78 Va. 574.

Where defendant appears in person and by attorney, an objection ade in the lower cannot be made in the appellate court. Anderson nson, 32 Grat. 558.

Where parties have been properly proceeded against as parties un- n, a plea in abatement by a defendant who has been served wtih ss, setting forth the names and residences of all the parties in- ed in the suit, is immaterial, and should be rejected. Fayette Co. v. Louisville & N. R. Co., 93 Va. 274, 24 S. E. 1016.

Where, in a suit in equity, the number of defendants exceed thirty, sonal decree may be entered against a defendant summoned by ation if he be a resident of this State, though he make no appear- Cardwell v. Talbott (Corporation Court of Danville), 5 Va. Law 182, and note.

uch a decree is res adjudicata, and no defence which might have made in the original suit can be pleaded in defence of a motion , brought for judgment on the decree. Id

A decree in personam against an absent debtor is entitled to all espect to which any other decree is entitled in all collateral con- rsies. Rootes' Ex'x v. Tompkins' Trustees, 3 Grat. 98.

Where service is made on non-resident by an individual, the affidavit rvice must show that the affiant is not interested in the matter in oversy. Raub v. Otterback, 17 Va. L. J 278, 281, 89 Va. 645, E. 933.

Where a non-resident defendant is served with process by an in- ual, such service must occur at least fifteen days (now ten days) e the return day of the writ. Raub v. Otterback, Id.

The provision herein allowing personal service on non-resident de- nts applies only to natural persons, and not to corporations or agents. Dillard v. Central Va. Iron Co., 82 Va. 734, 1 S. E. 124.

Personal service on a non-resident will be equivalent to an order blication upon an application to purchase delinquent lands. Thomas nes, 94 Va. 758, 27 S. E. 813, note 3 Va. Law Reg. 523.

The officer of another State can only act as a private individual. as v. Jones, 94 Va. 758, 27 S. E. 813, note 3 Va. Law Reg. 523.

Digitized by Google

An acknowledgment by S. & W. of legal service within the of Columbia must be treated as an order of publication duly pos no more. Smith v. Chilton, 77 Va. 535.

See note to section 6069, taken from Clem v. Given's Exr., 145, 55 S. E. 567.

See Barton, C. Pr. (2d Ed.) 149, 250, 254; 4 Min. (3d E 653; Barton, L. Pr. (2d Ed.) 281.

For W. Va. decisions on similar statute, see Justis' Ann chapter 124, section 13.

See Gregory's Forms No. 488.

Sec. 6072. Within what time case reheard, and any injust rected.—Any unknown party, or other defendant, who served with process, and did not appear in the case before t of such judgment, decree, or order, or the representative such, may, within two years from that date, if he be not serv a copy of such judgment, decree, or order, more than a yea the end of the said two years, and if he be so served, then one year from the time of such service, petition to have t reheard, and may plead or answer, and have any injustice proceedings corrected. (Code 1887, § 3233.)

Revisors' Note.—The limitation was formerly three years; is two years.

It seems that leave to file a petition will not stop the ru the statute. Woodson's Ex'r v. Leyburn, 83 Va. 843, 849, 3 S. This section applied in this case; also in Willard v. Willard, 98 468, 36 S. E. 518; Cralle v. Cralle, 79 Va. 182.

This section only applies to so much of the decree as opera the estate or effects of the absent debtor subject to the jurisd the court of this Commonwealth. Rootes' Ex'x v. Tompkins' 3 Grat. 98.

The limitation prescribed has no application to so much decree as acts in personam, and establishes a personal demand part may be shown to be erroneous either upon its face or by aliunde, notwithstanding the limitation has elapsed since it nounced. Id.

In a suit in which there is an absent defendant there is against the home defendant from which he appeals. Pending peal, the absent defendant may file his petition in the court bel permitted to appear and file his answer in the cause, and may decree reheard. James River & Kanawha Co. v. Littlejohn, 18 G

If upon such rehearing the decree or so much of it as is the of appeal is wholly set aside the appeal will generally be dismis if an appeal is taken from the decree on the rehearing before the d of the first appeal the appellate court may refuse to dismiss it.

A defendant is not bound by a decree against him found a petition filed in the cause, of which he had no notice, and ma the provisions of this section, file a petition in the cause, to h case made by the petition reheard. Keys Planing Mill Co. v. Kir 114 Va. 58, 75 S. E. 778.

See 4 Min. (3d Ed.) 649, 653; Barton, L. Pr. (2d Ed.) 281; C. Pr. (2d Ed.) 132, 168, 254.

For W. Va. decisions on similar statute, see Justis' Ann chapter 124, section 14.

Sec. 6073. When clerk of Court of Appeals to issue order lication; how published and posted; when case heard.—W the return of an officer, of process issued to answer an appe of error or supersedeas pending in the Supreme Court of

Digitized by Google

or when from affidavit filed with the clerk of said court, it shall appear that any appellee or defendant in error is a foreign corporation or is not a resident of the State, or the name, or the place of residence, of such party, is unknown, so that process cannot be served upon him, it shall be the duty of such clerk, on application, to issue an order of publication against such absent or unknown party, requiring him to appear on a day to be designated in said order, to answer the said appeal, writ of error, or supersedeas.

A copy of such order of publication shall be inserted once a week for four successive weeks, in some newspaper to be named therein and posted at the door of the place of sitting of said court; and when it shall appear, that said order of publication has been duly published and posted as aforesaid, the said court may proceed to hear and decide such case in the same manner as if the said parties had been personally served with process: Provided, however, that the order of publication shall have been executed as aforesaid at least ten days before the day on which any such case may be called for trial. (Code 1887, § 3234, 3235.)

Revisors' Note.—The words "is a foreign corporation or" found in lines five and six of the text are new, and the words "in vacation" formerly appearing after "clerk" in line eight of the text have been stricken out. The time in the proviso has been reduced from fifteen days to ten days.

CHAPTER 254.

Rules, Pleadings Generally, and Judgments in the Office.

Sec.
6074. When rules held, and how long continued.
6075. Docket in which rules are entered.
6076. When there is no clerk to take a rule.
6077. Nature of rules; how given.
6078. When defendant may give rule to file declaration or bill; when plaintiff non-suited; damages.
6079. When clerk to dismiss suit.
6080. When fact of defendant's non-residence to be returned, and suit abated.
6081. When place of contract, etc., need not be set forth in declaration, etc.; if set forth, how.
6082. Unnecessary to aver jurisdiction, or make profert.
6083. Allegations not traversable, omitted.
6084. Transfer of cases from one side of the court to the other.
6085. When action not to abate for want of form.
6086. Trespass on the case.
6087. Effect of judgment in trover.
6088. In any case where an action of covenant will lie an action of assumpsit may be brought.
6089. In trespass, what general averments omitted.
6090. When account to be filed with declaration.
6091. Court may require particulars of claim or defense to be filed; if not done, evidence of, etc., excluded.

Digitized by Google

Sec.
6092. Contributory negligence as a defense to actions of tort.
6093. When proof of signature to evidence of a release, payment, etc., not required unless denied by affidavit.
6094. Declaration on policy of insurance.
6095. When plaintiff may amend declaration or bill, or file amended bill, etc.; proceedings thereon.
6096. To authorize the filing of a petition in a pending chancery cause in the clerk's office and to mature the same at rules.
6097. Proceedings when cross bill is filed.
6098. Appointment of guardian ad litem for infant or insane defendant; his duty, etc.
6099. Joinder of tenants in common.
6100. Suing in the names of persons who are dead.
6101. Plea in abatement for misnomer not allowed.
6102. Effect of non-joinder or misjoinder.
6103. What defects can be availed of only by plea in abatement; amendment of writ, declaration, or return.
6104. Amendment of pleadings.
6105. How and when exception to jurisdiction to be taken; when pleas in abatement filed.
6106. If only part of defendants liable, how judgment entered.
6107. Defendant may plead several matters; how pleas filed; which tried first.
6108. When plea of infancy not allowed; the liability of infants for debts under certain circumstances.
6109. What allegations unnecessary in pleas, etc.
6110. Omission of protestation.
6111. How traverses to conclude.
6112. How plaintiff may proceed without joinder in demurrer or similiter; duty of clerk to put certain cases on docket.
6113. How plea shall comme
6114. After one plea, how a may commence.
6115. Form of demurrer or der in demurrer.
6116. Amendment of pleadi ter demurrer thereto tained; amendment protest.
6117. Demurrer to evi grounds to be stated.
6118. What defects not to garded on demurrer.
6119. For what defects in ings verdict shall not aside.
6120. Argument of demurr plea in equity; if over how defendant pro against.
6121. Trial by jury of pl equity.
6122. When defendant in may answer; penalty lay.
6123. Exceptions to answers ceedings when exce are sustained.
6124. Plea in abatement a non est factum to be fied.
6125. When proof of writin required, unless deni affidavit filed with pl
6126. When proof of own etc., unnecessary uni fidavit is filed.
6127. When, of partnership corporation, unless nied.
6128. Effect of an answer dence, when oath t waived.
6129. Pleadings may be sw before clerk; affidavit lief sufficient.
6130. Judgment or decree b fession in vacation; h tered; its validity.
6131. Same in office by de order for inquiry of ages.
6132. In what cases inqui damages unnecessary.

Digitized by Google

c.
33. When, in action of assumpsit, no plea in bar to be received, or inquiry of damages made, unless defendant file with plea affidavit denying plaintiff's claim, but judgment given therefor.
34. When judgment entered in office to become final; how entered; its effect as a lien.
35. When and how a judgment entered in the office set aside; when issue to be tried.
36. Although bill taken for confessed, plaintiff may still proceed against defendant by attachment, etc.
6137. Enforcement of process of contempt.
6138. When suit in equity set for hearing.
6139. When suit in equity heard as to part of defendants; how plaintiff compelled to mature his cause or have it dismissed; how court may make new parties to suit.
6140. Control by court over proceedings in office.

Sec. 6074. When rules held, and how long continued.—In the erk's office of every circuit and corporation court, and of every ty court having jurisdiction of civil cases at law or in equity, rules all be held on the first and third Mondays of every month, wheth- the court be in session or not, except that when the term of a rcuit court or of such corporation or city court designated for the ial of civil cases in which juries are required, happens to com- ence on the first or third Monday in a month, or on either of the vo following days, the rules which would otherwise have been eld on the first or third Monday, as the case may be, shall be held n the Monday of the preceding week. The rules shall continue ree days. (Code 1887, § 3236.)

Revisors' Note.—General language is used to cover all courts in the erk's offices of which rules may be held. The words, "whether the ourt be in session or not" are new, but they are not believed to change e law. See Abney v. Ohio R. Co., 45 W. Va. 446.

Before the revision of 1887, there was only one rule day a month. his was changed in order that suit might be matured earlier. See urks' Address, 2 Barton L. Pr. (2d Ed.) 1389.

Defendant may appear at any time before the last hour of the st rule day in convenient time to have the entry made. Botts v. ollard, 11 Leigh 433 (2d Ed. 452).

Writ returnable at rules "on first day of the next term—June term, 889," that being the second Monday and not a rule day, is invalid and ust be quashed. Raub v. Otterback, 89 Va. 645, 16 S. E. 933.

Orders made at rules are orders of court, though made in the clerk's ffice. Wohlford v. Trinkle, 90 Va. 227, 231, 17 S. E. 873.

Cited, but not construed, in Raub v. Otterback, 89 Va. 645, 16 . E.. 933; House v. Universal Crusher Corp., 115 Va. 558, 79 S. E. 1049; ee comment on this case, 19 Va. L. Reg. 701.

See 5 Va. Law Reg. 490; Graves on Pleading, 30; 4 Min. (3d Ed.) 63-665, 730, 1421; Barton, C. Pr. (2d Ed.) 254 et seq.; Barton, L. Pr. 2d Ed.) 283 et seq.; Burks' Pl. & Pr., pp. 256, 258, 259.

For form of rulebook and mode of entering rules, see 4 Min. (3d Ed.) 730.

For W. Va. decisions on similar statute, see Justis' Annotations, hapter 125, section 1.

Sec. 6075. Docket in which rules are entered.—There shall be a locket of the cases at rules, wherein the rules shall be entered; and

Digitized by Google

the books in which rules and orders are entered, in chancery shall be separate from those in which rules and orders are ente other cases. (Code 1887, § 3237.)

Where no rule docket is kept in the office, and no rules were and the cause had not been dismissed at rules, if the case be pu the docket it should be remanded to rules for regular proceedings to be had therein. Alvis v. Johnson, 1 Va. Dec. 381.

In debt on bond, if common order, and common order confirme been regularly entered at rules the cause is properly on the office ment docket at the next term of the court, though no indorsement proceedings has been made on the papers in the cause. Wall v. 21 Grat. 401.

The testimony of a clerk that rules in an action at law we entered on the days shown by his official record is not admiss impeach the record made by him. Trent v. Clinchfield Coal Cor Va. 805, 89 S. E. 921.

For W. Va. decisions on similar statute, see Justis' Annot chapter 125, section 3.

Sec. 6076. When there is no clerk to take a rule.—When t no clerk to take a rule in a case, it shall stand continued un next rule day after there is a clerk. (Code 1887, § 3238.)

Sec. 6077. Nature of rules; how given.—The rules may be clare, plead, reply, rejoin, or for other proceedings; they sh given from one rules to the next rules. (Code 1887, § 3239.)

A consent submission of a case for hearing is a waiver of irr ties at rules. Ronald, &c., v. Bank, 90 Va. 813, 20 S. E. 780.

For note upon proper procedure under this section see 12 V Reg. 565.

Cited but not construed in Norfolk & Western Ry. Co. v. land, 105 Va. 549, 54 S. E. 465.

See Barton, L. Pr. (2d Ed.) 285; 4 Min. (3d Ed.) 664, 731; Pleading, 30; 8 Va. Law Reg. 414; 6 Va. Law Reg. 484.

For W. Va. decisions on similar statute, see Justis' Anno chapter 125, section 5.

Sec. 6078. When defendant may give rule to file declara bill; when plaintiff non-suited; damages.—A defendant m pear at the rule day at which the process against him is retu or, if it be returnable in term, at the first rule day after the day, and, if the declaration or bill be not then filed, may rule for the plaintiff to file the same. If the plaintiff fail this at the succeeding rule day, or shall, at any time after fendant's appearance, fail to prosecute his suit, he shall b suited, and pay to the defendant, besides his costs, five dollars 1887, § 3240.)

The court may recommend a non-suit for insufficiency of e but cannot direct it to be entered against the will of the plaintiff v. Gill, 1 Wash. 87, 89.

A non-suit in a writ of right having been suffered under apprehension on the part of the demandants and their counsel as legal effect of an instruction given at the trial, held, the court, exercise of a sound discretion, should, on the motion of the dema have set aside the non-suit, and, this not having been done, th ment overruling such motion was reversed. Walker v. Boaz, 2 Ro

If the suit is not dismissed within the time prescribed, and wards the declaration is filed, and the cause is put on the docket clerk, the court should remand the case to rules, to be regularly n there for the docket. Alvis v. Johnson, 1 Va. Dec. 331.

Digitized by Google

Non-suit is the end of present suit without prejudice to bringing nd suit. It is not a final judgment. Mallory v. Taylor, 90 Va. 18 S. E. 438.

For a case in which an appearance was entered and a rule given plaintiff to file his declaration under this section, see Trent v. chfield Coal Corp., 119 Va. 805, 89 S. E. 921.

Where a court, acting under section 6140, corrects a mistake of clerk and dismisses a case because of the failure of the plaintiff to his declaration under this section, it will not be reinstated in the nce of sufficient legal reasons therefor. Mere negligence of counsel n insufficient reason. Furthermore, in the instant case it is con- d that a reinstatement would deprive the defendant of his defense ne statute of limitations. Trent v. Clinchfield Coal Corp., 119 Va. 89 S. E. 921.

It would seem that the word "damages" as used in section 3519 ld be construed to mean the five dollars damages under this section, not whatever damage defendant may suffer by reason of suit being tuted without cause. See note 11 Va. Law Reg. 936.

For note upon proper procedure under this section, see 12 Va. Law 565.

Cited but not construed in Norfolk & Western Ry. Co. v. Suther- , 105 Va. 549, 54 S. E. 465.

See section 6134 and notes; Barton, C. Pr. (2d Ed.) 257; Barton, r. (2d Ed.) 284, 334, 690; 4 Min. (3d Ed.) 684, 685, 1348.

As to effect of dismissing a suit agreed, see Hoover v. Mitchell, Grat. 387; Siron v. Ruleman's Ex'r, 32 Grat. 215, 223; Wohlford v. pton, 79 Va. 333.

For W. Va. decisions on similar statute, see Justis' Annotations, ter 125, section 6.

See Gregory's Forms Nos. 237, 238.

ec. 6079. When clerk to dismiss suit.—If one month elapse after process is returned executed as to any one or more of the de- lants, without the declaration or bill being filed, the clerk shall r the suit dismissed, although none of the defendants have ap- red. (Code 1887, § 3241.)

Under this section, the day on which the process is returned executed t be counted, and if one calendar month, including that day, elapses, out the declaration being filed, it is the mandatory duty of the clerk ismiss the action. Jennings v. Pocahontas Collieries Co., 114 Va. 76 S. E. 298.

It is the duty of the clerk to dismiss the suit when the process is ed and the bill is not filed in the time prescribed by the statute, but ne bill is filed before an order of dismissal is entered, and the de- lant answers without insisting upon the dismissal of the suit, and ents to a hearing of the cause, he thereby waives the objection. hanan v. King's Heirs, 22 Grat. 414.

Clerk should dismiss suit if bill not filed, but if party files his answer consents to the hearing, he waives the right to have suit dismissed. hanan v. King, 22 Grat. 414.

The reinstatement of a case at the following rules which has been nissed at rules for want of a declaration, may be regarded as a ter of course, if there be good cause for such reinstatement. Wick- v. Green, 111 Va. 199, 68 S. E. 259; note 16 Va. Law Reg. 365, editorials Id. 385, 467.

The failure of the clerk to dismiss a suit as required by this section s not materially affect the rights of the defendant, since the court, er section 6140, may order its dismissal at the succeeding term. kham v. Green, 111 Va. 199, 68 S. E. 259; see 16 Va. Law Reg. 365, , 467.

Process having been returned on first November rules (November) a dismissal for want of a declaration on first December rules (thrown

Digitized by Google

back to November 25th under section 6074) was premature. Universal Crusher Corp., 115 Va. 588, 79 S. E. 1049. See co this case, 19 Va. L. Reg. 701.

See 4 Min. (3d Ed.) 685; Barton, L. Pr. (2d Ed.) 285, 33 C. Pr. (2d Ed.) 258.

For W. Va. decisions on similar statute, see Justis' An chapter 125, section 7.

Sec. 6080. When fact of defendant's non-residence to be and suit abated.—When a summons to answer an action against a defendant whom the officer (receiving it) kno reside in his county or corporation, he shall, unless he therein before the return day, return him a non-residen upon, if the court from which such process issued have tion of the case only on the ground of such defendant's in such county or corporation, the suit shall abate as to hi 1887, § 3242.)

Though action be against two partners to recover a p debt, the suit may abate as to one and be heard as to the othe v. Belches, 1 Wash. 9. See section 5762 and notes.

See 4 Min. (3d Ed.) 663; Barton, L. Pr. (2d Ed.) 269

Sec. 6081. When place of contract, etc., need not be se declaration, etc.; if set forth, how.—It shall not be nec any declaration or other pleading to set forth the place any contract was made, or act done, unless when, from t of the case, the place is material or traversable, and th legation may be as to a deed, note, or other writing bea at any place, that it was made at such place, or as to any according to the fact, without averring or suggesting th at or in the county or corporation in which the action is unless it was in fact therein. (Code 1887, § 3243.)

Actions for personal injuries are transitory, and it is u to set forth in the declaration the place at which the act which caused the injury. Norfolk & W. R. Co. v. Ampey, 9 25 S. E. 226. See, also, Shaver v. White, 6 Munf. 110, 8 Am. Payne v. Britton's Ex'r, 6 Rand. 101.

The section applied in Young v. Hart, 101 Va. 480, 44 S.

See Graves Pleading, 71; 4 Min. (3d Ed.) 694, 712. 1 1290; Barton, L. Pr. (2d Ed.) 313; Burks' Pleading and P 287, 340, 916.

For W. Va. decisions on similar statute, see Justis' A chapter 125, section 32.

Sec. 6082. Unnecessary to aver jurisdiction, or make It shall not be necessary, in any action, to aver that th action arose, or that the matter is, within the jurisdict court, or to make profert of any deed, letters testam commission of administration; but a defendant may hav like manner as if profert were made. (Code 1887, § 3

Reverses the rule laid down in Thornton v. Smith, 1 Hill v. Pride, 4 Call 107.

A notice of motion for judgment by corporation again holder need not aver that defendants reside in the county. F Cormick v. Gold, 102 Va. 37, 45 S. E. 868.

If an administrator brings detinue he is not bound at t produce the certificate for his obtaining letters of administrat

Digitized by Google

receives notice that it will be required. Hughes v. Clayton, 3 Call (2d Ed. 478).

As to taking advantage, by demurrer, of a variance between the aration and the bond declared on, see Sterrett v. Teaford, 4 Grat. Duval v. Malone, 14 Grat. 24. See Bennett's Ex'r v. Giles, 6 Leigh

As to papers of which defendant has right to crave oyer, see Lang- ie v. Richmond Ry. Co., 91 Va. 369, 22 S. E. 159; Eib v. Pindall's . 5 Leigh 109; Grubbs v. National Life Maturity Ins. Co., 94 Va. 27 S. E. 464; Smith v. Wolsiefer, 119 Va. 247, 89 S. E. 115.

As to effect of craving oyer, see Jarrett's Adm'rs v. Jarrett, 7 Leigh Meredith's Adm'x v. Duval, 1 Munf. 76.

For sufficient excuse for not producing bond sued on when oyer is ed by the defendant, see Smith's Adm'r v. Lloyd's Ex'v, 16 Grat. 295. Cited, but not construed, in Norfolk & W. R. Co. v. Ampey, 93 Va. 123, 25 S. E. 226.

See Barton, L. Pr. (2d Ed.) 313; 4 Min. (3d Ed.) 694, 712, 1171,); 3 Min. (2d Ed.) 156, 157; Graves Pleading, 31, 72; Burks' Pl. r., pp. 287, 340, 581, 1005

Form of profert by administrator with the will annexed, coming in declaration after the "production of suite," 4 Min. (3d Ed.) 1638.

For W. Va. decisions on similar statute, see Justis' Annotations, ter 125, section 33.

See Gregory's Forms No. 21.

ec. 6083. Allegations not traversable, omitted.—All allega- s which are not traversable, and which the party could not be uired to prove, may be omitted, unless when they are required the right understanding of allegations that are material. (Code , § 3245.)

See Graves Pleading, 72; 4 Min. (3d Ed.) 712, 713, 1175, 1177, , 1271, 1300, 1305; Burks' Pleading and Practice, pp. 287, 340, 976, 977, 1012, 1018.

ec. 6084. Transfer of cases from one side of the court to the r.—No case shall be dismissed simply because it was brought he wrong side of the court, but whenever it shall appear that a ntiff has proceeded at law when he should have proceeded in ty, or in equity when he should have proceeded at law, the t shall direct a transfer to the proper forum, and shall order change in, or amendment of, the pleadings as may be neces- to conform them to the proper practice; and, without such ction, any party to the suit shall have the right, at any stage he cause, to amend his pleadings so as to obviate the objection his suit or action was not brought on the right side of the t. After such amendment has been made, the case shall be ed by the clerk on the proper docket of the court and proceed be determined upon such amended pleadings. The defendant l be allowed a reasonable time after such transfer in which repare the case for trial.

Revisors' Note.—This section is new. Cases will no longer have to ismissed because brought in the wrong forum. See Preface, ante, ii.

ec. 6085. When action not to abate for want of form.—No ac- shall abate for want of form, where the declaration sets forth

Digitized by Google

sufficient matter of substance for the court to proceed merits of the cause. (Code 1887, § 3246.)

If the consideration for the defendant's contract consi agreement on the part of the plaintiff, it must appear from t tion that such agreement was binding on the plaintiff at th defendant's promise was made, else the defendant's promise consideration, and the declaration consequently bad. This sec application to a case like this. So. Ry. Co. v. Willcox, 98 V S. E. 355, and note 6 Va. Law Reg. 46.

Where there has been a demurrer to pleading, and the been overruled, this section cures no defect, imperfection, o therein, except such as could not have been regarded on dem

If declaration is sufficient to inform defendant of the na demand made upon him, and states sufficient facts to enable to say that if the facts stated are proved, the plaintiff is ent cover, it is good on demurrer. Virginia Portland Cement C 103 Va. 427, 49 S. E. 577.

An allegation of duty is only a conclusion of law; and whe alleged show the duty, and are stated with sufficient clearness surprise and enable the court to proceed upon the merits of the declaration will be sustained. Virginia, &c., Wheel Co. 103 Va. 713, 49 S. E. 991; Richmond v. McCormack, 12 91 S. E. 767.

Where declaration in an action for the amount of a de certificate alleges death, consideration for defendant's under failure to pay, held, that declaration was sufficient as against a Cosmopolitan Life Ins. Ass'n v. Koegel, 104 Va. 619, 11 Va 824, 52 S. E. 166.

If the matter pleaded be in itself insufficient without r the manner of pleading it, the defect is substantial; but if the is in the form of alleging it, the defect is formal. Norfolk & Sturgis, 117 Va. 532, 85 S. E. 572.

A declaration designating an action as trespass which sufficient matter of substance for the court to proceed upon of the cause is good under sections 6085 and 6118, although alleged it is apparent that the declaration is one in trespass o Stonegap Co. v. Hamilton, 119 Va. 271, 89 S. E. 305.

Cited, but not construed, in Russell Creek Coal Co. v Va. 420, 31 S. E. 614.

See discussion of the statute of jeofails, 6 Va. Law Reg. (3d Ed.) 941.

See Graves Pleading 72; 4 Min. (3d Ed.) 712, 1293, 1305; Pr. (2d Ed.) 296; Burks' Pleading and Practice, pp. 141, 340 976, 977, 1012, 1018.

See sections 6118, 6331 and notes.

For W. Va. decisions on similar statute, see Justis' A chapter 125, section 9.

Sec. 6086. Trespass on the case.—In any case, in which of trespass will lie, there may be maintained an action o on the case. (Code 1887, § 2901.)

For the distinction between trespass vi et armis and t the case, see Taylor v. Rainbow, 2 Hen. & M. 423; Muse Munf. 27; Cleek v. Haines, 2 Rand. 440; Jordan v. Wyatt, 4 47 Am. Dec. 720.

In an action of trespass on the case counts in case and trespass may be joined in the declaration. Parsons v. Harpe 64; Womack v. Circle, 29 Grat. 192.

Two separate causes of action, one of trespass and th case, may be joined in the same action. Fechheimer v. Nat Grat. 651.

Digitized by Google

This section abolishes distinction between these two actions. Writ be in one action; declaration in the other. Daingerfield v. Thomp- 33 Grat. 136, 36 Am. Rep. 783; New York, etc., R. Co. v. Kellam's r, 83 Va. 851, 3 S. E. 703.

Declaration setting out defendants as carriers and their contract, alleging a failure of the performance of the duty as carriers, is a aration in case and not in assumpsit. Southern Express Co. v. Mc- h, 20 Grat. 264.

Under our liberal system of pleading in this State a plain and clear ement of the facts constituting the wrong is sufficient, and it is but e matter, in actions of trespass on the case, what the action is named alled. Ailstock v. Moore Lime Co., 104 Va. 565, 11 Va. Law Reg. 52 S. E. 213.

For a discussion of the question whether the title to land is put in e, in an action of trespass quaere clausum fregit, by the introduc- of evidence as to the title, under a plea of not guilty, see Douglas d Co. v. Thayer, 113 Va. 239, 74 S. E. 215.

See note of Stonegap Co. v. Hamilton, under preceding section.

See 4 Min. (3d Ed.) 137, 436, 447, 456, 459, 548; 1 Barton, L. Pr. Ed.) 178, 303.

For W. Va. decisions on similar statute, see Justis' Annotations, ter 103, section 8.

See Gregory's Forms Nos. 113, 129.

ec. 6087. Effect of judgment in trover.—A judgment for the ntiff in an action of trover shall not operate to transfer the to the property converted unless and until such judgment has satisfied.

Revisors' Note.—Independently of statute conflicting views are en- ained on the subject of when title passes in trover. This section is and makes statutory in Virginia what is said to be the great weight uthority. See Burks' Pl. & Pr., section 171.

ec. 6088. In any case where an action of covenant will lie an on of assumpsit may be brought.—In any case in which an ac- of covenant will lie there may be maintained an action of as- psit; but the general issue in assumpsit on a sealed instrument l be non est factum. (1897-8, p. 103.)

Revisors' Note.—The latter part of this section enacting that the eral issue in assumpsit on a sealed instrument shall be non est factum ew, and settles a question which had been left in doubt and un- ainty. Furthermore, it assimulates the pleading in assumpsit to the ding in debt, and preserves one of the distinguishing features of a ed instrument.

Under this section a special count on a sealed instrument may be ed with the common counts in an action of assumpsit. Grubb v, ford, 98 Va. 553, 37 S. E. 4.

Section 6086 provides that where trespass lies, trespass on the case be maintained.

See Burks' Pleading and Practice, pp. 83, 115, 119. 120, 157.

ec. 6089. In trespass, what general averments omitted.—In ac- s of trespass, general averments that the defendant committed r wrongs, and that the acts charged were done with force and s, and against the peace, may be omitted; and the plaintiff may ve all that he could have done if such averments had been in- ed in the declaration. (Code 1887, § 3247.)

See Graves Pleading, 72; 4 Min. (3d Ed.) 709, 899, 1290.

Digitized by Google

For W. Va. decisions on similar statute, see Justis' A
chapter 125, section 10.

See Gregory's Forms No. 71.

Sec. 6090. When account to be filed with declaration.
action of assumpsit upon an account, the plaintiff shal
his declaration an account stating distinctly the severa
his claim, unless it be plainly described in the declaratio
1887, § 3248.)

**Revisors' Note.—The words "upon an account" in line
text, are new. Their insertion is for the purpose of making
that no such account need be filed when the declaration is o
promise to pay.**

The sufficiency of the account.—An account filed which
of the character of the claim is sufficient, although it may b
of various items, of which no notice is given. Moore v. Mau
488.

An account filed with declaration in assumpsit for goods
ing goods sold "per account rendered." with proof that the a
rendered, is sufficient. Robinson v. Burks, 12 Leigh 378; Fitc
11 Leigh 471 (2d Ed. 492).

Where declaration does not plainly describe the items,
count filed therewith merely mentions the sums paid without
information about them, the account is insufficient. Johnson
Va. 695, 12 S. E. 973, 14 S. E. 183.

Where declaration in assumpsit states the date of account
with, and it was presented as a debt due at institution o
verdict was rendered accordingly, held no error that the acco
dated. Kenefick v. Caulfield, 88 Va. 122, 13 S. E. 348.

The count in an action of assumpsit by an administr
money had and received, and the bill of particulars merely s
count in which the defendant is debtor to the administrator
received, stating a sum certain. The account and bill of par
not sufficient to admit proof of an admission by the defend
had received from a third person a certain sum belonging t
of the plaintiff's intestate. Minor v. Minor's Adm'r, 8 Grat.

Taking advantage of defects in the account.—Ordinari
particulars is no part of the declaration, and objection to i
raised by demurrer; but the rule is otherwise where the part
writing that the case made by the declaration may be suppl
the bill of particulars. King v. Norfolk & W. R. Co., 99
S. E. 701; George Campbell Co. v. Angus, 91 Va. 438, 22
overruling Wright v. Smith, 81 Va. 777; Norfolk v. Norf
120 Va. 356, 91 S. E. 820.

The proper course to pursue where a sufficient bill of
is not filed is to apply to the court to require the plaintif
amended and sufficient account of his claim, and if he fails
move the court to exclude evidence of any matter not des
ciently to give the defendant notice of its nature and charact
Campbell Co. v. Angus, 91 Va. 438, 22 S. E. 167.

Cited in City of Richmond v. Leaker, 99 Va. 7, 37 S. E.
v. Wolsiefer, 119 Va. 247, 89 S. E. 115.

Commented upon, 17 Va. Law Reg. 628.

See Barton, L. Pr. (2d Ed.) 336; 4 Min. (3d Ed.) 700,
1301; Burks' Pl. & Pr., pp. 148, 149; notes to next section.

For W. Va. decisions on similar statute, see Justis' A
chapter 125, section 11.

**Sec. 6091. Court may require particulars of claim or
be filed; if not done, evidence of, etc., excluded.**—In an
motion, the court may order a statement to be filed o

Digitized by Google

lars of the claim, or of the ground of defense; and, if a party to comply with such order, may, when the case is tried or d, exclude evidence of any matter not described in the notice, aration, or other pleading of such party, so plainly as to give adverse party notice of its character. (Code 1887, § 3249.)

Object and effect of section.—The object of this section is to give the sing parties more definite information of the character of such claim efence than is generally disclosed by the declaration, notice, or plea, to prevent surprise. Columbia Ac. Asso. v. Rockey, 93 Va. 679, . E. 1009; City of Richmond v. Leaker, 99 Va. 6, 37 S. E. 348, and 6 Va. Law Reg. 680.

Its whole object and effect is to limit the scope and operation of general issue, and to confine the introduction of evidence to the par-ar defence which the defendant has disclosed. Oeters v. Knights lonor, 98 Va. 201, 35 S. E. 356.

Therefore the objection that an action was prematurely brought can-be relied on where the defendant has stated his grounds of defense, that objection is not specified. Farmers' Benev. Fire Ins. Ass'n v. sey, 101 Va. 236, 43 S. E. 338.

A defendant who has filed his grounds of defense hereunder will be ted to his specifications. Carolina C. & O. R. Co. v. Clinch V. L. Co., Va. 540, 72 S. E. 116.

While the defendant, after he has filed a statement of the grounds is defense, may not offer evidence of other defenses, otherwise ap-riate under the general issue, yet if the plaintiff offers such evidence, it is received without objection from the defendant, it is proper for consideration of the jury, although it sets up an additional defense. ropolitan Ins. Co. v. Hayslet, 111 Va. 107, 68 S. E. 256.

The object of bill of particulars is to advise a defendant of the ise nature and extent of the demand asserted against him. The al and better practice is that it should be demanded before pleading he merits, but if not demanded until a later period, and then a bill led which, standing alone, would be insufficient, it will be deemed cient if, taken in connection with the other documentary evidence in cause, it supplies all needful information to the defendant. Amer-Hide & Leather Co. v. Chalkley, 101 Va. 458, 9 Va. Law Reg. 199, note, 44 S. E. 705.

The object of the statement of particulars authorized by this section o facilitate an intelligent preparation of actions at law for trial and revent surprise at the trial. Tidewater Quarry Co. v. Scott, 105 Va. , 52 S. E. 835.

The object of this section is to simplify and shorten pleadings by viding that, if the declaration or other pleading do not present dis-tly the grounds or subject of action, the plaintiff, if required to do should file such a statement of particulars as will put the defendant possession of the character thereof. City of Richmond v. Wood, 109 75, 63 S. E. 449.

In what cases statement may be required.—No further bill of par-lars is contemplated or required when the declaration gives the de-dant complete notice of the nature and character of the plaintiff's m. City of Richmond v. Leaker, 99 Va. 6, 37 S. E. 348, note 6 Va. Reg. 680; Richmond & D. R. Co. v. Payne, 86 Va. 481, 10 S. E. , 6 L. R. A. 849.

In an action to recover damages for personal injury, where the de-ration avers that it was the duty of the defendant to furnish "suitable reasonable tools," etc., with which to do the work, it is unnecessary aver what the tools were or to furnish any bill of particulars thereof. hmond Locomotive Works v. Ford, 94 Va. 627, 27 S. E. 509.

In suits for damages, if a more specific statement of the element of nages be desired, it may be demanded under the provision of this tion. Wood v. American Nat. Bank, 100 Va. 306, 40 S. E. 931.

Digitized by Google

If a declaration in tort does not plainly describe "the disorder" alleged to result from a physical injury charged, the may require the needed particularity by calling for a bill of under this section. Norfolk & W. R. R. Co. v. Spears, 11 65 S. E. 482.

When the declaration does not state distinctly the sev of the plaintiff's claim, but omits many particulars as to wh fendant should be informed, it is error for the trial court to defendant's request for a bill of particulars. Clinchfield Coa tion v. Brooks, 118 Va. 72, 86 S. E. 829.

The object of this section was to provide that the plain action or motion should have notice of the defense relied upo the pleas filed by the defendant gave with detailed particul ground of defense relied upon, and no matter of defense w forward at the trial that was not fully described in the ple required a statement to be filed in addition would have been a mony. Newport News & O. P. Ry. & Electric Co. v. Bickfor 182, 52 S. E. 1011.

There is no inflexible rule as to the classes of cases i statement of particulars of the plaintiff's claim, or of the grounds of defense, are required but it rests in the sound di the trial court, subject to review if plainly erroneous. Driver R. Co., 103 Va. 650, 48 S. E. 1000.

It is not error to refuse to require a defendant to file a st the particulars of his defense under this section when the sp filed give with detailed particularity every ground of defense Newport News, etc., Ry. Co. v. Bickford, 105 Va. 182, 52 S. E

It is no error to refuse to require defendant to file st grounds of defense where the defenses relied on were develop the greatest latitude allowed the parties and when the pla not have suffered any injury by such refusal of the court. Wallen, 107 Va. 131, 57 S. E. 596.

Where the declaration states a good cause of action, a fendant desires a more particular statement of the grounds o he should demand a bill of particulars under this section. R. Co. v. Schwartz, 115 Va. 723, 80 S. E. 568.

If the declaration states a good cause of action, but the desires a more particular statement of the grounds of con remedy is not by demurrer but by a motion for a bill of partic this section. Clinchfield Coal Corp. v. Osborne, 114 Va. 13, 75 Interstate R. Co. v. Tyree, 110 Va. 38, 65 S. E. 500; Norfolk S Crocker, 117 Va. 327, 84 S. E. 681.

Sufficiency of bill of particulars.—It is not intended th ticulars should be set out with the formality or precision of a or plea, but only in such manner as would fairly and plainly to the adverse party of its character when the same was not s in the pleading. Tidewater Quarry Co. v. Scott, 105 Va. 16 835.

The statement is not the subject of demurrer. Columbia v. Rockey, 93 Va. 679, 25 S. E. 1009. See notes to section 6

The statement does not constitute the issue to be tried not be as formal or precise as a declaration or plea. Id.

Time of making objections to statement.—An objection particulars should be made before the trial begins. Norfolk & v. Carter, 91 Va. 587, 22 S. E. 517.

A motion for a bill of particulars was denied at the ter it was made, but at the next term, and before the trial, t appeared and filed the bill; the defendant, not having asked ponement in the lower court, cannot make the objection in th court. Central Lunatic Asylum v. Flanagan, 80 Va. 110.

Effect if insufficient or no statement is filed.—The obj section is not to punish the defendant for failure to compl order, but to protect the plaintiff from prejudice by surprise a

Digitized by Google

He is not debarred from all evidence in his defense, but is confined to evidence upon the point covered by his plea. City Gas Co. v. Poudre, 113 Va. 224, 74 S. E. 158.

Where statement of grounds of defense are insufficient, upon objection by plaintiff the court should require a sufficient statement to be filed, and if not furnished, the court should exclude evidence of any matter not described in the grounds of defense so plainly as to give the plaintiff notice of its character. Chestnut v. Chestnut, 104 Va. 539, 52 S. E. 348, 350; Columbia Ac. Asso. v. Rockey, 93 Va. 679, 25 S. E. 1009.

Where, under the general issue of non-assumpsit, the plaintiff has called for a statement of the grounds of defense, and the defendant either files none at all or merely denies facts which the plaintiff is obliged to prove to maintain his action, the defendant is not debarred from offering any evidence at all in his defense, but is limited to evidence in denial of the plaintiff's claim. Williamson v. Simpson, 113 Va. 439, 74 S. E. 162.

If a defendant in an action of trespass on the case who has pleaded the general issue of "not guilty" fails to comply with an order requiring him to specify his grounds of defense, he should not be allowed to introduce any evidence controverting the plaintiff's claim, as his plea gives no notice thereof. Colby v. Reams, 109 Va. 308, 63 S. E. 1009.

Where on plaintiff's motion, defendant who had filed no plea was ordered to file a statement of his defense on or before ten days prior to the next succeeding term which order was not obeyed, the court erred in permitting defendant to introduce his evidence over plaintiff's objection that issue had not been joined. Idem.

If the defendant pleads not guilty to an action of trespass, and fails to state his grounds of defense, when required by the court, he may, nevertheless, introduce any evidence tending to show that he did not commit the trespass. City Gas Co. v. Poudre, 113 Va. 224, 74 S. E. 158.

As to effect of party's failure to file statement of particulars, see note, 10 Va. Law Reg. 741.

Generally.—If bill of particulars is not asked for until case is called for trial, defendant cannot have continuance on the ground of surprise at its contents. Norfolk & W. R. Co. v. Spears, 110 Va. 110, 65 S. E. 482.

If defendant does not demand particulars, he cannot complain at the recovery of general damages not specifically claimed in the declaration. City of Richmond v. Wood, 109 Va 75, 63 S. E. 449.

Where in an action at law, the orders of court show that the plaintiff moved the court to require defendant to file a statement of grounds of defense, which the court overruled, and the plaintiff excepted. This is sufficient, without any bill of exceptions. Driver v. Southern R. Co., 103 Va. 650, 49 S. E. 1000.

In an action against a carrier for loss of goods, refusal to require plaintiff to show where the goods were delivered to defendant is not error when the defendant is not embarrassed in making its defense thereby. C. & O. Ry. Co. v. Stock, 104 Va. 97, 51 S. E. 161.

A defendant to a motion under section 6046, may demand a statement of the grounds of defense. Whitley v. Booker Brick Co., 113 Va. 434, 74 S. E. 160. See that section and notes.

Under a plea of non-assumpsit, the specification of defences does not convert the general issue into a special plea, or a negative defence into an affirmative one, and the burden of proof is still on the plaintiff. Oeters v. Knights of Honor, 98 Va. 201, 35 S. E. 356.

Cited, but not construed, in Morotock Ins. Co. v. Pankey, 91 Va. 259, 264, 21 S. E. 487; Union Central Life Ins. Co. v. Pollard, 94 Va. 154, 26 S. E. 421, 36 L. R. A. 271, 64 Am. St. Rep. 715; Pocahontas Collieries Co. v. Rukas, 104 Va. 278, 51 S. E. 449; Bettman v. Skinner, 113 Va. 24 at 27, 73 S. E. 436; Knight v. Grim, 110 Va. 400, 66 S. E. 42.

For discussion of this section see 12 Va. Law Reg. 275, 361.

Digitized by Google

For monographic note on bill of particulars, see 4 Ran Va. Rep. Anno.

See Barton, L. Pr. (2d Ed.) 338, 500, 647, 648; 4 Min. (3 763, 772, 775, 1160, 1299, 1301; Graves Pleading, 22; Burks' P and Practice, pp. 9, 100, 148, 157, 178, 179, 445, 456, 599, 60 924, 1016, 1018.

For W. Va. decisions on similar statute, see Justis' Anno chapter 130, and chapter 125, section 46.

See Gregory's Forms Nos. 221, 239.

Sec. 6092. Contributory negligence as a defense to acti tort.—If the defendant in any action of tort intends to rel the contributory negligence of the plaintiff as a defense to tion, he shall so state in writing before the trial begins, givi particulars thereof as fully as the plaintiff is required t the negligence of the defendant in his declaration or bill ticulars; but the defendant shall not be precluded from upon the contributory negligence disclosed to the defend the plaintiff's testimony. (1916, p. 506.)

Revisors' Note.—This section is based on the act cited, but comprehensive. The act was applicable to tort actions for pers juries only; the present section is applicable to all tort actions, the injury be to person or property or occasioning the death of a The act required the particulars of the contributory negligence t forth upon motion of the plaintiff; the present section provides the defendant intends to rely upon the contributory negligence plaintiff, he shall so state in writing before the trial begins, h motion is necessary. The provision of the act relating to amen has been omitted, as such amendments as ought to be allowed a ciently covered by section 6250.

Sec. 6093. When proof of signature to evidence of a payment, etc., not required unless denied by affidavit.—In tion, suit, or other proceeding wherein a party desires to release, payment, or set-off described in his account of set-o relies on a writing signed by any person, as evidence the he file the same among the papers in the cause, fifteen days the commencement of a term at which there may be a or trial, and give notice for a like period to the adverse or his attorney, of his intention to rely on such writing dence as aforesaid, no proof of such signature shall be re unless the party objecting shall make affidavit before th commences, that he has good cause to believe, and does that said signature is not the genuine signature of the whose signature it purports to be. If such affidavit be ma ing the term at which there may be a hearing or trial of said the party offering such writing as evidence shall be entitl continuance at that term. (Code 1887, § 3250.)

Revisors' Note.—The revised section reduces the time from days to fifteen days.

The Commonwealth may question the signature to the bond which coupons were cut without pleading non est factum. C Tunstall, 36 Va. 372, 10 S. E. 414.

Digitized by Google

As to when proof of writing not required unless denied by affidavit see section 6125.

Cited in the dissenting opinion of Buchanan, J., in Clement v. Adams Bros.-Paynes Co., 113 Va. 547, 75 S. E. 294, 18 Va. L. Reg. 437, and note.

Sec. 6094. Declaration on policy of insurance.—In an action on a policy of insurance no particular form of action or declaration shall be necessary, but it shall be sufficient for the plaintiff to file a complaint in writing at common law, setting forth the grounds of his action, and the relief prayed for, and filing therewith the original policy, or a sworn copy thereof, upon which his action is brought, and the loss or death relied upon as the ground of his recovery, and that he has performed all the conditions of said policy, and violated none of its prohibitions, and in such complaint it shall not be necessary to set forth every condition or proviso of said policy nor to aver observance of or compliance therewith seriatum, but a general averment to that effect shall suffice. Such complaint shall be filed in the same court and at the same time at which a declaration in such cases is now required by law, and such action shall be matured in the same manner as at present. (Code 1887, § 3251; 1895-6, p. 707.)

This section was changed by the revisors of 1887 to simplify an action on an insurance policy. Burks' Address, 2 Barton L. Pr. (2d Ed.) 1391.

Declaration drawn in substantial conformity with this section is sufficient (Valley Mut. Life Ass'n v. Teewalt, 79 Va. 421), though it largely follows form of an ordinary declaration in debt (Virginia Fire & Marine Ins., Co. v. Saunders, 84 Va. 210, 4 S. E. 584).

In action on policy it is sufficient that the declaration refer to policy, and allege, in general terms, the performance of all its conditions and the violation of none of its prohibitions. Tilley v. Connecticut Fire Ins. Co., 86 Va. 811, 11 S. E. 120.

Not necessary for declaration to allege that there had been an award, though policy avers that no suit be sustainable until after an award. Id.

This section does not confine proceedings upon policies to actions at law. A motion may be made under section 6046. Morotock Ins. Co. v. Pankey, 91 Va. 259, 21 S. E. 487.

There can be no recovery upon a policy of insurance, where the money is only payable on the performance of certain acts, and the existence of certain facts, upon a declaration containing only the common counts. Metropolitan Life Ins. Co. v. Rutherford, 95 Va. 773-779, 30 S. E. 383.

The statutory complaint on an insurance policy can only be filed where the loss or death occurred before the institution of the suit. It cannot be filed upon an averment that the company has wholly repudiated and abandoned the contract. Lee v. Mutual Reserve Fund Life Ass'n, 97 Va. 161, 33 S. E. 556.

The charter of the company is not made a part of the declaration by filing the policy or copy thereof; therefore its provisions are not to be considered on demurrer. Farmers' Benev. Fire Ins. Ass'n v. Kinsey, 101 Va. 236, 43 S. E. 338.

A certificate issued by a frateral mutual benefit society to a member, which provides that on the death of the member a specified sum will be paid to his wife out of the mortuary fund on condition of the payment by the member of fixed sums at fixed periods, is a life policy, within the meaning of this section, and not merely a certificate of membership in a beneficial society, within acts 1897-98, page 734 (now repealed),

Digitized by Google

defining and regulating fraternal beneficiary associations. Cosm Life Ins. Ass'n v. Koegel, 104 Va. 619, 11 Va. Law Reg. 823, 166. For present law governing fraternal benefit associations and societies, see chapter 171.

A fraternal mutual benefit society issued its certificate to a for the payment on his death to his wife. After the death of the an insurance company for a certain consideration assumed all l of the society on such certificates on which death had been repor specifically assumed the payment of the certificate issued to the member, and contracted to carry out the provisions of the ce Held, that the insurance company's agreements were a reinsur rectly to the several holders of certificates, and especially a cor reinsurance to the beneficiary in the certificate of the deceased and the certificate became its contract and the measure of its and this section was applicable. Id.

Acts 1897-98, page 734 (repealed), defining and regulatin ciary associations, and providing that they shall be exempt from visions of the insurance laws, did not apply to associations doi insurance business by issuing certificates providing for the of a specified sum to the beneficiary on the death of the memb

Acts 1897-98, page 734 (repealed), did not impliedly rep section; this and the section following being no part of the i law and being enacted to meet cases where companies seek t liability on technicalities in pleading. Id.

Cited but not construed North British Ins. Co. v. Robinett, 754, 72 S. E. 668.

As to when answers or statements of applicant do not bar on policy, see section 4220. See, also, sections 4227, 4228; Ac p. 539, chapter 362; 1918, p. 539, chapter 361.

It would seem that where special pleas setting out misrep tions and warranties and alleged breaches, but not supported by were objected to, not when tendered, but when proof of them fered, on the ground that the policy or contract was under seal an or want of consideration, or fraud, or breach of warranty could availed of, such objection should be overruled, and matters all be proven in an action of assumpsit under the general issue. See 10 Va. Law Reg. 767.

For history of statute, see Grubbs v. National Life Maturity 94 Va. 593, 27 S. E. 464.

See Barton, L. Pr. (2d Ed.) 249; 4 Min. (3d Ed.) 710, 1 forms of declaration, see Barton, L. Pr. (2d Ed.) 406; 4 Min. (1684-1690.

Form of declaration in assumpsit upon a policy of insurance fire, under statute, 4 Min. (3d Ed.) 1684; of declaration in as upon a policy of life insurance, under statute, Id. 1686; of declar assumpsit upon a policy of life insurance by a stranger intereste life, under statute, Id. 1687.

See Va. F. & M. Ins. Co. v. Saunders, 86 Va. 969, 11 S. E. section 5143.

See Gregory's Forms Nos. 63, 64, 65.

Sec. 6095. When plaintiff may amend declaration or bill amended bill, etc.; proceedings thereon.—The plaintiff right amend his declaration or bill before the defendant's ance, and notwithstanding such appearance, a plaintiff in may, at any time in the vacation of the court wherein the pending, file in the clerk's office an amended or supplemen or bill of revivor; whereupon, the same proceedings may as if leave to file it had been previously obtained in court, court, on the motion of a defendant, made at the term to

Digitized by Google

ess to answer the same is returned executed on him, or, if it eturnable to rules, at the first term after it is so returned, dismiss such amended or supplemental bill, or bill of revivor. de 1887, § 3253.)

Supplemental though not amended bill may be offered after cause set n for hearing. Pleasants v. Logan, 4 Hen. & M. 489. See Boykin's sees v. Smith, 3 Munf. 102.

Amendment of bill may be made by common order, before answer demurrer, and afterwards by leave of court. Holland v. Trotter, Grat. 136.

Objection to improper revival of cause cannot be made for the first in appellate court. Buchanan v. King's Heirs, Id. 414.

An amended bill is not to be filed if it shows that the original bill roundless, or presents a new and distinct matter in controversy. The imate functions of an amended bill are to bring before the court r parties, and to explain and set forth more fully the matters of the inal bill, or matters connected with the original bill which should be ght into the litigation. Lambert v. Jones, 2 Pat. & H. 144.

Amendments to a bill which bring into the case a new and subtive cause of action different from that set out in original bill, will be allowed; but if, on the hearing on demurrer defects are pointed which can be remedied, and substantial justice requires it, amendts may be made which are not inconsistent with the original bill. ney v. Craig, 103 Va. 158, 48 S. E. 864.

Demurrer to declaration sustained, and by leave of court it is nded and trial proceeds—error, if any, in sustaining demurrer waived. ris' Adm'r v. N. & W. R. R. Co., 88 Va. 560, 14 S. E. 535.

In ejectment, where the original declaration contained a description he land, and an allegation that defendants were unlawfully withling the possession thereof from plaintiff, he was entitled to amend description before appearance, whether defendants were personally onstructively served. King v. Davis, 137 Fed. 198, 11 Va. Law Reg.

As to amendments for variance between allegations and proof, see ion 6250.

Cited, but not construed, in Baker v. Briggs, 99 Va. 360, 362, 38 . 277.

See Barton, C. Pr. (2d Ed.) 263, Barton, L. Pr. (2d Ed.) 333, 463; in. (3d Ed.) 712.

As to amended and supplemental bills, see Baker v. Baker, 3 Munf. ; Anthony v. Leftwich's Representatives, 3 Rand. 238, 279; Smith v. th, 4 Rand. 95; Jameson's Adm'x v. Deshields, 3 Grat. 4, 13; Robn's Ex'rs v. Day, 5 Grat. 55; Parrill v. McKinley, 9 Grat. 1, 58 Am. 212; Sillings v. Bumgardner, 9 Grat. 273; Stephenson v. Taverners, 398; Belton v. Apperson, 26 Grat. 207, and note Va. Rep. Anno.; Comb v. Lobdell, 32 Grat. 185; Ewing's Adm'r v. Ferguson's Adm'r, Grat. 548; Hurt v. Jones, 75 Va. 341; S. V. R. Co. v. Griffith, 76 Va. ; Morrison's Ex'r v. Householder's Adm'r, 79 Va. 627; Mosby v. her's Ex'rs, 80 Va. 82; Spencer v. Jones, 85 Va. 172, 7 S. E. 180; aby's Adm'r v. Henritze's Adm'r, 85 Va. 177, 7 S. E. 204; Atwood v. V. R. Co., 85 Va. 966, 9 S. E. 748; Fudge v. Payne, 86 Va. 303, 10 E. 7; Throckmorton v. Throckmorton, 86 Va. 768, 11 S. E. 289; ser v. Renner, 87 Va. 249, 12 S. E. 406; Cosby v. Hite, 1 Wash. 365; ne v. Grim, 2 Munf. 297; Vaiden v. Bell, 3 Rand. 448; Power v. Ivie, eigh, 147; Couch v. Fretwell's Adm'r, 10 Leigh, 578; White's Adm'r Foncray, 5 Grat. 179.

For W. Va. decisions on similar statute, see Justis' Annotations, pter 125, section 12.

Sec. 6096. To authorize the filing of a petition in a pending chancery cause in the clerk's office and to mature the same at rules.—

Digitized by Google

Any person who would be entitled to be admitted a
chancery cause pending in any court may, for the pur
serting a right or seeking relief therein, by leave of
or of the judge thereof in vacation, file a petition in
office of such court in vacation, making all persons so
the relief prayed for in such petition, whether parties t
cause or not, parties defendant, and to have issued there
mons to the said defendants, returnable to rules or t
term, to answer the same. And said defendants may
defense to such petition which they could have made
had been awarded by a court, by demurrer, plea, answer
wise, filing the same at rules or at term. And when suc
shall have been matured, depositions may be taken i
to issues raised thereby. But a defendant to such pet
have at the next term of the court the same right to m
miss the same that he would have to resist an applicatio
for leave to file it. (1897-8, p. 316; 1901-2, p. 285.)

Revisors' Note.—The words, "at the next term of the co in the last sentence are new.

A defendant is not bound by a decree against him found petition filed in the cause, of which he had no notice, and the provisions of section 6072, file a petition in the cause, t case made by the petition reheard. Keys Planing Mill v. 114 Va. 58, 75 S. E. 778.

Discussed, 8 Va. L. Reg. 100.

Sec. 6097. Proceedings when cross bill is filed.—Whe bill is filed, the defendants in the first bill shall answer the defendants in the cross bill are compelled to ans (Code 1887, § 3254.)

Where answer contains charges and makes demands ag plainant which by strict rules of pleading should only be set or cross- bill, the court of equity will consider and treat such a cross-bill so as to enable it to do complete justice in the case. Adm'r v. Hagan, 18 Grat. 231; Cralle v. Cralle, 79 Va. 182; Crank's Ex'r, 79 Va. 602; Adkins v. Edwards, 83 Va. 300, 2 Tate v. Vance, 27 Grat. 571; Scott v. Rowland, 82 Va. 484, 4 595.

A petition may be treated as a cross-bill. Sayers v. Wal 354, 21 Am. Rep. 303. But defendant therein must be sum answer it, else decrees based thereon are of no effect. Pracht 81 Va. 711.

Affected delay in preparing the cross-suit for a hearing just cause for proceeding to hear the original bill. McC Moseley, 4 Call 360.

See, generally, on the subject of cross-bills, Tarr v. Ra 12 Grat. 642; Ragland v. Broadnax, 29 Grat. 401; Higginbotha 90 Va. 233, 17 S. E. 941; Kyle's Ex'r v. Kyle, 1 Grat. 526; Pied Life Ins. Co. v. Maury, 75 Va. 508, 514; Hudson v. Hudson's Ex 117; Hopkins v. Baker's Adm'r, 2 Pat. & H. 110; Wilson Wythe, 296.

See Barton, C. Pr. (2d Ed.) 320.

Sec. 6098. Appointment of guardian ad litem for infant defendant; his duty, etc.—The proceedings in a suit wh infant or insane person is a party, shall not be stayed b

Digitized by Google

infancy or insanity, but the court in which the suit is pend-
or the judge thereof in vacation, shall appoint some discreet
competent attorney-at-law as guardian ad litem to such infant
nsane defendant, whether such defendant shall have been
d with process or not; or, if no such attorney be found willing
t, the court, or the judge thereof in vacation, shall appoint
other discreet and proper person as guardian ad litem, but
person so appointed shall not be liable to costs. Any such
dian ad litem may also be appointed by the clerk of the court.
y guardian ad litem shall faithfully represent the interest or
e of the infant or insane person for whom he is appointed,
it shall be the duty of the court to see that the estate of such
ndant is so represented and protected. And the court or the
e thereof in vacation, whenever of opinion that the interest
n infant or insane person requires it, shall remove any guar-
ad litem and appoint another in his stead. When, in any
the court or judge is satisfied that the guardian ad litem has
ered substantial service to the estate of an infant or insane
ndant, it may allow him reasonable compensation therefor,
his actual expenses, if any, to be paid out of the estate of such
ndant. (Code 1887, § 3255.)

Revisors' Note.—The words, "in the vacation thereof" formerly ring in the second sentence, have been omitted. See latter part of rs' note to section 6069.

Under Code 1873, chapter 157, section 17, it was only where there no committee or where there was a conflict of interest between the mittee and the lunatic that it was necessary to appoint a guardian em for the insane defendant. Hinton v. Bland's Adm'r, 81 Va. 588.

t is error to enter a decree against infant defendants without as-ng them a guardian ad litem, and, though the infancy did not ap-in the original proceeding, yet if it be alleged in a petition for a ring (the decree being interlocutory) a guardian ad litem ought appointed. Roberts v. Stanton, 2 Munf. 129, 5 Am. Dec. 463.

The heirs of E. being infants, though their guardian was a party answered, they were entitled to be defended by a guardian ad ; and although one was appointed for them, and there was a paper rting to be an answer found among the papers of the cause, yet did not appear that it had been filed it was error to decree the of the infant's land without an answer filed by guardian ad litem. g's Adm'r v. Ferguson's Adm'r, 33 Grat. 548. See Beverley v. r, 6 Munf. 99, as to effect of full defense by statutory guardian. Harman v. Davis, 30 Grat. 461; Morriss v. Ins. Co., 85 Va. 588, 8 383, as to effect of decree for infant's benefit.

A person appointed guardian ad litem is not obliged to act. A nable time ought, therefore, to be given him to consider whether ll accept and to prepare for trial. Wells' Heirs v. Winfree, 2 Munf.

f one guardian ad litem dies, another should be appointed notwith-ing all the testimony and accounts were taken before the death of rst. Beverley v. Miller, 6 Munf. 99.

The guardian ad litem may be appointed at rules. Talley v. Starke's x, 6 Grat. 339.

It seems that process need not be served on the infants in pro-ngs to sell their lands. Parker v. McCoy, 10 Grat. 594. As to

Digitized by Google

necessity of service of process on infant to acquire jurisdict person, see 1 Va. Law Reg. 153.

An infant can only appear and defend by guardian ad proceedings against him are fatally defective unless the r that guardian ad litem was assigned him. Langston v. Va. 47, 51 S. E. 218; Weaver v. Glenn, 104 Va. 443, 51 S. E

Where infants are interested, notice of taking an account tion in newspapers in their names is insufficient. Such not served on guardian ad litem in person, or his name as such litem must appear in the publication. Strayer & Wife v. L 715, 3 S. E. 372.

In proceedings affecting the property rights of an ins it is the duty of the court, if he have no committee, to guardian ad litem. Howard v. Lansberg, 108 Va. 161, 60 S.

The effect of a creditor's bill is to stay during its pende ning of the statute as to those debts brought into the suit the suit is once ended it no longer repels the running of Prince v. McLemore, 108 Va. 269, 61 S. E. 802.

If infants are necessary parties to an interpleader sui have no estate which the court can reach, the fee to their litem is a proper charge in the first instance upon the fun ministered. Pettus v. Hendricks, 113 Va. 326, 74 S. E. 19

An amended bill in a partition suit charged that one fendants was insane, and prayed for the appointment of a litem; but the defendant who was alleged to be insane, h and another defendant (appellant) all strenuously denied h Before the issue was determined, the said party died, and ad litem was appointed. The cause was proceeded with in t her administrator. Held, not error, as sections 2618 and Code of 1887 had no application to suits of this character. tions 5337 and 5339 of this Code.) Had the said party would have been the proper practice, after her mental in was established, to appoint a guardian ad litem under this s other ordinary suits in equity. Cottrell v. Mathews, 120 S. E. 808. For change made by present revision in sectio revisors' note to that section.

As to consent or waiver by guardian ad litem, see Dai Smith, 83 Va. 81, 1 S. E. 599; Morriss v. Va. Ins. Co., 85 V 594, 8 S. E. 383; Kingsbury v. Buckner, 134 U. S. 678, 681, 638, 33 L. Ed. 1047; 1 Va. Law Reg. 472; Hite's Ex'r v. tees, 2 Rand. 409.

As to appointing of guardian ad litem by justice of th 7 Va. Law Reg. 280, 22 Cyc. 647, note 8.

For cases before the statute, see Fox v. Cosby, 2 Call McRea's Ex'rs, 4 Munf. 439.

See Graves Pleading, 27; 4 Min. (3d Ed.) 735, 753, Barton, L. Pr. (2d Ed.) 221, 307; Barton, C. Pr. (2d Ed.) Burks' Pleading and Practice, pp. 66, 67, 270, 307. See s and notes; Smith v. Henckel, 81 Va. 524; Strayer v. Long, 3 S. E. 372; Bank v. Patton, 1 Rob. 499, (2d Ed. 528).

For W. Va. decisions on similar statute, see Justis' chapter 125, section 13.

See Gregory's Forms Nos. 175, 260.

Sec. 6099. Joinder of tenants in common.—Tenants may join or be joined as plaintiffs or defendants. (§ 3256.)

See 3 Min. (2d Ed.) 33.

Sec. 6100. Suing in the names of persons who are de any official bond, suit or action may be maintained (for fit of any person injured by the breach of the condition

Digitized by Google

e name of the person to whom such bond is payable, whether f the obligees be alive or not. (Code 1887, § 3257.)

Revisors' Note.—Parts no longer necessary have been omitted. The , "or action," are new.

c. 6101. Plea in abatement for misnomer not allowed.—No in abatement for a misnomer shall be allowed in any action, n a case wherein, but for this section, a misnomer would have pleadable in abatement, the declaration may, on the motion e plaintiff or defendant, and on affidavit of the right name. nended by inserting the right name. (Code 1887, § 3258.)

Revisors' Note.—Formerly, the motion was restricted to the de- nt; now, it may be made either by the plaintiff or the defendant.

An action against a corporation in its former name cannot be de- l by showing that it had changed its name without any change of embership. Welfley v. Shenandoah, I., L., M. & M. Co., 83 Va. 768, E. 376.

Court may permit declaration against "Arminius Chemical Company" amended by adding the word "incorporated" to its name. Arminius . Co. v. White, 112 Va. 250, 71 S. E. 637.

As to effect of judgment against corporation by wrong name, see v. Craig, 6 Leigh, 399; Mason v. Farmer's Bank, 12 Leigh 84. See Graves, Pleading, 28; Barton, L. Pr. (2d Ed.) 288; 1 Min. (4th 561; 4 Min. (3d Ed.) 692, 756, 1290, 1294, Burks' Pl. & Pr., pp. 270, 583, 926, 1013.

For monographic note on Pleas in Abatement, see Warren v. Saun- 27 Grat. 259, Va. Rep. Anno.

For W. Va. decisions on similar statute, see Justis' Annotations, er 125, section 14.

c. 6102. Effect of non-joinder or misjoinder.—No action or shall abate or be defeated by the non-joinder or misjoinder of es, plaintiff or defendant, but whenever such non-joinder or inder shall be made to appear by affidavit or otherwise, new es may be added and parties misjoined may be dropped by r of the court at any stage of the cause as the ends of justice require; but such new party shall not be added unless it be made to appear that he is a resident of this State and the of such residence be stated with convenient certainty, nor he be added if it shall appear that by reason of chapter two red and thirty-two or chapter two hundred and thirty-eight action could not be maintained against him. (Code 1887, 61, 3262; 1893-4, p. 489; 1895-6, p. 453.)

Revisors' Note.—The remedy provided by Acts 1893-4, p. 489 nded 1895-6, p. 453) was confined to cases of misjoinder. It was dered in the interest of substantial justice to extend the remedy to oinder. Section 9 of the New Jersey Practice Act adopted in 1912 s non-joinder and misjoinder on the same footing, and the above on embodies substantially the New Jersey act. In consequence of nsertion of this section, sections 3261 and 3262 of the Code of 1887 ing to pleas in abatement for non-joinder have been omitted and by repealed.

Decisions under former statutes.—Though a husband was an im- r party to a suit involving separate estate of his wife, it was not to refuse to quash the summons for that reason. It was not a

Digitized by Google

reversible error to fail to enter an order abating the actio husband if it appeared that the husband was not treated as the record. West v. Adams, 2 Va. Dec. 517, 27 S. E. 496.

A misjoinder of parties cannot be taken advantage of by Carlton v. Boudar, 118 Va. 521, 88 S. E. 174; Lee v. Mutual Re Life Asso., 97 Va. 160, 33 S. E. 556.

But the proper remedy was to move for the abatement as to the parties improperly joined. Riverside Cotton Mills 102 Va. 148, 45 S. E. 875.

In an action of ejectment the sheriff as administrato heirs at law of the decedent sued as plaintiffs. The court he legal title under the will devolved on the heirs at law su divested by the power of sale in the will. Held, the action sh as to the sheriff plaintiff and proceed as to the others as if had not been made. Coles v. Jamerson, 112 Va. 311, 71 editorial on this case, 17 Va. Law Reg. 315.

As to the plea in abatement allowed by sections 3261 of the Code of 1887 for non-joinder, see said sections and Mitchell, 76 Va. 169; Wilson v. McCormick, 86 Va. 995, 11 Shields v. Oney, 5 Munf. 550; Graves' Pleading 28; Barton, Ed.) 287, 292, 293; 4 Min. (3d Ed.) 758, 1276; Burks' Pl. & 258, 271.

Sec. 6103. What defects can be availed of only by plea ment; amendment of writ, declaration, or return.—A on whom a valid process summoning him to answer a have been served, shall not take advantage of any def writ or return, or any variance in the writ from the d unless the same be pleaded in abatement. And in every the court may permit the writ or declaration to be amen to correct the variance, and permit the return to be amen such terms as to it shall seem just. If the process be n process, the suit or action shall be dismissed upon moti defendant, who may appear specially for that purpose, bu dismissed by reason of the failure of the clerk to issu process, the plaintiff may renew his suit or action wi payment of another writ tax. (Code 1887, § 3259.)

Revisors' Note.—The word "valid" in line two is new, the last sentence of the section. Under the former language tion it was held in Warren v. Saunders, 27 Grat. 259, that did not apply where the writ was a void writ. The prese makes it plain that if the writ is not valid, the proceeding t case dismissed may be by motion.

The second sentence in this section, providing that " permit the writ or declaration to be amended so as to c variance," etc., was added by the revisors of 1887. Burks' Barton Law Pr. (2d Ed.), 1391. This was taken from We Code, 1868, chapter 125, Section 15. Id. See Kuhn v. Bro W. Va. 252, 12 S. E. 519; Alexandria & F. R. R. Co. v. Hernd 193, 12 S. E. 289.

Original summons states damages at $15,000; copy at $1 variance could be taken advantage of only by plea in abatem mond & D. R. Co. v. Rudd, 88 Va. 648, 14 S. E. 361.

An application for leave to amend a return of service on intent to apply for leave to amend a declaration in ejectme denied, no such notice being required as a condition to plain to amend. King v. Davis, 137 Fed. 463, 11 Va. Law Reg. 46

Where, in ejectment, the return of service as to two

Digitized by Google

nts was defective, one for failure to show that the door of the dant's abode on which the process was posted, was the "front door," he other for failure to show that the defendant's wife, with whom rocess was left, was a member of his family, such returns, though by private persons, may be amended to show the fact, as against dants themselves, on scire facias to revive a default judgment. Id. ection 6041 and notes.

Whether a return of substituted service of process in Federal courts e amended is a question of the power of the court, with reference ich it is not bound by State decisions. Id.

nnocent purchasers from defendants in pending ejectment suits in ederal courts in Virginia being bound by the record without the of a lis pendens, a return of service, defective in that it did not that the wife of the person on whom process was served was a er of his family, was amendable as against an innocent purchaser the defendant so served. Id.

Where a defendant named "Francis" was personally served with ss in which he was named "France," and he was subsequently a notice that plaintiff would ask leave to amend, in which his was properly spelled, he is bound by a judgment, though he failed pear. Id.

f a variance is occasioned by an amendment of the declaration at ar, and, in the absence of plea or motion, the case is heard upon erits, it is conclusively presumed that the amendment was harm- Ches. & O. R. Co. v. Chapman, 115 Va. 32, 78 S. E. 631.

Variance between the writ and the declaration is a matter of abate- only, and the objection cannot be raised for the first time in the ap- e court. Ches. & O. R. Co. v. Chapman, 115 Va. 32, 78 S. E. 631.

By appearing and pleading to an action, or by taking or consent- o a continuance, defendant waives defects in the process and the e thereof. Harvey v. Skipwith, 16 Grat. 410.

Objection cannot be raised for variance between the allegations of laration and the proof for the first time in the appellate court. e Lime Co. v. Johnston, 103 Va. 84, 48 S. E. 557.

See Graves Pleading, 28; 4 Min. (3d Ed.) 385, 639, 734, 755, 1268; n, L. Pr. (2d Ed.) 288, 292, 1166; Barton, C. Pr. (2d Ed.) 260; s' Pleading and Practice, pp. 180, 257, 270, 272, 291, 349, 583, 1013.

As to amendment of return, see 1 Va. Law Reg. 152.

For cases before the statute, see Bradley v. Welch, 1 Munf. 284; pe v. Redman, 2 Munf. 240; Payne v. Grim, Id. 297.

Discussed, 14 Va. Law J. 21.

For W. Va. decisions on similar statute, see Justis' Annotations, er 125, section 15.

See Gregory's Forms No. 232.

c. 6104. Amendment of pleadings.—In any suit, action, mo- or other proceeding hereafter instituted, the court may at any in furtherance of justice, and upon such terms as it may just, permit any pleading to be amended, or material sup- ental matter be set forth in amended or supplemental plead- The court shall, at every stage of the proceedings, disre- any error or defect which does not affect the substantial ts of the parties. If substantial amendment is made in pur- ce of this section, the court shall make such order as to inuance and costs as shall seem fair and just. (1914, p. 641.)

Revisors' Note.—This section applies to suits, actions, motions and proceedings. The last sentence is new.

Though the courts in this jurisdiction are extremely liberal in al- g amendments to pleadings, the amendment must not introduce a

Digitized by Google

substantive cause of action different from that declared original declaration. New River Min. Co. v. Painter, 100 V S. E. 300; Bowman v. First Nat. Bk., 115 Va. 463, 80 S. E. 9 Barrett, 119 Va. 587, 89 S. E. 904.

This section must be liberally construed. Standard P Vietor, 120 Va. 595, 91 S. E. 752.

See notes under section 6250.

In Standard Paint Co. v. Vietor, 120 Va. 595, 91 S. E. 752 in speaking of the act from which the above section is taken language: "Since the act of March 27, 1914, supra, it is ap this court should extend the doctrine of harmless error to conclusion, namely, that error is harmless which does not affect the interests of the party complaining, and that such in presumed but must affirmatively appear from the record; fo in simple and unambiguous language directs the courts, at eve the proceeding, to disregard any error or defect in the proce does not affect the substantial rights of the parties. In thi doctrine of harmless error has been frequently announced an in many cases where there has been a misdirection of the jur to grant proper instructions, where evidence has been illegall and where there have been mistakes and errors in pleadin

Sec. 6105. How and when exception to jurisdiction to when pleas in abatement filed.—Where the declaration or on its face proper matter for the jurisdiction of the co ception for want of such jurisdiction shall be allowed u taken by plea in abatement. No such plea or any oth abatement shall be received after the defendant has pleaded in bar or answered to the declaration or bill, no second rules subsequent to service of process on such (Code 1887, § 3260; 1897-8, p. 198.)

Revisors' Note.—Under section 3260 of the Code of 1887, the above section is based, no plea in abatement could be re the defendant had demurred, pleaded in bar, or answered to t tion or bill, "nor after a rule to plead, or a conditional judgmen nisi." That section of the Code of 1887 was amended by A p. 198, by substituting for the words quoted the following: a decree nisi or conditional judgment at rules." In other amendment permitted a plea in abatement to be filed after plead, which was not the case under the section as it stood i of 1887. Under that amendment, therefore, a defendant by and not pleading was given a rule to plead, which enabled tain until the next rules in which to file his dilatory pleas, being allowed after a rule to plead but not after a decree n ditional judgment at rules. 6 Va. L. Reg. 484; 8 Va. L. Reg. appearance at the rules without pleading merely to get this time was thought by the revisors to be a useless formality changed the language of the amendment of 1897-8, above me read "nor after the second rules subsequent to service of such defendant." The intention of the revisors in making t was to give the defendant the same time without the ente appearance, that he could have obtained under the ame 1897-8 by entering an appearance. That is to say, tion was to cut off all dilatory pleas after the rules next the rules at which the declaration or bill is filed, but not be language used by the revisors, however, was not broad enou out fully their intention, and they are of opinion that the last the section should be so amended as to provide that "No such

Digitized by Google

r plea in abatement shall be received after the defendant has de-ed, pleaded in bar, or answered to the declaration or bill, nor after rules next succeeding the rules at which the declaration or bill is " The revisors will, therefore, recommend to the General Assembly s session of 1920 that this change be made.

To what cases applicable.—Applies only where the objection to the diction of the court is for mere matter of abatement, as where the is a proper one for a court of equity, but not the particular court in h it is brought, or where the suit ought to be abated by reason of circumstances attending the situation of the plaintiff or defendant e like. Jones v. Bradshaw, 16 Grat. 355.

When the cause of action is not within the jurisdiction granted by to the tribunal, the court will dismiss the suit at any time when act is brought to its notice. W. U. Tel. Co. v. Pettyjohn, 88 Va. 296, E. 431. See, also, as to want of jurisdiction, Green v. Massie, 21 356; Salamone v. Keiley, 80 Va. 86; Hudson v. Kline, 9 Grat. 379; rd v. Patterson's Adm'r, 3 Hen. & M. 67.

Where bill does not state proper matter for relief in equity, de-nt is not precluded by this section from taking exception to juris-on after answer (Hickman v. Stout, 2 Leigh 6); or by answer (Col-. Jones, 6 Leigh 530, 29 Am. Dec. 216); or at the hearing (Beckley lmer, 11 Grat. 625).

A non-resident of the State must take exception to the jurisdiction e court by plea in abatement; he cannot take exception on motion rest of judgment. Washington & N. O. Tel. Co. v. Hobson, 15 Grat.

On a motion for judgment under section 6046, after defendant has ared and pleaded to the action, he cannot move to dismiss. Moro-Ins. Co. v. Pankey, 91 Va. 259, 21 S. E. 487.

A plea in abatement is admissible in an action of ejectment. Sec-5463 refers only to pleas in bar of the action. James River & wha Co. v. Robinson, 16 Grat. 434.

Sufficiency of the plea.—As a general rule, a plea in abatement must a more proper and sufficient jurisdiction in some other court of State or country in which the action was brought. Guarantee Co. t. Bank, 95 Va. 480, 28 S. E. 909; Beirne v. Rosser, 26 Grat. 537. this is by no means a rule of universal extent and application. en v. Saunders, 27 Grat. 259, 267. And this requirement is not able where the plea shows a condition of facts under which no court e State has jurisdiction. Deatrick v. State Life Ins. Co., 107 Va. 59 S. E. 489.

Where it appears from declaration that plaintiff knew where the of action arose, a plea in abatement stating the defendant's resi-e is good, though it omit to state where the cause of action arose. Id.

A plea to the jurisdiction of the court in a transitory action which to state that the cause of action did not arise within the jurisdiction e court, or where it did arise, and which fails to give the plaintiff ter writ by showing what court of the State has jurisdiction of the , and which omits the prayer of judgment, is bad. Guarantee Co. v. Bank, 95 Va. 480, 28 S. E. 909, 3 Va. Law Reg. 873.

A plea in abatement to the jurisdiction of the court on the ground the defendant did not reside in the county in which the suit was ght, nor did the cause of action arise there, must state where the dant does reside and where the cause of action did arise. Middle-. Pinnell, 2 Grat. 202.

A plea to the jurisdiction by a corporation must be by attorney, as nnot appear in person. Culpeper Nat. Bank v. Tidewater Improve-Co., 119 Va. 73, 89 S. E. 118.

Duplicity.—A plea in abatement which sets up two or more distinct and ent defenses, either of which if true would necessitate a finding in of the defendant tendering the plea, is bad for duplicity. Guaran-o. v. Nat. Bank, 95 Va. 480, 28 S. E. 909.

Digitized by Google

Generally.—A petition for removal to federal court
before lapse of period allowed for the filing of pleas in
State court. Martin v. B. & O. R. Co., 151 U. S. 673, 14 Su
L. Ed. 311; Goldey v. Morning News, 156 U. S. 518, 15
39 L. Ed. 517; Wabash W. Ry. v. Brow, 164 U. S. 271, 17
41 L. Ed. 431; Powers v. Railway Co., 169 U. S. 92, 18
42 L. Ed. 673; Fidelity & Casualty Co. v. Hubbard, 8 Va. L
117 Fed. 949, and note 8 Va. Law Reg. 414.

Where, in a suit in equity, plea is presented of another
pending in same court, between same parties, concerning
matter, it is not error to reject the plea, consolidate the cau
ceed in them as one cause. Mosby v. Wither's Ex'rs, 80 Va

Declaration showing matter of jurisdiction and no plea i
the judgment must stand. Wells v. Hughes Ex'r, 89 Va. 543,

Cited but not construed in Southern Express Co. v. Jac
27, 63 S. E. 17.

As to when one suit is a bar to a second, see McAlliste
97 Va. 543, 34 S. E. 474, 5 Va. Law Reg. 529; N. & W. R. Co.
Adm'r, 88 Va. 546, 14 S. E. 367; 6 Va. Law Reg. 191.

Statute applied in Wells v. Hughes' Ex'r, 89 Va. 543,
Cox v. Cox, 95 Va. 173, 27 S. E. 834, 3 Va. Law Reg. 738,
N. & W. R. Co., 4 Va. Law Reg. 735, 91 Fed. 845, 34 C. C.
folk & W. R. Co. v. Ampey, 93 Va. 108, 25 S. E. 226; Reed &
v. Gold, 102 Va. 37, 45 S. E. 868.

See, also, Graves Pleading, 30, 74; Barton, L. Pr. (2d Ed
ton, C. Pr. (2d Ed.) 259, 385, 389; 4 Min. (3d Ed.) 750,
1274, 1343. Burks' Pleading and Practice, pp. 180, 258, 273
murrer to plea in abatement, see section 6118.

See notes to section 6103.

For an article on pleas in equity practice, see 17 Va. L

For W. Va. decisions on similar statute, see Justis'
chapter 125, section 16.

See Gregory's Forms No. 157.

**Sec. 6106. If only part of defendants liable, how ju
tered.**—If it shall appear at the trial that all the origi
unts are liable, but that one or more of the other per
under the provisions of section sixty-one hundred an
not liable, the plaintiff shall be entitled to judgment, o
and judgment, as the case may be, against the defe
appear liable, and such as are not liable shall have jud
recover costs as against the plaintiff, who shall be allowe
as costs against the defendants who caused them to be
ties. (Code 1887, § 3263.)

**Revisors' Note.—This section has been made to conform
6102.**

Declaration amended at bar in an immaterial particul
tinuance refused. No error. D. & W. R. R. Co. v. Brown,
18 S. E. 278.

As to right to amend declaration or bill before appearan
in vacation, see section 6095. As to right to amend at trial
of variance between allegation and proof, see section 6250.

For monographic note on amendment, see Snead v. Cole
300, Va. Rep. Anno.

For W. Va. decisions on similar statute, see Justis'
chapter 125, sections 19, 20.

See Gregory's Forms No. 233.

**Sec. 6107. Defendant may plead several matters;
filed; which tried first.**—The defendant in any action

Digitized by Google

many several matters, whether of law or fact, as he shall think essary, and he may file pleas in bar at the same time with pleas abatement, or within a reasonable time thereafter, but the is- s on the pleas in abatement shall be first tried, and if such issues found against the defendant, he may, nevertheless, make any er defenses he may have to the action. Special pleas constituting good defense shall not be rejected because provable under the neral issue. (Code 1887, § 3264.)

Revisors' Note.—The words, "and if such issues be found against defendant, he may, nevertheless, make any other defense he may have he action" appear in this section for the first time and are taken from ion 4775 of the Code of West Virginia (Hogg, 1913). See Burks' Pl. r., pp. 278, 279. The last sentence of the revised section is also new. Ches. & O. R. Co. v. Rison, 99 Va. at pp. 32, 33, 37 S. E. 320; Burks' & Pr., pp. 329, 331.

Revision of 1887.—The provision "and he may file pleas in bar at same time with pleas in abatement, or within a reasonable time reafter," etc., was added by the revisors of 1887. Burks' Address, 2 rton Law Pr. (2d Ed.), 1391. See, also, West Virginia Code, 1868, pter 125, section 21; Delaplaine & Co. v. Armstrong, 21 W. Va. 211; Barton Law Pr. (2d Ed.) 286.

Pleading and demurring to declaration.—The defendant may at the ne time plead and demur to the whole declaration. Stone v. Patterson, Call 71; Syme v. Griffin, 4 Hen. & M. 277.

If a defendant plead and demur to the whole declaration, and the murrer be overruled, judgment ought not to be entered without first ing the issues joined on the other pleas. Waller's Ex'rs v. Ellis, 2 nf. 88.

It is immaterial that the matters pleaded are inconsistent with each er. Id.

A defendant in chancery may, at the same time, answer and demur the same matter in the bill. Bassett's Adm'r v. Cunningham's Adm'r, Leigh 402.

Plaintiff cannot demur and reply to defendant's pleas.—A plaintiff y demur or reply to the defendant's pleas, but he cannot do both. is section applies to pleas by the defendant, but not to subsequent ges of the pleading. Chesapeake & O. Ry. Co. v. Bank, 92 Va. 495, S. E. 935, 44 L. R. A. 449, note 1 Va. Law Reg. 825; Lang v. Lewis' m'r, 1 Rand. 277.

Duplicity in pleading by defendant should still be avoided. O'Bannon Saunders, 24 Grat. 138, 147. See full discussion, 1 Va. Law Reg. 334.

Each matter of law or fact must be pleaded separately, unless they constitutent parts of one and the same defence. O'Bannon v. unders, 24 Grat. 138, 147.

If a defendant pleads several distinct matters of defence in one a, the plaintiff may reply generally to it, the defendant being guilty the first fault. Id.

Pleading general issue and special pleas together.—A defendant is t inhibited from pleading specially what he might have given in evi- nce under the general issue unless the matter pleaded amounts to the neral issue; that is to say, denies the allegation which the plaintiff is und to prove. Where the cause of action is avoided by matter ex st facto, such matter may always be specially pleaded, whether it could given in evidence under the general issue or not. Maggort v. Hans- rger, 8 Leigh 532. See notes below.

Where the general issue has been pleaded, special pleas which set up atter of defence which can be proved under the general issue should be jected. Blankenship v. Ely, 98 Va. 359, 36 S. E. 484. But see last

Digitized by Google

sentence of present section, and Ches. & O. R. Co. v. Rison, pp. 32, 33, 37 S. E. 320.

In a recent case it was held that the admission of a plea a **to the general issue** is a matter within the discretion of the t the exercise of which generally will not be subject to review b pellate court. Sutherland v. Wampler, 119 Va. 800, 89 S. E. 8

For difference between pleading specially matters which a the general issue, and pleading specially matters which, though be shown under the general issue, do not amount to the gene see 4 Va. Law Reg. 770.

The rejection of special pleas is not ground of error whe fendant has been allowed to give in evidence the same mat the general issue. Southern R. Co. v. Wilcox, 99 Va. 394, 39

Same matter in several pleas.—This section does not give the absolute right to his special pleas setting up defences a under pleas already received, and the court may strike out su pleas, although already admitted and issue joined. Virgini Marine Ins. Co. v. Buck, 88 Va. 517, 13 S. E. 973; Guarant Nat. Bank, 95 Va. 480, 28 S. E. 909; Smith's Case, 85 Va. 92 148.

It is not error to exclude a plea which presents a defe may be made under a plea already in. Norfolk & W. R. Co. 118 Va. 428, 87 S. E. 553.

Motion to strike out.—Special demurrer having been aboli motion to strike out or reject can be used to obviate objection ings, such as duplicity and the like, which cannot now be demurrer. Chesapeake & O. R. Co. v. Rison, 99 Va. 18, 37 S

Where the objection to the second plea is that the matte plea is already put in issue, the practise is to try that ques motion to reject the plea, or to strike it out if it has been e record. Reed v. Hanna's Ex'r, 3 Rand. 56. See Virginia Fire Ins. Co. v. Buck, 88 Va. 517, 13 S. E. 973.

As to difference between demurrer to and motion to re see 1 Va. Law Reg. 306; Virginia Fire & Marine Ins. Co. v. Buc 517, 13 S. E. 973.

Generally.—Under this section, authorizing a defendan action to plead as many several matters as he shall think necess to scire facias to revive a default judgment in ejectment, denyi of process, declaration, and notices in the manner and at the places stated in the returns, and alleging service by an una person, are not objectionable, though repugnant. King v. D Fed. 198, 11 Va. Law Reg. 179.

In ejectment a defendant may waive his plea in abatement in bar of the action. James River & Kanawha Co. v. Rob Grat. 434.

Defendant, under plea of non-assumpsit, may prove anythi statute of limitations, tender, and bankruptcy. Va. F. & M. Co and Newson, 15 Va. Law Journal (1891) 779.

For the discussion of the pleas of covenants performed a ants not broken, see 5 Va. Law Reg. 586.

As to pleading by administrators, see 5 Va. Law Reg. 27

As to pleading the statute of frauds, see section 5561 a

As to pleading in the former action of replevin, see Allen 18 Grat. 722-729. Generally, as to matters of pleading, Vaide 3 Rand. 448; Delaplaine v. Armstrong, 21 W. Va. 211.

See Graves Pleading, 75, 81, 104, 126; Barton, L. Pr. 286, 455, 487, 488, 764; 4 Min. (3d Ed.) 739, 1105, 1164; Burk ing and Practice, pp. 279, 332, 339, 342, 343, 909, 1000, 101 Law Reg. 824.

For W. Va. decisions on similar statute, see Justis' An chapter 125, section 21.

See Gregory's Forms No. 179.

Digitized by Google

ec. 6108. When plea of infancy not allowed; the liability of in-ts for debts under certain circumstances.—If any minor now nsacting business or who may hereafter transact business as a der fail to disclose by a sign in letters easy to be read, kept spicuously posted at the house wherein such business is trans-ed and also by a notice published for two weeks in a newspaper any) printed in the city, town, or county wherein the same is nsacted the fact that he is a minor, all property, stock, and ses in action acquired or used in such business shall as to the ditors of any such person be liable for the debts of such per-, and no plea of infancy shall be allowed. (1893-4, p. 373.)

ec. 6109. What allegations unnecessary in pleas, etc.—In a plea, ication, or subsequent pleading, intended to be pleaded in bar, n maintenance of the action, it shall not be necessary to use allegation of "actionem non," or "precludi non," or to the effect, or any prayer of judgment. (Code 1887, § 3265.)

See Graves Pleading, 100; Barton, L. Pr. (2d Ed.) 473; 4 Min. Ed.) 766-769.

For W. Va. decisions on similar statute, see Justis' Annotations, pter 125, section 22.

See Gregory's Forms Nos. 161, 162, 163, 164, 165, 166, 167, 169, 171, 173, 174, 175, 176, 177, 179, 180, 181, 182, 183, 184. 185, 186, 188, 189, 194, 195, 196, 198, 200.

ec. 6110. Omission of protestation.—No party shall be preju-d by omitting a protestation in any pleading. (Code 1887, 266.)

As to nature of protestation, see Philips' Case, 19 Grat. 485. See, Graves Pleading 101; 4 Min. (3d Ed.) 742.

For W. Va. decisions on similar statute, see Justis' Annotations, pter 125, section 23.

ec. 6111. How traverses to conclude.—All special traverses, or erses with an inducement of affirmative matter, shall conclude he country. But this regulation shall not preclude the opposite y from pleading over to the inducement when the traverse nmaterial. (Code 1887, § 3267.)

Does not affect rule of pleading that where new matter is introduced pleading shall conclude with a verification. Virginia Fire & Marine Co. v. Saunders, 84 Va. 210, 4 S. E. 584. See section 6119 and sors' note.

See Graves Pleading 101; 4 Min. (3d Ed.) 742, 1116; Burks' Plead-and Practice, p. 865.

For W. Va. decisions on similar statute, see Justis' Annotations, pter 125, section 24.

See Gregory's Forms No. 164.

ec. 6112. How plaintiff may proceed without joinder in de-rrer or similiter; duty of clerk to put certain cases on court ket.—When the plaintiff takes issue on the defendant's plead-or traverses the same, or demurs, so that the defendant is not in to allege any new matter, the plaintiff may, without giving ule to rejoin, proceed as if there were a similiter or joinder in murrer. And in any action where, for want of a plea, an office

Digitized by Google

judgment would have been entered, it shall be the du clerk, if a plea has been filed, to place such action upon docket; and in any such action so placed upon the cou the pleadings may be matured in court, subject to such to continuance as the court in its discretion may imp either party. (Code 1887, § 3268.)

The court will not reverse a judgment because the co refused to allow defendant to withdraw his joinder in issue a to the replication where the latter is sufficient in law. Va. F. Co. v. Saunders, 86 Va. 969, 11 S. E. 794.

It seems that objection to the want of joinder of issue taken for the first time in the appellate court. Southside Daniel, 20 Grat. 344.

For case before the statute, see Nadenbousch v. McRae, Gi See Miller v. McLuer, Id. 338.

See Graves Pleading, 29, 102; Barton, L. Pr. (2d Ed.) 47 C. Pr. (2d Ed.) 386; 4 Min. (3d Ed.) 722, 1139, 1283; Burks and Practice, p. 356.

For W. Va. decisions on similar statute, see Justis' An chapter 125, section 25.

Sec. 6113. How plea shall commence.—No formal defe be required in a plea. It shall commence as follows: fendant says that." (Code 1887, § 3269.)

See Barton, L. Pr. (2d Ed.) 470; 4 Min. (3d Ed.) 740, 124 Pleading 100.

For W. Va. decisions on similar statute, see Justis' An chapter 125, section 26.

See Gregory's Forms Nos. 157, 161, 162, 163, 164, 165. 169, 170, 171, 173, 174, 175, 176, 177, 179, 180, 181, 182, 185, 186, 187, 188, 189.

Sec. 6114. After one plea, how another may commence. not be necessary to state in a second or other plea that it ed by leave of the court, or according to the form of th or to that effect. (Code 1887, § 3270.)

See Barton, L. Pr. (2d Ed.) 470; 4 Min. (3d Ed.) 74 Pleading 104; Burks' Pleading and Practice, p. 909.

For W. Va. decisions on similar statute, see Justis' An chapter 125, section 27.

Sec. 6115. Form of demurrer or joinder in demurrer.— of demurrer or joinder in demurrer, may be as follows: fendant (or plaintiff) says that the declaration (or oth ing) is not (or is) sufficient in law"; provided, that all d shall be in writing, except in criminal cases, and in civil court on motion of any party thereto, shall, or of its ow may, require the grounds of demurrer relied on to be state cally in the demurrer; and no grounds shall be consider than those so stated, but either party may amend his dem stating additional grounds, or otherwise, at any time b trial. (Code 1887, § 3271; 1899-00, p. 111.)

A demurrer to a bill in equity in the form given in the sufficient. Jones' Ex'rs v. Clark, 25 Grat. 642, 675.

The demurrer may be contained in the answer. Dunn v Grat. 291, 296, 297; Matthews v. Jenkins, 80 Va. 463.

Digitized by Google

It is not necessary to state grounds of demurrer in criminal cases. Jones' Case, 100 Va. 842, 41 S. E. 951.

Since the amendment (1899-00, p. 111), providing among other things that the court may, on motion of any party, or of its own motion, require grounds of demurrer to be stated specifically, etc., if taken advantage of, it will do away with the practice of assigning one ground of demurrer in trial court, and relying upon a wholly different ground in the appellate court. Lane Bros. & Co. v. Bauserman, 103 Va. 150, 48 S. E. 857.

Causes of demurrer not assigned in the statement of causes of demurrer in the trial court cannot be assigned in appellate court. Virginia, &c., Wheel Co. v. Harris, 103 Va. 708, 49 S. E. 991.

Where grounds of demurrer are not copied in the record the appellate court will treat the case as if there had been no demurrer. Lane Bros. & Co. v. Bauserman, 103 Va. 147, 150, 49 S. E. 991.

A demurrer not noticed by the decree of the trial court will be considered as having been overruled. Savings Bank v. Powhatan Clay Mfg. Co., 102 Va. 274, 9 Va. Law Reg. 898, and note, 46 S. E. 294.

Where plaintiff states in writing the grounds of his demurrer to plea in abatement, no other grounds can be considered than those stated. Va. & S. W. R. Co. v. Hollingsworth, 107 Va. 359, 58 S. E. 572.

Under this section the grounds of demurrer must be stated with reasonable certainty and no other grounds than those so stated should be considered. McMenamin v. Southern R. Co., 115 Va. 822, 80 S. E. 696, 19 Va. L. Reg. 901 and note.

A ground of demurrer reading: "That by reason of the vagueness of the statements made in said count and the omission of statements which should be made, said count does not fulfill the requirements of the law of pleadings," may be disregarded, as it is no more than an assertion that the declaration is not sufficient in law. Newton v White, 115 Va. 849, 80 S. E. 561.

Cited but not construed in Norfolk & Western Ry. Co. v. Stegall, 105 Va. 539, 54 S. E. 19 and in Strother's Admx. v. Strother, 106 Va. 730, 56 S. E. 170. C. & O. R. Co. v. Rowsey, 108 Va. 632, 62 S. E. 363; Nes. & O. R. Co. v. Tinsley, 116 Va. 600, 82 S. E. 732.

See Barton, L. Pr. (2d Ed.) 301, 457; 4 Min. (3d Ed.) 813; Graves Pleading 72, 124; 12 Va. L. Reg. 275, 361.

For monographic note on demurrers see Com. v. Jackson, 2 Va. Cas. 501, Va. Rep. Anno.

Form of joinder to demurrer to any pleading, 4 Min. (3d Ed.) 1736; demurrer to declaration, Id.; of demurrer to any pleading, Id.

For W. Va. decisions on similar statute, see Justis' Annotations, Chapter 125, section 28.

See Gregory's Forms Nos. 207, 208, 209, 210.

Sec. 6116. Amendment of pleading after demurrer thereto sustained; amendment under protest.—Wherever a demurrer to any pleading has been sustained, and as the result thereof the demurree has amended his pleading, he shall not be deemed to have waived his right to stand upon his pleading before the amendment, provided the order of the court shows that he objected to the ruling of the court sustaining the demurrer and in any writ of error in such a case the demurree may insist upon his original pleading, and if the same be held to be good, he shall not be prejudiced by having made the amendment. (1914, p. 493.)

Revisors' Note.—The act of 1914 upon which this section is based, provided that the demurree might except to the ruling of the court sustaining the demurrer. A bill of exception to a ruling on a demurrer being incongruous, under the present section no bill of exception is necessary, but the demurree may obtain the benefit of his original pleading

Digitized by Google

by having the order of the court show that he objected to th sustaining the demurrer.

Sec. 6117. Demurrer to evidence; grounds to be state party tendering a demurrer to the evidence shall state in specifically the grounds of demurrer relied on, and the d shall not be compelled to join in said demurrer until such have been so stated, nor shall any ground of demurrer n specifically stated be considered; but the court shall al demurree to withdraw his joinder in such demurrer an duce new evidence, or suffer a non-suit, at any time before retire from the bar. The demurrant shall also be perm withdraw his demurrer within the same time. (1912, p. 7

Revisors' Note.—This section is based on the act cited a Acts 1906, p. 301. The change in language is intended to mak the legislative intention, except that in one particular the revise differs in meaning from the act. Under the act the court w discretion in allowing withdrawals, but the revised section g demurree the absolute right to withdraw his joinder in the d and to introduce new evidence or suffer a non-suit at any tim the jury retire from the bar. The demurrant is also given the right to withdraw his demurrer within the same time.

The refusal to permit a demurrant to the evidence to an grounds of demurrer after a verbal joinder in the demurrer announced by the demurree is not prejudicial to the demurran under the grounds already assigned, he has the right to rely u does in fact argue the same point proposed to be made and reli by the amendment. Virginia Iron Co. v. Munsey, 110 Va. S. E. 478.

The object of this statute was at least two-fold: First, to the demurrant to give notice in writing of the grounds or c demurrer which he intended to rely on, and second, to prevent h assigning grounds of demurrer in the appellate court wholly from those relied on in the lower court. McMenamin v. Southern 115 Va. 822, 80 S. E. 596, 19 Va. L. Reg. 901 and note.

Where the language used is broad enough to embrace a prehend any one of several causes of demurrer, but fails to spe one of them as the particular ground or cause relied on with re certainty, considering the facts and circumstances of the case, a sufficient compliance with this statute. McMenamin v. Sout Co., 115 Va. 822, 80 S. E. 596, 19 Va. L. Reg. 901 and note. the circumstances of this case it was held that the grounds sufficiently stated.

The failure of a demurree to evidence to object to the gr demurrer because not as specific as he desires is not a waive requirement of the statute. McMenamin v. Southern R. Co., 822, 80 S. E. 596, 19 Va. L. Reg. 901 and note.

The degree of particularity within which the grounds of d should be stated in order to meet the requirements of the statu depend to some extent upon the character of the case. McMen Southern R. Co., 115 Va. 822, 80 S. E. 596, 19 Va. L. Reg. 901 a It is sufficient if the demurree is fully advised of the contentio demurrant. Bonos v. Ferries Co., 113 Va. 495, 75 S. E. 126.

The provisions of this statute are mandatory and preclude of jurisdiction to consider a demurrer unless the grounds of s murrer are specifically stated in writing. Saunders v. Southern 117 Va. 396, 84 S. E. 650.

Where there is only one controverted question in the case, other could arise on the demurrer to the evidence, the failure

Digitized by Google

ne grounds in the demurrer is not ground for reversal. Newberry v. Watts, 116 Va. 730, 82 S. E. 703.

A failure to comply with the plain mandate of the statute cannot be excused upon the ground that there were but two grounds of demurrer relied on which were well known to and understood by the plaintiff. Saunders v. Southern R. Co., 117 Va. 396, 84 S. E. 650.

For a case in which the grounds of a demurrer were held to be sufficiently stated, see Va. I. C. & C. Co. v. Asbury's Admr., 117 Va. 683, 85 S. E. 148.

For statement of the light in which the evidence is viewed upon demurrer to the evidence, see Newberry v. Watts, 116 Va. 730, 82 S. E. 703.

In Virginia R. & P. Co. v. Gorsuch, 120 Va. 655, 91 S. E. 632 (March 15, 1917), after the evidence had been concluded the defendant company demurred to the evidence because it had not beeen proved that the street car causing the injury complained of was the property of the defendant company. The plaintiff had rested and concluded her case, but after the grounds of demurrer had been stated the court allowed her to reopen the evidence and prove the ownership of the car. It was held that at that stage of the proceedings, they were within the control of the court, and that it was the duty of the court to permit the plaintiff to prove a fact which had been inadvertently omitted; furthermore, that had the court refused to do so, it would have been reversible error.

For present law concerning proof of ownership, etc., see section 6126.

See 11 Va. Law Reg., 959 and 12 Id. 195.

Sec. 6118. What defects not to be regarded on demurrer.—On demurrer (unless it be to a plea in abatement), the court shall not regard any defect or imperfection in the declaration or other pleading, whether it has been heretofore deemed mispleading or insufficient pleading or not, unless there be omitted something so essential to the action or defense, that judgment, according to law and the very right of the cause, cannot be given. No demurrer shall be sustained, because of the omission in any pleading of the words, "this he is ready to verify," or "this he is ready to verify by the record," or, "as appears by the record;" but the opposite party may be excused from replying, demurring or otherwise answering to any pleading, which ought to have, but has not, such words therein, until they be inserted; nor shall a demurrer be sustained to a declaration alleging negligence of defendant because the particulars of the negligence are not stated, but such particulars may be demanded by the defendant under section six thousand and ninety-one. (Code 1887, § 3272.)

Revisors' Note.—The latter part of this section relating to the failure of the plaintiff to aver, in his declaration, the particulars of the negligence of the defendant, is new, and intended to change the former law as announced in Hortenstein v. Va.-Car. Ry. Co., 102 Va. 914, 47 S. E. 996, and Norfolk & W. R. Co. v. Gee, 104 Va. 806, 52 S. E. 572.

When declaration is sufficient.—A demurrer to an entire declaration raises the question whether there be or be not matter in the declaration sufficient to maintain the action. If there be several counts, and one good, that is sufficient. If there be a single count containing sufficient breaches, any one of which is well assigned, that is sufficient. If there be a single count containing a demand of several matters which in their nature are divisible, any one of which is well claimed, that is sufficient. Henderson v. Stringer, 6 Grat. 130.

Digitized by Google

If there are several counts in the declaration, and any one is good, the demurrer should be overruled; and the fact that th ment of causes of demurrer applies to the bad counts as well good will not affect the result as it does not enlarge the sco demurrer. Virginia, etc., Wheel Co. v. Harris, 103 Va. 708, 49

A declaration in an action for personal injury is sufficien averments are made as to the circumstances under which the i inflicted as will show the extent of the duty which it is averred neglected by the defendant to the injury of the plaintiff. Norf R. Co. v. Wood, 99 Va. 158, 37 S. E. 846.

While it is not sufficient merely to allege negligence i terms as a conclusion of law in a declaration, the declaration i demurrer if such facts are alleged as to show that the acciden one which would have occurred if the defendant had exercise able care. Houston v. Lynchburg T. & L. Co., 119 Va. 136, 89

A declaration is sufficient if it informs the defendant of t of the demand made against him, and states such facts as will e court to say that if the facts are proved, as alleged, they e good cause of action. Va., etc., Wheel Co. v. Harris, 103 Va S. E. 991; Stonegap Co. v. Hamilton, 119 Va. 271, 89 S. E. 3

Where the declaration in an action for the amount of a ben ficate sets forth the undertaking of defendant to pay the certific by a beneficiary association on the life of a member, alleged and the consideration for the defendant's undertaking and th to pay the amount of the certificate. Held, declaration suffici sumpsit as against a demurrer. Cosmopolitan Life Ins. Ass'n 104 Va. 619, 11 Va. Law Reg. 824, 52 S. E. 166.

An allegation of duty is only a conclusion of law; and facts alleged show the duty, and are stated with sufficient cle prevent surprise, and enable the court to proceed upon the the cause, the declaration should be sustained. Virginia, & Co. v. Harris, 103 Va. 713, 49 S. E. 991.

Defects not regarded on demurrer.—Though declaration detinet only when it should declare in the debet and detinet, it held bad for this cause. Bailey v. Beckwith, 7 Leigh 604.

On general demurrer the irregularity in a replication w cludes to the country, instead of with a verification, as it sho cured by this section. Carthrae v. Clarke, 5 Leigh 268. S 6119.

Where declaration, though inartificially commencing sta cause of action with a "quod cum," yet states the essential ave direct and positive terms, it is sufficient. Roanoke Nat. Banl brick, 82 Va. 135.

Whether a paper declared on as a simple contract is a s tract or not cannot be raised by demurrer. Grubbs v. Nat. Lif 94 Va. 593, 27 S. E. 464.

A demurrer to a plea required by statute to be verified b does not bring to the attention of the court the lack of the Lewis' Adm'r v. Hicks, 96 Va. 91, 30 S. E. 466.

A declaration designating an action as **trespass** which sufficient matter of substance for the court to proceed upon of the cause is good under sections 6085 and 6118, althou facts alleged it is apparent that the declaration is one in t **the case.** Stonegap Co. v. Hamilton, 119 Va. 271, 89 S. E. 3

Where the assignment of grounds of demurrer points out not cured by this section, the demurrer is properly overruled. Paint Co. v. Vietor, 120 Va. 595, 91 S. E. 752.

If the matter pleaded be in itself insufficient without re the **manner** of pleading it, the defect is **substantial,** but if the is in the form of alleging it, the defect is formal. Norfolk & v. Sturgis, 117 Va. 532, 85 S. E. 572.

Defects regarded on demurrer.—In debt on a decree which does not give running interest thereon, the declaration

Digitized by Google

erest from the date of the decree as part of the debt. Held bad on ieral demurrer. Shelton's Ex'rs v. Welsh's Adm'rs, 7 Leigh 175.

Where one of the counts in a declaration is in case for tort and ther in assumpsit, a general demurrer to the declaration for such sjoinder ought to be sustained. Creel v. Brown, 1 Rob. 265 (2d Ed.) 1; Henderson v. Stringer, 6 Grat. 130.

Faulty assignments in a single count, containing separable mat-s, some of which are good and others bad, may be reached by de-rrer. Ches. & O. R. Co. v. Tinsley, 116 Va. 600, 82 S. E. 732.

Special demurrer.—This section abolished special demurrers. See aves Pleading 70, 71.

Assigning special causes for demurrer does not make a demurrer cial which is in its nature general. Miller v. McLuer, Gilmer 338.

Special demurrer having been abolished in Virginia, mere duplicity a count of a declaration is no longer a ground of demurrer. Norfolk W. R. Co. v. Ampey, 93 Va. 108, 25 S. E. 226, note 2 Va. Law Reg. 284; nningham v. Smith, 10 Grat. 255, 60 Am. Dec. 333.

As to how to take advantage of duplicity in pleading, see 1 Va. w Reg. 306, 384, 836; Chesapeake & O. R. Co. v. Rison, 99 Va. 18, S. E. 320, note 6 Va. Law Reg. 678.

Demurrers to pleas in abatement.—The utmost strictness is re-ired in plea in abatement, and a general demurrer to such plea has the effect of a special one (Hortons v. Townes, 6 Leigh 47); and ght to be sustained, though the plea be defective in point of form only lantz v. Hendley, 2 Hen. & M. 308). See Guarantee Co v. Bank, 95 . 480, 28 S. E. 909, 3 Va. L. Reg. 873.

Generally.—Where pleadings terminate in a demurrer on either e, any error in the previous pleadings on either side may be taken vantage of. Roane's Adm'r v. Drummond's Adm'rs, 6 Rand. 182.

Upon demurrer taken by plaintiff, court goes back to the first fault, d if plaintiff's declaration is defective gives judgment for the de-ndant on demurrer. Bennett's Ex'r v. Giles, 6 Leigh 316.

In debt on sheriff's official bond in name of G., successor of T., Gov-nor of Virginia, to whom the bond was given, plea that G. was not d M. was the successor of T., and demurrer to the plea, held, though e plea was obviously designed to entrap, the demurrer must be over-led. Bennett's Ex'r v. Giles, 6 Leigh 316.

On general demurrer to declaration, the court looks always to the bstantial meaning of its allegations to ascertain whether it states good use of action. Mowry v. Miller, 3 Leigh 561, 24 Am. Dec. 680.

Under this section, a common count of indebitatus for services ren-red in a declaration in assumpsit is not demurrable because of omis-on of promise to pay. City of Newport News v. Potter, 122 Fed. 321, C. C. A. 483.

Where a demurrer to a bill has been sustained, and the bill amend-, the plaintiff waives his right to appeal on that ground. Fudge v. yne, 86 Va. 303, 10 S. E. 7.

A demurrer admits all facts well pleaded, but not the pleader's con-usions of law based thereon which he has introduced into his pleading. umbo v. Fulk, 103 Va. 73, 48 S. E. 525.

Cited but not construed, Newman v. McComb, 112 Va. 408, 71 S. E. 4.

As to demurrer to a plea, see 1 Va. Law Reg. 306.

As to demurrer to plea or answer in chancery, see 6 Va. Law Reg. 4; Kelly v. Hamblen, 98 Va. 383, 36 S. E. 491.

See Graves Pleading 71, 105; Barton, L. Pr. (2d Ed.) 296; Barton, Pr. (2d Ed.) 370; 4 Min. (3d Ed.) 745, 812, 1103, 1120, 1147, 1153, 36, 1271, 1293, 1305; Burks' Pleading and Practice, pp. 141, 269, 4, 340, 359, 975, 976, 977, 1012, 1018; 1 Va. Law Reg. 836; Roach Gardner, 9 Grat. 89.

Discussed, 14 Va. Law J. 21.

See sections 6331, 6085.

Digitized by Google

For W. Va. decisions on similar statute, see Justis' Ann chapter 125, section 29.

Sec. 6119. For what defects in pleadings verdict shall set aside.—After a trial upon the merits, no verdict shal aside by reason of the failure of any plea to conclude to th try or with a verification, unless it be shown that the par ing to set aside has been prejudiced by such failure.

Revisors' Note.—This section is new, and is intended to decision in Virginia Fire & Marine Insurance Co. v. Saunders, 210, 4 S. E. 584.

Sec. 6120. Argument of demurrer or plea in equity; if ov how defendant proceeded against.—A plaintiff in equity m any plea or demurrer set down to be argued. If the same ruled, no other plea or demurrer shall afterwards be receiv the defendant may, in the discretion of the court, be req answer the bill forthwith, and, in default thereof, the bill taken for confessed, and the matter thereof decreed; or the iff may proceed against such defendant in the manner pr by section sixty-one hundred and thirty-six. (Code 1887, §

Defendant's demurrer to a bill being overruled, he is at li file any sufficient answer. Sutton v. Gatewood, 6 Munf. 398; western Bank v. Nelson, 1 Grat. 108. If demurrer be susta may amend. Tidball v. Bank, 98 Va. 768, 37 S. E. 318.

See Barton, C. Pr. (2d Ed.) 380; 4 Min. (3d Ed.) 1421; preceding sections.

For W. Va. decisions on similar statute, see Justis' Ann chapter 125, section 30.

Sec. 6121. Trial by jury of plea in equity.—A plaintiff i may take issue upon a plea; and either party may have su tried by a jury. (Code 1887, § 3274.)

The court of chancery should judge on the proofs before it a clear case decree thereon without directing an issue. Pryor v. 1 Call 382 (2d Ed.) 332, 1 Am. Dec. 533. See notes to this issue out of chancery in Va. Rep. Anno.

See 4 Min. (3d Ed.) 1421; Barton, C. Pr. (2d Ed.) 386, 8

For W. Va. decisions on similar statute, see Justis' Ann chapter 125, section 32.

Sec. 6122. When defendant in equity may answer; pena delay.—A defendant in equity upon whom process has b ecuted shall file his answer or other defense in the court o clerk's office of the court in which the suit or proceeding i ing within six months from the date of such service, unle notice to the adverse party, and for good cause shown, the lessened by the court or additional time be given by the c the judge thereof in vacation, within which to file the same. the lapse of such six months, or additional time, if any granted, no answer or other defense shall be received exc good cause shown and upon payment to the complainant costs up to that time, or such part thereof as the court o shall deem reasonable, and unless the defendant will under file his answer within such time as the court or judge shall

Digitized by Google

d submit to such other terms as the court or judge shall direct, the purpose of speeding the cause. (Code 1887, § 3275.)

Revisors' Note.—Section 3275 of the Code of 1887, which was taken m the Code of 1849 (Code 1849, p. 650, chapter 171, section 34), owed the defendant to file his answer at any time before final decree. ch an indulgence necessarily operated to delay the disposition of causes, many instances to an unreasonable degree, and is altogether out of ord with present day views. See Federal Equity Rules 16 and 17. e present section is taken in part from the rules cited, but is far more eral to defendants.

Formerly a defendant had the right to file his answer at any time ore final decree. Bean v. Simmons, 9 Grat. 389. But the trial of cause was not to be consequently delayed, unless for good cause wn. Bowles v. Woodson, 6 Grat. 78.

Answer was allowed to be filed after a decree annulling conveyance fraud and directing commissioner to ascertain the location and value the lands and liens thereon (Welsh v. Solenberger, 85 Va. 441, 8 E. 91); or after decree of sale to satisfy lien for purchase money gden v. Brown, 83 Va. 670, 3 S. E. 236).

Defendant whose counsel in his absence may have filed an incomte, irregular, and unsworn answer (which was in fact no answer at was permitted to file a full and complete answer at any time before l decree. Radford v. Fowlkes, 85 Va. 820, 8 S. E. 817.

A final decree is such a decree as leaves nothing further for the court do in the cause; measures that are necessary for the execution of a ree that has been pronounced, are to be regarded, not as in, but ond the cause. Collier v. Seward, 113 Va. 228, 74 S. E. 155.

If defendant did not ask leave to file his answer, a decree correct n the merits would not be reversed by appellate court. Reynolds v. nk, 6 Grat. 174; Brent v. Washington's Adm'r, 18 Grat. 526.

A defendant in equity who was in default filed a demurrer to the , which was overruled. He was not entitled to two months in which file an answer. Reynolds v. Bank, 6 Grat. 174.

See, also, Buford v. North Roanoke Land & Imp. Co., 90 Va. 418, S. E. 914; Taylor v. Forbes' Admx., 101 Va. 658, 44 S. E. 888; lers' Exrs. v. Harris, 76 Va. 187, 191.

For Federal practice, see Federal Equity Rules.

For monographic note on answers, see Tate v. Vance, 27 Grat. 571, Rep. Anno.

See Barton, C. Pr. (2d Ed.) 404; 4 Min. (3d Ed.)) 1348.

Sec. 6123. Exceptions to answers; proceedings when exceptions sustained.—Exceptions to answers for insufficiency are abolished. The test of sufficiency shall be made by a motion to strike ; if found insufficient, but amendable, the court may allow endment on terms. If a second answer is adjudged insufficient, defendant may be examined upon interrogatories and committed until he answer them, or on motion of the plaintiff the court y strike out the answer and take the bill for confessed. (Code 87, § 3276.)

Revisors' Note.—The first two sentences of this section follow substantially Federal Equity Rule No. 33. The last sentence is taken from tion 3277 of the Code of 1887. It will be observed that this section kes material and important changes in equity practice.

As to exceptions to answers, abolished by the above section, see eman v. Lyne, 4 Rand. 454; Kelly v. Hamblen, 98 Va. 383, 36 S. E. ; Clarke v. Tinsley's Admr., 4 Rand. 250; Craig v. Sebrell, 9 Grat. ; Johnson v. Wilson, 29 Grat. 379, 390.

Digitized by Google

Sec. 6124. Plea in abatement and of non est factum, to filed.—No plea in abatement or plea of non est factum sh ceived, unless it be verified by oath. (Code 1887, § 3278.)

Plea in abatement offered in prosecution for misdemeanor be verified by oath or affirmation. Com. v. Sayers, 8 Leigh 7

Affidavit to the plea of non est factum is not rendered de inserting the words, "to the best of the defendant's knowledg lief." Jackson v. Webster, 6 Munf. 462.

Affidavit filed with the plea need not allege that the defe not deliver the paper in question as his deed after the blank with the sum without his presence or knowledge. Franklin Rand. 448.

If plaintiff does not object to want of affidavit to the plea court, he cannot make the objection in an appellate court. Goode, 12 Leigh 479, 37 Am. Dec. 677.

If a plea of non est factum be offered which is not v affidavit, the proper method of taking advantage of the defect is to the reception of the plea, and it is impossible to take advant of by demurrer, for by demurrer the facts stated in the plea are and, therefore, the defect will be considered as waived. Wilso of Mt. Pleasant, 6 Leigh 570, 571, 574.

And upon a demurrer to a plea of non est factum, when the Court overrules the demurrer it will give judgment for the and refuse to allow the demurrant to withdraw his demurrer over. Id. See Burks' Pl. & Fr., pp. 366, 367.

A defendant who has made affidavit to a plea of non e under this section is not required to make any further affida section 6125. Wilson v. Wooldridge, 118 Va. 209, 86 S. E. 87

Fraud in the procurement of a contract cannot be set u plea of non est factum—what can be shown. Hayes and W Mut. Protection Asso., 76 Va. 225.

Evidence under non est factum, see Swecker v. Swecker, 8 12 S. E. 1056.

As to plea of non est factum generally, see Cleaton v. C 6 Rand. 86; Ward v. Churn, 18 Grat. 801, 98 Am. Dec. 749 Hamlet, 27 Grat. 337; Miller v. Fletcher, 27 Grat. 403, 21 Am. Nash v. Fugate, 32 Grat. 595, 34 Am. Rep. 780; Wendlinger 75 Va. 309, 40 Am. Rep. 727; Keen's Ex'r v. Monroe, 75 Priest v. Whitacre, 78 Va. 151; Batchelder v. White, 80 Va. 1 nett's Adm'x v. Pace's Adm'r, 84 Va. 873, 6 S. E. 217; Com. v. Va. 918, 9 S. E. 148; Com. v. Tunstall, 86 Va. 372, 10 S. E. 41 v. Moore, 86 Va. 26-30, 9 S. E. 419; Bunch's Ex'r v. Fluvann Va. 452, 10 S. E. 532; Elgin v. Hall, 82 Va. 680; Newell v. 3 Leigh 250, 23 Am. Dec. 261; Preston v. Hull, 23 Grat. 600 Rep. 153.

See Graves Pleading 99; Barton, L. Pr. (2d Ed.) 289; Pr. (2d Ed.) 384; 4 Min. (3d Ed.) 751, 1284; Burks' Pl. & 99, 101, 176, 269.

For. W. Va. decisions on similar statute, see Justis An chapter 125, section 39.

See Gregory's Forms Nos. 157, 162, 211.

Sec. 6125. When proof of writing not required, unless d affidavit filed with plea.—Where a bill, declaration, or oth ing alleges that any person made, endorsed, assigned, or any writing, not under seal, no proof of the handwriting required, unless it be denied by an affidavit accompanying putting it in issue. (Code 1887, § 3279.)

Revisors' Note.—In addition to changes in phraseology, t "not under seal" appearing in line three of the text are new, thu

Digitized by Google

statutory Phaup v. Stratton, 9 Grat. 619, and Clason v. Parrish, 93 Va. 24, 24 S. E. 471. Instruments under seal are fully covered by the preceding section. See Burks' Pl. & Pr., p. 99.

Purpose and application of statute.—It was not the purpose of the statute to narrow the defence under the general issue, but in regard to a particular matter to require notice of the defence, and some security against its being vexatious or frivolous. Shepherd v. Fry, 3 Grat. 442 (2d Ed. 422).

It seems that the effect of the statute is to dispense with the proof of handwriting in actions on writings not under seal—nothing more. Phaup v. Stratton, 9 Grat. 615-619; Clason v. Parrish, 93 Va. 24, 27, 24 S. E. 471, note 2 Va. Law Reg. 188. See present section and revisors' note above.

A defendant who has made affidavit to a plea of non est factum under section 6124 is not required to make any further affidavit under this section. Wilson v. Wooldridge, 118 Va. 209, 86 S. E. 872. See preceding paragraph and revisors' note above.

This section only applies where the declaration alleges that the defendant or the person stated to have made the writing subscribed his name thereto. Kelly v. Paul, 3 Grat. 191 (2d Ed.) 182; Shepherd v. Fry, 3 Grat. 442 (2d Ed. 422).

This section has no application to a transfer of paper by a mere delivery. Clason v. Parrish, 93 Va. 24-27, 24 S. E. 471, note 2 Va. Law Reg. 188.

Applies to an order filed with the bill as a ground of the plaintiff's claim. James River & Kanawha Co. v. Littlejohn, 18 Grat. 53.

The defenses contemplated by this section involve a denial of the making (the factum) of the writing, indorsement, assignment, acceptance, or other writing by the person charged therewith. In other words, a plea under this section is equivalent to a plea of non est factum. Holdsworth v. Anderson Drug Co., 118 Va. 361, 87 S. E. 565.

The fact that the defendant swears to a plea denying that the plaintiff is the holder in due course of the negotiable note sued on does not throw upon the plaintiff the burden of showing that he is such a holder. Holdsworth v. Anderson Drug Co., 118 Va. 359, 87 S. E. 565.

An allegation in a bill of certain indebtedness "evidenced by" a certain note, describing it, is sufficient to dispense with proof of execution of the note under this section. Taylor v. Carter, 117 Va. 845, 86 S. E. 120.

In the absence of the affidavit provided by this section, the defendant will not be permitted to prove that he did not make the note declared on. Chestnut v. Chestnut, 104 Va. 539, 52 S. E. 348, 350.

Does this section apply to a motion which does not allege that any person "made, endorsed, assigned or accepted" the writing sued upon? See Wilson v. Wooldridge, 118 Va. 209, 86 S. E. 872.

Partnership writings.—The section applies to instruments signed with the name of a partnership. Shepherd v. Fry, 3 Grat. 442 (2d Ed. 422).

Where declaration charges that defendants by their partnership name signed the note sued on, and there was no affidavit by the defendants or any of them putting the execution of the note in issue, held, that they were precluded from showing that the partnership had been dissolved before the note was made, and that the person making it had no authority of executing it for the other parties. Phaup v. Stratton, 9 Grat. 615.

The affidavit in chancery cases.—An answer sworn to putting in issue genuineness of the writing sued on is a sufficient compliance with this section. Harnsberger v. Cockran, 82 Va. 727, 1 S. E. 120; Piedmont Bank v. Hatcher, 94 Va. 230, 26 S. E. 505, 3 Va. Law Reg. 369.

To take exception to a bond filed by defendant with his answer, the plaintiff should file a general replication to the answer, accompanied by an affidavit putting in issue the execution of the bond. Simmons v.

Digitized by Google

Simmons' Adm'r, 33 Grat. 451, 458. Same rule applies to an ag of release set up by the answer. Stewart v. Conrad's Adm'r, 132, 40 S. E. 624, note 7 Va. Law Reg. 767.

When too late to make objection.—Where defendant does n the execution of an order sued on in the lower court, it is too make the objection in the appellate court. James River & K Co. v. Littlejohn, 18 Grat. 53.

Generally.—See Graves Pleading 100; Barton, L. Pr. (2d E 3 Min. (2d Ed.) 389; 4 Min. (3d Ed.) 751, 895, 900, 1421; Burks ing and Practice, pp. 99, 114, 162, 176, 269, 332.

As to proof of signature evidencing release, payment or se section 6093.

For W. Va. decisions on similar statute, see Justis' Ann chapter 125, section 40.

Sec. 6126. When proof of ownership, etc., unnecessary unl davit is filed.—Where a bill, declaration, or other pleading that any person or corporation, at a stated time, owned, op or controlled any property or instrumentality, no proof fact alleged shall be required unless an affidavit be file the pleading putting it in issue, denying specifically and w ticularity that such property or instrumentality was, at t alleged, so owned, operated, or controlled.

Revisors' Note.—This section is new.

Sec. 6127. When, of partnership or incorporation, unless nied.—Where plaintiffs or defendants sue or are sued as p and their names are set forth in the declaration or bill, or plaintiffs or defendants sue or are sued as a corporation, not be necessary to prove the fact of the partnership or inc tion, unless with the pleading which puts the matter in issu be an affidavit denying such partnership or incorporation. 1887, § 3280.)

In an action against a railroad company it is not necessary in the declaration nor is it necessary to prove on the trial that corporation unless defendant files the affidavit required. B. & O v. Sherman's Adm'x, 30 Grat. 602.

In an action of assumpsit the writ and declaration is in th of a plaintiff, which indicates that said plaintiff is a corporation is not stated to be a corporation. It is not necessary that the prove it is a corporation unless defendant files the affidavit r Gillett v. American Stove & Hollow Ware Co., 29 Grat. 565.

A suit by persons styling themselves the directors of the school board (the school board being a corporation) cannot b tained, though no affidavit be filed. Stewart v. Thornton. 75 V

An affidavit denying that at the time of the institution of there was any such corporation as the defendant, but not deny existence of such corporation at the time of the contract sued on sufficient. Richmond Union Pass. Ry. Co. v. New York & S. B. 95 Va. 386, 28 S. E. 573, 4 Va. Law Reg. 42.

For case before the present statute, see Shepherd v. Fry, 442 (2d Ed. 422).

See Graves Pleading 100: Barton, L. Pr. (2d Ed.) 243, Min. (4th Ed.) 621, 636; 4 Min. (3d Ed.) 751, 900, 1284, 1421; Pleading and Practice, pp. 99, 176, 269; 4 Va. Law Reg. 547.

For W. Va. decisions on similar statute, see Justis' Anno chapter 125, section 41.

Sec. 6128. Effect of an answer as evidence, when oath

Digitized by Google

vaived.—If the complainant in a suit in equity shall, in his bill, vaive an answer under oath, or shall only require an answer un-ler oath, with regard to certain specified interrogatories, the ans-ver of the defendant, though under oath, except such part thereof s shall be directly responsive to such interrogatories, shall not be vidence in his favor, unless the cause be heard upon bill and nswer only; but may, nevertheless, be used as an affidavit with he same effect, as heretofore upon a motion to grant or dissolve ny injunction, or upon any other incidental motion in the cause; ut this shall not prevent a defendant from testifying in his own ehalf, where he would otherwise be a competent witness. (Code 887, § 3281.)

This section was taken from an amendment to the then 41st rule of ractice for Federal courts of equity, which rule was construed in Conley v. Nailor, 118 U. S. 127, 6 Sup. Ct. 1001, 30 L. Ed. 112.

When an answer to a bill for an injunction negatives all its equities, nd is sworn to, it is entitled to the weight of an affidavit. Thomas v. owe, 2 Va. Dec. 113, 22 S. E. 157.

On motion to dissolve where answer under oath is waived, the nswer has the effect of being a denial of the plaintiff's whole case and uts him to proof. Ingles v. Straus, 91 Va. 223, 21 S. E. 490.

Notwithstanding the statute, it is encumbent upon the plaintiff, hough answer under oath be waived, to uphold the case made in his ill by competent and sufficient evidence, the answer in such case being quivalent to a traverse. Jones v. Christian, 86 Va. 1017, 1032, 11 S. E. 84; Millhiser v. McKinley, 98 Va. 207, 35 S. E. 446.

Where original bill does not waive an answer under oath, and an nswer under oath is filed, plaintiff cannot deprive respondent of the enefit of his sworn answer by filing an amended bill waiving such oath. hrockmorton v. Throckmorton, 86 Va. 768, 11 S. E. 289.

For the rule before the statute, see Thornton v. Gordon, 2 Rob. 719; ones v. Abraham, 75 Va. 466; Moore v. Ullman, 80 Va. 307.

As to effect as evidence of answer to bill of discovery, see 7 Va. aw Reg. 107; Thompson v. Clark, 81 Va. 422.

As to effect as evidence of answer of corporation sworn to by officer ho is not a party, see 7 Va. Law Reg. 145; 1 Va. Law Reg. 152.

As to effect of defendant's failure to answer allegation in the bill, ee Clinch River Mineral Co. v. Harrison, 91 Va. 122, 21 S. E. 660, 1 Va. aw Reg. 45.

See Barton, C. Pr. (2d Ed.) 418; 4 Min. (3d Ed.) 1438-1441; regory's Forms No. 138.

Sec. 6129. Pleadings may be sworn to before clerk; affidavit of elief sufficient.—Any bill, answer, or other pleading to be filed n any court, may be sworn to before the clerk thereof; and where n affidavit is required in support of any pleading or as a pre-equisite to the issuance thereof, it shall be sufficient, if the affiant wear that he believes it to be true. (Code 1887, § 3282.)

Revisors' Note.—The words, "or as a prerequisite to the issuance hereof," appearing in lines three and four of the text, are new.

Applied in Southern Ry. Co. v. Washington, A. & Mt. V. Ry. Co., 02 Va. 483, 46 S. E. 784.

See Barton, L. Pr. (2d Ed.) 564; Barton, C. Pr. (2d Ed.) 412.

See Gregory's Forms Nos. 139, 144, 146, 149, 203, 204, 205.

Sec. 6130. Judgment or decree by confession in vacation; how ntered; its validity.—In any suit a defendant may in vacation of

Digitized by Google

the court and whether the suit be on the court docket or n
fess a judgment in the clerk's office for so much principal
terest as the plaintiff may be willing to accept a judgmen
cree for. The same shall be entered of record by the clerk
order or minute book and be as final and as valid as if en
court on the day of such confession, except merely that th
shall have such control over it as is given by section sixty-o
dred and forty. And the said clerk shall enter upon the ma
such book opposite where the said judgment or decree is
the date and time of the day at which the same was confes
the lien of the said judgment or decree shall run only from
of day of the confession. (Code 1887, § 3283; 1897-8, p. 50

Revision of 1887.—It was believed that this section, as it s
fore the revision of 1887, was intended to allow such confessio
clerk's office during the vacation of the court only, and not du
term, and that such confession might be made in a suit whethe
pending at the rules or was upon the court docket. To prev
fusion the phraseology of the former law was made to expre
definitely this supposed intention. Burks' Address, 2 Barton
(2d Ed.) 1402.

Section is mainly declaratory of the common law.—The s
mainly declaratory of the common law, and only substantial co
is required to validate such a judgment. Saunders v. Lipscomb
647, 19 S. E. 450; Manson v. Rawlings, 112 Va. 384, 71 S. E.

Confession by attorney in fact.—A judgment may be conf
an attorney in fact, though the attorney is not a lawyer, and th
of attorney may be executed before the action is brought (In
Barley's Adm'r, 16 Grat. 363); and need not be under seal (A
v. Alexander, 85 Va. 353, 7 S. E. 335, 1 L. R. A. 125).

A power of attorney executed by a firm and the judgment
thereunder are valid. Alexander v. Alexander, 85 Va. 363, 365
335, 1 L. R. A. 125.

Entry of the confession upon the order book.—A judgment
in a clerk's office, though no process appears to have been i
served, and though the clerk failed to enter it upon the order o
book, or any other book in his office, and the only evidence of
unsigned memorandum indorsed on a declaration which seems
been filed, and the bond enclosed in the declaration, is a valid j
and entitled to rank as such against other creditors of the
Shadrack's Adm'r v. Woolfolk, 32 Grat. 707; Saunders v. L
90 Va. 647, 19 S. E. 450.

If the entry of a judgment confessed in the office upon the
minute book has not been made at the time of its confession,
may make the entry at any time, and if he fails to do it the c
at any time direct him to make the entry. Shadrack's Adm'r
folk, 32 Grat. 707.

The provision for entry of the judgment on the order or min
is directory only, and, if in fact confessed, the judgment will b
though not entered on that or any other book in his office, but e
merely by authenticated memoranda of the clerk taking the co
Manson v. Rawlings, 112 Va. 384, 71 S. E. 564.

Generally.—A judgment confessed in the clerk's office is no
because there was no suit pending and no previous process issue
enbrough's Ex'x v. Brockenbrough's Adm'r, 31 Grat. 580, 59
rack's Adm'r v. Woolfolk, 32 Grat. 707; Saunders v. Lipscomb
647, 19 S. E. 450.

It seems that one of several joint defendants may confess j
Mills v. Central Sav. Bank, 16 Grat. 94.

Though bill is confessed as to all sureties except one and
(2732)

Digitized by Google

tute of limitations, which prevails, no decree can be entered against y of them, as the defense of one inures to the benefit of all. Ashley Bell's Adm'r, 80 Va. 811.

The last clause of statute overturns rule laid down in Hockman v. ckman, 93 Va. 455, 25 S. E. 534, 57 Am. St. Rep. 816, 3 Va. Law g. 462. See section 6470.

Clerk may enter his own confession of judgment in favor of his editor, and it will be valid; he acts purely as a ministerial officer. ith v. Mayo, 83 Va. 910, 5 S. E. 276.

This section only authorizes a confession of judgment in the clerk's ice in vacation. Brown v. Hume, 16 Grat. 456.

A judgment confessed in the clerk's office on the morning of the st day of the term of the court before the hour for the opening of the urt is a judgment confessed in vacation and is valid. Id.

For discussion of powers of corporate agents to confess judgment, note to Irvine v. Randolph Lumber Corp., 16 Va. Law Reg. 759.

See Graves Pleading 44; Barton, L. Pr. (2d Ed.) 424, 564; Barton, Pr. (2d Ed.) 258, 919; 3 Min. (2d Ed.) 395; 4 Min. (3d Ed.) 727, 8, 960, 1439; Burks' Pleading and Practice, pp. 261, 262, 292, 608, 610.

For. W. Va. decisions on similar statute, see Justis Annotations, apter 125, section 43.

Sec. 6131. Same in office by default; order for inquiry of damages.—If a defendant, who appears, fail to plead, answer, or demur to the declaration or bill, a rule may be given him to plead. he fail to appear at the rule day at which the process against n is returned executed, or, when it is returnable to a term, at e first rule day after it is so returned, the plaintiff, if he has ed his declaration or bill, may have a conditional judgment or cree nisi as to such defendant. No service of such decree nisi conditional judgment shall be necessary. But at the next rule y after the same is entered, if the defendant continue in default, or at the expiration of any rule upon him with which he ls to comply, if the case be in equity, the bill shall be entered taken for confessed as to him, and, if it be at law, judgment all be entered against him, with an order for the damages to be inired into, when such inquiry is proper. (Code 1887, § 3284.)

Common order cannot be entered until plaintiff has filed his deration (Waugh v. Carter, 2 Munf. 333); nor until writ has been rned (Winchester v. Bank, Id. 339; Crews v. Garland, Id. 491).

The conditional judgment or decree nisi is proper only when the fendant fails to appear at the return day of the process. If he appears, t fails to plead, answer, or demur, then, and only then, a rule is ven him to plead at the next rules. 6 Va. Law Reg. 484. See, also, Va. Law Reg. 414.

A judgment by default on an instrument of writing for the payent of money, on which an endorsement of a credit is made by the aintiff himself, ought to be entered subject to such credit, or, if the aintiff refuses to take the judgment in that way, a writ of inquiry ould be awarded. Rees v. Bank, 5 Rand. 326, 16 Am. Dec. 755.

An office judgment entered upon a declaration which is blank as the sums sued for is erroneous, and should be reversed, though the rrect amount be named in the writ. Blane v. Sansum, 2 Call 495 d Ed. 415). But see Terry v. Dickinson, 75 Va. 475.

Where defendant has appeared and pleaded, no inquiry of damages necessary. George Campbell Co. v. Angus, 91 Va. 438, 22 S. E. 167, Va. Law Reg. 224.

An order of inquiry of damages, where it is necessary, is confined

Digitized by Google

to cases where the defendant has not appeared and pleaded. V issue is made by the pleadings, and it is tried by a jury, then at the same time that they try the issue, assess the damages; in such case no writ of inquiry is necessary. This is the usual memorial practice. George Campbell Co. v. Angus, 91 Va. 443, 167, and cases there cited.

This and section 5462 having dispensed with the necess rule to plead before entry of a default judgment in ejectme there has been no appearance the fact that no such rule wa as directed by a court order, was not ground for vacation of judgment long after the term at which it was rendered. King 137 Fed. 198, 11 Va. Law Reg. 178, and note.

There should be an order for inquiry of damages in e James River & Kanawha Co. v. Lee, 16 Grat. 424.

The statute of jeofails has no effect upon a judgment by de want of appearance. Hatcher v. Lewis, 4 Rand. 152.

As to effect of bill taken for confessed, see 1 Va. Law R Price v. Thrash, 30 Grat. 515, 522; Welsh v. Solenberger, 85 443, 8 S. E. 91; Thomson v. Wooster, 114 U. S. 104, 5 Sup. 29 L. Ed. 105; Hefner v. Northwestern Mut. Life Ins. Co., 123 U 8 Sup. Ct. 337, 31 L. Ed. 309.

See Graves Pleading 45, 46; Barton, L. Pr. (2d Ed.) 3 Barton, C. Pr. (2d Ed.) 814; 4 Min. (3d Ed.) 684, 720, 1348

For W. Va. decisions on similar statute, see Justis' Ann chapter 125, section 44.

Sec. 6132. In what cases, inquiry of damages unnece

There need be no such inquiry in any action upon a bond writing for the payment of money, or against the drawe dorser of a bill of exchange or negotiable note, or in an a scire facias upon a judgment or recognizance, or in an upon an account, wherein the plaintiff shall serve the de at the same time and in the same manner that the process mons to commence the suit or action is served, with a co tified by the clerk of the court in which the suit or a brought) of the account on which the suit or action is stating distinctly the several items of his claim, and the a amount thereof, and the time from which he claims interest and the credits, if any, to which the defendant may be But this section shall not apply to any action on an acc which the process is served by publication. (Code 1887,

Where the defendant has appeared and pleaded, no inquiry ages is necessary. George Campbell Co. v. Angus, 91 Va. 438, 167.

When the issue made by the pleadings is tried by a jury, jury assess damages at the same time as they try the issue such case no writ of inquiry is necessary. George Campbel Angus, 91 Va. 438, 22 S. E. 167.

An order for an inquiry of damages should be entered case of ejectment. James River & Kanawha Co. v. Lee, 16 G

In action of debt on a decree for money, an inquiry of da proper. Shelton's Ex'rs v. Welsh's Adm'rs, 7 Leigh 175.

A judgment at rules in a clerk's office cannot lawfully be m on a declaration for money lent, and not alleged to be founde specialty, bill, or note in writing until a writ of inquiry has been and executed. Hunt v. McRea, 6 Munf. 454.

A judgment cannot be entered without a writ of inquiry in action on insurance policy providing that, if there be other i

Digitized by Google

the property, the loss, if any, shall be adjusted among the separate surers, as such policy is not such a "writing for the payment of money" is contemplated by this section. Commercial Union Assur. Co. v. erhart's Adm'r, 88 Va. 952, 14 S. E. 836.

Appearance bail is not required in actions of debt on bonds with llateral conditions, and in such cases it is error to enter a judgment by fault against the sheriff for not returning appearance bail. Ruffin v. ll, 2 Wash. 181 (2d Ed. 233).

An action upon a scire facias takes the same course as an ordinary tion at law in which a writ of inquiry is dispensed with. King v. vis, 137 Fed. 198, 11 Va. Law Reg. 185.

For cases upon negotiable notes before the statute, see Metcalfe v. ttaile, Gilmer 191; Hatcher v. Lewis, 4 Rand. 152.

See Graves Pleading 43, 117; Barton, L. Pr. (2d Ed.) 334, 564, 5, 1034; 1 Min. (4th Ed.) 639; 4 Min. (3d Ed.) 724; Burks' Pleading d Practice, pp. 150, 263, 264.

For W. Va. decisions on similar statute, see Justis' Annotations, apter 125, section 45.

Sec. 6133. When, in action of assumpsit, no plea in bar to be ceived, or inquiry of damages made, unless defendant file with ea affidavit denying plaintiff's claim, but judgment given there-r.—In an action of assumpsit on a contract, express or implied, r the payment of money (except where the process to answer e action has been served by publication), if the plaintiff file with s declaration an affidavit made by himself or his agent, stating erein to the best of the affiant's belief the amount of the plain-f's claim, that such amount is justly due, and the time from ich the plaintiff claims interest, and shall serve the defendant, the same time and in the same manner that the process or sum-ons to commence the suit or action is served, with a copy of such idavit certified by the clerk of the court in which the suit or tion is brought, together with a copy of the account (when an count is filed with the declaration), no plea in bar shall be re-ived from a defendant sued in his own right, either at rules or court, unless the defendant files with his plea the affidavit of mself or his agent, that the plaintiff is not entitled, as the af-nt verily believes, to recover anything from the defendant on ch claim, or stating a sum certain less than that set forth in the idavit filed by the plaintiff, which, as the affiant verily believes, all that the plaintiff is entitled to recover from the defendant on ch claim. If such plea and affidavit be not filed by the defend-t, there shall be no inquiry of damages, but judgment shall be r the plaintiff for the amount claimed in the affidavit filed with s declaration. If such plea and affidavit be filed, and the affidavit mits that the plaintiff is entitled to recover from the defendant sum certain less than that stated in the affidavit filed by the aintiff, judgment may be taken by the plaintiff for the sum so mitted to be due, and the case be tried as to the residue. (Code 87, § 3286; 1916, p. 16.)

Revisors' Note.—The words, "from a defendant sued in his own ht," appearing in line thirteen of the text, are new. This amendment (2735)

Digitized by Google

enables representatives of parties under disability to make de
out affidavit.

Origin of section—Its object—Substantial compliance.—T
originated with the revision of 1887, and was intended mainly
delay. Burks' Address, 2 Barton Law Pr. (2d Ed.) 1390.

This section was enacted to prevent the filing of sham
purposes of delay, and a substantial compliance is all that i
Carpenter v. Gray, 113 Va. 518, 75 S. E. 300.

An affidavit accompanying a plea of non-assumpsit "th
stated in the annexed plea are true" is a substantial complianc
provisions of this section. Jackson v. Dotson, 110 Va. 46, 65

Sufficiency of affidavit.—The affidavit need not state,
terms, that the affiant is the plaintiff in the action, if it use
which plainly shows that he is the plaintiff. Carpenter v. Gra
518, 75 S. E. 300.

The affidavit of the president of a corporation, in the abse
averment therein of his agency, or any other evidence on the
not a sufficient compliance with this section. Jones & Co. v.
Sons, 117 Va. 511, 85 S. E. 460. But see section 276 and rev

An affidavit made by plaintiff's bookkeeper is insufficient t
judgment in favor of plaintiff, since a bookkeepr, in the absen
showing his authority, is a servant, rather than an agent, of the
whom he is employed. Merriman Co. v. Thomas & Co., 103
Va. Law Reg. 520, 523, and note; 48 S. E. 490. See section

Affidavit filed with declaration in assumpsit under this sect
state the time from which plaintiff claims interest. Merrin
Thomas, 103 Va. 24, 48 S. E. 490.

Compliance and non-compliance with section by defend
section is complied with where the defendant orally directe
file for him a plea of non-assumpsit and lodged with the cle
affidavit. Moreland v. Moreland, 108 Va. 93, 60 S. E. 730.

If plea without affidavit be filed at rules, a motion m
third subsequent term to strike out plea was rightfully gr
the case stood before the motion was granted as though nc
been tendered at rules. Grigg v. Dalsheimer, 88 Va. 508, 13

Although pleas have been filed unaccompanied by affidavi
without objection on the part of the plaintiff, yet if they are
and new pleas are tendered by the defendant, the plaintiff
on the lack of an affidavit as a valid objection to such
Spencer's Adm'r v. Field, 97 Va. 38, 33 S. E. 380, note 5
Reg. 158.

Where plaintiff has filed affidavit with declaration and
accompanied by affidavit be filed, the case should be placed o
judgment docket for next term after the case is matured to be
along with other office judgments. If, through error, the cas
on the writ of inquiry docket, and unsworn pleas be filed, an
continued to another term, and the plaintiff moves to strike
out because not sworn to, and court overrules motion and co
on the pleas, which results in a verdict for defendant, this cou
a writ of error awarded to the plaintiff, set aside the verdict,
the pleas, and enter final judgment for the plaintiff. Price v. M
Va. 18, 48 S. E. 499.

Section is for benefit of plaintiff—Waiver and estoppel.—T
is for the benefit of the plaintiff but he will be deemed to have
where he makes no objection when the plea is tendered withou
affidavit and where he accepts without objection a continuan
case until the next term of court "with leave to the defend
within fifteen days his grounds of defense." Jackson v. Do
Va. 46, 65 S. E. 484.

The provision that defendant's plea shall be verified by a
in the interest of the plaintiff, who may waive it, or by his c
estopped from asserting it. He cannot insist on it after hav

Digitized by Google

e on such plea without objection. Lewis' Adm'r v. Hicks, 96 Va. 91, 3. E. 466.

Asking for a continuance after the court had erroneously set aside office judgment based upon an affidavit filed with the declaration er this section, does not amount to a waiver of a plaintiff's rights er this section. Carpenter v. Gray, 113 Va. 518, 75 S. E. 300.

The provision that the defendant's plea shall be verified by affidavit o prevent delay where no real defense exists. It is in the interest he plaintiff, who may waive it or by his conduct be estopped to take antage of it. He cannot insist on it after the defendant, at the ntiff's request, consents to the postponement of a case until a later of the term, and the court adjourns before that day arrives. Mum- l Banking Co. v. Farmers Bank, 116 Va. 449, 82 S. E. 112.

The plaintiff may waive, or be estopped from asserting, his right ave judgment entered in his favor for the amount claimed by him in affidavit filed with the declaration, although the defendant has failed comply with the provisions of this section. Carpenter v. Gray, 113 518, 75 S. E. 300.

Generally.—If there be a variance, as to the time from which in- st is claimed, between the declaration and the affidavit, the latter will trol, when it is in favor of the defendant, no defense being made. penter v. Gray, 113 Va. 518, 75 S. E. 300.

Under similar West Virginia statute requiring affidavit to be made t the claim is "due and unpaid," an affidavit that the claim is "due" ot sufficient. Marstiller v. Ward, 52 W. Va. 74, 43 S. E. 178.

The West Virginia statute also requires the affidavit to state that sum is due and unpaid "after deducting all payments, credits and offs." An affidavit omitting the words in quotation was held insuf- ent. Vinson v. Norfolk, 37 W. Va. 598, 16 S. E. 802.

Declaration of four counts charge that defendants are common car- s, that they received goods which they agreed for compensation to ry, and that they failed to perform their duty in carrying the same— counts are in case and not in assumpsit. Southern Express Co. v. Veigh, 20 Grat. 264.

Assumpsit lies to recover for use and occupation of houses and ds, but it must be founded on a contract express or implied, and will lie where possession is under adverse title. Lloyd v. Hough, 1 How. . 11 L. Ed. 83.

Cited but not construed in Diebold v. Tatterson, 115 Va. 766, 80 E. 585; Clement v. Adams Bros.-Paynes Co., 113 Va. 547, 75 S. E. , 18 Va. L. Reg. 437 and note; Gring v. Land Co., 110 Va. 754, 67 E. 360; Geo. Campbell Co. v. Angus, 91 Va. 438, 443, 22 S. E. 167.

See 4 Min. (3d Ed.) 723; Barton, L. Pr. (2d Ed.) 564; Graves ading, 44, 99, 117; Burks' Pleading and Practice, pp. 100, 150, 263, , 269, 741.

See Gregory's Forms Nos. 607, 608; section 376 and revisors' note.

Sec. 6134. When judgment entered in office to become final; w entered; its effect as a lien.—Every judgment entered in the ice in a case wherein there is no order for an inquiry of dam- es, and every non-suit or dismission entered therein, shall, if t previously set aside, become a final judgment, if the case be in circuit court, on the adjournment of the next term or at the se of the fifteenth day thereof (whichever shall happen first), if the case be in the Circuit Court of the city of Richmond, or the Law and Equity Court of the said city, or in the Court of w and Chancery of the city of Norfolk, or in the Court of Law d Chancery of the city of Roanoke, and be matured at the rules, d docketed during the term of the court, on the adjournment of

Digitized by Google

As to whether the proviso in this section applies to dec taken for confessed, see Robinson v. Mays, 76 Va. 708.

See Graves Pleading 46; Barton, L. Pr. (2d Ed.) 267, 3 555, 560, 561, 1037; 1 Min. (4th Ed.) 639; 3 Min. (2d Min. (3d Ed.) 638, 645, 720, 722-724, 783, 960, 1349; Bur and Practice, pp. 95, 263, 275, 277, 619. See notes to sectio

For W. Va. decisions on similar statute, see Justis' chapter 125, section 46.

Sec. 6135. When and how a judgment entered in t aside; when issue to be tried.—If a defendant again judgment is entered in the office, whether an order for of damages has been made therein or not, shall, before final, appear and plead to issue, and shall, in the cases in section sixty-one hundred and thirty-three, in which is required, file such affidavit with his plea, the judgm set aside, unless an order for inquiry of damages has bee in which case it shall not be set aside without good cause issue may be tried at the same term, unless the defendant cause for a continuance. (Code 1887, § 3288.)

What pleas should be received.—After office judgment, t discretionary power to admit any plea which appears neces defendant's defence, though not issuable, and should refuse i delay seems to be intended. Downman v. Downman's Ex'rs,

Where pleas are offered on setting aside an office ju court may exercise sound discretion about receiving them, receive none (if objected to) that do not go to the merits o Wyche v. Macklin, 2 Rand. 426.

A general demurrer is an issuable plea which ought to for the purpose of setting aside an office judgment. Sym 4 Hen. & M. 277. So is the plea of non est factum. Fra 4 Rand. 448. Also the plea of the statute of limitation Adm'r v. How's Adm'r, Gilmer 1.

A defective plea ought not to be received by the court an office judgment. Gray v. Campbell, 3 Munf. 251.

A plea puis darrien continuance may be pleaded after ment and before the end of the last quarterly term. Hunt v 2 Call 49 (2d Ed. 41), 1 Am. Dec. 534.

A plea in abatement ought not to be received to set as judgment unless it be of matter which arose puis darrien Bradley v. Welch, 1 Munf. 284; Wall v. Atwell, 21 Grat. 4

Generally.—The defendant might be ruled to trial in court at the first term after the office judgment. Mandevill ville, 3 Call 225.

In an action on the case, if there be an office judgment defendant, with a writ of inquiry, and afterwards without the cause, the jury be sworn as if there were an issue, a be found for the defendant, the verdict will be set aside and directed. McMillion v. Dobbins, 9 Leigh 422. But see Bri 99 Va. 275, 38 S. E. 148, note 6 Va. Law Reg. 853; section

If a circuit court, after the fifteenth day, sets aside an ment and the execution which had issued upon it and per fendant to plead, the plaintiff may have supersedeas from and, though that part of the order setting aside the judgm locutory, the appellate court will set aside the whole ord Ex'rs v. Burch, 15 Grat. 64.

The defendant in ejectment may, upon notice to the pear at the next term of the court, and move the court to judgment, and allow him to plead therein. Smithson v. Bri 180.

Digitized by Google

t seems that the defendant in an action of ejectment may have the judgment set aside and plead to issue at any time before the writ quiry is executed. James River & Kanawha Co. v. Lee, 16 Grat.

Where, in ejectment, the defendants were in default, and the case ripe for final judgment without a writ of inquiry at the time an was entered reciting that, defendants' time to plead having expired, s ordered that the case be set for inquiry at the next term, and that erk notify defendants thereof by mail, the entry of such order was re irregularity, and did not affect the validity of a final judgment quently entered. King v. Davis, 137 Fed. 198, 11 Va. Law Reg. 179. f an office judgment is set aside by a plea to the merits at one term e court, and, at a subsequent term, the plea is stricken out because e insufficiency of the affidavit supporting it, the office judgment is by reinstated and having become final at the term at which the plea nterposed, the trial court was thereafter powerless to amend the ings. Jones & Co. v. Hancock & Sons, 117 Va. 511, 85 S. E. 460. Cited in George Campbell Co. v. Angus, 91 Va. 438, 22 S. E. 167. See Graves Pleading 46; Barton, L. Pr. (2d Ed.) 485, 560; 4 Min. Ed.) 685, 752, 1277; Burks' Pleading and practice, pp. 263, 276,

See Gregory's Forms No. 231.

. 6136. **Although bill taken for confessed, plaintiff may still ed against defendant by attachment, etc.**—Although a bill be for confessed as to any defendant, the plaintiff may have an hment against him, or an order for him to be brought in to er interrogatories. No plea or demurrer shall be received such attachment, unless by order of court, upon motion e 1887, § 3289.)

ee 1 Min. (4th Ed.) 639; 4 Min. (3d Ed.) 1429.
For W. Va. decisions on similar statute, see Justis' Annotations, r 125, section 48.

. 6137. **Enforcement of process of contempt.**—If a defendant, process of contempt, put in an answer which is adjudged insuf-t, the plaintiff may go on with the process of contempt as if swer had been filed. (Code 1887, § 3290.)

Upon the question of contempts generally, see Postal Tel. Cable Co. & W. R. Co., 88 Va. 929, 14 S. E. 691; Com. v. Dandridge, 2 Va. 41; Wells v. Com., 21 Grat. 509, and note Va. Rep. Anno.; Hook ss, 1 Hen. & M. 310; 1 Min. (4th Ed.) 639; 4 Min. (3d Ed.) section 4521 and notes.
For W. Va. decisions on similar statute, see Justis' Annotations, r 125, section 49.

. 6138. **When suit in equity set for hearing.**—Whenever an r in equity is filed at rules, it shall be the ex officio duty of erk to enter a general replication thereto for the plaintiff at me rules at which the answer is filed, which replication, how-may be withdrawn at the hearing by the plaintiff; and when-a suit in equity is matured at rules as to all of the defendants, ll be the ex officio duty of the clerk, as soon as the same is red, to set the case for hearing as to them, and place it on ourt docket. If the suit be matured as to only a part of the dants, the plaintiff may have it set for hearing as to such and if one of the defendants has answered and one month

Digitized by Google

elapse after the filing of his answer without the case be
the defendant may have the case set for hearing at the
himself, but the trial court shall have discretion to po
hearing until the cause has been further matured as to
of the other defendants. (Code 1887, § 3291.)

**Revisors' Note.—This section differs materially from sect
the Code of 1887. The purpose of the changes is to speed**

If a cause is set for hearing on bill and answer, the
be considered as true in all its parts. Kennedy v. Baylor, 1
Jones v. Mason, 5 Rand. 577, 16 Am. Dec. 761.

The only effect of the omission of replication to an ans
all the facts stated in such answer are admitted. Kennedy
Wash. 162; Pickett v. Chilton, 5 Munf. 467. See above se
ex-officio duty of the clerk.

As to filing a replication nunc pro tunc and effect thereo
former law, see Dabney v. Preston's Adm'rs, 25 Grat. 838.

See Barton, C. Pr. (2d Ed.) 256; 4 Min. (3d Ed.) 1348,

For W. Va. decisions on similar statute, see Justis' A
chapter 125, section 50.

**Sec. 6139. When suit in equity heard as to part of d
how plaintiff compelled to mature his cause or have it
how court may make new parties to suit.**—If a suit in
set for hearing as to any defendant, it shall be heard
unless his interests be so connected with those of other
in the suit that it would be improper to decide upon the
separately; and though there be such connection, a def
to whom the case has been set for hearing, may have
upon the plaintiff to use due diligence to mature the
hearing as to the other defendants, and unless it be s
within such time as the court may deem reasonable, sh
titled to a hearing or dismission of it as to him; and i
where full justice cannot be done, or the whole controv
without the presence of new parties to the suit, the court
may direct the clerk to issue the proper process against
parties, and upon the maturing of the case as to them,
make such orders or decrees as would have been proper
parties had been made parties at the commencement o
(Code 1887, § 3292.)

Upon a bill in chancery by a distributee against an ad
and his surety, alleging that the administrator has not dul
and praying an account, the bill is taken pro confesso as to t
trator; but the surety answers, and proves that the plaintif
and final settlement, has released the administrator, and so
tled to an account, upon which the chancellor dismisses th
costs. Held, the bill was properly dismissed as to both
Cartigne v. Raymond, 4 Leigh 579.

On the hearing of the suit in chancery, if it be discover
cause is not matured for the hearing as to some of the defend
whom the plaintiff appears to have a claim in equity, the bil
to be dismissed upon the merits, but only as to those defend
whom there is no equity. As to the other defendants, it sho
back to the rules for further proceedings, notwithstanding t
may have been negligent and the cause was prematurely set
upon his motion. Key v. Hord, 4 Munf. 485.

Digitized by Google

As to consolidation of causes, see Claiborne v. Gross, 7 Leigh 331. Cited but not construed in James' Ex'r v. Life, 92 Va. 702, 24 S. E.

See Barton, C. Pr. (2d Ed.) 209, 257.
For W. Va. decisions on similar statute, see Justis' Annotations, pter 125, section 51.

ec. 6140. Control by court over proceedings in office.—The rt shall have control over all proceedings in the office during preceding vacation. It may reinstate any cause discontinued ing such vacation, set aside any of the said proceedings, or rect any mistake therein, and make such order concerning the ie as may be just. (Code 1887, § 3293.)

Generally.—Though the proceedings at rules be irregular, they can- afterwards be cured by proceedings at rules, but must be corrected the court. Southall's Adm'r v. Exchange Bank, 12 Grat. 312.

Where an office judgment is improperly entered in debt on a decree money, this is a clerical error, which the court may properly correct subsequent term. Shelton's Ex'rs v. Welsh's Adm'rs, 7 Leigh 175.

An irregularity committed at rules may be corrected at the next n of the court, and the plaintiff may be allowed to withdraw a de- ive replication and reply. Southall's Adm'r v. Exchange Bank, 12 t. 312.

When an office judgment becomes final, and is so entered by the k, any clerical error in such judgment may be corrected by the rt at a subsequent term. Eubank v. Ralls' Ex'r, 4 Leigh 308-317.

If the proceedings in the office judgment are so irregular that the se is not properly on the office judgment docket, the court should and it to the rules for proper proceedings. Wall v. Atwell, 21 t. 401.

The jurisdiction of the court is in no wise dependent on the regu- ty of the proceedings in the office. Wohlford v. Trinkle, 90 Va. 227, S. E. 873.

The power conferred by this section must be exercised by the court term, not by the judge in vacation. Chase v. Miller, 88 Va. 791, , 14 S. E. 545.

On a motion to remand a case to rules because the clerk had not en the rules maturing the case for hearing, it is not error for the trial rt to overrule the motion, retain the case and require the clerk to er the proper rules on the rule book maturing the case for hearing; ppearing that the defendant was in no wise prejudiced by the failure he clerk to take the rules at the proper time. Southern Express Co. acobs, 109 Va. 27, 63 S. E. 17.

Where actions at law were cognizable only at quarterly terms, the ion to set aside any of the proceedings in the office in such actions e cognizable only at a quarterly term. Therefore the proceedings vacation referred to above means, in its application to such cases, the rval between the quarterly terms of the court. Ins. Co. v. Barley's n'r, 16 Grat. 363.

Under this section, a court has the right to dismiss an action be- se the declaration was not filed within the time prescribed by section 9, if the clerk does not dismiss it; but, even though the clerk did not niss, the court cannot relieve the plaintiff from the consequences of his lect, without excuse, when the effect of leave to file the declaration uld be to deprive the defendant of an accrued right to plead the ute of limitations. Wickham v. Green, 111 Va. 199, 68 S. E. 259; 16 Va. Law Reg. 365, 385 and 467.

A case dismissed by the clerk, under section 6079, for failure to the declaration within the time prescribed by the statute, cannot be nstated in the absence of sufficient legal reasons therefor. Jennings Pocahontas Collieries Co., 114 Va. 213, 76 S. E. 298.

Digitized by Google

Where a court, acting under this section, corrects a
the clerk and dismisses a case because of the failure of the
file his declaration under section 6078. it will not be reinst
absence of sufficient legal reasons therefor. Mere negligence
is an insufficient reason. Furthermore, in the instant case it
that a reinstatement would deprive the defendant of his defe
statute of limitations. Trent v. Clinchfield Coal Corp., 11
89 S. E. 921.

Cited but not construed in N. & W. R. Co. v. Coffey, 104
S. E. 367; Carpenter v. Gray, 113 Va. 518, 75 S. E. 300;
Stove Co., 111 Va. 147, 68 S. E. 266.

See Barton, L. Pr. (2d Ed.) 424; Barton, C. Pr. (2d
258; 4 Min. (3d Ed.) 664, 685, 784, 1349; Graves Pleading
Pleading and Practice, pp. 274, 598, 608; notes under sect
6079.

For W. Va. decisions on similar statute, see Justis' A
chapter 125, section 60.

CHAPTER 255.

Payment and Set-Off.

Sec.		Sec.	
6141.	Payment before action brought may be pleaded.	6145.	Special plea of se
6142.	Defendant may pay into court a sum on account of matter of suit, and plead that plaintiff is not entitled to more.	6146.	Proceedings ther fect of plea on equity.
6143.	Proceedings thereupon.	6147.	Effect of chapter tary bonds.
6144.	Payment or set-off may be allowed, if described in plea or account; when allowed, though claim against several, and debt only to part of them.	6148.	If plea or set-off g only of demand, proceeded in.
		6149.	Defendant, claimi put on footing of
		6150.	Other proceedings

Sec. 6141. Payment before action brought may be pl
any action for the recovery of a debt, the defendant
payment of the debt (or of so much as is due by the
before action brought. (Code 1887, § 3295.)

Revisors' Note.—This section formerly applied to "any debt." Now it applies to "any action for the recovery of a was thought that the right to plead payment should not be re the action of debt, especially in view of the wide scope now g action of assumpsit and proceedings by motion under section

As to the application of payments, see Hill v. Gregory,
Lightfoot v. Price, 4 Hen. & M. 431; Donally v. Wilson, 5
Smith v. Loyd, 11 Leigh 512 (2d Ed. 535), 37 Am. Dec. 6
v. Trevilian, 2 Rob. 1; Vance v. Monroe, 4 Grat. 52; Ross'
Lauchlan's Adm'r, 7 Grat. 86; Schofield v. Cox, 8 Grat. 533;
McCall, 21 Grat. 205; McClintic v. Wise's Adm'rs, 25 Grat. 4
Rep. 694; Chapman v. Com., 25 Grat. 721; Fultz v. Davis, 26
Gordon v. Fitzhugh, 27 Grat. 835; Grubbs v. Wysors, 32

Digitized by Google

gle v. Cook's Adm'rs, 32 Grat. 262; Coles v. Withers, 33 Grat. 186; garity v. Shipman, 82 Va. 784, 1 S. E. 109; Munford v. McVeigh's m'r, 92 Va. 446, 23 S. E. 857.

For case before the statute, see Faulkner's Adm'x v. Brockenbrough, Rand. 245.

See, also, Graves Pleading 83; 3 Min. (2d Ed.) 354, 392; 4 Min. d Ed.) 783; 4 Va. Law Reg. 770.

Form of plea of payment. 4 Min. (3d Ed.) 1740.

For W. Va. decisions on similar statute, see Justis' Annotations, apter 126, section 1.

Sec. 6142. Defendant may pay into court a sum on account of tter of suit, and plead that plaintiff is not entitled to more.—In any personal action, the defendant may pay into court, to the rk, a sum of money on account of what is claimed, or by way compensation or amends, and plead that he is not indebted to e plaintiff (or that the plaintiff has not sustained damages) to a eater amount than the said sum. (Code 1887, § 3296.)

See Graves Pleading 91; 4 Min. (3d Ed.) 737.

Form of plea upon payment of money into court, 4 Min. (3d Ed.) 41.

For W. Va. decisions on similar statute, see Justis' Annotations, apter 126, section 2.

See Gregory's Forms Nos. 169, 217.

Sec. 6143. Proceedings thereupon.—The plaintiff may accept the d sum either in full satisfaction, and then have judgment for his sts, or in part satisfaction, and reply to the plea generally, and, issue thereon be found for the defendant, judgment shall be given r the defendant, and he shall recover his costs. (Code 1887, 3297.)

See Graves Pleading 91; 4 Min. (3d Ed.) 737.

Sec. 6144. Payment or set-off may be allowed if described in ea or account; when allowed, though claim against several, and bt only to part of them.—In an action for any debt, the defendt may at the trial prove, and have allowed against such debt, y payment or set-off which is so described in his plea, or in an count filed with the papers in the cause, as to give the plaintiff tice of its nature, but not otherwise. Although the claim of the aintiff be jointly against several persons, and the set-off is of a bt not to all but only to a part of them, this section shall extend such set-off, if it appear that the persons, against whom such aim is, stand in the relation of principal and surety, and the per- n entitled to the set-off is the principal. And when the defendt is allowed to file and prove an account of set-off to the plainff's demand, the plaintiff shall be allowed to file and prove an count of counter set-off, and make such other defense as he ight have made had an original action been brought upon such t-off, and in the issue, the judge (if the case be tried without a ry), or the jury shall ascertain the true state of indebtedness etween the parties and judgment shall be rendered accordingly. Code 1887, § 3298.)

Revisors' Note.—The words, "or in an account filed with the papers

Digitized by Google

in the cause," found in lines three and four of the text, are u
of, "or in an account FILED THEREWITH." Under the fo
guage it appeared necessary for the defendant to file a plea of
with the account, but the practice was generally otherwise. S
sion in Burks' Pl. & Pr., p. 444. In order to put the questi
the change above pointed out was made, so as expressly to
account to be filed with the papers in the cause, instead of w
thus conforming to the practice.

The last sentence of the present section is new. Whetl
counter set-offs were allowable prior to the revision had not
cided, so far as the revisors were informed, but apparently the
recognized in Sexton v. Aultman, 92 Va. 20, 22 S. E. 838. It w
best, however, to settle the question, and the last sentence r
is taken from the Code of West Virginia (Hogg, 1913) section

Liberal construction.—This statute should be liberally
with a view to the furtherance of its obvious policy, which is
multiplicity of suits, and as far as conveniently can be done to
in one action complete justice between the parties. Allen v
Grat. 722, 729; Richardson Co. v. Whiting L. Co., 116 Va. 49
87; Tidewater Quarry Co. v. Scott, 105 Va. 162, 52 S. E. 835.

Demands which may be set off.—Defendant in an action
sit may set-off a claim for the conversion of his property b
Tidewater Quarry Co. v. Scott, 104 Va. 269, 52 S. E. 835.

Though unliquidated damages to be ascertained by the
of a jury cannot be set off, unliquidated damages to be asse
pecuniary demands, in all cases where indebitatus assumpsit
may be set off. Richardson Co. v. Whiting L. Co., 116 Va.
E. 87.

S. as principal and H. as his surety executed their bond
owes S. and N., partners, an account, and N. assigns it to S.
bankrupt. The assignee in bankruptcy of E. sues H. on the
may plead the account as set-off. Edmunds' Assignee v. H
Grat. 637.

F. is indebted to D. by bond, which after it is due is assi
to C., but before notice of assignment F. becomes surety for D.
to B. D. becomes insolvent. Held, F. is entitled in equity
the amount of the bond in which he is D.'s surety, though n
(unless he is indemnified against his surety), against his ow
D. in the hands of C., the assignee. Feazle v. Dillard, 5 Leigh 3

H. and N. are merchants and partners. H. sells out to M.
firm undertakes to pay the debts of the old. H. becomes indeb
new firm, for which he executes his bond with two sureties
bond is assigned to A. The new firm afterwards fails, and H.
of old firm. Held, H. is entitled in equity to set off against h
the hand of the assignee the debts of the old concern
N., which M. and N. were bound to pay, and which H. had pa
v. Hupp, 6 Grat. 310.

A judgment debtor may set up in equity against the credi
ment the beneficial interest of such debtor in a decree in
receiver of another court against such creditor. Stuart's Ex'r
97 Va. 796, 34 S. E. 696.

In an action upon a bond by Y. against W. and two
being the principal in the bond, the defendants may set off a
by P. against Y. which had been assigned to W. Wartman v
Grat. 595. See Gordon v. Rixey's Adm'r, 86 Va. 853, 11 S. E.

As to setting off judgments against each other, see 6 Va.
122.

A clerk of court may set off fees due him against an act
bond by the party from whom they are due. Craigon's Ex'x v
Leigh 627.

Purchaser from a vendee, who was entitled to an abatemen

Digitized by Google

ount of the purchase money for the failure of the vendor to put him possession of a part of the land, may set off the amount to which the idee is so entitled against bonds for the purchase money given by the idee, though in the hands of an assignee. Taylor's Adm'r v. Spindle, Grat. 44. See Dobyns v. Rawley, 76 Va. 537.

Illegal interest paid may within a year be set off against suit by der for the principal. Munford v. McVeigh's Adm'r, 92 Va. 446, 23 E. 857.

One of three sureties who has paid the debt may offset the amount e him by his co-surety against an action on his own bond made pay- e to such co-surety, though in the hands of an assignee. Wayland v. cker, 4 Grat. 267, 50 Am. Dec. 76.

A. is indebted to D., E. & Co. by bond. A. dies, and, at the sale his estate by his executor, F., the acting partner of D., F. & Co., buys slave, which he carries to his own plantation, and there continues him. e amount of the purchase for the slave is a good discount against the nd. Rose v. Murchie, 2 Call 409 (2d Ed. 344).

Where a foreign corporation, having a first lien on stock registered in names of each member for liabilities to the corporation, reduces a im against a domestic corporation and its managing officer holding ck for damages for breach of contract, the judgment can, under this tion, be set off against the officers' suit at law for dividends. United garette Mach. Co. v. Winston C. Mach. Co., 194 Fed. 947.

Surety may set off the claim due his principal notwithstanding the ter's bankruptcy. Edmunds' Assignee v. Harper, 31 Grat. 637.

A surety of both A. and B. on distinct undertakings by them when ed with B. by A., may set off a debt due by A. to B., though arising of a different transaction, and though B. be bankrupt. U. S. v. hardson, 223 Fed. 1010; note on this case, 1 Va. L. R. N. S. 633.

Where defendant has dealt with agent, supposing him to be the sole ncipal, if an action be brought in the name of the principal, the de- ndant has the right to set off claims against such agent. Dixon Livery v. Bond, 117 Va. 656, 86 S. E. 106.

Though defendant has only equitable title, he may set off the claim action at law. Edmund's Assignee v. Harper, 31 Grat. 637; Wart- n v. Yost, 22 Grat. 595.

Demands which may not be set off.—Partnership demands and de- nd due to or by individual partners cannot be set off against each other. rter v. Nekervis, 4 Rand. 359; Ritchie v. Moore, 5 Munf. 388, 7 Am. c. 688; Scott v. Trent, 1 Wash. 77; Armistead v. Butler's Adm'r, 1 n. & M. 176. See Liberty Bank v. Campbell, 75 Va. 534.

In the absence of an agreement between the parties, or some special cumstances, such as insolvency or non-residence, unliquidated dam- s cannot be pleaded by way of set-off (Bunting v. Cochran, 99 Va. 3, 39 S. E. 229; Kinzie v. Riely's Ex'r, 100 Va. 713, 42 S. E. 872, note Va. Law Reg. 647; Webster v. Couch, 6 Rand. 519); even in equity angerfield v. Rootes, 1 Munf. 529).

Joint and separate demands cannot be set off against each other orter v. Nekervis, 4 Rand. 359; Glazebrook's Adm'r v. Ragland's m'r, 8 Grat. 332); except by agreement (Perkins' Adm'r v. Hawkins' m'x, 9 Grat. 649; Huffmans v. Walker, 26 Grat. 314); either at law in equity (Gilliat v. Lynch, 2 Leigh 493).

In an action by executor or administrator for money due decedent's ate, defendant cannot set off debts due by him to decedent (White v. nnister's Ex'rs, 1 Wash. 166; Brown's Adm'x v. Garland, Id. 221); his claim as one of the intestate's distributees. (Pullman v. nston, 5 Leigh 324; James v. Johnston, 22 Grat. 461); nor a debt e him for moneys paid as surety of intestate since his death (Minor v. nor's Adm'r, 8 Grat. 1); nor debts due him from the administrator ividually, either at law or in equity (Pulliam v. Winston, supra).

In an action by the assignee against the maker of a promissory e, the defendant cannot set off against it a bill of exchange for which

Digitized by Google

the assignor is responsible unless it appear that such bill wa
erty before he received notice of the assignment. Ritchie v
Munf. 388, 7 Am. Dec. 688. See, also, Clopton's Adm'r v.
Leigh 278.

A set-off, as between the maker and the payee, acquire
transfer of an overdue note, though acquired without notice o
fer of the note, cannot be set off against the holder. Davi
14 Grat. 1.

A debtor of a bank cannot set off notes of the bank bo
him after the executing and recording of a deed of assignm
bank. Exchange Bank v. Knox, 19 Grat. 739; Saunders v.
Grat. 327; Farmers' Bank v. Anderson, 19 Grat. 739; Finney
27 Grat. 365.

The endorser of notes made by a firm of which he is a m
held by the receivers of an insolvent bank, is not entitled
against such notes the amount of an individual deposit due
bank, when the makers of the note are solvent; but he can
set-off when the makers are insolvent. Edmondson v. Thomas
326, 71 S. E. 536.

A surety who is a co-defendant with his principal can
again the plaintiff a set-off he has against the plaintiff. Th
in such case can set-off a demand due him by the plaintiff but
can not. Stimmel v. Benthall, 108 Va. 141, 60 S. E. 765.

A defendant cannot set off a claim against the plaintiff i
if the plaintiff's claim were in fact a partnership claim, thou
his own name, and the defendant knew or ought to have kn
existence of the partnership. Dixon Livery Co. v. Bond, 11
86 S. E. 106.

Statute treats payment and set-off together.—This sta
payment and set-off together, and places them upon the same
prescribing the mode of relying on them as matters of defe
horne v. McGehee, 103 Va. 286, 49 S. E. 44.

Where the items of an account are so described as to gi
notice of their character, the defendant may show either p
set-offs. If the nature of the item be distinctly stated, the stat
plied with, though the item be wrongly denominated. La
McGehee, 103 Va. 281, 49 S. E. 44.

Payment made after suit brought.—In action of assumpsit
non-assumpsit, not proper to prove payment made after bri
Johnson v. Fry, 88 Va. 605, 12 S. E. 973, 14 S. E. 183.

Pleading and evidence.—A defendant may make the
set-off other than the equitable set-off under section 6145,
formal plea, or by notice of the set-off accompanied by an
set-offs. If the defense be by plea the plaintiff must repl
but if the defense be by notice there can be no replication,
of limitation may be relied on without further pleading. S
Aultman & Co., 92 Va. 20, 22 S. E. 838; Trimyer v. Polla
460.

In action on bond with collateral conditions when the
is "conditions performed" the defendant is not entitled
set-off. Botetourt County v. Burger, 86 Va. 530, 10 S. E. 26

Under plea of nil debit defendant cannot introduce
payment or set-off, unless such payment or set-off be so
particularly described in an account filed therewith as to gi
notice of its nature. Richmond City & Seven Pines Ry. Co.
90 Va. 775, 20 S. E. 148. See 5 Va. Law Reg. 410. As to
see Bell v. Crawford, 8 Grat. 110. See, also, Rice's Ex'r
Adm'r, Id. 557; Peery's Adm'r v. Peery, 26 Grat. 320. Con
word "therewith" formerly appearing in the statute, see rev
above.

Additional set-offs.—Defendant may have leave to file an
account of set-offs when it will not produce delay to the plain

Digitized by Google

necessary to attain the justice of the case. Perkins' Adm'r v. Hawkins' m'x, 9 Grat. 649.

Objections in appellate court.—Where a plea is not sworn to, such ect is not one for which judgment will be reversed where the judgnt appears to be substantially right. Grayson v. Buchanan, 88 Va. , 13 S. E. 457.

Though a set-off be not actually marked filed, yet if both parties, oughout the trial, treated it as a part of the record to be considered the jury and the court, the plaintiff will not be allowed to make obtion for the first time in the appellate court that the set-off was not perly filed. Norfolk & W. R. Co. v. Potter, 110 Va. 427. 66 S. E. 34.

Generally.—The filing of a plea of set-off in excess of the plaintiff's nand does not confer the right to open and close the argument. ight v. Collins, 111 Va. 806, 69 S. E. 942.

A set-off is equivalent to an action, and where the amount disowed by the trial court exceeds $300, the amount in controversy is hin the jurisdiction of this court. Norfolk & W. R. Co. v. Potter,) Va. 427, 66 S. E. 34.

The uniform practice is to allow discounts up to the time of the al. The English rule is contra. Trimyer v. Pollard, 5 Grat. 460-462. 4 Min. (3d Ed.) 789.

The defense of set-off was admissible in a motion in county court on a forthcoming bond taken on a warrant of distress (Allen v. Hart, Grat. 722); and regardless of the amount of the set-off (Hancock v. itehall Tobacco Warehouse Co., 100 Va. 447, 41 S. E. 860).

In whatever court defendant may be impleaded the right of set-off sts to the extent to which it is necessary to make complete defense to demand of the plaintiff. Hancock v. Whitehall Tobacco Warehouse , 100 Va. 447, 41 S. E. 860.

Where defendant fails to plead proper set-offs at law, equity will relieve him against a judgment (Cabell's Ex'rs v. Roberts' Adm'rs, Rand. 580); though he is prevented by unavoidable accident (Hudson Kline, 9 Grat. 379). If bill of discovery be necessary, it should be d in aid of his defense at law. George v. Strange's Ex'r, 10 Grat. .

Where there is a set-off which applies to several bonds which have n assigned, the bonds are liable to the set-off in the inverse order of ir assignment. Armentrout's Ex'rs v. Gibbons, 30 Grat. 632.

May the plea of set-off be set up against a contractor under governnt contracts, when there are sub-contractor's claims to be paid? U. v. Richardson, 223 Fed. 1010.

As to counter set-off, or set-off to a set-off, see 6 Va. Law Reg. 204, revisors' note above.

For difference between set-off and recoupment, see 7 Va. Law Reg. .

As to right of bank to set off against a check by an insolvent deitor his debt to the bank which has not yet matured, see 1 Va. Law g. 780.

See Graves Pleading, 92, 93; Barton, L. Pr. (2d Ed.) 493, 497, 506; Min. (3d Ed.) 785 et seq.; Burks' Pleading and Practice, pp. 97, 432. 5, 437, 440, 443, 444, 459; Smith v. Bradford, 76 Va. 758; Nolting v. . Bank, 99 Va. 54, 37 S. E. 804; Vaught v. Meador, 99 Va. 569, 39 E. 225, 86 Am. St. Rep. 908; McClellan v. Kinnaird, 6 Grat. 352; gsdale v. Hagy, 9 Grat. 409; notes to next section.

As to appeal from set-off allowed defendant, see note to section 50.

Form of plea of set-off of open account to debt on bond, 4 Min. (3d) 1744.

For W. Va. decisions on similar statute, see Justis' Annotations, pter 126, section 4.

See Gregory's Forms Nos. 172, 173, 216.

Sec. 6145. Special plea of set-off.—In any action on a contract,

Digitized by Google

the defendant may file a plea, alleging any such failure i
sideration of the contract, or fraud in its procurement, o
breach of any warranty to him of the title or the sou
personal property, for the price or value whereof he en
the contract, or any other matter as would entitle him
recover damages at law from the plaintiff, or the per
whom the plaintiff claims, or to relief in equity, in wh
part, against the obligation of the contract; or, if the c
by deed, alleging any such matter arising under the cont
ing before its execution, or any such mistake therein,
execution thereof, or any such other matter as would e
to such relief in equity; and in either case alleging the
which he is entitled by reason of the matters contained i
Every such plea shall be verified by affidavit. (Code 188

This section enlarges the right of defense existing at com
The provisions of this section were intended to enlarge the r
fense heretofore existing at common law, and not to impair a
right or to take away any defense previously allowed by law.
mon-law right of recoupment was not impaired, but in addit
the statutes permitted the defendant to recover any damage
prove in excess of the damages claimed by the plaintiff. Col
Ass'n v. Rockey; 93 Va. 678, 25 S. E. 1009, and note 2 Va.
669, disapproving suggestion in Keckley v. Bank, 79 Va. 458.
v. Baxter, 2 Pat. & H. 133.

This section contemplates the settlement of all differenc
connected with the subject-matter of the plaintiff's claim
News, etc., Ry. Co. v. Bickford, 105 Va. 182, 52 S. E. 1011.

A defendant cannot set-off or recoup against the plaintif
purely legal demand growing out of an entirely different
from the claim asserted by the plaintiff. The provisions of
were not intended to alter or modify that provision of se
which excludes the right of a surety to set-off against the pl
mand a claim due to such surety as principal by the plaintiff
v. Benthall, 108 Va. 141, 60 S. E. 765.

Unliquidated damages.—The claim set up by special plea
may be for unliquidated damages. Leterman v. Charlottesv
110 Va. 769, 67 S. E. 281.

Rescission of contract and re-investment of title to real
plea, under this section, cannot be relied on which sets up
ground of defense, which requires rescission of the contract i
a reinvestment of the vendor with the interest alleged to
sold. This defense can only be made in a court of equity.
McClelland, 93 Va. 786, 22 S. E. 364; Tyson v. Williamson, 9
32 S. E. 42; Shiflett v. Orange Humane Soc., 7 Grat. 297.

It seems that a plea under this section is available as a d
bond for the purchase price of real estate, where the vende
quired title to the property and where the defenses do not
rescission of the contract sued on, or a re-investment of the
vendees. Mundy v. Garland, 116 Va. 922, 83 S. E. 491.

Relief in equity.—If the equitable defenses which are pr
der this section are not made at law, they may be made in
equity brought to enforce a judgment at law provided nothin
in the law action which the statute declares precludes the
from relief in equity. Selden v. Williams, 108 Va. 542, 62 S

This section does not prevent a party to a contract from
ing a suit in equity for its rescission, though he might have
defense hereunder to an action on such contract. Dotson v

Digitized by Google

Circuit Court of Appeals, 4th Circuit), 180 Fed. 14, 16 Va. Law Reg.

See note of Rohrer v. Strickland under following section.

Failure of consideration.—A plea under this section which sets up worthlessness of the property which formed the consideration of contract in suit must aver worthlessness at the time of the contract, not at the date of the plea. South Roanoke Land Co. v. Roberts, Va. 489, 39 S. E. 133, note 7 Va. Law Reg. 247. See 8 Va. Law . 53; Tyson v. Williamson, 96 Va. 636, 32 S. E. 42.

A lessor covenants to put certain repairs upon the demised prem-, which he fails to do. In an action of replevin upon a distress for t, the tenant may set off the damages accrued by the failure of the or to make the repairs. Murray v. Pennington, 3 Grat. 91 (2d Ed.

Upon an action on a bond given for the hire of two slaves, one of m was never delivered to the hirer, the obligor is entitled, under ial plea under this statute, to a credit to the amount of the hire of slave not delivered. Isbell's Adm'r v. Norvell's Ex'r, 4 Grat. 176.

In an action at law for the price of land, under a plea alleging a ure in the quantity of land purchased, parol evidence is admissible how the true contract. Grayson v. Buchanan, 88 Va. 251, 13 S. E.

Fraud in the procurement.—Fraud in the procurement of a bond vailable as a defense under this section, and under it the defendant claim compensation or damages for the injury which he has suf-d by reason thereof. Tyson v. Williamson, 96 Va. 636, 32 S. E.

Same rule applies to fraud or misrepresentation in the procure-t of the contract for the sale or purchase of real estate. Watkins Vest Wytheville Land & Imp. Co., 92 Va. 1, 22 S. E. 554; Strick-l v. Graybill, 97 Va. 604, 34 S. E. 475.

Damages for fraud in the procurement of a contract for the sale of must be ascertained and fixed as of the date of the contract, and as of the date of a plea to an action on the contract; a plea which s that the land was worthless at the time the plea was filed is bad. on v. Williamson, 96 Va. 636, 32 S. E. 42. See South Roanoke Land v. Roberts, 99 Va. 489, 39 S. E. 133, note 7 Va. Law Reg. 247; 8 Va. Reg. 53.

Where a deed is procured by fraudulent misrepresentations, the nse can only be made, at law, in the mode provided by the statute. tners v. Keran, 24 Grat. 42.

A plea under this section is sufficient which avers that the state-ts of facts were falsely and fraudulently made for the purpose of uring the contract, that they were material, that they were untrue, that the defendant to whom they were made relied upon them, and by them induced to enter into the contract; it is not necessary to scienter. Strickland v. Graybill, 97 Va. 604, 34 S. E. 475; Guar-e Co. v. Nat. Bank, 95 Va. 490, 28 S. E. 909, 3 Va. Law Reg. 873.

Breach of warranty.—A defendant who files a plea of the breach ne warranty in the sale of an animal and claiming to be relieved to extent of the price paid for the animal, in which he succeeds, can-maintain another action for other damages and expenses he has in-ed on account of the breach of said warranty, as he might have re-red under said plea all the damages which he could recover in an on for a breach of the warranty. Huff v. Broyles, 26 Grat. 283.

A plea in an action of debt on a bond that the bond was given for price of goods which defendant bought of plaintiff, who made cer-representations in respect thereto, but not averring a warranty of quality of the goods, or that the plaintiff knew that the said repre-ations made by him were untrue, or that he used any fraud or art isguise their true condition or quality, is defective. Cunningham v. th, 10 Grat. 255, 60 Am. Dec. 333.

A grantee of real estate, when sued at law by his grantor for the

Digitized by Google

purchase price, may under this section file a special plea clai
ages for a breach of warranty or covenant for title by his gr
less the defense is one which requires the contract to be resc
the grantor to be reinvested with the title conveyed. Kinzie
Ex'r, 100 Va. 709, 42 S. E. 872, 8 Va. Law Reg. 647. See
Huston's Ex'rs, 6 Grat. 304.

"Any other matter."—The meaning of the words, "or
matter," used in this section is restricted by the enumerate
which precede them, and hence no set-off can be pleaded
fendant which does not grow out of the contract in the suit.
Manganese Co. v. Virginia Manganese Co., 91 Va. 272, 21
note 1 Va. Law Reg. 119; Gates & Son Co. v. Richmond, 10
49 S. E. 965.

Sufficiency of plea.—Plea must allege the amount to
fendant is entitled by reason of the matters contained therei
v. Williamson, 96 Va. 636, 32 S. E. 42; Richmond Ice Co.
Ice Co., 99 Va. 239, 37 S. E. 851, note 6 Va. Law Reg. 824.

A plea must show that the offset is such as may be set up
statute. Watkins v. Hopkins' Ex'r, 13 Grat. 743.

The facts should be set forth with sufficient precision and
to apprise the plaintiff of the character of the defence inten
made, and to enable the court to decide whether the matter
constitutes a valid claim to an equitable relief. Burtners
24 Grat. 42.

Federal courts.—Because of the doctrine that no State st
be permitted to obliterate the ancient distinction between law
causes, there has been much trouble in the Federal courts of
with this section. While matter of counter claim of legal n
be pleaded in a law cause in the Federal courts, purely equitab
can not be set up in such causes. And this rule applies w
cause originated in the State or Federal court. In this co
has been held that matter of estoppel in pais is a legal defens
Law Reg. 340.

See note of Dotson v. Kirk, under section 6150.

Res judicata.—If a party filing such a plea only claims a
a part of the damages he has sustained, and then brings a
recover for other damages, a plea of the former judgment is a
in bar to the action. Huff v. Broyles, 26 Grat. 283.

Damages, though nominal, recovered by a defendant
plaintiff on a covenant in a deed would bar any subsequent ac
covenant, although the grantees were subsequently evicted.
Riely's Ex'r, 100 Va. 709, 42 S. E. 872, note 8 Va. Law Reg.

Generally.—If, in an action by a grantor against the g
his surety on a bond given for the purchase price of real est
plea be filed by principal and surety under this section clai
ages for a breach of warranty of the title, the surety cannot a
cute a writ of error; the defence is personal to the princip
v. Reily's Ex'r, 100 Va. 709, 42 S. E. 872, note 8 Va. Law Reg

Though in suit to collect assessment to stock from su
may set up defence allowed by this section, those defences a
to him, and do not pass to the transferee of the stock. Lewi
ville Land & Imp. Co., 90 Va. 693, 19 S. E. 781.

The general rule that the statute of limitations must
pleaded has no application to a plea under this section.
replication which is allowed to such plea under section 6146
replication, and under that replication the plea of the statut
tion may be relied on. Sexton v. C. Aultman & Co., 92 Va
E. 838. See 1 Va. L. Reg. 610.

Upon an appeal, under section 2761, a county has the
a plea of set-off under this section. Luck Const. Co. v. Russ
Va. 335, 79 S. E. 393; White v. Am. Nat. Life Ins. Co., 1
78 S. E. 582.

A motion by lessor for judgment for rent is an action at

Digitized by Google

meaning of this section, in which the defendant in an action on a ract may file a plea of set-off. Newport News & O. P. Ry. & Electric v. Bickford, 105 Va. 182, 52 S. E. 1011.

An agent of an undisclosed principal when sued on the contract he other party thereto may set up as a defense by plea under this on any matter which would entitle him to recover damages or relief nst the obligation of the contract against the plaintiff. The mere that the beneficial interest of the plea is in another constitutes no nd of objection thereto. Leterman v. Charlottesville L. Co., 110 769, 67 S. E. 281.

Although there is a marked conflict in the authorities as to whether non-residence of the party against whom set-off is sought to be rted is good ground for equitable interference to allow the set-off, ust be said that the majority of cases in which non-residence was ed have held it sufficient to warrant the application of the doctrine. t is held in Ewing-Merkle Electric Co. v. Lewisville Light & W. Co., Ark. 594, 124 S. W. 509, annotated in 30 L. R. A. (N. S.) 21, that ty will enforce against a claim of a non-resident for goods sold delivered, a set-off of a claim of the purchaser against the seller for ch of warranty in another transaction between them, where satis- on of such claim cannot be secured by action without compelling ndant to seek the courts of the State where the seller resides. See, 6 Va. L. Reg. 858; Vaught v. Meador, 99 Va. 569, 39 S. E. 225, Am. St. Rep. 908.

As to what verdict should be upon demurrer to the defendant's ence in support of his plea, see South Roanoke Land Co. v. Roberts, Va. 489, 39 S. E. 133, note 7 Va. Law Reg. 247.

How is this section affected by section 6088, providing that as- psit may be maintained where covenant will lie? See 4 Va. Law 200, 201.

Followed in Scott v. Boyd, 101 Va. 28, 42 S. E. 918.

For full discussion for difference between common-law recoupment recoupment under this section, see note to Bunting v. Cochran, 7 Law Reg. 332. See, also, 1 Va. Law Reg. 540; Graves Pleading 4, 96-99, 124, 125; Barton, L. Pr. (2d Ed.) 491, 506, 514; 3 Min. (2d 152; 4 Min. (3d Ed.) 769, 793, 947, 1284; Burks' Pleading and tice, pp. 101, 102, 117, 171, 175, 177, 178, 269, 338, 357, 406, 408, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 854.

Cited but not construed in 4 Va. Law Reg. 770; Liskey v. Paul, Va. 769, 42 S. E. 875; Saunders v. Bank, 112 Va. 443, 71 S. E. 714; erson v. Union Bank, 117 Va. 1, 83 S. E. 1080; Sutherland v. Wam- , 119 Va. 800, 89 S. E. 875; Hoge v. Fidelity, &c., Co., 103 Va. 15, S. E. 494; Ney v. Wrenn, 117 Va. 85, 84 S. E. 1; Stewart v. Rogers, Va. 836, 86 S. E. 161; Briggs v. Cook, 99 Va. 273, 38 S. E. 148, 6 Va. Law Reg. 847. In this case no exception was taken to the g of a plea under this section to a motion.

For cases before the statute, see Chew v. Moffett, 6 Munf. 120; lor v. King, 6 Munf. 358, 8 Am. Dec. 746; Wyche v. Macklin, 2 d. 426; Tomlinson's Adm'rs v. Mason, 6 Rand. 169; Christian v. er, 3 Leigh 78, 23 Am. Dec. 251.

See notes to next section.

For W. Va. decisions on similar statute, see Justis' Annotations, pter 126, section 5.

See Gregory's Forms Nos. 174, 215.

ec. 6146. Proceedings thereupon; effect of plea on relief in ity.—If a defendant, entitled to such plea as is mentioned in preceding section, shall not tender it, or though he tender it, t be rejected, he shall not be precluded from such relief in- ity as he would have been entitled to if the preceding section not been enacted. If, when an issue in fact is joined thereon,

Digitized by Google

such issue be found against the defendant, he shall b
relief in equity upon the matters alleged in the plea,
such ground as would entitle a party to relief against
in other cases. Every such issue in fact shall be upo
replication that the plea is not true; and the plaintiff
evidence on such issue any matter which could be g
dence under a special replication if such replication w
(Code 1887, § 3300.)

**Revisors' Note.—The words, "for not being offered i
formerly appearing after "rejected" in line three of the te
omitted. No reason was seen for this restriction, and it was
the defendant should be allowed the relief in equity if t
tendered and rejected for any cause.**

The only replication, under this section, which is allow
under section 6145 is a general replication that the plea is
under that replication the plea of the statute of limitations
on. Sexton v. C. Aultman & Co., 92 Va. 20, 22 S. E. 838.

The statute of jeofails did not apply to the omission to
such replication, and the failure to reply entitled the
nominal damages, but the defendant waived the irregularity
trial without it. Briggs v. Cook, 99 Va. 275, 38 S. E. 148
Law Reg. 853. See McMillion v. Dobbins, 9 Leigh 422.

After verdict motion will not be entertained to set it a
no issue had been joined on the special plea. Id.

If a defendant who is entitled to the defenses contemplat
6145 fails to avail himself thereof by special plea of set-off,
relief by cross bill in a suit to enforce the judgment. Rohr
land, 116 Va. 755, 82 S. E. 711.

Cited but not construed in Kinzie v. Riely's Ex's, 100
S. E. 872; Selden v. Williams, 108 Va. 542, 62 S. E. 380;
Union Bank, 117 Va. 1, 83 S. E. 1080.

See Graves Pleading 97, 98; Barton, L. Pr. (2d Ed.)
(3d Ed.) 795; Burks' Pleading and Practice, pp. 357, 408, 4
For W. Va. decisions on similar statute, see Justis'
chapter 126, section 6.

Sec. 6147. Effect of chapter on voluntary bonds.—
this chapter shall impair or affect the obligation of a
other deed deemed voluntary in law upon any party
his representatives. (Code 1887, § 3301.)

See 1 Va. Law Reg. 540; 3 Min. (2d Ed.) 153; 4 Min. (
Graves Pleading 97, 99.

**Sec. 6148. If plea or set-off goes to part only of deman
proceeded in.**—If the defendant file a plea or account
which covers or applies to part of the plaintiff's dem
ment may be forthwith rendered for the part not co
and the costs accrued until the filing of the plea or a
the case shall be proceeded with for the residue, as if t
which judgment was rendered had not been included th
if, in addition to such plea or account, the defendant
other plea, going to the whole or residue of the deman
shall not be continued as to the part not controverted
or account of set-offs, unless good cause be shown fo
tinuance. A failure to take such judgment, however,

Digitized by Google

the plea or account is filed, shall not operate a discontinuance of the cause. (Code 1887, § 3302.)

Revisors' Note.—The last sentence is new.

See Graves Pleading 101; 4 Min. (3d Ed.) 794; Barton, L. Pr. (2d Ed.) 507; Burks' Pleading and Practice, pp. 433, 435, 448, 874.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 126, section 8.

Sec. 6149. Defendant claiming set-off, put on footing of a plaintiff.—A defendant who files a plea or account under this chapter, shall be deemed to have brought an action, at the time of filing such plea or account, against the plaintiff, and, if he be assignee or transferee, also against the person with whom the contract sued on was originally made and under whom the plaintiff claims, according to their respective interests, for the matters mentioned in such plea or account, and the plaintiff shall not, after the plea or account is filed, dismiss his case, without the defendant's consent, but the defendant's claim shall be open to the same ground of defense to which it would have been open in any action brought by him thereon. (Code 1887, § 3303.)

Does not make party bringing the action a defendant, or the party filing the plea a plaintiff, within the meaning of section 6168, or deprive the personal representatives of the party bringing the action of the right to have it revived in their names by motion. Kinzie v. Riely's Ex'r, 100 Va. 711, 42 S. E. 872, note 8 Va. Law Reg. 655.

Statute of limitations may be set up by plaintiff as defence to defendant's off-sets. Trimyer v. Pollard, 5 Grat. 460, 462.

Although defendant be "deemed to have brought an action," if trial be had without replication to defendant's plea, it is not ground for reversal. Briggs v. Cook, 99 Va. 273, 38 S. E. 148, 6 Va. Law Reg. 847.

For rule in court of equity, see Fitzgerald v. Jones, 1 Munf. 150.

Cited but not construed in Botetourt County v. Burger, 86 Va. 530, 10 S. E. 264; Leterman v. Charlottesville L. Co., 110 Va. 769, 67 S. E. 281.

See Barton, L. Pr. (2d Ed.) 116, 508, 525, 686; 4 Min. (3d Ed.) 787 et seq., 934, 1448; Graves Pleading 94, 97; Burks' Pleading and Practice, pp. 436, 440, 441, 443, 597.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 126, section 9.

See Gregory's Forms No. 172.

Sec. 6150. Other proceedings.—Other proceedings shall be as follows:

First. If plaintiff is the person, or, etc., with whom the contract was made, how set-off applied and judgment given.—If the plaintiff be a person with whom the contract sued on was originally made, or the personal representative of such person, on the trial of the case, the jury shall ascertain the amount to which the defendant is entitled, and apply it as a set-off against the plaintiff's demand, and, if the said amount be more than the plaintiff is entitled to, shall ascertain the excess, and fix the time from which interest is to be computed on the same, or any part thereof. Judgment, in such case, shall be for the defendant against the plaintiff for said excess, with such interest from the said time till payment.

Digitized by Google

Second. If he is assignee of such person, and defendant exceeds plaintiff's demand, defendant may waive for the ex If the plaintiff claims as assignee or transferee under a pers whom the contract sued on was originally made, and the ant's claim exceeds the plaintiff's demand, the defendant plea or in a writing filed with his account, may waive the of his claim as to any excess beyond the plaintiff's claim, upon, the further proceedings shall be upon the plaintiff and the defendant's counter claim as a defense thereto; or, of such waiver.

Third. He may have person under whom plaintiff claims party, and obtain judgment against him for such excess defendant may, by rule issued by the court, or, on his app issued by the clerk of the court in vacation, or by reason tice in writing, such rule or notice substantially stating the ant's claim, make the person, under whom the plaintiff cl aforesaid, a party to the suit; and, on the trial of the case, shall ascertain and apply, as provided in the first sub-div this section, the amount and interest to which the defenda titled; and, for any excess beyond the plaintiff's demand fo such person under whom the plaintiff claims as aforesaid i with such interest as the jury allows, judgment shall be r for the defendant against such person. (Code 1887, § 330

If defendant does not obtain judgment for excess of his over plaintiff's claim, he cannot afterwards sue for such excess. Broyles, 26 Grat. 283. See Kinzie v. Riely's Ex'r, 100 Va. S. E. 872.

Where the full amount of a set-off allowed to a defendant $500 (now $300), an appeal lies to this court on behalf of plainant, although the amount decreed against him is less t sum. Bunting v. Cochran, 99 Va. 558, 39 S. E. 229.

In an action in a Federal court by a vendor against a p of standing timber for breach of the contract, if defendant c that the vendor has failed to perform the contract, he can do by way of defense or counter-claim; set-offs and counter cla legal character being available to defendant in an action at la Federal courts, if allowed by State practice, even to the extent of defendant to recover judgment against the plaintiff. Dotson (Circuit Court of Appeals, Fourth Circuit), 180 Fed. 14.

See Graves Pleading 94, 97; 4 Min. (3d Ed.) 791, 792 Pleading and Practice, pp. 436, 441, 442, 443, 448, 449; Gregory No. 172; notes to five preceding sections.

Digitized by Google

CHAPTER 256.

Interpleader.

ec.
151. The proceeding, when defendant disclaims interest in the subject; how right of third party tried.
152. How claim of third party tried to property distrained or levied on.
153. Sale of property where no forthcoming bond is given; power of court to make orders; costs.
154. Indemnifying bond to officer; its penalty and condition. Course of officer, when it is given, and when not; where returned, when given.
Sec.
6155. Effect of such bond.
6156. Claimant may give suspending bond; its effect; when claimant of property required to have title settled; presumption; suits on such bonds.
6157. How forthcoming bond taken of claimant of property the sale whereof has been suspended; sale of property if expensive to keep or perishable.
6158. When property sells for more than claim, how surplus paid.

Sec. 6151. The proceeding, when defendant disclaims interest in ie subject; how right of third party tried.—Upon affidavit of a efendant in any action that he claims no interest in the subject atter of the action, but that some third party has a claim thereto, nd that he does not collude with such third party, but is ready to ay or dispose of the subject matter of the action as the court may irect, the court may make an order requiring such third party to ppear and state the nature of his claim, and maintain or relinquish , and in the meantime stay the proceedings in such action. If ich third party, on being served with such order, shall not appear, ie court may, on proof of the plaintiff's right, render judgment or him, and declare such third party to be forever barred of any laim in respect of the subject matter, either against the plainiff or the original defendant, or his personal representative. If uch third party, on being so served, shall appear, the court shall llow him to make himself defendant in the action, and, either in aid action or otherwise, cause such issue or issues to be tried as it ay prescribe, and may direct which party shall be considered the laintiff in the issues, and shall give judgment upon the verdict endered on such trial, or, if a jury be waived by the parties interested, shall determine their claims in a summary way. (Code 1887. 2998.)

This section was taken from English statute 1 & 2 Wm. IV., c. 58. ts object is to give relief without compelling the party seeking it to ave recourse to a bill of interpleader. It does not take away the right f a party to file bill of interpleader. The remedy is concurrent; yet a sheriff or stakeholder have filed such a bill, then having made his lection the common-law courts will not interfere. Report of Revisors, 849, p. 764.

This statute does not enlarge the rules governing bills of inter-

Digitized by Google

pleader and does not limit or affect the equitable jurisdictio subject. They merely furnish an additional and cumulative Runkle v. Runkle, 112 Va. 788, 72 S. E. 695.

See this case for the requirements necessary to a bill of in not under the statute.

A sheriff may file a bill of interpleader to settle the right o taken under an execution, and to which there are conflicting cl an injunction will not be granted to stay a suit against him i should sell the goods, as the statutes provide an adequate re him, and he is not bound to act unless indemnified. Storrs 4 Hen. & M. 506.

Unsuccessful claimant who makes it necessary for holder erty to file bill of interpleader should pay costs. Beers v. S Leigh 153.

Where auctioneers are stakeholders and trustees of pr sales made by them, and bound to pay the proceeds to one of t claimant, upon condition agreed upon, equity has jurisdiction on a bill filed by one of the claimants against the auctioneer other claimant. Townes v. Birchett, 12 Leigh 173.

The plaintiff in a suit of interpleader continues to be a s and necessary party until he has fully rendered the debt, duty, thing required of him. George v. Pilcher, 28 Grat. 299, 26 350.

Where shares of stock in a corporation have been atta proceeding instituted against a stockholder, and said corpor been summoned as a garnishee; where along with the answer o poration an affidavit is filed, as provided by this section—the cou require such third person to appear and state the nature of and maintain or relinquish the same. C. & O. R. Co. v. Grat. 502.

A party having an agreement with judgment debtor to him, for valuable consideration received, certain after-acquired property, may interplead against creditor levying on such First Nat. Bank v. Turnbull, 32 Grat. 695, 34 Am. Rep. 791.

Followed in Leftwich v. Wells, 101 Va. 255, 43 S. E. 36

Cited in dissenting opinion of Buchanan, J., in Clement Bros.-Paynes Co., 113 Va. 547, 75 S. E. 294, 18 Va. L. Reg. 437

For W. Va. decisions on similar statute, see Justis' An chapter 107, section 1.

See Gregory's Forms No. 257.

Sec. 6152. How claim of third party tried to property d or levied on.—When property, of the value of more tha dollars, is taken under a warrant of distress, or under a fieri facias issued by a justice, or when property of any taken under a writ of fieri facias issued by the clerk of a c any person, other than the party against whom the proces claims such property, or the proceeds or value thereof, th court of the county, or the circuit or corporation court of poration, in which the property is taken, or the judge of su in vacation, upon the application of the officer, where no fying bond has been given, or, if one has been given, on t cation of the person who claims such property and has gi suspending bond as is hereinafter mentioned, or of the pa ing said process, may cause to appear before such court the party issuing such process as the party making such cl such court may exercise, for the decision of their rights, a

Digitized by Google

the powers and authority prescribed in the preceding section. Code 1887, § 2999; 1902-3-4, p. 597.)

Revisors' Note.—The words, "or of the party issuing said process," pearing in lines twelve and thirteen of the text are new, but are taken substance from the first sentence of section 3000 of the former Code mended 1902-3-4, p. 597).

It is intended by this section to afford the remedy where no indemnifying bond is given, either at the instance of the officer or one the parties interested. * * * With the exception of a temporary privation of the use of the specific property, it (this section) will attain in a more simple way everything that can now be attained by a rit of replevin or a bill in equity to restrain the sale. Report of evisors, 1849, p. 765. Replevin abolished, section 5784.

For discussion of replevin and this its statutory substitute, see len v. Hart, 18 Grat. 722.

Where property taken in execution is forbidden to be sold under idea of a prior lien, the sheriff must nevertheless proceed to make s return. Upon the refusal of the party to give an indemnity, he ight, on application to the court, have had further time given him make his return, and in the meantime have put it upon the parties ncerned to litigate their rights to the property in question by filing a ll for that purpose. Baird v. Rice, 1 Call 18, 1 Am. Dec. 497.

Equity will entertain a bill to protect equitable separate estate of arried women, although under this section there is complete and adeiate provision at law furnishing the remedy desired. Filler v. Tyler, Va. 458, 22 S. E. 235; 1 Va. Law Reg. 350, and note.

On appeal from a judgment rendered on a trial of claim by third erson to property levied on under execution, an order of a court issued a chancery cause, the record of which was admitted in evidence, cant be reviewed. Partlow v. Lickliter, 100 Va. 631, 42 S. E. 671.

Form of order for process of interpleader by court in term. 4 Min. d Ed.) 1632; of order for interpleader by circuit judge in vacation, . 1632; of application for process of interpleader by claimant of effects vied on, Id. 1631.

For a form under this section, see statement of facts in Edmunds v. obbie Piano Co., 97 Va. 588, 34 S. E. 472.

See Burks' Pleading and Practice, pp. 12, 47, 217, 218, 654.

For W. Va. decisions on similar statute, see Justis' Annotations, apter 107, section 2, 5.

Sec. 6153. Sale of property where no forthcoming bond is given: ower of court to make orders; costs.—In such case as is menoned in the preceding section, the court, where no bond is given for ie forthcoming of the property, or, the judge thereof in vacation ay, before a decision of the rights of the parties, make an order or the sale of the property, or any part thereof, on such terms as ie court or judge may deem advisable, and for the proper applicaion of the proceeds. In any case before mentioned in this chaper, the court or judge may make all such rules and orders, and nter such judgment as to costs and all other matters as may be ust and proper. (Code 1887, § 3000; 1902-3-4, p. 597.)

Revisors' Note.—The substance of the first sentence of this section s it stood before the revision has been transferred to the preceding ection. See revisors' note to that section.

See Burks' Pleading and Practice, pp. 12, 217, 218, 219, 654.

For W. Va. decisions on similar statute, see Justis' Annotations, hapter 107, section 6.

Sec. 6154. Indemnifying bond to officer; its penalty and condi-

Digitized by Google

tion. Course of officer, when it is given, and when not; v turned, when given.—If any officer levies or is required t fieri facias, an attachment, or a warrant of distress on p and a doubt shall arise whether the said property is liable levy, he may give the plaintiff, his agent or attorney at tice that an indemnifying bond is required in the case; b thereupon be given by any person, with good security, pa the officer in a penalty equal to double the value of the p with condition to indemnify him against all damage which sustain in consequence of the seizure or sale of said prop to pay to any claimant of such property all damage which sustain in consequence of such seizure or sale, and also to and defend to any purchaser of the property such estate or therein as is sold. If such indemnifying bond be not give a reasonable time after such notice, the officer may refuse on such property, or may restore it to the person from wh session it was taken, as the case may be. If it be given, th shall proceed to levy if he has not already done so, or if has been released. Any indemnifying bond taken by an offic this section shall be returned by him within twenty day clerk's office from which the fieri facias or attachment is if the fieri facias or attachment was not issued by a cler office of the court to which the attachment is returnable, be a fieri facias or distress warrant, to the office of the which the officer who levied the fieri facias or distress war appointed, or in which he qualified. (Code 1887, § 3001; 1 505.)

Revisors' Note.—The first part of this section is taken from part of section 3001 of the former Code (amended 1897-8, The latter part of the section is taken from section 3002 of the 1887.

It will be observed that the last few lines of the revised sect "Or if it be a fieri facias or distress warrant, to the office of the which the officer WHO LEVIED THE FIERI FACIAS OR D WARRANT was appointed, or in which he qualified." Form language was: "Or if it be an execution, to the office of the which SUCH OFFICER was appointed or in which he qualified."

Equity jurisdiction.—Although a party whose property is execution to satisfy the debt of another may proceed to rec property, or damages for the taking and detention thereof, in at law, and although it is competent for a sheriff having doubts title of property taken in execution to demand from the credi demnifying bond, yet neither of these remedies is in exclu proceeding in equity having for its object the detention of the in specie. Wilson v. Butler, 3 Munf. 564.

Effect of omission or of insertion of condition not required a court or officer taking a bond has the authority or capacit it, and by mistake some of the conditions prescribed are omi condition not authorized is inserted, the bond is not vitiated statute, by express terms or necessary implication, makes it wh the bad does not vitiate the good; and the bond may be sued as the conditions are good as a statutory bond. Aylett v. Roan

Digitized by Google

2; Pratt v. Wright, 13 Grat. 176, 67 Am. Dec. 767; Gibson v. Beckham, Grat. 321; Jackson v. Hopkins, 92 Va. 604, 24 S. E. 234.

A constable, sheriff, or other officer, who sells property taken under ecution, is not protected from an action of trespass by the claimant, less the indemnifying bond taken by him under the statute conform all respects to that act, and particularly contains the clause inserted the benefit of the person claiming title to the property. McClunn v. eel, 2 Va. Cas. 256.

In the abstract of the case of Dabney v. Catlett, 12 Leigh 383, it pears that the court decided that an indemnifying bond which omitted e covenant for the protection of a purchaser of the property seized, a sale by the sheriff, was not a good statutory bond, and would not otect the sheriff against an action by the claimant of the property. the case of Aylett v. Roane, 1 Grat. 282, the court, referring to the ove case, states that it did not decide that the bond was not a good atutory bond for any purpose, and that a bond similarly executed was od in other respects, though omitting the covenant for the protection the purchaser, and was a good statutory bond, as far as the claimant the property was concerned, and in an action by the claimant against e sheriff could be offered by the sheriff in bar of the action. See Id., . Rep. Anno.

In an action against a constable for taking the property of the aintiff upon three executions against a third person, the constable filed separate plea, in which he set up an indemnifying bond executed by e plaintiffs in the execution. The plaintiff craved oyer of the bond, d demurred to the plea. Held, that it is not necessary to set out the dgments in the plea; that the executions appear on their face to be ued by a justice of Hardy county, yet, in fact having been issued by justice of Hampshire, where they were levied, and this being averred the plea, they are valid, and give authority to the officer to execute em; that it is not necessary to set out the executions in the indemnify- g bond; that an indemnifying bond may be taken on several executions; at a firm being the plaintiffs in the execution, the bond executed by e of the firm, in the partnership name, is a good bond of the person so ecuting it; that the reciting in the bond of the names of the plaintiffs the execution by their partnership name is sufficient. Davis v. Davis, Grat. 363.

Pleading and practice.—An action in an indemnifying bond given a sheriff for sale of property taken in execution, under statute 1 Rev. de, chapter 134, sections 25, 26, 27, must be brought in the name of e sheriff, but it can only be maintained at the relation of the party in- red. Though the party injured is not named as relator in the declara- on or other pleading, yet if the breach assigned is that the obligor did t pay the damages sustained by B. by reason of the sale, and if a ecial verdict in the cause shows that B. is the relator, or supposing the eading defective in this particular, the defect is cured after verdict by atute of jeofails. Lewis v. Adams, 6 Leigh 320.

In an action on an indemnifying bond the relator claims title to e property sold under a sale made by one partner, without the knowl- ge or consent of the other, of partnership property. The relator may cover for the undivided interest of the partner who made the sale, under general allegation in the declaration of his ownership of the property. rkner v. Stuart, 6 Grat. 197.

An indemnifying bond given to a sheriff, under statute 1 Rev. Code, apter 134, sections 25, 26, can only be put in suit at the relation of e person having the legal title to the property taken in execution and ld by the sheriff, not at the relation of any person having an equitable ght therein. Garlands v. Jacobs, 2 Leigh 651.

In an action on a bond of indemnity given to the officer for the sale property under execution, at the relation of the claimant of the roperty, the declaration states the obligation to be that the obligors ound themselves to pay, among other things, to any person claiming tle to the property levied on, all damages which such claimant might

Digitized by Google

sustain by the seizure and sale, etc. On the trial the plaint in evidence an indemnifying bond, in a penalty, and with a Held no variance, and the evidence admissible. Kevan v. Grat. 274. This case approves the declaration given in Car Anderson, 5 Munf. 32.

A declaration on an indemnifying bond in the name of t istrator de bonis non of the high sheriff sets out the bond a himself. Without craving oyer of the bond, the defendants d there is enough in the declaration to enable the court to judgment according to law and the very right of the cause, the should be overruled. Duval v. Malone, 14 Grat. 24.

Any person claiming the property sold under an exec prosecute an action of debt on the indemnifying bond, in the n sheriff or other officer to whom it was taken, without proving damage has been sustained by such officer. Carrington v. 5 Munf. 32.

In a declaration on a bond with collateral condition, i two assignments of breaches, and either assignment be good whole declaration is demurred to, the demurrer ought to be Martin v. Sturm, 5 Rand. 693.

While the bond cannot be recovered on as a statutory in this case it is not opposed to, McClunn v. Steel, 2 Va. Cas. as the declaration contains two counts, and one bond being go mon law, the general demurrer must be overruled, and th allowed to prove his damages under the second count. Martin 5 Rand. 693.

Form of declaration by a claimant of property on an ind bond, see Carrington v. Anderson, 5 Munf. 32.

Evidence.—In an action on an indemnifying bond, bro person claiming the property sold, the deputy sheriff who sold erty under the execution, and took the bonds, is not a compete for the defendants to prove that the property belonged to against whom the execution issued. Wilson v. Alexander, 9 Carrington v. Anderson, 5 Munf. 32.

In an action on an indemnifying bond, at the relation of claiming under a deed of trust from the debtor in the execu the levy of which the bond was taken, the grantor in the deed debtor in the execution, is a competent witness for the plainti son v. Ford, 2 Grat. 16, and note thereto Va. Rep. Anno.

In debt on an indemnifying bond given to a sheriff for s sale of a slave under execution, it is competent for the def prove that the relator of the plaintiff had only a life estate in though it appears that he had bona fide purchased of the tena an absolute estate. Stevens v. Bransford, 6 Leigh 246.

In an action on an indemnifying bond, the declaration a the obligors bound themselves to indemnify, etc. In the bond themselves, their heirs, executors, and administrators, jo severally. Held, that this was substantially the same as de the declaration, and should have been permitted to go to t evidence in support of the declaration. Dickinson v. Smith, 5

Liability of officer.—Where a debtor against whose goods attempts to levy an execution informs the officer that he was and claimed the benefits of his homestead exemption, and at the homestead law had only recently gone into effect, and informed the execution creditor of the claim, and demand demnifying bond, and the creditor refused to give one, it was the circumstances were sufficient to justify the officer in refus unless the creditor gave the indemnifying bond, and that the his sureties were not liable where the debt was lost through levy. Huffman v. Leffell's Ex'r, 32 Grat. 41.

Execution issued upon a contract made before the C allowing a debtor to set apart his homestead took effect. levied on the property of the debtor, who gave a forthcoming

Digitized by Google

ich the debtor claims his homestead in the property. The officer thereon releases it, without first notifying or requiring the creditor to give indemnifying bond. The property is afterwards lost to the creditor. ld, the sheriff and his sureties are liable to the creditor for the balance e upon his claim. Sage v. Dickinson, 33 Grat. 361, distinguished m Huffman v. Leffell's Ex'r, 32 Grat. 41.

See note on Statutory Bonds to Goolsby v. Strother, 21 Grat. 108, Rep. Anno.

Generally.—Form of indemnifying bond, 4 Min. (3d Ed.) 1582; of claration in debt on indemnifying bond, Id. 1651.

See Gregory's Forms Nos. 28, 397, 398, 503, 504.

Sec. 6155. Effect of such bond.—The claimant or purchaser of ch property shall, after such bond is so returned, be barred of y action against the officer levying thereon, provided the security rein be good at the time of taking it. (Code 1887, § 3003.)

Revisors' Note.—This section is taken from the first part of section 03 of the former Code.

If the claimant should bring his action against the sergeant, it will be sufficient for him to show that he has established his claim to the perty in the action on the indemnifying bond; he must go further, l show that the sergeant failed in his official duty in not taking a vent bond, or in taking one in which the obligors have since become olvent. Stevens v. Bransford, 6 Leigh 250.

Sec. 6156. Claimant may give suspending bond; its effect; when imant of property required to have title settled; presumption; its on such bonds.—The sale of any property levied on under a ri facias or distress warrant shall be suspended at the instance any claimant thereof who will deliver to the officer bond, with od security, in a penalty equal to double the value thereof, payle to said officer, with condition to pay to all persons who may injured by suspending the sale thereof, until the claim thereto n be adjusted, such damage as they may sustain by such suspen-n. If the property claimed to be liable by virtue of the process oresaid is in the possession of any of the parties against whom ch process was issued, but is claimed by any other person or per-ns, or is claimed to belong to any other person or persons, the icer having such process in his hands to be executed shall, whether indemnifying bond has been given or not, after notice to the imant, or his agent, proceed to execute the same notwithstand-g such claim, unless the claimant of said property or some one him shall give the suspending bond aforesaid, and shall within irty days after such bond is given proceed to have the title to d property settled in accordance with the provisions of this chap-r. And in case such claimant or some one for him fails to give ch bond, or having given such bond fails to have such proceed-gs instituted as aforesaid to settle the title thereto, said property all be conclusively presumed to be the property of the party in ssession. For the purposes of this section, a person making a im of ownership of property on behalf of another shall be deemed be the latter's agent, and the notice required by this section may verbal or in writing. Upon any such bond as is mentioned in

Digitized by Google

this or the preceding section, an action may be prosecut
name of the officer for the benefit of the claimant, cred
chaser, or other person injured, and such damages rec
said suit as a jury may assess. The same may be prose
a writ of fieri facias had in the name of such officer when
in like manner as if he were alive.

Revisors' Note.—This section is taken from the latter part 3001 of the Code of 1887 (amended 1897-8, p. 505), and the of section 3003 of that Code. It will be noted that the clain quired to have the title settled, and the presumption of owners party in possession arises whether the plaintiff has given an inc bond or not. See Fields-Watkins Co. v. Hensley, 117 Va., a 666, 86 S. E. 113, construing the former language.

The revised section provides that the officer shall, "After the claimant, or his agent, proceed to sell." Notice was deer able, if not necessary. See Windsor v. McVeigh, 93 U. S. provision is made for a publication of the notice in the event cannot be personal or substituted service. It is hardly pro such publication would be necessary, as it is provided that may be given to the claimant or his agent. If the claimant claim in person, of course, the notice may be served on him made for him by another, the latter is, for the purposes of t made the agent of the claimant (see fourth sentence). Such is believed to be valid. If a person is authorized to make a another, or to make the statement that the property belongs t he may properly be treated as the agent of the party in a pro this nature.

The last few words of section 3001 of the former Code before the revision, exempting the officer from liability, omitted from this section because covered by section 6155. I attachments has been omitted, also, because provided for in ch

The claimant must not only execute the suspending bon but must within thirty days from the execution of such bon the proceedings provided to settle the title to the property so and upon his failure to have such proceedings instituted, the to be conclusively presumed to be the property of the party in Fields-Watkins Co. v. Hensley, 117 Va. 661, 86 S. E. 113.

See revisors' note above.

Form of suspending bond in case of interpleader, 4 Min 1630.

See Burks' Pl. & Pr., pp. 215-219.

Sec. 6157. How forthcoming bond taken of claimant o the sale whereof has been suspended; sale of property if to keep or perishable.—The sheriff or other officer levyi of fieri facias or distress warrant on property, the sale o suspended under this chapter, at the instance of a claima may, if such claimant desire the property to remain in session as it was immediately before the levy, and if th one in which a bond for the forthcoming of the prope prohibited from being taken from the debtor by section hundred and twenty-four, take from the claimant a bond ficient surety, in a penalty equal to double the value of erty, payable to the creditor, with such recital as is r a forthcoming bond taken from the debtor, and with

Digitized by Google

at the property shall be forthcoming at such day and place of le as may be thereafter lawfully appointed; whereupon such operty may be permitted to remain, at the risk of such claimant, such possession as it was immediately before the levy; and sec- ns sixty-five hundred and twenty, sixty-five hundred and twenty- e, sixty-five hundred and twenty-three, sixty-five hundred and enty-four, and sixty-five hundred and twenty-five, shall apply to ch forthcoming bond in like manner as to a forthcoming bond ken from the debtor. But notwithstanding such forthcoming bond given, if such property be expensive to keep or perishable, the urt in which proceedings in the case under section sixty-one hun- ed and fifty-two are pending or may be had, or, the judge thereof vacation, may, before a decision of the rights of the parties under ch proceedings, on the application of such claimant or of the sure- in such suspending or forthcoming bond, after reasonable notice the intended application has been given by such claimant or the rety to the other parties in the case, order a sale of the property, any part thereof, on such terms as the court or judge may deem visable; and the court shall apply the proceeds according to the d rights when determined. (Code 1887, § 3004; 1902-3-4, p. 597.)

Title acquired at sheriff's sale.—A fair purchase under a sheriff's e, without knowledge of any improper conduct on the part of the icer, acquires a valid title to the property purchased, and the remedy the party injured is by action at law for damages against the sheriff. e same remedy applies where a sheriff has improperly refused a forth- ming bond when he ought to have received it. Hamilton v. Shrews- ry, 4 Rand. 427, 15 Am. Dec. 779.

Compare Saunders v. Pate, 4 Rand. 8, where it was decided that a eriff selling under an execution, with good faith, incurs no responsi- ity as to title, there being no implied warranty raised by the law der such a sale. The rule of caveat emptor applies to such a case. e distinction seems to be that where proceedings under execution are olly void, as where A.'s property is levied on for B.'s debt, no title sses; but otherwise where the execution is valid so far as to bind operty, but the proceedings of the sheriff thereunder are simply irre- lar or improper.

Under the act of assembly concerning sheriffs (Rev. Code, Vol. 2, p. 0), the sheriff, having received the bond of indemnity, is bound to l the property taken in execution, whether it belongs to the debtor not. In such a case there is no implied warranty by the sheriff of e title to the property sold, nor implied promise to refund the purchase oney if the buyer be evicted. Stone v. Pointer, 5 Munf. 287.

For discussion of proceedings on motion on forthcoming bond, see rter v. Grant's Adm'x, 32 Grat. 769.

Cited in Hancock v. Whitehall Tobacco Warehouse Co., 100 Va. 443. S. E. 860.

Form of delivery or forthcoming bond by claimant, in order to regain ssession of the effects pending suit, 4 Min. (3d Ed.) p. 1632.

For W. Va. decisions on similar statute, see Justis' Annotations, apter 107, section 7.

Sec. 6158. When property sells for more than claim, how surplus aid.—When property, the sale of which is indemnified, sells for ore than enough to satisfy the execution, attachment, or distress arrant under which it is taken, the surplus shall be paid by the

Digitized by Google

officer into the court to the office whereof the indemnifyi
is required to be returned, or as such court may direct.
court may make such order for the disposition thereof, eit
porarily, until the question as to the title of the propert
determined, or absolutely, as in respect to the rights of th
ested may seem to it proper. (Code 1887, § 3005.)

CHAPTER 257.

Awards.

Sec.		Sec.	
6159.	Submission of controversy to arbitration; may be entered of record; rule of court thereon.	6161.	How award entere judgment of court
6160.	Submission irrevocable; power of court over it.	6162.	For what award se
		6163.	Fiduciary may subr bitration.

Sec. 6159. Submission of controversy to arbitration; ma tered of record; rule of court thereon.—Persons desiring to controversy, whether there be a suit pending therefor or submit the same to arbitration, and agree that such submis be entered of record in any court. Upon proof of such ag out of court, or by consent of the parties given in court, i or by counsel, it shall be entered in the proceedings of suc and thereupon a rule shall be made, that the parties shall s the award which shall be made in pursuance of such ag (Code 1887, § 3006.)

Under a former statute (1 Rev. Code, chapter 114), a subm arbitration by a rule of court of a controversy in a suit pending within the statute concerning awards, and so the court migh to judgment on the award at the same term to which it was Wheatley v. Martin's Adm'r, 6 Leigh 62. See, also, Halcomb v. 2 Call 433; Mitchell v. Kelly, 1 Call 379.

Parol award—Boundaries.—Parties may agree to settle by tion the division line between their lots of land, and an award pursuance of a submission for that purpose will bind the pa though the arbitrators make a parol award, where the submis not require it to be in writing. Miller v. Miller, 99 Va. 125, 37 S

Death of plaintiff.—After submission to arbitration by rule the suit is revived by his administrator. The administrator of and the defendant proceed in the arbitration without any new sion. Held, the death of the plaintiff did not avoid the submis the award under it is good. Wheatley v. Martin's Adm'r, 6 L

Insurance losses.—See sections 4308, 4309.

Statute cumulative.—As to statutes prescribing a method for tion being merely cumulative, see 8 Va. Law Reg. 139.

Generally.—For a case which was submitted to arbitrati this chapter, see Drewry-Hughes Co. v. Throckmorton, 120 Va. S. E. 818.

Cited but not construed, McKennie v. Charlottesville R. Va. 70, 65 S. E. 503.

Digitized by Google

For monographic note on Arbitration and Award, see Bassett's Adm'r v. Cunningham's Adm'r, 9 Grat. 684, Va. Rep. Anno.

For editorial comment on this section, see 15 Va. L. R. 644.

On the subject of award under statute and otherwise, see Barton, L. Pr. 580, 4 Min. (3d Ed.) 170 et seq. and note; Burks' Pleading and Practice, pp. 23, 24; Bassett's Adm'r v. Cunningham's Adm'r, 9 Grat. 684, Va. Rep. Anno.; Coupland v. Anderson, 2 Call 106; Britton v. Williams' Devisees, 6 Munf. 453; Sutton v. Dickinson, 9 Leigh 142; Corbin v. Adams, 76 Va. 58; Doyle v. Patterson, 84 Va. 800, 6 S. E. 138; Canada v. Barksdale, 84 Va. 742, 6 S. E. 10.

Form of arbitration bond, 4 Min. (3d Ed.) 1579.

For W. Va. decisions on similar statute, see Justis' Annotations, Chapter 108, section 1.

Sec. 6160. Submission irrevocable; power of court over it.—No such submission, entered or agreed to be entered of record in any court, shall be revocable by any party to such submission, without the leave of such court; and such court may, from time to time, enlarge the term within which an award is required to be made. (Code 1887, § 3007.)

Either party may withdraw from an agreement to arbitrate made after a cause of action has arisen and before the award has been rendered, such an agreement being no bar to suit at law or in equity, and no foundation for a decree of specific performance, the only remedy being an action for damages growing out of the breach of submission. Long v. Long, 5 Call 431; Corbin v. Adams, 76 Va. 58; Rison v. Moon, 91 Va. 84, 22 S. E. 165. Otherwise where the submission is under the statute, 4 Min. (3d Ed.) 174.

For W. Va. decisions on similar statute, see Justis' Annotations, Chapter 108, section 2.

Sec. 6161. How award entered as the judgment of court.—Upon the return of any such award, made under such an agreement (whether any previous record of the submission, or a rule thereupon, has been made or not), it shall be entered up as the judgment or decree of the court, unless good cause be shown against it at the first term after the parties have been summoned to show cause against it. (Code 1887, § 3008.)

Cited but not construed. The question of the constitutionality of the section was sought to be presented but was not decided on account of procedure. Pizzini v. Grinnan, 112 Va. 241, 70 S. E. 850.

For W. Va. decisions on similar statute, see Justis' Annotations, Chapter 108, section 3.

Sec. 6162. For what award set aside.—No such award shall be set aside, except for errors apparent on its face, unless it appear to have been procured by corruption or other undue means, or that there was partiality or misbehavior in the arbitrators or umpires, or any of them. But this section shall not be construed to take away the power of courts of equity over awards. (Code 1887, § 3009.)

Plain mistake of law.—Where an order has been entered in a pending cause submitting the matters in dispute to arbitration, and the arbitrators have before them the pleadings and exhibits, duly consider them, and return them to court with their award; if it appears from an inspection of the whole that the arbitrators have made a plain and palpable mistake of law there can be no valid ground for refusing relief in such cases. Moore v. Luckess' Next of Kin, 23 Grat. 160.

If the arbitrators intended to conform to the law in making their award, but failed to do so, and such mistake plainly appears, the court

Digitized by Google

will grant relief in favor of infant distributee, however much t
tor may have contributed to the mistake. Moore v. Luckess'
Kin, 23 Grat. 168.

**Misbehavior of arbitrators—Appointment of third arb
Notice to parties.**—Where two arbitrators, who have power to
third in case of their disagreement, disagree, and make the appo
it is necessary to inform the parties in interest of the appointm
give them reasonable opportunity to produce evidence touching
ters in controversy. In the absence of an agreement to that ef
not sufficient for the third arbitrator to derive his knowledg
evidence from the other arbitrators. The case should be re
him. Coons v. Coons, 95 Va. 434, 28 S. E. 885, 64 Am. St. Re

Submission to arbitration of three or any two; two join in th
giving notice of the award concluded, and being about to be
to the third, who does not join in it. Held, this is no objectio
validity of the award. Wheatley v. Martin's Adm'r, 6 Leigh 6

Although the submission of a case to arbitration where
depending in a court of law does not come within the provisio
statute of awards (as it then existed), yet the court (in which
mission is made a rule of court) has a general superintendence
award made by virtue of such submission, and may annul it
behavior of the arbitrators, apparent mistakes on its face, et
unnecessary in such case to resort to a court of equity to
Graham's Adm'rs v. Pence, 6 Rand. 529.

Two arbitrators meet on the day appointed to decide the ca
red to them, and continue the case for good cause shown by the d
On the same day they determine that they will no longer act as
tors, and give notice of their declination to the parties. But
pressed by the plaintiff they are prevailed on by him to act ag
authorize the plaintiff to give notice to the defendant of the
place for arbitrating it. The defendant on the day and at t
protests against their power to act, and refuses to submit his ca
evidence to them. The arbitrators, however, proceeded to
award on the plaintiff's ex parte evidence. Such misbehavior a
award. Graham's Adm'rs v. Pence, 6 Rand. 529.

Award set aside in part.—In this case, where the arbitrato
a certain item of the account of the appellant, with interest ther
the respective periods when they arose or were contracted, such
items as were barred by the statute of limitations, and which it
the intention of the arbitrators to strike out, but which they h
to do, were stricken out by the court, and the award held valid
residue. Moore v. Luckess' Next of Kin, 23 Grat. 160.

Equitable relief.—While, under our statute, courts of law ca
aside awards, except for errors apparent on the face of the aw
less the award was obtained by corruption or other undue m
for misbehavior of the arbitrators, a court of equity is not
stricted, and may grant relief in cases in which in equity and g
science relief should be granted. Moore v. Luckess' Next of
Grat. 168.

Where every party in interest is before the court upon a b
aside the award upon grounds which unquestionably gives a
equity jurisdiction, this jurisdiction having once attached for the
of injunction, the court may decide the whole controversy an
a final decree, though all the issues are legal in their nature and
of being tried by a court of law, and the legal remedies there
quate. Coons v. Coons, 95 Va. 434, 28 S. E. 885, 64 Am. St. R
3 Va. Law Reg. 716.

A court of equity will not set aside an award for objection
if available at all were available at law, but of which the party
avail himself at law, there being no surprise proved, though
and no fraud proved or alleged. Wheatley v. Martin's Adm'r
62.

It is equally the rule of equity as of law that the reason fo

Digitized by Google

side an award must appear on the face, or there must be misbehavior in ne arbitrators, or some palpable mistake. Id.

Generally.—Cited but not construed, McKennie v. Charlottesville R. o., 110 Va. 70, 65 S. E. 503; Pizzini v. Grinnan, 112 Va. 241, 70 S. E 50.

See Burks' Pl. & Pr., p. 29.

Cases bearing on subject of arbitration and award, but which do ot construe this section: Shermer v. Beale, 1 Wash. 11; Pleasants v. oss, 1 Wash. 156, 1 Am. Dec. 449; Smallwood v. Mercer, 1 Wash. 290; eftwich v. Stovall, Id. 303; Mitchell v. Kelly, 1 Call 379; Holcomb v. lournoy, 2 Call 433; Ross v. Overton, 3 Call 309, 2 Am. Dec. 552; aylor's Adm'r v. Nicolson, 1 Hen. & M. 67; Morris v. Ross, 2 Hen. & M. 08; Fletcher v. Pollard, Id. 544; Brickhouse v. Hunter, 4 Hen. & M. 63, 4 Am. Dec. 528; Hollingsworth v. Lupton, 4 Munf. 114; Ligon v. ord, 5 Munf. 10; Manlove v. Thrift, Id. 493; Richards v. Brockenrough's Adm'r, 1 Rand. 449; Miller v. Kennedy, 3 Rand. 2; Head v. luir, 3 Rand. 122; Smith v. Smith, 4 Rand. 95; Rison v. Berry, Id. 275; lay v. Yancey, 4 Leigh 362; Lee v. Patillo, Id. 436; Martin v. Martin, 2 Leigh 495; Byars v. Thompson, 12 Leigh 550, 37 Am. Dec. 680; ollard v. Lumpkin, 6 Grat. 398, 52 Am. Dec. 128; Bassett's Adm'r v. unningham's Adm'r, 9 Grat. 684, and note thereto Va. Rep. Anno; unsford v. Smith, 12 Grat. 554; Crane's Guardian v. Crane, 21 Grat. 79; Forrer v. Coffman, 23 Grat. 871; Willoughby v. Thomas, 24 Grat. 21; Pollock's Adm'r v. Sutherlin, 25 Grat. 78; Adams v. Hubbard, Id. 29; Lynchburg Female Orphan Asylum v. Ford, Id. 570; City of Portsouth v. Norfolk Co., 31 Grat. 728; Shipman v. Fletcher, 83 Va. 601, S. E. 198.

For W. Va. decisions on similar statute, see Justis' Annotations, hapter 108, section 4.

Sec. 6163. Fiduciary may submit to arbitration.—Any personal epresentative of a decedent, guardian of an infant, committee of n insane person, or trustee, may submit to arbitration any suit or natter of controversy touching the estate or property of such deedent, infant, or insane person, or in respect to which he is trusee. And any submission so made in good faith, and the award nade thereupon, shall be binding and entered as the judgment of a ourt, if so required by the agreement, in the same manner as other ubmissions and awards. No such fiduciary shall be responsible for ny loss sustained by an award adverse to the interests of his ward, nsane person, or beneficiary, under any such trust, unless it was aused by his fault or neglect. (Code 1887, § 3010.)

Next of kin may contest award.—Where the executor declines to ppose the confirmation of the award, the next of kin may maintain a uit for that purpose. A court of equity alone has jurisdiction in such case. Moore v. Luckess' Next of Kin, 23 Grat. 160.

For decisions upon cases arising before the statute, see Wheatley . Martin's Adm'r, 6 Leigh 62; Nelson's Adm'r v. Cornwell, 11 Grat. 24; Thompson's Adm'r v. Thompson's Ex'r, 6 Munf. 514.

As to compromise by fiduciaries.—See sections 5440, 5789.

Generally.—The following additional cases touch on the general ubject of arbitration and award, but do not construe these statutes: McAlister v. McAlister, 1 Wash. 193; Turner v. Moffett, 2 Wash. 70; Macon v. Crump, 1 Call 575; Turberville v. Self, 4 Call 580; Beverley v. Reynolds, Wythe 121; Dawson v. Winslow, Id. 114; Harrison v. Brock, 1 Munf. 22; Kincaid v. Cunningham, 2 Munf. 1; Green v. Bailey, 5 Munf. 246; Dust v. Conrod, 5 Munf. 411; Horrel v. McAlexander. 3 Rand. 94; Armstrong v. Armstrong, 1 Leigh 491; Bierly v. Williams, 5 Leigh 700; Merrit v. Smith, 6 Leigh 486; Chapline v. Overseers of Poor, 7 Leigh 231,

Digitized by Google

30 Am. Dec. 504; Harrison v. Wortham, 8 Leigh 296; Dool Malcom, 8 Leigh 608, 31 Am. Dec. 671; Scates v. Wilson, 9 Leig Boyd's Heirs v. Magruder's Heirs, 2 Rob. 761; McCormick v. Bla 4 Grat. 133; Cauthorn v. Courtney, 6 Grat. 382; Price v. Via's 8 Grat. 79; Morris v. Morris, 9 Grat. 673; Kidwell v. B. & O. R. Grat. 676; Jenkins v. Liston, 13 Grat. 535; Condon v. South Side 14 Grat. 302, and note thereto, Va. Rep. Anno.; Iaege v. Bossi Grat. 83, 76 Am. Dec. 189; Carroll Co. v. Collier, 22 Grat. 310; v. Hubbard, 25 Grat. 129, and note thereto, Va. Rep. Anno.; Vance, 27 Grat. 571; Wood v. Shepherd, 2 Pat. & H. 442; Tilley v Fire Ins. Co., 86 Va. 811, 11 S. E. 120; Mills v. Norfolk & W. 90 Va. 523, 19 S. E. 171; Rison v. Moon, 91 Va. 384, 22 S. E Miller v. Miller, 99 Va. 125, 37 S. E. 792.

For W. Va. decisions on similar statute, see Justis' Anno chapter 108, section 5.

CHAPTER 258.

Death or Change of Parties, and the Discontinuance of Caus Prosecuted.

Sec.

6164. When death, or, etc., occurs after verdict and before judgment, how judgment entered.

6165. Where it occurs as to any of several plaintiffs or defendants in a suit, the cause of which survives, how suit to proceed; how, on death of a joint defendant.

6166. Effect of marriage of female plaintiff or defendant.

6167. Where it occurs after appeal, etc., how judgment or decree entered.

6168. For and against whom scire facias may be sued out; when suit revived on motion; when new party may have continuance or pleadings.

6169. Scire facias may be is vacation, and order vival entered at rule

6170. Where party, whose cease, is defendant, h proceeded in.

6171. When discontinued, revived.

6172. When for five years ceeding in a case but tinue it, court may s from the docket.

6173. Decree in a suit, wher ber of parties exceeds and one of them dies

6174. Right of absent party hearing.

Sec. 6164. When death, or, etc., occurs after verdict and judgment, how judgment entered.—Where a party dies, or b convict of felony, or insane, or the powers of a party who is sonal representative or committee cease, if such fact occu verdict, judgment may be entered as if it had not occurred. 1887, § 3305.)

Revisors' Note.—The words, "or a female party marries," fo appearing in this section, have been omitted. See new section

In personal injury case if trial court erroneously sets aside a for plaintiff and on second trial defendant gets judgment and p then dies, his personal representative may have writ of error to the action of the trial court on the first trial. Jackson v. Wi 112 Va. 128, 70 S. E. 539.

Cited but not construed in Booth v. Dotson, 93 Va. 233, 2 935. See Barton, C. Pr. (2d Ed.) 175; 4 Min. (3d Ed.) 975-9

Digitized by Google

For W. Va. decisions on similar statute, see Justis' Annotations, ɔter 127, section 1.

ec. 6165. Where it occurs as to any of several plaintiffs or de-lants in a suit, the cause of which survives, how suit to proceed; , on death of a joint defendant.—Where such fact occurs in any ge of a cause, whether it be in a court of original or appellate sdiction, if it occur as to any of several plaintiffs or defendants, suit or action may proceed for or against the others, if the cause uit or action survive to or against them; and no suit (unless it personal action which dies with the person) shall abate as to a y sued jointly with another, who shall die during the pendency uch suit or action, but in all cases where such suit or action ld have abated, the same may be revived against the personal esentative of the decedent, and if it be an action at law shall eed thenceforward as a separate action against such personal esentative, as though such decedent had been a sole defendant. le 1887, § 3306.)

Revisors' Note.—The language of this section as it stood before the ion indicated that the Legislature intended it to apply to actions w. This was more manifest from the last three lines of the sec- as found in the Code of 1887. The word "suit" was apparently in the sense of "action." Equity, independently of any statute, jurisdiction to revive a suit by a bill of revivor, or by supplemen- bill in the nature of a bill of revivor, but it seems had no power to e a suit by scire facias until that power was conferred upon it in and by Act of Parliament 15 and 16 Vict., chap. 86, sec. 2. (See el's Chancery Pl. & Prac., 4th Ed., pp. 1506-1509). It would seem able that the right to revive by scire facias should be conferred, fore, on a court of equity in Virginia as was done in England, al- gh the scire facias is not often resorted to in equity practice. The on now expressly applies to suits as well as actions.

An appeal from, or supersedeas to, an order quashing an execution ist two defendants, need not, if one of them die, be revived against epresentative, but should be proceeded in as to the other only. Bul- Ex'rs v. Winston, 1 Munf. 269.

Where there are two plaintiffs in a supersedeas, if one of them dies ause will abate as to him, and proceed in the name of the surviving tiff. Hairston v. Woods, 9 Leigh 308.

Pending an action of detinue at the suit of four plaintiffs, one of dies, and a scire facias is awarded to revive the action in the name is executor. Held, the scire facias was improvidently awarded 's Adm'x v. Burgess, 10 Leigh 186 (2d Ed. 193).

In a suit in equity against two persons who have been partners, of whom dies pending the suit, it is not necessary to revive the suit ist the representative of the decedent. The plaintiff may proceed ist the survivor alone. Townes v. Birchett, 12 Leigh 173. See ingham v. Smithson, Id. 33.

In an action of debt against two, one dies, and the suit is revived ist the administratrix, and then she and the other defendant give ate confession of judgment, and a separate judgment is rendered st each. Held, no error. Richardson's Ex'x v. Jones, 12 Grat. 53.

Sale of land ordered. Before it is executed debtor dies and scire s ordered that suit be revived in the names of heirs, but with the nt of the parties before the court, the commissioner was directed ecute previous decree of sale before heirs were served with scire

Digitized by Google

facias. Error to take any further decree until heirs are court. Sexton v. Crockett, 23 Grat. 857.

Cited, but not construed in Hansbrough v. Neal, 94 Va. E. 593; McMurray v. Dixon, 105 Va. 608, 54 S. E. 481.

See 4 Min. (3d Ed.) 976-978; Barton, L. Pr. (2d Ed.) 785; Barton, C. Pr. (2d Ed.) 175, 176; 2 Va. L. Reg. N. S.

For W. Va. decisions on similar statute see Justis' Anno 127, sec. 2.

Sec. 6166. Effect of marriage of female plaintiff or de The marriage of a female plaintiff or defendant shall n suit or action to abate, but upon affidavit or other proof the suit or action shall proceed in the new name, but i riage be not suggested before judgment, the judgment valid, and may be enforced in like manner, as if no such had taken place.

Revisors' Note.—This section is largely new, in cons which the omission referred to in revisors' note to section made.

Sec. 6167. Where it occurs after appeal, etc., how ju decree entered.—If, during the pendency of an appeal, wr or supersedeas, the death of a party, or any other fact, had occurred after verdict in an action, would not have judgment being entered, be suggested or relied on in ab the appellate court, the said court may, in its discretion, ment or decree in the case, as if such death or other fa occurred. (Code 1887, § 3307.)

Process of revival is not necessary in the Court of Ap appellee died between verdict and judgment. Buckner v. Bla 336.

Where a party to a cause pending in the Supreme Court dies pending the appeal, it is not necessary to revive the c name of his representative, but the case may be revived w back to the court below. Reid's Adm'r v. Strider's Adm'r,

This section does not confer upon the appellate court enter judgment in a case in which the alleged plaintiff in err before the appellate proceedings were begun. Booth v. Dot 233, 236, 24 S. E. 935.

The right to bring a writ of error in case of the death after judgment is in the personal representative, without a re judgment. Id.

See Barton, L. Pr. (2d Ed.) 165, 420; Barton, C. Pr. (2

Sec. 6168. For and against whom scire facias may be when suit revived on motion; when new party may hav ance or amend pleadings.—In any stage of any case, a may be sued out for or against the committee of any pa insane or convict, or for or against a person before powers of whose committee have ceased, or for or again sonal representative of the decedent who or whose pers sentative was a party, or for or against the heirs or de decedent who was a party, to show cause why the suit proceed in the name of him or them; or where the party whose powers cease, or such insane person or convict is appellant, the person or persons for whom such scire fa

Digitized by Google

sued out may, without notice or scire facias, move that the suit ceed in his or their name. The person or persons against whom cire facias might be sued out by the plaintiff may also, without ice or scire facias, move that the suit proceed in his or their ne. In the former case, after service of the scire facias, or, in latter case, on such motion, if no sufficient cause be shown inst it, an order or decree shall be entered that the suit proceed ording to such scire facias or motion. Any such new party (ex- t in an appellate court) may in the discretion of the court have ntinuance of the case at the term at which such order or decree ntered; and the court may allow him to plead anew or amend pleadings so far as it deems reasonable, but in other respects case shall proceed to final judgment or decree for or against , in like manner as if the case had been pending for or against before such scire facias or motion. (Code 1887, § 3308.)

Revisors' Note.—The provisions formerly appearing in this section aining to the marriage of a female party have been stricken out. riage no longer abates a suit. See section 6166 for express statu- enactment on this subject.

The second sentence of this section is new, and the words "or de-" have been inserted in the third and fourth sentences. The object hese changes is to allow the proper representative of a DEFENDANT ave an action or suit revived in his name and on his motion. The ner language seemed to limit that right to the proper representative plaintiff or an appellant. No reason was perceived for this limita-. On the other hand, there may be causes in which such revivals ld be desired by the representatives of defendants, and this exten- of the statute will tend to facilitate the hearing of causes.

The words, "in the discretion of the court," appearing in the last ence of the text, are new.

In lower court.—The personal representative of the party bringing ction may revive it in their names by motion, notwithstanding de- lant may have filed a plea of set-off under chapter 255. Kinzie v. y's Ex'r, 100 Va. 709, 42 S. E. 872.

The provision in this section that any new party may have a con- ance of the case at the term at which such order is entered only ap- s to case in which the order is entered in term. Stearns' Ex'r v. mond Paper Mfg. Co., 86 Va. 1034, 11 S. E. 1057. See next sec-

Any irregularity in the revival of the suit can only be taken advan- of in that suit, and such objection cannot be made in an independent Wilson v. Smith, 22 Grat. 493.

It seems that upon revival a personal representative can plead de o such plea only as his testator or intestate if living might have ded in the actual stage of the cause. Clopton's Adm'r v. Clarke's , 7 Leigh 325.

If in detinue the defendant dies pending the action, it may be re- d by scire facias against his executors if the goods demanded have e to the executor's possession; otherwise not. Allen's Ex'r v. Har- s Adm'r, 6 Leigh 42; Catlett's Ex'r v. Russell, 6 Leigh 344.

Where a writ of right was brought against a life tenant who died, demandant could revive the action against the heirs of the first ten- Davis v. Teays, 3 Grat. 283. See Carter v. Carr, Gilmer 145; go v. Stead, 2 Rand. 454; Lovell v. Arnold, 2 Leigh 16.

In trespass quaere clausum fregit, if defendant dies after judgment, plaintiff has a right to a scire facias against a personal representa-

Digitized by Google

tive of the defendant, though not against his heirs or dev
v. Crenshaw, 3 Rand. 14.

Judgment.—Neither declaration nor rule is necessary
facias to revive a judgment. If scire facias is returnable
defendant makes default, there should then be an award
which if not set aside at the next term becomes a final ju
the last day of the term. No order of the court is nece
case, but could prejudice no one. McVeigh v. Bank, 76
to variance between the judgment and the scire facias, see
Adm'r v. Prince George Justices, 11 Grat. 190.

As to scire facias to revive a recognizance, see Com.
Va. Cas. 134.

In equity.—After a decree ascertaining the rights of
in respect to the lands, and after partition made and a c
rected to L. of the moiety sued for, he died. Held, as
then proceeded in for the lands and profits only to which
of L. were entitled, it was proper to revive it in their nam
the names of the heirs of L. Ruffners v. Lewis' Ex'rs, 7
Am. Dec. 513.

A suit in chancery for a conveyance of land, in case
dies before a final decree, ought to be revived against his
visees and all other persons interested in the land in que
Lambert, 1 Hen. & M. 330.

In a suit by W. v. L. for a partition of land, W. dies le
and infant child; the suit may be revived in their name u
tion, without notice. Wilson v. Smith, 22 Grat. 493. See
for method of revival.

In appellate court.— *As to appellee or defendant in*
ejectment judgment be given for the defendant, and the
peals, pending which the appellee dies, the appellant can
scire facias against his heirs. Tomkies v. Walters, 6 Cal

The defendant, in a proceeding of unlawful detainer,
an appeal by the plaintiff below. The cause cannot be re
man v. Dunlap, 4 Grat. 86.

Where the appellee dies the court will not take up the
name of his executor without giving the appellant notice of
especially where a great length of time has elapsed sinc
Scott v. Adams, 3 Hen. & M. 501.

The appellee having died, an appearance was entered
tors, and on motion of their counsel the cause was tried
ing for a scire facias. Daniel v. Robinson's Ex'rs, 1 Was

If, after a supersedeas obtained, the defendant in err
facias must be awarded against his executor or administr
a new writ of supersedeas, because the latter could not
as a continuing process, and consequently the executor
upon the supersedeas bond first given. Keel v. Herbert's

As to appellant or plaintiff in error.—Both the plain
having died after writ of error, it seems that a scire facia
in the names of the executors of both of the plaintiffs. Bos
Id. 322.

An appeal having abated at one term by the death of
at the next term a scire facias was awarded, on the moti
ministrators, who had qualified since the abatement, for t
show cause why the appeal should not be revived. Gibbs
2 Hen. & M. 211; Buster v. Wallace, 3 Hen. & M. 217.

Generally.—See Barton, L. Pr (2d Ed.) 421, 424, 46
Barton, C. Pr. (2d Ed.) 177, 212; 4 Min. (3d Ed.) 97
Burks' Pl. & Pr., pp. 73, 463.

For W. Va. decisions on similar statute see Justis'
ch. 127, sec. 4.

See Gregory's Forms Nos. 244, 246, 442, 443, 444,

Sec. 6169. Scire facias may be issued in vacation, a

Digitized by Google

evival entered at rules.—The clerk of the court, in which the case s, may issue such scire facias at any time, and an order may be en- ered at rules for a case to proceed in the name of the proper party, lthough the case be on the court docket. (Code 1887, § 3309.)

Where case is revived at rules under this section its revival consti- utes no grounds for a continuance. Stearns' Ex'r v. Richmond Paper lfg. Co., 86 Va. 1034, 11 S. E. 1057.

See Barton, L. Pr. (2d Ed.) 420, 1032; Barton, C. Pr. (2d Ed.) 77, 317; 4 Min. (3d Ed.) 980, 1385.

For W. Va. decisions on similar statute see Justis' Annotations, h. 127, sec. 5.

See Gregory's Forms Nos. 442, 443, 444, 445.

Sec. 6170. Where party, whose powers cease, is defendant, how uit proceeded in.—Where the party whose powers cease is defend- nt, the plaintiff may continue his suit against him to final judg- ient or decree; but he shall not, at law, proceed in the same action gainst such defendant and his successor; nor shall he, in equity, roceed against both upon his previous bill, unless an order, that he suit proceed against the former party, be entered at the first erm after service of a scire facias for or against such successor. Code 1887, § 3310.)

See 4 Min. (3d Ed.) 983, 1385; 3 Min. (2d Ed.) 568; Barton, C. r. (2d Ed.) 316; Barton, L. Pr. (2d Ed.) 421.

For W. Va. decisions on similar statute see Justis' Annotations, h. 127, sec. 6.

Sec. 6171. When discontinued, unless revived.—If the committee, ersonal representative, heirs, or devisees of the plaintiff or appel- nt who was a party, or of the decedent whose personal represen- ative was plaintiff or appellant, shall not make such motion, or pply for such scire facias, at or before the second term of the ourt next after that at which there may have been a suggestion on he record of the fact making such scire facias or motion proper, he suit of such plaintiff or appellant shall be discontinued, unless ood cause be shown to the contrary. (Code 1887, § 3311.)

See Barton, L. Pr. (2d Ed.) 1018; Barton, C. Pr. (2d Ed.) 316; 3 in. (2d Ed.) 568; 4 Min. (3d Ed.) 983, 1386.

For W. Va. decisions on similar statute see Justis' Annotations, h. 127, sec. 7.

See Gregory's Forms Nos. 442, 443, 444, 445.

Sec. 6172. When for five years no proceeding in a case but to con- nue it, court may strike it from the docket.—Any court in which is ending a case wherein for more than five years there has been no rder or proceeding except to continue it, may, in its discretion, or- er it to be struck from its docket; and it shall thereby be discon- nued. A court making such order may direct it to be published in uch newspaper as it may designate. Any such case may be rein- tated, on motion, within one year from the date of such order, but ot after. (Code 1887, § 3312.)

The provision in this section that the court may direct the order of ismissal to be published in a newspaper is not mandatory. Echols' x'r v. Brennan, 99 Va. 151, 37 S. E. 786.

Digitized by Google

For W. Va. decisions on similar statute see Justis' A
ch. 127, sec. 8.

**Sec. 6173. Decree in a suit, where number of parti
thirty, and one of them dies.**—When, in any suit
the number of parties exceeds thirty, and any one of sa
jointly interested with others in any question arising the
die, the court may, notwithstanding, if in its opinion all
interests are represented and no one will be prejudice
proceed to render a decree in such suit as if such party v
decreeing to the heirs, devisees, legatees, distributees, o
representatives, as the case may be, such interest as the
person, if alive, would be entitled to. (Code 1887, § 33

**Revisors' Note.—The provisions formerly appearing in
pertaining to the marriage of a female party have been st
See revisors' note to section 6168.**

See 4 Min. (3d Ed.) 978, 1397; Barton, C. Pr. (2d Ed.

For W. Va. decisions on similar statute see Justis' A
ch. 127, sec. 9.

Sec. 6174. Right of absent party to rehearing.—The
of section six thousand and seventy-two shall apply to d
tered under the preceding section. (Code 1887, § 3314.)

CHAPTER 259.

Removal of Causes Pending in One Court to Anoth

Sec.
6175. Removal by circuit or corporation courts, or their judges, on motion, after notice, of suits, etc., pending in said courts.
6176. Removal by courts, or their judges, without motion or notice, of suits, etc., which

Sec.
it is improper f
try.
6177. Clerk's duty, wh
dered to be rem
ceedings in cour
it is removed; c
ing removal.

**Sec. 6175. Removal by circuit or corporation courts
judges, on motion, after notice, of suits, etc., p
said courts.**—A circuit, corporation or city court where
motion, or other civil proceeding is pending, or the jud
in vacation, may, on motion by any party, after twenty
tice to the adverse party or his attorney, and for good ca
order any such suit, motion, or other civil proceedin
therein, to be removed to any other court having jurisdict
subject matter. (Code 1887, § 3316; 1889-90, p. 24; 1
625.)

**Revisors' Note.—The language of this section has been
changed in order properly to cover the various city courts in s
larger cities.**

Digitized by Google

Guardian ad litem may consent to the removal of a case to another ırt. Lemmon v. Herbert, 92 Va. 653, 24 S. E. 249.

Court may make an order to remove a cause to another court whilst e cause is at rules. Muller v. Bayly, 21 Grat. 521.

An injunction may be heard by the judge of the court to which the ıse is removed before the next term after the removal. Id.

If the court, for the removal, assign a reason which is unfounded in ct, it would not invalidate the order which the court has power to ke, and to which there is no exception. Id.

An application for a change of venue on the ground of prejudice ould be supported by affidavits of disinterested individuals. Boswell Flockheart, 8 Leigh 364.

Existence of prejudice against defendant company in the city in ich action is pending is not sufficient to justify a change of venue, es-ially when the witnesses by whom the feeling is shown express the nion that a perfectly fair and impartial jury to try the case can be ten in the city. Atlantic & D. Ry. Co. v. Reiger, 95 Va. 418, 28 S. E.).

Affidavits in support of a motion for a change of venue under this tion must state the facts and circumstances from which the conclu-n is deduced that a fair and impartial trial cannot be had where the e is pending, and the court must be satisfied from the facts sworn that a fair trial cannot be had where the case is pending. The venue l not be changed for the mere belief of the party or his witnesses t he cannot have a fair trial in the jurisdiction where his case is ıding. Ramsay v. Harrison, 119 Va. 682, 89 S. E. 977.

It seems that defendant should not be ruled to trial at the first m after the case is transferred. McAlexander v. Hairston's Ex'r, 10 gh 486 (2d Ed. 507).

For case under former statute, see Spengler v. Davy, 15 Grat. 381; gshead v. Baylor, 16 Grat. 99. See, also, Town of Danville v. Black-l, 80 Va. 38.

See 4 Min. (3d Ed.) 811; Barton, L. Pr. (2d Ed.) 29.

For monographic note on Removal of Causes, see Brown v. Crippin, Hen. & M. 173, Va. Rep. Anno.

For W. Va. decisions on similar statute, see Justis' Annotations, 128, sec. 1.

See Gregory's Forms No. 259.

Sec. 6176. Removal by courts, or their judges, without motion notice, of suits, etc., which it is improper for them to try.—If judge of any circuit, city, or corporation court in which a suit, tion, or other civil proceeding is pending, is so situated as to ıder it improper in his opinion for him to decide such case or eside at the trial thereof, such court or the judge thereof in va-ion, may, without motion or notice, order the case to be removed any court to which it might be removed, on motion and notice, der the preceding section. (Code 1887, § 3317.)

Decision of judge under this section is not subject to review by ap-late court. Boswell v. Flockheart, 8 Leigh 364.

The acts of a judge who sits in a case in which he is interested are void. They are binding on all the parties until reversed or annulled a proper proceeding had for that purpose. Louisville & N. R. Co. v. ylor, 93 Va. 226, 24 S. E. 1013.

See 4 Min. (3d Ed.) 811; Barton, L. Pr. (2d Ed.) 29.

See Gregory's Forms No. 234.

Sec. 6177. Clerk's duty, when suit ordered to be removed; pro-dings in court to which it is removed; costs attending removal.—hen any case is ordered to be removed, under this chapter, the

Digitized by Google

clerk of the court from which, shall transmit to the cl
court to which, it is removed, the original papers therei
copies of all rules and orders made, and a statement o
incurred by each party therein; whereupon, the case sh
ceeded in, heard, and determined by the court to whic
moved, as if it had been brought, and the previous proce
in said court. The costs attending such removal shall
as may be thought just by the court from which, or if
order on the subject, by the court to which the case i
(Code 1887, § 3318.)

A party who obtains a continuance after removal cannot say that he was not regularly brought into court. Carnah worth, 2 Va. Dec. 608, 31 S. E. 65.

When a case has been removed from one court to anothe the clerk of the first court has not made the copies of rules required by this section, yet where it appears that the whole before the circuit court when it decided the case the app will not presume that the case was heard in the lower court sence of any of the papers of the case. Bell v. Farmville & 91 Va. 99, 20 S. E. 942.

The clerk of the court to which the cause is removed person who can certify the record and take the bond requir to perfect an appeal to supreme court, even though the errors of were committed before removal. An appeal allowed up certified by the clerk of the court making the removal order missed, but without prejudice to the rights of the appellan not affected by act of limitations. Smith v. Pyrites Mining Co., 100 Va. 292, 43 S. E. 564.

See 4 Min. (3d Ed.) 812.

For W. Va. decisions on similar statute see Justis' A ch. 128, sec. 2.

See Gregory's Forms No. 235.

CHAPTER 260.

Appointment of Commissioners in Chancery, Reference of A Them, and Proceedings Thereon.

Sec.
6178. Appointment and removal of commissioners by circuit, corporation and city courts; their number.
6179. How accounts referred; commissioner's duty.
6180. When publication of notice equivalent to personal service.
6181. Commissioners in chancery may compel the attendance of witnesses before them.
6182. Commissioner may ask instructions of court or its judge.

Sec.
6183. His power to a proceedings.
6184. Adjournment of to another cou and continuing p etc., there.
6185. How his report t out; what to b with it; when costs.
6186. When cause heard
6187. Delivery of origi of suit by clerk sioner.
6188. Appointment of a missioner for co

Digitized by Google

Sec. 6178. Appointment and removal of commissioners by circuit, corporation and city courts; their number.—Each circuit, corporation and city court having chancery jurisdiction, or the judge thereof in vacation, shall, from time to time, appoint such commissioners in chancery as may be deemed necessary for the convenient dispatch of the business of such court. Such commissioners shall be removable at pleasure. (Code 1887, § 3319; 1901, p. 247; 1904, p. 305; 1908, p. 123; 1910, p. 27.)

Revisors' Note.—This section is substantially new, and its purpose to obviate the necessity of frequent acts of the General Assembly allowing the various courts to appoint additional commissioners in chancery. It was deemed altogether safe and proper to confer general authority on the courts and judges to appoint as many of such officers as they consider necessary for the convenient dispatch of business.

Three acts were passed at the session of 1918 authorizing the appointment of additional commissioners in chancery: One for the Circuit Court of the city of Norfolk, Acts 1918, c. 36, p. 94; two for the Circuit Court of Montgomery County, Acts 1918, c. 36, p. 259; and one for the Circuit Court of Pittsylvania County, Acts 1918, c. 198, p. 238.

Sec. 3319 of the Code of 1887 has been amended by the following acts: 1889-90, pp. 6, 32, 81; 1891-2, p. 1092; 1893-4, pp. 92, 484; 1895-6, p. 107; 1897-8, p. 362; 1899-00, p. 424; 1901, p. 247; 1904, p. 305; 1908, p. 123; 1910, p. 27; 1912, p. 639.

For monographic note on Commissioners in Chancery, see Whitehead's Adm'r v. Whitehead, 23 Grat. 376, Va. Rep. Anno.

Sec. 6179. How accounts referred; commissioner's duty.—Accounts to be taken in any case, shall be referred to a commissioner or appointed, unless the parties interested agree, or the court shall deem it proper, that they be referred to some other person. Every commissioner shall examine, and report upon, such accounts and matters as may be referred to him by any court. But the report shall not have the weight given to the verdict of a jury on conflicting evidence, but the court shall confirm or reject such report in whole or in part, according to the view which it entertains of the law and the evidence. (Code 1887, § 3320.)

Revisors' Note.—The last sentence as to the weight of the report new.

When account should not be ordered, etc.—No account should be ordered where the answer denies all the material allegations of the bill and there is no proof to sustain them. Sadler, etc., v. Whitehurst, 83 Va. 46, 1 S. E. 410.

An account will not be ordered where by reason of laches no recovery can be had. Harrison v. Gibson, 23 Grat. 212.

As to what cases court may refer to commissioner, see Kraker v. Fields, 20 Grat. 377, 390; court acting too soon upon report, Winston v. Johnson's Ex'rs, 2 Munf. 305; who may serve as commissioner, Dillard v. Krise, 86 Va. 410, 10 S. E. 430; Bowers' Adm'r v. Bowers, 29 Grat. 697; failure of trial court to pass on exception, Bristol Iron & Steel Co. v. Thomas, 93 Va. 396, 25 S. E. 110; as to recommittal, Dillard v. Krise, 86 Va. 410, 10 S. E. 430; that exceptions must be specific, Perkins v. Saunders, 2 Hen. & M. 420; Simmons v. Simmons' Adm'r, 33 Grat. 451.

Notice.—A failure to set forth in report that notice was given to parties is not an error sufficient to reverse decree, if no exception to report appear in record. White's Ex'rs v. Johnson, 2 Munf. 285.

Digitized by Google

A special notice is not necessary to take depositions b missioner. McCandlish v. Edloe, 3 Grat. 330 (2d Ed. 315

As to notice generally, see Coffman v. Sangston, 21 Campbell v. Winston, 2 Hen. & M. 10. As to effect of wan see Winston v. Johnson's Ex'rs, 2 Munf. 305. As to time o for want of notice, see Miller v. Holcombe's Ex'r, 9 Grat. 66 v. Johnson's Ex'rs, 2 Munf. 305.

Commissioner's report—Weight.—The principle is well that when a question of fact is referred to a commissioner upon the testimony of witnesses conflicting in their statemen fering in their recollection, the court must, of necessity, ad port, unless in case of palpable error or mistake. Stuart v. 80 Va. 601; Magarity v. Shipman, 82 Va. 784, 1 S. E. 109; Shields, 20 Grat. 377; Bowers' Adm'r v. Bowers, 29 Grat. But see Shipman v. Fletcher, 91 Va. 473, 22 S. E. 458. F sion, 1 Va. Law. Reg. 485. In Diebold v. Tatterson, 115 V S. E. 585, Judge Keith, in delivering the opinion of the cou to the case of Shipman v. Fletcher, **supra**, with approval. "In Shipman v. Fletcher, 91 Va. 473, 22 S. E. 458, in wh Riely reviewed the decisions bearing upon the weight to be reports of commissioners in chancery, it was held that they facie correct, and that objection must be made to them by that when this is done it is the duty of the court to exami dence returned by the commissioner, and upon which his are based, and review his conclusion. If the evidence consis sitions, and has been taken by the commissioner or in his pr is conflicting, and his conclusions are clearly supported by and unimpeached witnesses, his report will not be disturbed is clear that the weight of the testimony is contrary to his c But, even in such case, the court will review and weigh th and, if not satisfied with the findings of the commissioner, rule them. The report will only be accepted as conclusive testimony, though conflicting, is evenly balanced, and the rep ported by the testimony of competent and unimpeached witn this connection, attention is called to the last sentence of t section.

Generally.—As to report on accounts of long standing confusion, see Stimpson v. Bishop, 82 Va. 190.

A report erroneous on its face may be objected to at the in appellate court, though no exceptions have been previ White's Ex'rs v. Johnson, 2 Munf. 285; Cookus v. Peyton's Ex 431. See, also, as to error apparent upon the face of the repo v. Walker, 2 Wash. 195 (2d Ed. 251); Garrett v. Carr, 3 413; Wills' Adm'r v. Dunn's Adm'r, 5 Grat. 384, 411, 412; Townes, 10 Grat. 514, 526.

Without exception previously filed, a report cannot be on grounds and in relation to subjects which may be affecte neous testimony. White's Ex'rs v. Johnson, 2 Munf. 285. Se to necessity of exception in such case, French v. Townes, 10 526; Beckwith v. Butler, 1 Wash. 224; Jones v. Watson, 3 Ca Ed. 222); Simmons v. Simmons' Adm'r, 33 Grat. 451; S Fletcher, 91 Va. 473, 490, 22 S. E. 458; Wilson's Adm'r v. Va. 546, 25 S. E. 596.

Either party to a suit may take testimony after a commis made up and returned his report. Atwood v. Shenandoah V. 85 Va. 966, 9 S. E. 748. But see note of Lyle v. Sarvey, 10 51 S. E. 228, under section 6228.

See Barton, C. Pr. (2d Ed.) 684.

For W. Va. decisions on similar statute see Justis' A ch. 129, sec. 3.

Sec. 6180. When publication of notice equivalent to service.—The court, or the judge thereof in vacation, or

Digitized by Google

ccount to be taken, may direct that notice of the time and place f taking it be published once a week for four successive weeks in ome convenient newspaper, and that such publication shall be quivalent to personal service of such notice on the parties, or any f them. (Code 1887, § 3321.)

Does not limit the class of cases in which the court may direct that otice may be given by publication. Hill v. Bowyer, 18 Grat. 364.

The published notice will be sufficient if it gives the style of the uit, and contains all that is necessary to inform the parties of the time nd place of taking the account, although the names of the parties are ot inserted in it. Martin v. South Salem Land Co., 94 Va. 28, 26 S. . 591.

It is no valid objection by a party upon whom process in the suit as been served that he did not see or hear the notice by publication of he taking an account by a commissioner under the order of the court. ill v. Bowyer, 18 Grat. 364.

When publication is ordered there must be at least twenty-eight ays before the first insertion and the day of taking the account. Dilard v. Krise, 86 Va. 410, 10 S. E. 430. Under section 5 the day on hich the account is taken must be excluded from computation.

Notice of taking an account must be given the guardian ad litem; t is not sufficient to name the infants in the order of publication. trayer, etc., v. Long, etc., 83 Va. 715, 3 S. E. 372.

Three days' notice is not sufficient for taking an account, but a case ill not be set aside on that ground alone unless the party be injured hereby. Nor because the account is returned to court within ten days efore the commencement of term, unless it is shown to have been acted n within ten days. Moore v. Bruce, 85 Va. 139, 7 S. E. 195.

As to effect of publication in newspaper without court's order, see IcCandlish v. Edloe, 3 Grat. 330 (2d Ed. 315).

See Barton, C. Pr. (2d Ed.) 686; 4 Min. (3d Ed.) 1473.

For W. Va. decisions on similar statute see Justis' Annotations, h. 129, sec. 4.

Sec. 6181. Commissioners in chancery may compel the attendance of witnesses before them.—A commissioner in chancery to whom has been referred any account or other matter may compel the attendance of all needed witnesses by summons, rule, and attachments in like manner as a circuit court, save that he shall not have the power of imprisonment. But any witness who has been fined by a commissioner acting under the authority of this section shall within ten days from the order of fine, have an appeal of right, without giving bond, to the court by whom the commissioner was appointed. (1893-4, p. 235.)

Sec. 6182. Commissioner may ask instructions of court or its judge.—A commissioner, who, in taking an account to be returned to a court, doubts as to any point which arises before him, may, in writing, submit the point to such court, or the judge thereof in vacation, who may instruct him thereon. (Code 1887, § 3322.)

It is well established practice for the court to instruct the master as to the principles upon which accounts should be restated. Cogbill v. Boyd, 79 Va. 1. See Barton, C. Pr. (2d Ed.) 693; 4 Min. (3d Ed.) 1474.

For W. Va. decisions on similar statute see Justis' Annotations, ch. 129, sec. 6.

Digitized by Google

Sec. 6183. His power to adjourn his proceedings.—A sioner may adjourn his proceedings from time to time, day to which notice was given, without any new notice report is completed; and, when it is completed, it may the clerk's office at any time thereafter. (Code 1887, § 3

See Barton, C. Pr. (2d Ed.) 689; 4 Min. (3d Ed.) 147

For W. Va. decisions on similar statute see Justis' A ch. 129, sec. 7.

Sec. 6184. Adjournment of proceedings to another cou and continuing proceedings, etc., there.—A commissione cery of any court in this Commonwealth to whom has bee any account or other matter may, if it shall appear to h sary, adjourn such proceedings from his own county or c to any other county or corporation, and there continue ceedings and take depositions and other evidence in lik and with like force and effect as if the same were done i county or corporation. And such commissioner shall have to compel the attendance of witnesses before him in th prescribed by section sixty-one hundred and eighty-one. p. 21.)

Sec. 6185. How his report to be made out; what to be with it; when liable for costs.—With his report, the com shall return the decrees, orders, and notices under which and all the testimony upon which his report is based. He copy in his account or report any paper; and, if there h previous account, he shall not copy it into his; but, tak the basis of his, correct the errors and supply the defec by an additional statement. Everything improperly copi commissioner's account shall be expunged at his costs, o plication of either party; and, if on account of his negl misconduct, a report be recommitted, he shall bear the c sioned thereby. (Code 1887, § 3324.)

Revisors' Note.—The words, "and all the testimony upon report is based," found in line three of the text, are new. v. Parrish, 86 Va. 69, 9 S. E. 616; Saunders v. Prunty, 89 Va. E. 231, and Maddock's Admx. v. Skinker, 93 Va. 479, 25 S. was held that the commissioner need not return with his evidence on which it was based, unless so directed. Now i done in all cases, and special direction is no longer requi change will obviate the statement formerly so often necessary pellate court that the court did not know upon what evidence missioner acted.

See Barton, C. Pr. (2d Ed.) 688; 4 Min. (3d Ed.) 1474,

For W. Va. decisions on similar statute see Justis' An ch. 129, sec. 8; ch. 130, sec. 5.

Sec. 6186. When cause heard on report.—A cause may upon a commissioner's report, after it shall have been ret days; and, if the report be under an order recommitting report, the cause may be heard without waiting the said (Code 1887, § 3325.)

Digitized by Google

If a final decree be pronounced at a hearing upon a commissioner's ort, had before the expiration of the ten days, it will be reversed n appeal, though the bill was taken for confessed. Gray v. Dicken- 's Adm'rs, 4 Grat. 87. But if there be error in an interlocutory de- e made at a hearing upon a report of a commissioner which had not n returned for the legal period it is not ground for an appeal unless, n application, the court below refuses to correct it. Armstrong's n'r v. Pitts, 13 Grat. 235.

Where cause is heard on commissioner's report prematurely, but hout exception appearing of record, no exception presented in the ap- late court can be considered unless for errors appearing on the face of report, and the hearing will be treated as having been by consent. ange's Adm'r v. Strange, 76 Va. 240.

The report of a commissioner to whom a case is referred merely to e evidence and report upon the propriety of a sale of infant's lands ot embraced within this section. Lancaster v. Barton, 92 Va. 615, S. E. 251.

See Barton, C. Pr. (2d Ed.) 696; 4 Min. (3d Ed.) 1475; Gregory's rms No. 338.

For form of exceptions to report of commissioner, see Mathews de (2d Ed.), p. 157.

For W. Va. decisions on similar statute see Justis' Annotations, 129, sec. 7.

Sec. 6187. Delivery of original papers of suit by clerk to commissioner.—The clerk of a court in which a suit in equity is pend- , shall, upon the request of any commissioner in chancery, who s before him for execution an order or decree made in such suit, liver to him the original papers thereof; and it shall not be neces- ry for the clerk to copy the said papers, nor shall he charge any e for copies of any of them, unless the same be specially ordered. e commissioner to whom such papers may be delivered, shall give s receipt therefor, and return the papers as speedily as possible the office of the clerk of the court. (Code 1887, § 3326.)

Sec. 6188. Appointment of a bail commissioner for counties.— e circuit court of each county, or the judge thereof in vacation, all appoint one of the commissioners in chancery of said court il commissioner for said county. (1902-3-4, p. 292.)

CHAPTER 261.

Evidence.*

c.	Sec.
89. Hening's Statutes, this Code, the several editions of previous Codes, etc., and printed copies of acts and resolutions of General Assembly, to be evidence.	6190. Also, acts and resolutions of the General Assembly, though local or private; judicial notice by appellate court.
	6191. Also, journal of either house.

*For monographic note on Evidence, see Lee v. Tapscott, 2 Wash. 6, Va. Rep. Anno.; on Witnesses, see Claiborne v. Parrish, 2 Wash. 46, Va. Rep. Anno.

Digitized by Google

Sec.
6192. Also, statutes of United States, or of any State or Territory.
6193. Also, ordinances of municipal corporations.
6194. Notice by courts and officers of signatures of judges and Governor.
6195. Copies of certain deeds to be evidence.
6196. Effect as evidence of deeds conveying property heretofore or hereafter sold under a deed, deed of trust, mortgage, or any judicial proceedings.
6197. Also, copies of records or papers in clerk's office of any court of the State, or in the public offices thereof, or certificate of Auditor in certain cases.
6198. Also, copies of records or papers in clerk's office of any court of West Virginia, or in the public offices thereof, or certificate of its Auditor in certain cases.
6199. When copy filed in one suit may be filed in another.
6200. When court may deliver out original paper, retaining a copy.
6201. When a book, containing judgments, decrees, etc., of a court, is lost or illegible, how matters therein re-entered.
6202. When a book or paper in a clerk's office is lost or illegible, how new record made.
6203. How contents of any such record, book, or paper which has been lost, destroyed, or become illegible, may be proved.
6204. How evidence of the witnesses taken; commissioner to keep a journal and return it and evidence to court or to the clerk's office; order to be made by the court or by the judge thereof in vacation.

Sec.
6205. Records and proc
a court of anothe
of the United S
authenticated.
6206. Records and exem
of office books i
office of United S
a State, not perta
court.
6207. Foreign deeds, po
torney, policies
ance, etc.
6208. No person incon
testify by reason
or because a par
6209. If one party incap
tifying, testimony
party to be cor
when memoranda
an incapable part
ceived in evidence
6210. Competency of hu
wife to testify.
6211. Testimony of hus
wife in criminal
6212. Communications b
husband and wife
6213. If a party refuse
when required,
missed, or plea, e
out.
6214. How adverse part
examined.
6215. Witness proving
contradiction; pr
sistent statement.
6216. Contradiction by p
sistent writing.
6217. How summons for
sued, and to whom
6218. When trial court
process for a wi
cuted by its own
another county or
6219. How subpoena du
issued.
6220. How person failing
and give evidence,
duce a writing or
proceeded against
ment of mileage a
ance.
6221. Commitment to ja
son refusing to
to produce writing
ment.

Digitized by Google

2. Who may administer oath to witness.
3. Interpreters.
4. What is sufficient evidence of non-residence of witness or party; how publication in a newspaper is proved.
5. Deposition of witness, by whom taken in this State; how certified.
6. Of witness, who resides out of the State, by whom taken; how certified.
7. No commission necessary.
8. Notice to be given of taking a deposition; in what stage of suit in equity a deposition may be returned and read.
9. Notice to non-resident may be served on counsel; court to decide on its validity.
0. When deposition may be retaken and read.

Sec.
6231. Under what circumstances a deposition may be read in case at law.
6232. How depositions certified, returned, and filed; time when received to be endorsed.
6233. May be read by either party.
6234. How taken after decision of cause from which appeal, etc., lies.
6235. How testimony perpetuated.
6236. Interrogatories to adverse party or claimant; when and how filed; how answers thereto enforced; how used as evidence.
6237. When and how production of book accounts or other writing compelled.
6238. Effect of the two preceding sections on bill in equity.
6239. Presumption of death from absence.
6240. Evidence in mitigation of damages.

Sec. 6189. Hening's statutes, this Code, the several editions of evious Codes, etc., and printed copies of acts and resolutions of neral Assembly, to be evidence.—The thirteen volumes of the tutes of Virginia from sixteen hundred and nineteen to seventeen ndred and ninety-two, heretofore published by William Waller ning, and to which reference is made in certain acts of the Gen- l Assembly, passed on the fifth day of February, eighteen hundred d eight, twelfth of February, eighteen hundred and thirteen, and th of March, eighteen hundred and nineteen; this Code and the eral editions of the Code of laws and of supplements to or con- uations of, the Code, authorized by or referred to in the acts of sembly passed the twenty-eighth of December, seventeen hun- ed and ninety-two, twenty-sixth of January, eighteen hundred d two, seventh of January, eighteen hundred and seven, tenth February, eighteen hundred and twelve, twelfth of March, hteen hundred and nineteen, twenty-first of February, eighteen ndred and thirty-five, and sixteenth of August, eighteen hun- ed and forty-nine; and the act of Assembly approved May teenth, eighteen hundred and eighty-seven; printed copies the acts and resolutions of the General Assembly since venteen hundred and ninety-two, heretofore published, or which ay hereafter be published for the Commonwealth; and any her copies of the said acts and resolutions since seventeen hun- ed and ninety-two, which have been or may be published

Digitized by Google

by the public printer for the time being, shall be recei
dence in the courts of this State, for any purpose for
original acts or resolutions could be received, and wit
effect. (Code 1887, § 3327.)

**Revisors' Note.—The words, "and the act of Assembly ap
sixteenth, eighteen hundred and eighty-seven," are new. Th
Code of 1887.**

See Barton, L. Pr. (2d Ed.) 617; 4 Min. (3d Ed.) 890.

For lists of the Codes and acts, see 11 Va. Law Reg. 10

**Sec. 6190. Also, acts and resolutions of General Assembl
local or private; judicial notice by appellate court.**—Act
lutions of the General Assembly, though local or priva
given in evidence without being specially pleaded; and
late court shall take judicial notice of such as appear to
relied on in the court below. (Code 1887, § 3328.)

If court is of opinion that the act is a public act, and off
it to be read to the jury without introducing it in evidence,
allow it to be introduced can work no harm. Blankenship
Ry. Co., 94 Va. 449, 27 S. E. 20.

Latter clause of this section overrules Legrand v. Ham
College, 5 Munf. 324.

See Barton, L. Pr. (2d Ed.) 617; 4 Min. (3d Ed.) 1211.

For W. Va. decisions on similar statute see Justis' A
ch. 130, sec. 1.

Sec. 6191. Also, journal of either house.—Copies of t
of each house of the Assembly, printed as prescribed
twenty-five, shall be received as evidence for any purpose
the original journal could be received. (Code 1887, § 332

See 4 Min. (3d Ed.) 891.

**Sec. 6192. Also, statutes of United States, or of any St
ritory.**—Copies of the statutes of the United States prin
thority of the United States, and copies of the statutes of
or territory of the United States, printed by authority of
or territory, may be received as prima facie evidence of
utes in any suit or proceeding in this State. (Code 188

**Revisors' Note.—For "an act to authorize courts and c
nals to take judicial notice of the laws of other States and fo
tries, and of the United States," see Acts 1918, c. 182, p. 31**

The laws of a sister State printed by public authority a
ble evidence without other authentication. Taylor's Adm'r
Leigh 471. See Dickinson v. Hoomes' Adm'r, 8 Grat. 353.

If the statutes are private, it seems that they must be ple
lor's Adm'r v. Bank, 5 Leigh 471, 476.

As to necessity of proof of foreign law, see Union Centra
Co. v. Pollard, 94 Va. 146, 26 S. E. 421, 36 L. R. A. 271, 64 A
715.

As to authentication of foreign law by affixing thereto
the State, see Hunter v. Fulcher, 5 Rand. 126, 16 Am. Dec.
ner v. Com., 2 Va. Cas. 95.

A transcript of a statute of another State authenticated
tificate of the Secretary of the Commonwealth under his hand
accompanied by a declaration of the Governor under the Gre
the Commonwealth, that he is Secretary and that full faith
ought to be given to his official acts, is sufficient evidence to

Digitized by Google

ed to the jury that such copy of the act is the law. Warner v. Com., Va. Cas. 95.

See 4 Min. (3d Ed.) 890, 891; Burks' Address, 2 Barton Law Pr. 2d Ed.), 1396.

Sec. 6193. Also, ordinances of municipal corporations.—A copy f any ordinance or joint resolution of a municipal corporation in his State, certified by the clerk or secretary of the corporation, or printed copy thereof which purports to have been printed by the uthority of the corporation, shall be received as prima facie evience for any purpose for which the original ordinance or joint esolution could be received. (Code 1887, § 3331.)

See Barton, L. Pr. (2d Ed.) 619.

Sec. 6194. Notice by courts and officers of signatures of judges nd Governor.—All courts and officers shall take notice of the signature of any of the judges, or of the Governor of this State, to ny judicial or official document. (Code 1887, § 3332.)

See 4 Min. (3d Ed.) 890.

Sec. 6195. Copies of certain deeds to be evidence.—Copies of eeds, acknowledged or proved and certified according to the act the thirteenth December, seventeen hundred and ninety-two, and aced upon record after the expiration of two years, the period escribed by the act of the twenty-fifth December, seventeen hunred and ninety-four, but before the passage of the act of seventh ebruary, eighteen hundred and fourteen, shall be received in evience, and have all the force and effect of copies of deeds recorded ithin two years, the period prescribed as aforesaid: Provided, at nothing in this section shall be construed so as to affect the ghts of creditors and subsequent purchasers without notice. (Code 87, § 3333.)

Sec. 6196. Effect as evidence of deeds conveying property heretofore or hereafter sold under a deed, deed of trust, mortgage or y judicial proceedings.—Whenever the title to any property, aimed under a conveyance or deed, heretofore or hereafter made, rporting to be in execution of a sale under a deed, deed of trust, ortgage, or any judicial proceeding, according to the terms of id deed, deed of trust, mortgage, or judicial proceedings, is atcked or called into question in any manner, if it shall appear om the face of such conveyance or deed that such sale has been gularly made in accordance with the terms of such deed, deed of ust, or mortgage, or judicial proceedings, such deed or conveyce shall be prima facie evidence that such sale was regularly ade and that the other recitals in such deed or conveyance are ue. (1897-8, p. 322; 1899-00, p. 1247.)

Where it appears from the face of the conveyance under a deed of ust by the trustee that the sale was regularly made in accordance with e terms of the deed of trust, the same shall be prima facie evidence of t fact. Preston v. Johnson, 105 Va. 238, 53 S. E. 1.

The recital in a deed from a trustee to a purchaser under a deed of ust that due and legal notice was given of the time, place and terms

Digitized by Google

of sale is to be taken as prima facie correct under this sectio
kins v. Givens, 119 Va. 578, 89 S. E. 871.

In this case the deed of a court commissioner was held t
the essential recitals to bring it directly within the purview of
tion. Saunders v. Terry, 116 Va. 495, 82 S. E. 68.

This section changes the rule laid down in Sulphur Min
Thompson, 93 Va. 293, 25 S. E. 232, requiring proof of the rec
deed more than sixty years before. See 11 Va. Law Reg. 5.

See 3 Va. Law Reg. 81 for article which probably led to t
ment of the statute.

Cited but not construed in Wasserman v. Williams, 105
54 S. E. 893, and in Preston v. Johnson, 105 Va. 239, 53 S. E.
ard v. Landsberg, 108 Va. 161, 60 S. E. 769.

Sec. 6197. Also, copies of records or papers in clerk's any court of the State, or in the public offices thereof, or c of Auditor in certain cases.—A copy of any record or pap clerk's office of any court, or in the office of the Secretar Commonwealth, State Corporation Commission, Board of of Virginia or its successors, Treasurer, Register, either Railroad Commissioner, Commissioner of Agriculture, or t assayer and chemist, attested by the officer in whose office is; and a copy of any record or paper in the office of the Public Works, or the Board of Education, or the board visors of any county, attested by the secretary or clerk board; and a copy of any record or paper in the office of of lands of any county, attested by the surveyor in wh the same is, may be admitted as evidence in lieu of the but, for good cause shown, the original records in the offi surveyor of lands of any county may be required to be p And the certificate of the Auditor of Public Accounts of and time of the return of any real estate as delinquent, sale thereof for taxes, shall be prima facie evidence of stated in such certificate. Any such copy or certificate, pu to be sealed, or sealed and signed, or signed alone, by officer, secretary or clerk, may be admitted as evidence, any proof of the seal or signature; or of the official cha the person whose name is signed to it. The certificate of ditor of Public Accounts of the payment or non-paymen time, of taxes on forfeited or delinquent lands or lots, or not having been entered on the books of the commissione revenue for the county or city shall, in any suit or proce relation to such lands or lots, be prima facie evidence of stated in such certificate, provided it be filed with the p said suit at least twenty days before the first day of the which it is to be offered in evidence. When the certific ports to be signed by the said Auditor, it may be admitte dence without proof of his signature. (Code 1887, § 33 p. 598.)

The copy is primary evidence, equivalent to the original.

Digitized by Google

reston, Gilmer 235; Kelly v. Lehigh Min. & Mfg. Co., 98 Va. 405, 408, S. E. 511, 81 Am. St. Rep. 736.

The original order book of a county court is competent evidence herever a certified copy would be evidence. Ballard v. Thomas, 19 rat. 14.

Copies of decrees in a cause are competent evidence without pro- ıcing the whole record. White v. Clay's Ex'rs, 7 Leigh 68.

A copy of a patent from the record of a county court is as good idence of title as the original would be. Lee v. Tapscott, 2 Wash. 6, 281.

A copy of a copy of a will recorded under section 6202 is prima facie true copy of the will. Effinger v. Hall, 81 Va. 94.

A certificate of probate of a will was certified properly, in this form: A. B. B., Deputy Clerk for S. M. G., Clerk of the Circuit Court of I. ounty, Virginia," and the will itself was attested by "A. B. B., D. Clerk." eld, the record should be read together and the will admitted in evi- ence. Hurley v. Charles, 112 Va. 706, 72 S. E. 609.

A certificate purporting to be made by the auditor of the State, ing in the usual form in which he certifies papers from his office, is idence of the execution of such certificate and of the official character the papers, and also of the facts therein contained. Usher's Heirs Pride, 15 Grat. 190.

Cited in Van Gunden v. Virginia Coal & Iron Co., 52 Fed. 850, C. C. A. 294.

For cases before the statute, see Burk's Ex'rs v. Tregg's Ex'rs, 2 ash. 215; Hord v. Dishman, 5 Call 279; Anderson v. Dudley, Id. 529; owlett v. Daniel, 4 Munf. 473; Ben v. Peete, 2 Rand. 539; Gibson v. m., 2 Va. Cas. 111; Pollard's Heirs v. Lively, 4 Grat. 73.

See Barton, L. Pr. (2d Ed.) 619; 4 Min. (3d Ed.) 881, 884, 892.

Sec. 6198. Also, copies of records or papers in clerk's office of ıy court of West Virginia, or in the public offices thereof, or cer- ificate of its Auditor in certain cases.—A copy of any record or ıper in the clerk's office of any court in the State of West Vir- nia, or in the office of the Secretary of State, Treasurer, Auditor, surveyor of lands in any county in that State, attested by the ficer in whose office the same is, may be admitted as evidence in eu of the original. The certificate of the Auditor of that State as the return of any real estate as delinquent, or the sale thereof r taxes, or payment or non-payment of taxes on forfeited or de- ıquent lands, or non-entry of lands on the books of the assessors, all, in any suit in relation to such lands, be prima facie evidence what is stated in such certificate, provided it be filed with the ıpers in such suit and notice thereof be given to the opposite party his attorney, at least forty days before the first day of the term which it is to be offered as evidence. Any such copy or certifi- te purporting to be sealed, or signed and sealed, or signed alone, any such officer, may be admitted as evidence without any roof of the seal or signature, or of the official character of the rson whose name is signed to it. (Code 1887, § 3335.)

See 4 Min. (3d Ed.) 881, 884.

For W. Va. decisions on similar statute, see Justis' Annotations, apter 130, section 6.

Sec. 6199. When copy filed in one suit may be filed in another.— ıch a copy of any writing, filed in a suit, may be filed in another

Digitized by Google

suit on the same writing, and the defendant shall plead th
if the original was filed. (Code 1887, § 3336.)

See 4 Min. (3d Ed.) 892; Corbett v. Nutt, 18 Grat. 624.

**Sec. 6200. When court may deliver out original paper, r
a copy.**—The court in the clerk's office whereof there is an
paper filed in a cause (although decided) may, for good c
der it to be delivered to any person, retaining in its stea
thereof, and may make any order to prevent the improp
the original. (Code 1887, § 3337.)

See 4 Min. (3d Ed.) 892.

**Sec. 6201. When a book, containing judgments, decrees
a court, is lost or illegible, how matters therein re-entered.**
any book, containing judgments, decrees, or proceedings of
is lost, destroyed, or illegible, and there can be again ent
rectly, by means of any writing, any matters which were
book, such court may cause its clerk to have such matte
tered, and such re-entries shall have the same effect as the
entries. For any services of the clerk under this section
dered necessary by his own neglect, the court shall allo
reasonable compensation, which shall be chargeable on th
or corporation. (Code 1887, § 3338).

**Revisors' Note.—The word "destroyed" in line three of
is new.**

See Barton, L. Pr. (2d Ed.) 620; 3 Min. (2d Ed.) 148
(3d Ed.) 885.

**Sec. 6202. When a book or paper in a clerk's office i
illegible, how new record made.**—Where any such book
book containing the record of wills, deeds, or other pa
where any paper filed in a clerk's office, is lost, destroy
illegible, the clerk in whose office such book or paper w
the production to him of any original paper which was
in such book. or of an attested copy of the record there
anything else in such book, or of any paper so filed, shal
plication, record the same anew. The record shall show
it is made from an original or a copy, and how the pa
which it was made was authenticated or attested. Suc
shall have, as far as may be, the same effect that the r
paper for which it is substituted would have had. (Co
§ 3339.)

**Revisors' Note.—The word "destroyed" in line three of
is new.**

The act of the clerk under this section admitting the
record is conclusive upon the question whether the paper is
purports to be, and evidence to prove that the copy was not ce
the clerk whose name is affixed to the certificate, but by anothe
who was not authorized to make the certificate, is inadmissible
lateral action. Taliaferro v. Pryor, 12 Grat. 277.

A copy of a copy recorded under this section is prima fa
copy of the original. Effinger v. Hall, 81 Va. 94.

Cited in Warren v. Warren, 93 Va. 73, 76, 24 S. E. 9
Barton, L. Pr. (2d Ed.) 620; 3 Min. (2d Ed.) 148; 4 Min. (3d
(2790)

Digitized by Google

For W. Va. decisions on similar statute, see Justis' Annotations, pter 130, section 13.

Sec. 6203. How contents of any such record, book, or paper ich has been lost, destroyed, or become illegible, may be proved. Any person desirous of proving the contents of any such book, ord, or paper as is mentioned in the two preceding sections, y file before the circuit court of the county or the circuit or poration court of the city in which such record, book, or paper s, or before the judge thereof in vacation, a petition in writing, ting the nature of the record, book, or paper, the contents of ich he desires to prove, and what persons may be affected by h proof. Thereupon the court shall direct one of its commis- ners to appoint a time and place for proceeding on the said ition whereof reasonable notice shall be given by him to all par- named in such petition, or interested in the proceeding, and any others who shall be known to the court, judge, or commis- ner, or who shall claim to be so interested. If any party inter- ed other than the petitioner, or who may be affected by the of, be an infant or insane person, the said court or judge shall point a guardian ad litem to represent his interest in the cause. ode 1887, § 3340; 1904, p. 99.)

Revisors' Note.—The phraseology of this section has been con- erably changed, and the following important change in meaning also y be observed: As the section stood before the revision, it apparently uired a commissioner to be appointed for the special purpose in each nty and city, seeming to regard the position as a permanent one, to existing at all times, with which commissioner all petitions arising er the section should be filed. It was considered preferable to pro- e that the petition shall be addressed to the court, or the judge thereof vacation, and in each case to allow the court to designate some com- sioner to perform the duties required.

This section is cumulative, and does not deprive the party of his edy at common law, and it seems that where a will has been legally ved in a court of probate, and afterwards destroyed, with the book in ch it is recorded, its contents may be proved by parol evidence. Smith Carter, 3 Rand. 167.

Cited in Warren v. Warren, 93 Va. 73, 76, 24 S. E. 913; Slocum v. npton, 93 Va. 374, 377, 25 S. E. 3. See Barton, L. Pr. (2d Ed.) ; 3 Min. (2d Ed.) 148; 4 Min. (3d Ed.) 885.

For W. Va. decisions on similar statute, see Justis' Annotations, pter 130, section 17.

Sec. 6204. How evidence of the witnesses taken; commissioner keep a journal and return it and evidence to court or to the rk's office; order to be made by the court or by the judge thereof vacation.—The said commissioner shall, at the instance of any son interested, take, in writing, the evidence of all witnesses o may be produced before him, or whom he may think it neces- y to examine. He shall keep a journal of his proceedings in h case, which he shall return, with the evidence taken by him, filed before him, with such explanations and comments as he y deem necessary, to the circuit court of the county or the cir-

Digitized by Google

cuit or corporation court of the city, in which the reco paper mentioned in the petition was, at its next term clerk's office of such circuit or corporation court, in va the court, or the judge thereof in vacation, shall make in respect to the said record, book, or paper, or anythi as may be necessary to secure the benefits thereof to interested, or such other order as may be proper in the provisions of sections sixty-one hundred and eighty-thre one hundred and eighty-six shall be applicable to such r

Before the judge of such court shall make such ord tion, the petitioner shall cause to be served on the pe ested a notice in writing that he will apply for such o manner provided by section six thousand and forty-one, days before such order is to be made in vacation; but if s or any of them, do not reside in this State, or after d cannot be found therein, an order of publication may provided by sections six thousand and sixty-nine and s and seventy. The commissioner, for his services under last preceding section, shall be allowed the same fees lowed to commissioners in chancery. (Code 1887, § 3341

Revisors' Note.—The latter part of this section as it the revision allowed an order of publication against persons in the county or corporation. Under the present section, publication is not allowed unless the person be a non-res State, or after due diligence cannot be found therein. T publication is the uniform order provided by sections 606 The sentence formerly appearing in this section providing th in vacation should not have jurisdiction to hear and deter under the section, unless he had previously during the ter order consenting that such matters might be submitted dur has been stricken out.

Cited in Warren v. Warren, 93 Va. 73, 76, 24 S. E. 91 Compton, 93 Va. 374, 377, 25 S. E. 3. See Barton, L. Pr. (3 Min. (2d Ed.) 148; 4 Min. (3d Ed.) 885.

Sec. 6205. Records and proceedings of a court of an or of the United States, how authenticated.—The recor cial proceedings of any court of the United States, or o or of any country subject to the jurisdiction of the U attested by the clerk thereof, with the seal of the cou if there be a seal, and certified by the judge, chief jus siding magistrate of such court, to be attested in due have such faith and credit given to them in every court State, as they have in the courts of the State, Territor whence the said records come. (Code 1887, § 3342.)

Revisors' Note.—The words, "or of any country su jurisdiction of the United States," constituting the third lin are new. This insertion is made in order to make the sec to the Act of Congress. (Rev. Stat. U. S., section 905.)

A record legally authenticated of the proceedings of a petent authority in any other of the United States is conclu

Digitized by Google

the courts of this State to show that a judgment was rendered, and at the party was compellable to pay the amount recovered against him, t it may be opposed by proof of fraud or collusion or of subsequent yments or discounts. Buford v. Buford, 4 Munf. 241. 6 Am. Dec. 1.

A law of another State is sufficiently authenticated under the act Congress (U. S. Comp. St. 1901, section 905), if it has the seal of e State affixed thereto, and the particular officer entitled to affix the l depends upon the regulations of the several States, respectively. nter v. Fulcher, 5 Rand. 126, 16 Am. Dec. 738.

An office copy of a deed registered in North Carolina is not admisle as primary evidence in this State, unless there be some statute of rth Carolina making it primary evidence in that State. Petermans v. ws, 6 Leigh 523.

Office copies of deeds registered in another State are not admissible evidence in this, unless duly authenticated according to the laws of e United States. Id.

A copy of a will and of the probate thereof in a foreign State is thenticated by a certificate of the clerk of the court under his seal of ce, and by a certificate of the presiding justice that the clerk's certiate (not his attestation) is in due form. Held, the authentication is per. Gornto v. Bonney, 7 Leigh 234.

Cited but not construed, Bryan v. Nash, 110 Va. 329, 66 S. E. 69.

Under section 345 the Secretary of the Commonwealth is authorized certify records for use in other States.

For W. Va. decisions on similar statute, see Justis' Annotations, apter 130, section 19.

Sec. 6206. Records and exemplification of office books in a public office of United States or of a State, not pertaining to a court.—records and exemplifications of office books kept in any public ice of the United States, or of a State, not appertaining to a urt, shall be evidence in any court or office in this State, if atted by the keeper of the said records or books, and the seal of office annexed, if there be a seal, and certified by any judge of court of record in the county, city, town, or district in which h office is, or of the Governor, the Secretary of State, the chanlor, or the keeper of the great seal of the State, to be attested due form, and by the proper officer. Such certificate, if given the judge of a court, shall be authenticated by the clerk or thonotary of the said court, who shall certify under his hand d the seal of his office, that the said judge is duly commissioned d qualified; or if said certificate be given by the Governor, the cretary of State, the chancellor, or keeper of the great seal, it all be under the great seal of the State in which the said certcate is made. (Code 1887, § 3343.)

One of the usual methods of proving records is by examined copies. e method prescribed by this section of the Code is merely cumulative, d does not deprive party of the right to resort to any other method owable by common law. Southern R. Co. v. Wilcox, 99 Va. 394, 39 E. 144, note 7 Va. Law Reg. 381.

For W. Va. decisions on similar statute, see Justis' Annotations, apter 130, section 20.

Sec. 6207. Foreign deeds, powers of attorney, policies of insurce, etc.—Every deed or power of attorney executed out of this ate, the acknowledgment or proof of which is certified so that it

Digitized by Google

might be admitted to record under chapter two hundred
and every policy of insurance, charter party, copy from
any foreign court, or from a register of births and marri
place out of the United States, if it be attested by a no
his seal of office, that such policy, charter party, record,
was made, entered, or kept in due form according to the
place in which it was made, entered, or kept, and that
is true, and the official character of such notary be cer
any court of record, or the mayor or other chief ma
any county, city, town, or borough, or under the great
State, kingdom, province, island, or colony, in which s
may reside, shall be evidence in any court in this Sta
1887, § 3344.)

This statute applies to the original deeds, not copies. P
Laws, 6 Leigh 523.

For case before the statute, see Kidd's Adm'r v. Alexand
1 Rand. 456. See Barton, L. Pr. (2d Ed.) 621.

As to foreign affidavits, see section 275.

For W. Va. decisions on similar statute, see Justis' A
chapter 130, section 21.

**Sec. 6208. No person incompetent to testify by reaso
est, or because a party.**—No person shall be incompeten
because of interest; or because of his being a party to
suit, or proceeding of a civil nature; but he shall, if
competent to testify, and subject to the rules of evi
practice applicable to other witnesses, be competent t
dence in his own behalf and be competent and compell
tend and give evidence on behalf of any other party
tion, suit, or proceeding; but, in any case at law, the
good cause shown, may require any such person to atte
tify ore tenus and, upon his failure to so attend and t
exclude his deposition. (Code 1887, § 3345.)

Under this statute it is very clear that the rule in respe
tion for incompetency on the ground of interest is equally a
parties examined as a witness as to those who are not part
Adm'r v. Colbert, 28 Grat. 49, 56.

Cited in Wager v. Barbour, 84 Va. 419, 4 S. E. 842;
Fowlkes, 85 Va. 820, 8 S. E. 817; Hoge v. Turner, 96 Va. 6
291; Gordon v. Funkhouser, 100 Va. 679, 42 S. E. 677; Wri
son, 108 Va. 16, 62 S. E. 948.

See Barton, L. Pr. (2d Ed.) 605, 610; Barton, C. Pr. (2d
1 Min. (4th Ed.) 642; 3 Min. (2d Ed.) 542; 4 Min. (3d Ed
850, 858, 1332.

Discussed, 1 Va. Law J. 255 et seq.

**Sec. 6209. If one party incapable of testifying, te
other party to be corroborated; when memoranda, etc.
capable party to be received in evidence.**—In an action
or against a person who, from any cause, is incapable of
or by or against the committee, trustee, executor, adm
heir, or other representative of the person so incapable
ing, no judgment or decree shall be rendered in favor

Digitized by Google

rse or interested party founded on his uncorroborated testimony; id in any such action or suit, if such adverse party testifies, all tries, memoranda, and declarations by the party so incapable of stifying made while he was capable, relevant to the matter in sue, may be received as evidence. (Code 1887, § 3346.)

Revisors' Note.—This section is new; and sections 3346, 3347, 3348 d 3349 of the Code of 1887 have been omitted and thereby repealed. he present Code makes material changes in the law governing the com- tency of witnesses to testify. The following excerpt is taken from the eport of the Revisors made to the General Assembly at its session of 918:

"The subject of the competency of witnesses to testify was one that ceived very careful consideration by the revisors. Nearly all of the fficulties that have arisen in practice have grown out of the exceptions the rule that interest should not disqualify a witness. In the draft bmitted the revisors have removed practically all disqualifications ex- pt to protect confidential communications, especially between husband d wife. In order to meet the difficulties that may arise in consequence a removal of disqualifications, the revisors have added a new section eclaring:" (See section 6209 above.) "It was believed that this sec- on, together with the great safeguard of cross-examination, would be ople protection for the estates of persons laboring under disability or ho are incapable of testifying. In the business affairs of life all evi- nce bearing upon the question at issue is received and considered by e business world, and it seemed proper that the same rule should obtain courts of justice which are enforcing rights arising out of such busi- ss transactions."

Section 3345 of the Code of 1887 (section 6208 of this Code un- anged) removed common law disqualifications on account of interest because a party. The exceptions referred to in the above excerpt were posed by section 3346 of the Code of 1887, for the most part, which ceptions were in turn qualified by sections 3347, 3348 and 3349 of at Code. The principal exception and one which was most fruitful of igation was that pertaining to the survivor of a transaction. Most of e States still retain this exception, but in at least two States other than rginia it has been abolished. (New Mexico and Connecticut.) The jections to the PRINCIPLE of the survivor of a transaction rule can- t be set forth in a note of this character, but they will be found well d ably discussed by Mr. Wigmore, a distinguished authority, in his ork on Evidence (1 Wig. Ev., section 578). The objections to the le IN ACTUAL OPERATION are best illustrated by the numerous ses which arose under the former law, some of which were of such a aracter as to call for amendment of the sections by which they were verned.

Section 2529 of the Code of 1887 on the subject of the competency devisees and legatees, their wives or husbands, as attesting witnesses wills, has been omitted and thereby repealed. This section was con- rued in Bruce v. Shuler, 108 Va. 670, 62 S. E. 973. The competency attesting witnesses to wills is now governed by section 6208. For ecific provisions applying to creditors and executors, see sections 5214 d 5245. For proof of handwriting in holographic wills, see section 229. Section 3346 of the Code of 1887 having been omitted altogether, e part providing that "the competency of attesting witnesses to wills,

Digitized by Google

deeds, and other instruments, shall be determined by the la the day before this Code takes effect," as a matter of course pealed along with the residue of that section.

For cases arising under, and pertaining to, sections 3 3348 and 3349 of the Code of 1887 (now repealed), see ann these sections in Pollard's Code (1904), and Supplements (191

Sec. 6210. Competency of husband and wife to test band and wife shall be competent witnesses to testify for each other in all cases, civil and criminal, except as othe vided. (1893-4, p. 722; 1897-8, p. 753; 1901-2, p. 798.)

Revisors' Note.—This and the two following sections ar Acts 1901-2, p. 798. Section 1 of the act provided, among o that "Neither husband nor wife shall be competent to testify fo each other in any proceeding by a creditor to avoid or impea veyance, gift, or sale from the one to the other on the grou or want of consideration but as to said transaction the existi evidence shall remain unchanged." This provision of the a stricken out. It was thought proper to indulge a prima facie that the transaction is fraudulent, but it was considered a ste to declare that neither shall testify in such cases, as was true law. See Hoge v. Turner, 96 Va. 624, 32 S. E. 291.

Section 1 of the act hereinbefore referred to also pr "Nothing herein contained shall be deemed or construed t existing rules of evidence as to proceedings for divorce, exc where the suit for divorce is brought on the ground of cruel tion, in which cases the husband or wife may testify." Th no longer appears. Under the former law in practically eve matter what the real ground of divorce was, one or the oth grounds was alleged in the bill so as to make the complai petent witness. This being so, the revisors were of opinion t ing above quoted might well be omitted. In order to safegu proceedings, however, and to prevent fraud and collusion, s has been so amended as to enact that no divorce shall be gra uncorroborated testimony of the parties or either of them. note to that section.

Cases relating to the provision of section 1 of the act q first paragraph of the revisors' note above.—Bank v. Holland, 39 S. E. 126, 55 L. R. A. 155, 86 Am. St. Rep. 898; Hoge 96 Va. 624, 32 S. E. 291; Crowder v. Garber, 97 Va. 565, 34 Atkinson v. Solenberger, 112 Va. 667, 72 S. E. 727; Eason v. Va. 390, 76 S. E. 957. See 1 Va. Law Reg. 673; 2 Va. La 3 Va. Law Reg. 410; 4 Va. Law Reg. 469.

Cases on the general subject of the competency of husba as witnesses for or against each other, decided before the (Acts 1893-4, p. 722).—William & Mary College v. Powell, 1 Fink v. Denny, 75 Va. 663; Ratliff v. Vandikes, 89 Va. 307, 1 Dugger v. Dugger, 84 Va. 130, 4 S. E. 171; Witz v. Osborn, 2 S. E. 33; De Farges v. Ryland, 87 Va. 404, 12 S. E. 805, Rep. 659; Scott v. Rowland, 82 Va. 484, 4 S. E. 595; Smith 76 Va. 758; Marks v. Spencer, 81 Va. 751; Crabtree v. Dunn, 11 S. E. 1053; Bowman v. Reinhart, 89 Va. 435, 16 S. E. 27 Housman, 90 Va. 816, 20 S. E. 830; Statham v. Ferguson's Grat. 28; McDevitt v. Frantz, 85 Va. 740, 8 S. E. 642; Mur v. Carter, 23 Grat. 477; Johnston v. Slater, 11 Grat. 321 Mill, 78 Va. 468; Perry v. Ruby, 81 Va. 317; Lindsay v. 82 Va. 479, 5 S. E. 534; Warwick v. Warwick, 31 Grat. 7 R. Co. v. Prindle, 82 Va. 122; Radford v. Fowlkes, 85 Va.

Digitized by Google

7; Jones v. Degge, 84 Va. 685, 5 S. E. 799; Johnson v. Fry, 88 Va. 5, 12 S. E. 973, 14 S. E. 183.

See, also, as to competency of husband and wife as witnesses for or ainst each other at common law, Norfolk, etc., Co. v. Read, 87 Va. 185, S. E. 395; Grayson v. George, 85 Va. 908, 9 S. E. 13; Hayes v. Mutual, c., Asso., 76 Va. 225; Farley v. Tillar, 81 Va. 275; Nicholas v. Austin, Va. 817, 1 S. E. 132; Frank v. Lilienfeld, 33 Grat. 377; Thomas v. llman, 87 Va. 683, 13 S. E. 146.

Sec. 6211. Testimony of husband and wife in criminal cases.— criminal cases husband and wife shall be allowed, and subject the rules of evidence governing other witnesses, may be com- lled to testify in behalf of each other, but neither shall be com- lled, nor without the consent of the other, allowed to be called a witness against the other except in the case of a prosecution r an offense committed by one against the other, but if either called and examined in any case as a witness in behalf of the her, the one so examined shall be deemed competent, and sub- ct to the exception stated in the next section, may be compelled testify against the other under the same rules of evidence gov- ning other witnesses. The failure of either husband or wife to stify, however, shall create no presumption against the accused, r be the subject of any comment before the court or jury by the osecuting attorney. In the prosecution for a criminal offense mmitted by one against the other, each shall be a competent tness except as to privileged communications. (Id.)

Revisors' Note.—See revisors' note to section 6209 as to confidential mmunications.

The act of 1897-8 (Acts 1897-8, p. 753), referred to at the end of e preceding section, did not change the common law rule that a wife a competent witness to testify against her husband relative to offenses leged to have been committed by him on her. Davis' Case, 99 Va. 838, S. E. 191. Under the present section (6211) "each shall be a com- tent witness except as to privileged communications." (Last sentence.)

Sec. 6212. Communications between husband and wife.—Neither sband nor wife shall, without the consent of the other, be ex- mined in any case as to any communication privately made by e to the other while married, nor shall either be permitted, with- t such consent, to reveal in testimony after the marriage relation ases any such communication made while the marriage subsisted. d.)

Revisors' Note.—See revisors' note to section 6209 as to con- dential communications. The word "privately" in this section is new. e Pilcher v. Pilcher, 117 Va. 356, 84 S. E. 667. See, also, Wilkes v. ilkes, 115 Va. 886, 80 S. E. 745.

The rule that neither husband nor wife can, without the consent of e other, testify as to any communication made by one to the other, etc., es not apply to communications between husband and wife with regard a business matter in which he is acting as her agent. Lurty v. Lurty, 7 Va. 466, 59 S. E. 405.

In Wilkes v. Wilkes, 115 Va. 886, 80 S. E. 745, it was held that sub- vision 3 of section 3346a of Pollard's Code (1904) (upon which the ove section is based), applied to any communication between husband d wife, and that the statute did not limit the exception to confidential mmunications. In Pilcher v. Pilcher, 117 Va. 356, 84 S. E. 667

Digitized by Google

(annotated, 1 Va. L. R. N. S. 34), it was held that commu
tween husband and wife made in the presence of third perso
just sense either confidential or privileged. The revised sec
the word "privately." See revisors' note above.

**Sec. 6213. If a party refuse to testify when requir
missed, or plea, etc., struck out.**—If any party, requ
other to testify on his behalf, refuse to testify, it shal
for the court, officer, or person before whom the proceed
ing, to dismiss the action, suit, or other proceeding o
so refusing, as to the whole or any part thereof, or t
and disregard the plea, answer, or other defense of su
any part thereof, as justice may require. (Code 1887, §

See 4 Min. (3d Ed.) 826, 851; Barton, L. Pr. (2d Ed

Sec. 6214. How adverse party may be examined.—A
to testify for another, having an adverse interest, may b
by such other party according to the rules applicable
amination. (Code 1887, § 3351; 1899-00, p. 124.)

**Revisors' Note.—This and two following sections are
Acts 1899-00, p. 124, amending section 3351 of the Code of
tion 2 of the act has been omitted because it was considered
dependently of statute.**

**Sec. 6215. Witness proving adverse; contradiction;
sistent statement.**—A party producing a witness shal
lowed to impeach his credit by general evidence of ba
but he may, in case the witness shall in the opinion
prove adverse, by leave of the court, prove that he h
other times a statement inconsistent with his presen
but before said last-mentioned proof can be given the ci
of the supposed statement, sufficient to designate th
occasion, must be mentioned to the witness, and he mu
whether or not he has made such statement. In ever
the court, if requested by either party, shall instruct t
to consider the evidence of such inconsistent statements
the purpose of contradicting the witness. (Id.)

A party may contradict his own witness, who appears t
by other testimony, provided foundation is laid for such
evidence by first calling to the attention of the witness the
of the supposed contradictory statements sufficiently to desig
ticular occasion. This should usually embrace the time, pl
son to whom the statement was made; but the omission of
be material, where it is evident the witness fully understood
referred to. This statute (Acts 1899-00, p. 124, amending
of the Code of 1887) is simply declaratory of a well-establ
practice. Gordon v. Funkhouser, 100 Va. 675, 42 S. E. 67
son v. Daughtrey, 94 Va. 308, 26 S. E. 822.

This section (3351 of the Code of 1887, as amended
criminal cases as well as civil cases. Its language is broad
and there is no suggestion on its face to limit its operation
The fact that it is found under the title "Proceedings in
and the mere collocation of that section thereunder cannot
to override every other consideration, and require the cou
it to civil cases, when it is a remedy for an evil as great in
as in civil, and the consequences of which may be even
McCue's Case, 103 Va. 871, 49 S. E. 623.

Digitized by Google

In proving the prior inconsistent statements of a witness who has unexpectedly proven adverse to the party calling, the party is not restricted to the provisions of this section to proof of the fact that such statements were made, but may give in evidence the details of such statements. McCue's Case, 103 Va. 871, 49 S. E. 623.

Where a witness for the Commonwealth proves adverse and takes the prosecution by surprise, he may be impeached according to this section and appropriate instructions may be given the jury. This procedure has the approval of the McCue Case, 103 Va. 870, 49 S. E. 623, and is established practice in this State. Hardy's Case, 110 Va. 910, 67 S. E. 522.

A party is not bound by all the statements of a witness called by him, if adverse, even though no other witnesses are called against him. He may, on a material point, be contradicted by the physical facts proved in the case. Washington & O. D. Ry. v. Jackson's Admr., 117 Va. 636, 85 S. E. 496.

The annotation to Norfolk & W. R. R. Co. v. Thomas, 16 Va. Law Reg. 48, while not directly on this subject, states the Virginia rule as to the extent of cross-examination.

Discused in a review of the case of McCue v. Commonwealth, 1 Va. L. R. N. S. 664.

See Barton, L. Pr. (2d Ed.) 608; Barton, C. Pr. (2d Ed.) 692; 4 Min. (3d Ed.) 825, 851.

Sec. 6216. Contradiction by prior inconsistent writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, relative to the subject matter of the proceeding, without such writing being shown to him; but if it is intended to contradict such witness by the writing his attention must, before such contradictory proof can be given, be called to the particular occasion on which the writing is supposed to have been made, and he may be asked if he did not make a writing of the purport of the one to be offered to contradict him, and if he denies making it, or does not admit its execution, it shall then be shown to him, and if he admits its genuineness, he shall be allowed to make his own explanation of it; but it shall be competent for the court at any time during the trial to require the production of the writing for its inspection, and the court may thereupon make such use of it for the purpose of the trial as it may think best. The provisions of this section shall apply as well to criminal as civil cases. But this section is subject to this qualification, that in an action to recover for a personal injury or death by wrongful act or neglect, no ex parte affidavit or statement in writing other than a deposition, after due notice, of a witness as to the facts or circumstances attending the wrongful act or neglect complained of, shall be used to contradict him as a witness in the case. (Id.)

Revisors' Note.—The words in the present section beginning in line seven of the text "called to the particular occasion," etc., and ending in line twelve with "his own explanation of it" are used in lieu of "called to those parts of the writing which are to be used for the purpose of so contradicting him, and the said writing shall be shown to him." This change is believed to conform to the practice.

The last sentence of the section is new.

Digitized by Google

Sec. 6217. How summons for witness issued, and to **rected.**—A summons may be issued, directed as prescribe tion six thousand and fifty-five, commanding the officer to any person to attend on the day and at the place that suc ance is desired, to give evidence before a court, grand ju trators, umpire, justice, coroner, surveyor, notary, or any sioner appointed by a court. The summons may be issued, tendance be desired at a court, by the clerk thereof; if grand jury, by the attorney for the Commonwealth, or the the court, at the instance of the attorney for the Commo and, in other cases, by the clerk of the circuit court of th or the clerk of the corporation court of the city in whic tendance is desired, or, if it be desired before a justice, by any other justice. It shall express on whose behalf, and case or about what matter, the witness is to attend. Thi shall be deemed to authorize a summons to compel at before commissioners or other persons appointed by aut another State, but only in case they be citizens of this S the summons requires the attendance of a witness at a out of his county or city. (Code 1887, § 3352.)

Revisors' Note.—The words, "and, in other cases, by the cl circuit court of the county or the clerk of the corporation cou city in which the attendance is desired," etc., found in the rev beginning in line ten, are used in lieu of, "and, in other cases, PERSON BEFORE WHOM, or a clerk of the court of a coun poration in which, the attendance is desired," etc. The capitali have been omitted, and a few verbal changes made.

See Barton, L. Pr. (2d Ed.) 438, 451; Barton, C. Pr. (2d 792; 4 Min. (3d Ed.) 825, 1474.

The fact that this section is under the title of "Proceedin Cases" does not preclude its application to criminal cases. collocation under this title does not confine it to civil cases. Case, 103 Va. 1001, 49 S. E. 623.

For W. Va. decisions on similar statute, see Justis' An chapter 130, section 25.

See Gregory's Forms No. 436.

Sec. 6218. When trial court may have process for a wit cuted by its own officer in another county or city.—Whenev calling of or during the trial of a civil or criminal case in of record it appears to the court that it is necessary to ha ness from a county or city other than that of trial, the rule, or attachment issued for such witness from the trial c when the court so orders, be executed by its officers in an or city of the State, for which services the officer shall be a reasonable compensation by the court. (1893-4, p. 292

Revisors' Note.—This section now expressly applies to civ as criminal cases. The act from which it is taken was res criminal cases.

Sec. 6219. How subpoena duces tecum issued.—When it by affidavit that any book, writing or document in the p of a person not a party to the matter in controversy, is

Digitized by Google

nd proper to be produced before a court, or any person appointed y it or acting under its process or authority, such court, or a udge thereof in vacation, may order the clerk of said court to ssue a subpoena duces tecum to compel such production at a ime and place to be specified in the order. (Code 1887, § 3353.)

Revisors' Note.—The word "book" appearing in line two of the text s new.

See Barton, L. Pr. (2d Ed.) 452; Barton, C. Pr. (2d Ed.) 325; 4 Min. (3d Ed.) 825, 893.

For W. Va. decisions on similar statute, see Justis' Annotations, hapter 130, section 26.

See Gregory's Forms Nos. 262, 437.

Sec. 6220. How person failing to attend and give evidence, or to roduce a writing or document, proceeded against; prepayment of ileage and attendance.—If any person, after being served with uch summons, fail to attend to give evidence, or to produce such ook, writing, or document, according to the summons, the court or ribunal whose clerk issued the summons, or before whose officer he attendance is desired, or the judge thereof in vacation, or if it vas not issued by the clerk of the court, and the attendance was ot desired before an officer of some city court other than a corporation court, the circuit court of the county, or the circuit or orporation court of the city in which the attendance was desired, r the judge of any such court in vacation, on a special report thereof by the person or persons before whom there was the failure to ttend, and on proof that there was paid to him (if it was required y endorsement on the process) a reasonable time before he was equired to attend, the allowance for one day's attendance and is mileage and tolls, shall, after service of a notice to or rule to how cause against it, if none be shown, fine him not exceeding wenty dollars, to the use of the party for whom he was summoned, nd said court or judge may proceed, by attachment, to compel im to attend and give his evidence, or produce such book, writing r document at such time and place as said court or judge may deem fit. The witness shall, moreover, be liable to any party aggrieved for damages. (Code 1887, § 3354; 1902-3-4, p. 637.)

Revisors' Note.—The word "book," twice appearing in this section s new. In this respect it now conforms to the preceding section. The words "or tribunal" found in lines three and four of the text are also new.

See Barton, L. Pr. (2d Ed.) 439; Barton, C. Pr. (2d Ed.) 690, 691, 792; 4 Min. (3d Ed.) 827, 1474.

Discussed, 14 Va. Law J. 135.

See Gregory's Forms Nos. 263, 264, 475.

Sec. 6221. Commitment to jail of person refusing to testify, or to roduce writing or document.—If a person, after being served with uch summons, attend, and yet refuse to be sworn, or to give evidence, or to produce any book, writing or document required, he nay, by order of the court whose clerk issued said summons, or the judge thereof in vacation, or if it was not issued by a clerk, by rder of the court or judge having authority to enforce the attend-

Digitized by Google

ance of the witness under the preceding section, on a spe
of the fact by the person before whom such refusal occu
mitted to jail, there to remain for a period not exceedi
months, or until he shall, in custody of the jailor, give
dence or produce such writing or document. (Code 188

**Revisors' Note.—The word "book" in line three of the t
as are also the words, "or the judge thereof in vacation," fou
four and five. The provision in the latter part of the section
maximum confinement in jail at twelve months appears in
for the first time.**

See Barton, L. Pr. (2d Ed.) 439; Barton, C. Pr. (2d E
Min. (3d Ed.) 248, 827.

See Gregory's Forms No. 265.

Sec. 6222. Who may administer oath to witness.—A
before whom a witness is to be examined, may administe
to such witness. (Code 1887, § 3356.)

Sec. 6223. Interpreters.—Interpreters shall be sworn t
terpret, when necessary. (Code 1887, § 3357.)

Revisors' Note.—"Shall" is used in lieu of "may."

**Sec. 6224. What is sufficient evidence of non-residence
or party; how publication in a newspaper is proved.**—In a
affidavit that a witness or party resides out of this State
of it, shall be prima facie evidence of the fact, although
davit be made by a party, and without previous notice
anything is authorized or required by this Code or by a
to be published in a newspaper, the certificate of the ed
lisher, business manager or assistant business manager, o
davit of any other person, shall be admitted as evidence
stated therein as to the publication. (Code 1887, § 3358
382.)

A decree reciting that the cause came on to be heard as
sent defendant upon the bill and order of publication, duly e
conclusive proof of such execution. Craig v. Sebrell, 9 Grat. 1
v. Holt, 10 Grat. 284, 291.

For cases before the statute, see Moore v. Gilliam, 5 M
Cunningham v. Smithson, 12 Leigh, 32. See, also, Barton,
Ed.) 281.

For W. Va. decisions on similar statute, see Justis' A
chapter 130, section 32.

See Gregory's Forms, 574, 599.

**Sec. 6225. Deposition of witness, by whom taken in t
how certified.**—In any pending case the deposition of
whether a party to the suit or not, may be taken in this S
the declaration or bill has been filed by a justice, or notar
commissioner in chancery; and, if certified under his han
received without proof of the signature to such certificat
1887, § 3359.)

**Revisors's Note.—The words, "after the declaration or bil
filed," are new. See 10 Va. L. Reg. 663.**

A person taking a deposition certifies that the deposition
before him, and signs his name to the certificate with the addi

Digitized by Google

ers "J. P." Held it sufficiently appears that he is a justice of the ce. Pollard's Heirs v. Lively, 2 Grat. 216.

The appellate court will presume that the deposition has been regu- ly taken where no objection has been taken in the court below. Id.

As to when exception may be taken to the competency of witnesses, Baxter v. Moore, 5 Leigh 219; Stewart v. Conrad's Adm'r, 100 Va. 3, 40 S. E. 624; Simmons v. Simmons' Adm'r, 33 Grat. 451, 460.

See Barton, L. Pr. (2d Ed.) 431; Barton, C. Pr. (2d Ed.) 786; Min. (3d Ed.) 830, 831, 1374, 1398.

For monographic note on Depositions, see Field v. Brown, 24 Grat. Va. Rep. Anno.

For W. Va. decisions on similar statute, see Justis' Annotations, apter 130, section 33.

See Gregory's Forms No. 610.

Sec. 6226. Of witness, who resides out of the State, by whom ken; how certified.—The deposition of a witness, whether a party the suit or not, who resides out of this State, or is out of it in e service thereof, or of the United States, may be taken before y commissioner appointed by the Governor of this State, or any stice, notary, or other officer authorized to take depositions in the ate wherein the witness may be, or if the deposition is to be taken a foreign country, before any person that the parties may agree on in writing, or any American minister plenipotentiary, charge affaires, consul-general, vice-consul, commercial agent appointed the government of the United States, or any other representa- ve of the United States in a foreign country, or the mayor, or her magistrate of any city, town, or corporation in such country, any notary therein. Any person, before whom a deposition may so taken, may administer an oath to the witness, and take and rtify the deposition with his official seal annexed; and if he have ne, then the genuineness of his signature shall be authenticated some officer of the same State or country, under his official seal, less the deposition is taken by a justice out of this State, but in e United States, or before some person agreed upon in writing by e parties, in which case his certificate shall be received without y seal annexed, or other authentication of his signature. When deposition is taken before some person agreed upon in writing the parties other than the officer authorized to take the deposi- on, the said writing shall be returned with the deposition, and e deposition shall not be read unless said writing is so returned. Code 1887, § 3360.)

See Barton, L. Pr. (2d Ed.) 431; Barton, C. Pr. (2d Ed.) 787; 4 in. (3d Ed.) 830-832, 1374, 1398.

As to depositions in federal courts, see 1 Va. Law Reg. 152.

For W. Va. decisions on similar statute, see Justis' Annotations, apter 130, section 34.

Sec. 6227. No commission necessary.—No commission shall here- fter be necessary to take a deposition, whether within or without he State. (Code 1887, § 3361.)

Revisors' Note.—This section is as it appears in the Code of 1887, ith the omission of the words, "except as provided in section twenty-

Digitized by Google

five hundred and thirty-seven." For reasons for this on section 5252 and revisors' note.

Section 3361 of the Code of 1887 was amended in 1908 p. 116); but that amendment has been omitted and therel because it was not believed that any other State can regulate of evidence to be used in the courts of this State.

Sec. 6228. Notice to be given of taking a deposition stage of suit in equity, a deposition may be returned a Reasonable notice in writing shall be given to the adv of the time and place of taking every deposition. It ne in any particular form, nor served in any particular ma it shall be deemed sufficient in any form or served in an if it conveys the needed information, and is actually r reasonable time before the time fixed for the taking. A there are pending in the same court several actions or suit the same parties, depending upon the same facts, or inv same matter of controversy, in whole or in part, a deposi in one of said actions or suits, upon a joint notice to the s or parties, may be read in all, so far as it is applicable vant to the issue. In a suit in equity, a deposition may if returned before the hearing of the cause, or, though af terlocutory decree, if it be as to a matter not thereby adju be returned before a final decree. (Code 1887, § 3362.)

Revisors' Note.—The words, "in writing" appearing in t the text are new. The second sentence is new, and changes sion in King & Co. v. Hancock, 114 Va. 596, 77 S. E. 510. the last sentence of section 6041 and revisors' note thereon.

Necessity for notice.—A deposition cannot be read to interests of any party to whom no notice of the time and pla ing it had been given. Stubbs v. Burwell, 2 Hen. & M. 53 may be admissible as to the party receiving due notice. Colv stead, 5 Leigh 101. And the objection to it may be taken offered to be read as evidence to the jury. Unis v. Charlto 12 Grat. 484.

It seems that a deposition cannot be read, though it s counsel professing to represent the adverse parties appeared examined the witness, unless notice be produced or proved Charlton's Adm'r, 12 Grat. 484.

When a deposition is read at common law, whether it de bene esse or in chief, it should appear in the record, upon that notice of the time and place of taking it had been giv adverse parties. Collins v. Lowry, 2 Wash. 75 (2d Ed. 97).

When guardian ad litem had no notice of depositions they read against infant defendants. Walker v. Grayson, 86 Va S. E. 51.

If depositions are read on a trial without objection, or if is made without an exception taken to their admission, upo trial of the cause they will not be excluded for the failure notice to take them unless the party objecting has given not other party of his intention to object to them in time to enable offering them to take them again, and the witnesses are al time of such notice. Peshine v. Shepperson, 17 Grat. 472, 94 468.

How notice served.—In King & Co. v. Hancock, 114 Va S. E. 510, 19 Va. L. Reg. 57 (and note), it was held that the no of the taking of depositions under this section as it stood b

Digitized by Google

resent revision had to be served in the manner prescribed by section 207 of the Code of 1887, as amended (corresponding to section 6041 of his Code); and that a service on the party or his counsel by sending he notice by registered mail was not sufficient. The present section hanges this rule. See revisors' note above.

A notice to take a deposition given to the overseer of the party ho resided part of his time in the State and part out was not sufficient. hapman v. Chapman, 4 Hen. & M. 426.

In taking an acconunt a commissioner may take the deposition of witesses under the general notice. McCandlish v. Edloe, 3 Grat. 330 3d Ed. 315).

If a commissioner gives notice by publication in a newspaper, an xception by a party for want of personal notice, where that was practicale, ought not to be entertained unless he shows by his own affidavit or therwise that he had no such information of the contemplated proceedng of the commissioner as would have enabled him to attend. McandlIsh v. Edloe, 3 Grat. 330 (2d Ed. 315).

Reasonable notice.—What is reasonable notice is dependent upon he peculiar circumstances of each case, the principal of which are the istance, traveling conveniences, condition of roads, and other such matrs as affect the ability of the party to attend personally or by counsel, nd to return in time for trial. Trevelyan's Adm'r v. Lofft, 83 Va. 141, 46, 1 S. E. 901. See Coleman v. Moody, 4 Hen. & M. 1; Fant v. Miller, 7 Grat. 187.

Where a notice was left with the wife of a party at his dwelling ouse when it was known by the adverse party that he was absent on a ourney to another State, and where it appeared that the notice might reviously have been given to the party himself, and that the taking of he deposition might have been postponed until his return, it was held hat the notice was insufficient, and the deposition taken under it was uppressed. Coleman v. Moody, 4 Hen. & M. 1.

A notice is given by plaintiff to defendant, for taking depositions f several witnesses at a specified place in Missouri, on six successive ays, between certain hours of each day. Held, considering the disance of the place appointed for taking the depositions, and the uncerainty of the precise time at which the party would be enabled to have hings in readiness for taking them, the notice is sufficiently definite. Kincheloe v. Kincheloe, 11 Leigh 393 (2d Ed. 409).

A notice, given June 7th, that depositions would be taken in London on July 4th following, is sufficient. Trevelyan's Adm'r v. Lofft, 83 a. 141, 1 S. E. 901.

For note upon reasonable notice to take depositions, see 11 Va. aw Reg. 930.

Notice to two places at same time.—If a party gives notice of the aking of several depositions at different places on the same day, so that he opposing party cannot be present to cross-examine all the witnesses, e may select which examination he will attend, and the other deposiion will be suppressed. Fant v. Miller, 17 Grat. 187. But if he attends y counsel at both places he cannot object to the deposition taken at ither or both places. Latham v. Latham, 30 Grat. 307.

A defendant in two suits in which the plaintiffs are different, though epresented by same counsel, cannot complain of the taking of depositions in the two suits, one in Georgia and the other in New York, on he same day. Wytheville Ins. & Banking Co. v. Teiger, 90 Va. 277, 18 . E. 195.

Place.—A notice to take depositions is insufficient if it omits the lace where the depositions are to be taken. Hunter v. Fulcher, 5 Rand. 26, 16 Am. Dec. 738.

Depositions after decrees.—After an interlocutory decree upon a earing, deciding the questions of fact in issue, neither party has an abolute right to introduce new evidence touching the question so decided. The introduction of such evidence depends on the sound discretion of the

Digitized by Google

court and its judgment on the sufficiency of the excuse offe
failure to have it before the court when the cause was hea
interlocutory decree pronounced and such excuse may be off
on motion upon notice or upon a petition for a rehearing of
Moore v. Hilton, 12 Leigh 1; Richardson v. Duble, 33 Grat. 7

Even after interlocutory decree, a deposition taken an
before a final hearing may be read as to any matter not a
Richardson v. Duble, 33 Grat. 730.

It seems that this section permits a commissioner to ret
tions of parties who have once deposed. Atwood v. Shenando
Co., 85 Va. 967, 9 S. E. 748.

The last sentence of this section does not give an abs
The statute does not say the deposition "shall be," but "it ma
It could hardly have been intended that after the cause had be
to a commissioner, and ample opportunity afforded both parti
duce their witnesses, and after the commissioner had made
and the cause was ready for a hearing, that one of them s
the absolute right at any time thereafter to bring forward his
and demand the reading of it upon a controverted matter
Sarvey, 104 Va. 229, 51 S. E. 228.

New evidence may be introduced before a commissione
any matter of account directed by the interlocutory decree
the court touching any matter of the account which the cour
the decree to have referred to a commissioner. Moore v.
Leigh 1.

A deposition having been taken after the cause was set
in the superior court of chancery, and no objection appeari
been made in that court, the appellate court will presume
cause was shown for admitting it. Stubbs v. Burwell 2 Hen.

When a cause has been submitted for hearing, in vacatio
not later than a specified day, to be fixed by further agreeme
tions taken and returned after such submission, and before th
for the hearing, may be read. Radford v. Fowlkes, 85 Va. 8
817.

If depositions be taken without objection during the ter
a final decree is rendered, objection cannot be made at the
the first time. Fisher v. Dickenson, 84 Va. 318, 4 S. E. 737.

Quære, what would be such a final decree as would
party from filing new evidence touching a question thereb
Dunbar's Ex'rs v. Woodcock's Ex'r, 10 Leigh 629 (2d Ed. 660)

Generally.—Where depositions were regularly taken and
cause upon proper notice to the parties, but the decree whi
dently based upon them omits to mention the depositions,
considered a clerical mistake, and the cause will be acted upo
depositions had been only referred to in the decree. Day v.
22 Grat. 146.

An officer taking depositions cannot resume the taki
future day without an adjournment to such day. Hunter
5 Rand. 126, 16 Am. Dec. 738.

A notice to take a deposition to be read in case in whic
Bartley is plaintiff may be read in an action carried on by
Bartley, the person being obviously the same. Bartley v. Mc
Grat. 750.

See Barton, L. Pr. (2d Ed.) 433, 448, 1307; Barton, C. P
784, 788, 789; 4 Min. (3d Ed.) 834, 1374, 1398.

For W. Va. decisions on similar statute, see Justis' A
chapter 130, section 35.

See Gregory's Forms No. 365.

**Sec. 6229. Notice to non-resident may be served on cou
to decide on its validity.**—Whenever any party, on whom
to take a deposition should be served, is not a resident of

Digitized by Google

e service of such notice on the counsel of such party or on any e of such counsel, if there be more than one, shall have like ef- ct as if it were served upon the party, provided the time between e service of notice and taking the deposition be sufficient for con- ying by ordinary course of mail a letter from the place of ser- ce to the place of residence of the party, and a reply from that ace back to the place of service, and then for the counsel to at- nd at the place of taking the deposition. In all cases when no- e is served on counsel as aforesaid, the court, upon exception ing taken, may determine whether, under all the circumstances e notice has been served in reasonable time, and admit or reject e deposition accordingly. (Code 1887, § 3363.)

Notice served on defendant's counsel in Richmond, 3:45 P. M. y 24th, to take depositions at Hampton, May 26th, between 9 A. M. d 6 P. M., the defendants residing in Baltimore, is insufficient. Payne Zell, 98 Va. 294, 36 S. E. 379.

Cited but not construed in King & Co. v. Hancock, 114 Va. 596, S. E. 510, 19 Va. L. Reg. 57 and note.

See Barton, L. Pr. (2d Ed.) 433, 436; Barton, C. Pr. (2d Ed.) 789, 1; 4 Min. (3d Ed.) 1374. For case before the statute, see Cahill v. ntony, 4 Munf. 371.

For W. Va. decisions on simliar statute, see Justis' Annotations, apter 121, section 33.

Sec. 6230. When deposition may be retaken and read.—The dep- ition of a witness may be retaken in any case without the con- nt of the court first obtained, and may be read, if the court, upon plication, in the exercise of a sound discretion, would have made order for such re-examination. (Code 1887, § 3364.)

It seems that it is proper for defendants to retake a deposition when ch retaking is to prove facts rendered necessary to their defense by e action of the plaintiff since their first depositions. Fant v. Miller, Grat. 187, 219-222.

It seems that leave to read a deposition will always be granted ienever justice seems to require it. Carter v. Edmonds, 80 Va. 58. e Booth v. McJilton, 82 Va. 827, 1 S. E. 137.

The lower court, when acting under this section, will not be reversed less palpably wrong. Leonard v. St. John, 101 Va. 752, 45 S. E. 474. See Barton, L. Pr. (2d Ed.) 449.

Sec. 6231. Under what circumstances a deposition may be read case at law.—A deposition in a civil case at law, taken on such otice, under sections sixty-two hundred and twenty-five, sixty- vo hundred and twenty-six and sixty-two hundred and twenty- ght, may be read in such case if, when, it is offered, the witness e dead, or out of this State, or one of its judges, or a superintend- t of a hospital for the insane distant more than thirty miles from e place of trial, or in any public office or service, the duties of hich prevent his attending the court, or be unable to attend it om sickness or other infirmity, or be more than a hundred miles om the place of trial. But where the only ground of reading a eposition is, that the witness is more than a hundred miles from e place of trial, on motion to the court, before the commencement

Digitized by Google

of the trial, it may, for good cause shown, require such to attend in person. (Code 1887, § 3365.)

Deposition ought not to be admitted in a suit at law un pears by the record in what suit and by what authority they w and that the witness could not attend the trial. Butts v. Rand. 255.

As to what proof of the inability of a witness to attend t necessary when his deposition taken de bene esse is offered t see Collins v. Lowry, 2 Wash. 75 (2d Ed.) 97.

The affidavit of a witness taken before a justice of the p from his age and infirmities he was unable to attend the cou endangering his life, not having been objcted to in the lower want of notice, that objection cannot be made in the appell Tayloe v. Smith, 10 Grat. 557.

Plaintiff, having taken deposition of an aged and infirm be read de bene esse, fails to take out a subpoena, and have on the witness to attend at the trial; yet held that, upon s proof of the witness' inability to attend the trial by reason of the deposition shall be read. Lynch v. Thomas, 3 Leigh 682.

An affidavit as to inability to attend the trial of the cause taken eight days before the cause was called for trial, is su authorize the deposition of the witness, which had been take esse, to be read in evidence. Tayloe v. Smith, 10 Grat. 557.

A witness giving his deposition de bene esse states in it unable from his age and health to attend the court; this is su authorize his deposition to be read upon the trial of the cause i is taken. Pollard's Heirs v. Lively, 2 Grat. 216; Nuckols' Adm' 8 Grat. 267.

It is improper to read a witness' deposition in a court account of his absence unless the party offering the deposit that he has used due diligence to find the witness, or that within the jurisdiction of the court and the reach of it Tompkins v. Wiley, 6 Rand. 242.

The circumstance that a witness has been summoned an attend is not sufficient to authorize the reading of his deposition esse, but it must be proved that he is dead, or, if living, unable Minnis v. Echols, 2 Hen. & M. 31.

Hearsay evidenec that the deponent has left the country not returned, is not sufficient to authorize the reading of his Collins v. Lowry, 2 Wash. 75 (2d Ed. 97); Wise Terminal Cormick, 107 Va. 376, 58 S. E. 584.

Quaere, whether upon a question of the witness' inabi tend on account of his health hearsay evidence as to the st health may properly be heard by the court. Lynch v. Thoma 682.

Depositions which have been read may be taken to the if what is objectionable in them is erased. Hansborough v 25 Grat. 495.

Barton, L. Pr. (2d Ed.) 430, 450; 4 Min. (3d Ed.) 84 Pleading and Practice, p. 465.

See section 4415, as to depositions of female witnesses in

For W. Va. decisions on similar statute, see Justis' An chapter 130, section 36.

See Gregory's Forms No. 610.

Sec. 6232. How depositions certified, returned, and f when received to be endorsed.—A deposition, when compl be certified and returned by the officer taking it, or sealed through the post-office, or by some public carrier, to the the court wherein the suit or other proceeding, in which sition is taken, is pending, or to the commissioner or pers

Digitized by Google

whom it is to be read; and when received, the clerk, commissioner, or other person to whom sent, after endorsing thereon the time it was so received, shall file it among the papers of the suit or other proceeding. (Code 1887, § 3366.)

Revisors' Note.—The words, "or sealed and sent through the post-office, or by some public carrier," are new.

It seems that a deposition upon due notice may be read, though it was returned to the clerk's office open and unsealed, but without being shown to be erased or altered. Givens v. Manns, 6 Munf. 191. See revisors' note above as to depositions sent through the post-office or by public carriers.

A commission (under former law) directed to five persons ("any three of whom may act") cannot be executed by one only, and the return by one that three others were present when the deposition was taken is not sufficient. It should be certified by three at least who were present. Marshall v. Frisbie, 1 Munf. 247-252.

It is no objection to a deposition which is duly certified that it is not signed by the witness. Barnett v. Watson, 1 Wash. 372.

See 4 Min. (3d Ed.) 834, 842.

See Gregory's Forms No. 610.

Sec. 6233. May be read by either party.—A deposition, if not read on the trial by the party taking it, may be read by the other party. (Code 1887, § 3367.)

See Barton, L. Pr. (2d Ed.) 448; 4 Min. (3d Ed.) 842.

Sec. 6234. How taken after decision of cause from which appeal, etc., lies.—In any case wherein there has been a judgment, decree, or order, from or to which an appeal, writ of error, or supersedeas, has been or might be allowed, a deposition may be taken for any party to such case, or for or against his wife or her husband, personal representative, heirs, or devisees, in like manner, and by such persons, as is before prescribed for pending cases; and it may be read in any future trial that may be directed, if the same could properly be read had there been no such judgment, decree, or order. (Code 1887, § 3368.)

See 4 Min. (3d Ed.) 842.

Sec. 6235. How testimony perpetuated.—A person desirous of perpetuating the testimony of witnesses as to a matter in respect to which there is no suit, may file with a commissioner in chancery of a court wherein, if there were a bill to perpetuate the testimony, such bill might be filed, a petition addressed to such commissioner stating such matter, and what persons may be affected by the testimony. Whereupon, the commissioner shall appoint, for proceeding on the petition, a time and place, whereof reasonable notice shall be given to the persons who may be so affected. If any of them be an infant or insane person, the commissioner shall appoint a guardian ad litem to attend on his behalf. At such time and place the commissioner shall take in writing the evidence of any witnesses adduced in respect to the said matter by the petitioner, or by the person so affected. He may adjourn from time to time, and shall return a report of his proceedings, with the testimony taken by him, to the clerk's office of the court by which he was appointed,

Digitized by Google

and such testimony shall have the same effect as if it
taken on a bill to perpetuate testimony. Such court n
such order as to the costs as may seem to it right. (C
§ 3369.)

**Revisors' Note.—The words, "addressed to such commiss
pearing in line five of the text, are new.**

See Barton, C. Pr. (2d Ed.) 217, 303, 807; 4 Min. (3d
1374.

For editorial comment on this section, 14 Va. Law Reg.

**Sec. 6236. Interrogatories to adverse party or claima
and how filed; how answers thereto enforced; how used as**

—In a case at law a party may file in the clerk's office,
case or matter before a commissioner of a court, any
terested may file with such commissioner interrogatori
adverse party or claimant. The clerk or commissioner sh
summons, directed as prescribed in section six thousand
five, requiring the officer to summon the proper party
said interrogatories, and make return thereof within such
exceeding sixty days, as may be prescribed in the summo
the summons there shall be a copy of the interrogatori
shall be delivered to the person served with the summo
time of such service; if the summons be against the pla
is not a resident of this State, or a defendant who is not
of this State, but who has appeared in the case or been se
process in this State, the service may be on his attorn
When the court in which the case is, or whose commissio
the summons, is satisfied that the interrogatories are rel
such as the person to whom they are propounded would
to answer upon a bill for discovery, and sees also that
rogatories have not been unreasonably delayed, it may, i
person do not in a reasonable time file answer thereto, u
or, if he file answers which are evasive, attach him and c
to answer in open court, or to answer more explicitly. It
if it see fit, set aside a plea of his, and give judgment ag
by default, or if he be plaintiff, order his suit to be dism
costs, or, if he be claiming a debt before a commissioner
such claim. Answers to such interrogatories may be us
dence at the trial of the cause, in the same manner and
same effect as if obtained upon a bill of discovery. A c
may be required to answer proper interrogatories under
tion, and shall answer by its president, vice-president,
secretary, cashier, business manager, or by any officer
having the information sought in said interrogatories,
such person may be summoned to answer said interroga
such corporation. (Code 1887, § 3370; 1910, p. 376.)

Revisors' Note.—The last sentence is new.

A party to a cause is not bound to answer interrogato

Digitized by Google

may subject him to a penalty or a forfeiture. Poindexter v. Davis, 6 Grat. 481.

This rule is not confined to cases where the purpose of the action is to enforce the penalty or forefeiture, but extends to those where the discovery itself would expose the party to some action or suit or any criminal or penal prosecution tending to a like result. Id.

If the court permits improper interrogatories to be filed, and directs them to be answered, the party to whom they are directed may answer them, and then on the trial of the cause may object to their admission as evidence. Id.

Though interrogatories be filed in an action at law, they can only be given in evidence by the party who has filed them, and will not be admitted as evidence unless offered by such party. If introduced by him as evidence, the whole of the answers will go together to the jury, before whom they will not be conclusive, but have such weight only as the jury think them properly entitled to, and be subject to be disproved by any other evidence which the other party may introduce. McFarland v. Hunter, 8 Leigh 489; Vaughn v. Garland, 11 Leigh 251 (2d Ed. 250).

As to what interrogatories the person to whom they are propounded would be bound to answer upon a bill for discovery, see Baker v. Morris' Adm'r, 10 Leigh 284 (2d Ed. 294). See, also, Fant v. Miller, 17 Grat. 187; N. & W. R. Co. v. Postal Tel. Cable Co., 88 Va. 932, 14 S. E. 689.

Cited but not construed, Wash.-Va. Ry. Co. v. Bouknight, 113 Va. 596, 75 S. E. 1032.

For case before the statute, see Templeton v. Fauntleroy, 3 Rand. 434.

See Barton, L. Pr. (2d Ed.) 453, 896; 4 Min. (3d Ed.) 849, 1045, 1375; Gregory's Forms Nos. 435, 657.

Sec. 6237. When and how production of book accounts or other writing compelled.—In any case at law a party may file in the clerk's office, and in any case or matter before a commissioner of a court any person interested may file with such commissioner, an affidavit, setting forth that there is, he verily believes, a book of accounts or other writing in possession of an adverse party or claimant containing material evidence for him, specifying with reasonable certainty such writing or the part of such book. The clerk or commissioner shall issue a summons, directed as under the preceding section, requiring him to summon the proper party to produce such writing, or an exact copy of such part of the said book, and make return thereof as under that section. With the summons there shall be a copy of the affidavit, which shall be delivered to the person served with the summons at the time of such service; if the summons be against a plaintiff, who is not a resident of this State, or a defendant who is not a resident of this State, but who has appeared in the case or been served with process in this State, the service may be on his attorney-at-law. When the court in which the case is, or whose commissioner issued the summons, is satisfied that the person filing such affidavit has no means of proving the contents of such writing, or of such part of the book, but by the person summoned producing what is required by the summons, and that the same is relevant and material, and sees also that the call therefor has not been unreasonably delayed, it may, unless the person summoned shall, in a reasonable time, either produce what

Digitized by Google

it so required, or answer in writing, upon oath, that he ha
der his control such book or writing, or any of the like
attach him and compel him to do the one or the other. It
if it see fit, set aside a plea of such person, and give j
against him by default, or if he be plaintiff, order his s
dismissed with costs, or if he be claiming a debt before a
sioner, disallow such claim. This section shall apply to
tions and the court or commissioner, as the case may be, s
jurisdiction to enforce its provisions as to a corporatio
taching the proper custodian of any such book or other w
the possession of such corporation. (Code 1887, § 3371;
376.)

Revisors' Note.—The last sentence is new.

Cited in the dissenting opinion of Buchanan, J., in C
Adams Bros.-Paynes Co., 113 Va. 547, 75 S. E. 294, 18 Va. L.
and note; Norfolk & W. R. Co. v. Steele, 117 Va. 788, 86 S. E.

See Barton, L. Pr. (2d Ed.) 453; 4 Min. (3d Ed.) 826,
1375.

For W. Va. decisions on similar statute, see Justis' An
chapter 130, section 44.

See Gregory's Forms Nos. 434, 609.

Sec. 6238. Effect of the two preceding sections on bill in
The two preceding sections shall not preclude a person,
not file such interrogatories or affidavit, from exhibiting
chancery for a discovery, as he might have done if the said
had not been enacted. But a person filing such interrog
affidavit, shall not afterwards exhibit a bill in equity ag
same party for the discovery or production of the same
(Code 1887, § 3372.)

If discovery is necessary in order for plaintiff to make
law, bill must be filed before judgment is rendered; he canno
lief in equity after the rendition of the judgment. Green, &c.,
21 Grat. 356.

See generally as to a bill of discovery, Fant v. Miller, 17
Smith v. Smith's Adm'r, 92 Va. 696, 24 S. E. 280. See 4 Min.
849, 1375; Gregory's Forms No. 137.

Sec. 6239. Presumption of death from absence.—If an
who shall have resided in this State, go from, and do not
the State for seven years successively, he shall be presun
dead in any case wherein his death shall come in questio
proof be made that he was alive within that time. (C
§ 3373.)

**Revisors' Note.—For sections applying to the grant of let
ministration on estates of persons presumed to be dead, se
5361 to 5368, inclusive.**

This section is simply declaratory of the common law.
Stewart, 81 Va. 724.

A person for seven years not heard of by those who, if h
would naturally have heard of him, is presumed to be dead, b
raises no presumption as to the precise time of his death. T
of proof that the death took place at any particular time
seven years lies upon a person claiming a right to the establi
which that fact is essential. Id.

Digitized by Google

The presumption only arises at the end of the seven years. The arty asserting that absentee was dead at any period within the seven ears must prove his assertion affirmatively. Security Bank v. Equit. ife Soc., 112 Va. 462, 71 S. E. 647.

It is incumbent on parties asserting that a person is dead in action n insurance policy to prove death within the life of policy, and this ection gives no aid to the proof until the end of the seven years. ecurity Bank v. Life Ins. Co., 112 Va. 462, 71 S. E. 647.

See Barton, L. Pr. (2d Ed.) 254, 1018; 2 Min. (4th Ed.) 1032; 3 lin. (2d Ed.) 554. See Carr v. Brown, 20 R. I. 215, 38 Atl. 9, 38 L. R. . 294, 78 Am. St. Rep. 855. Sections 5361 to 5368, inclusive; 19 Va. . Reg. 616.

For W. Va. decisions on similar statute, see Justis' Annotations, hapter 130, section 43.

Sec. 6240. Evidence in mitigation of damages.—In any action for efamation, the defendant may justify by alleging and proving that ne words spoken or written were true, and (after notice in writing f his intention to do so, given to the plaintiff at the time of, or or pleading to such action), may give in evidence, in mitigation f damages, that he made or offered an apology to the plaintiff for uch defamation before the commencement of the action, or as oon afterwards as he had an opportunity of doing so, in case the ction shall have been commenced before there was an opportunity f making or offering such apology. (Code 1887, § 3375.)

The truth of defamatory words, written or spoken, if relied upon y the defendant, either as a bar or in mitigation of damages, must be pecially pleaded, and cannot be shown under a plea of not guilty. Williams Printing Company v. Saunders, 113 Va. 156, 73 S. E. 472.

For cases before the statute, see Com. v. Morris, 1 Va. Cas. 176, Am. Dec. 515; Brooks v. Calloway, 12 Leigh 466; Moseley v. Moss, Grat. 534.

See, as to actions for defamation generally, Bourland v. Eidson, 8 Grat. 27; Hogan v. Wilmoth, 16 Grat. 80; Dillard v. Collins, 25 Grat. 343; Hansbrough v. Stinnett, Id. 495; Chaffin v. Lynch, 83 Va. 106, 1 S. E. 303; Id., 84 Va. 884, 6 S. E. 474; Harman v. Cundiff, 82 Va. 239; Holland v. Batchelder, 84 Va. 664, 5 S. E. 695. See Barton, L. Pr. (2d Ed.) 190, 503, 645; section 5781 and notes.

For W. Va. decisions on similar statute, see Justis' Annotations, hapter 130, section 47.

CHAPTER 262.

Loss of a Record or a Paper in a Cause; Actions on Lost Evidences of Debt.

Sec.
6241. How court may proceed, when original papers lost or destroyed; plaintiff may commence new suit in such case; when certified copy of a paper, required to be recorded, may be used as evidence.
6242. Actions at law on lost evidences of debt; plaintiff to give indemnifying bond.

Digitized by Google

Sec. 6241. How court may proceed, when original pape destroyed; plaintiff may commence new suit in such case; tified copy of a paper, required to be recorded, may be us dence.—If in any case the original papers therein, or any or the record for or in an appellate court, or any pape connected with such record, be lost or destroyed, any part case may present to the court wherein the case is, or in would or ought to be, but for such loss or destruction, verified by affidavit stating such loss or destruction, and that such case be heard and determined or tried on the r tion of such record or papers, or satisfactory proof of t tents. Upon such petition and an authenticated copy o lost or destroyed, the court may hear and determine the proceed to a trial thereof, if before a jury. The court hear and determine the case, or proceed to the trial there fore a jury, upon proof, after reasonable notice to the part ested of the contents of such record or papers, or so mu of, as may be necessary for a decision by the court, or t jury, if the case be before a jury, and may make such ord cree as if the papers or any of them had not been lo stroyed.

The court may in its discretion, require new pleadings to up in whole or in part.

A plaintiff instead of proceeding under this section m mence and prosecute a new suit for the same matter; and fied copy of any deed, will, account, or other original quired by law to be recorded shall be used by any part dence for him, in any case where the original deed, will, or other original paper or the record thereof has been d until such copy has been properly admitted to record, acc law. This section shall not apply to criminal cases. (C § 3376; 1902-3-4, p. 568.)

Revisors' Note.—This section as it now reads prescribes cedure with more particularity than was formerly the case.

For cases before the statute, see Lyons v. Gregory, 3 Hen. Smith v. Carter, 3 Rand. 167.

This section applies only to civil cases, and does not records or papers in criminal proceedings. Bradshaw v. Com. 507, 86 Am. Dec. 722. The section now expressly provides th not apply to criminal cases.

A party is under no obligation to avail himself of the pro this section, which are only cumulative. Newcomb v. Dru Leigh 57, 60; Corbett v. Nutt, 18 Grat. 624, 639.

It is a sufficient compliance with this section where a alleges and answer admits the destruction of the original pa cause wherein was a decree for sale of certain lands, and the a certified copy of the papers from the Supreme Court where was on appeal, and an injunction will not lie to such sale on t that no affidavit of the destruction was filed. Hudson v. Yo 347, 13 S. E. 436.

As to reinstatement of cause, which it does not appear w

Digitized by Google

emoved, see the Dismal Swamp Land Co. v. McCauley's Adm'r, 85 Va. 6, 6 S. E. 697.

For W. Va. decisions on similar statute, see Justis' Annotations, hapter 130, section 14.

Sec. 6242. Actions at law on lost evidences of debt; plaintiff to ive indemnifying bond.—An action at law or motion may be maintained on any past due lost bond, note, or other written evidence of debt, and if judgment be rendered for the plaintiff, there shall be ntered as a part of the judgment that the plaintiff is not to have he benefit thereof, nor be allowed to enforce it by execution or otherwise, unless and until he shall have first entered into bond efore the court or the clerk thereof in such penalty as is prescribed in the order awarding the judgment, and with condition to ndemnify and save harmless the defendant or defendants from ll loss or damage he or they may sustain or incur by reason of aving to pay in whole or in part said past due lost bond, note, or ther written evidence of debt to some other person than the plainiff. The indemnifying bond hereinbefore required shall be payable o the defendant or defendants, and shall be filed in the clerk's ffice of the court in which the judgment is rendered. (1899-00, p. 09.)

Revisors' Note.—This section is based on the act cited. The object f the change in phraseology is to cover the ground more fully.

This section does not deprive courts of equity of their jurisdiction o enforce payment of a lost bond. Kabler v. Spencer, 114 Va. 589, 77 . E. 504.

See Burks' Pleading and Practice, pp. 95, 593.

CHAPTER 263.

Court Docket; Inquiry of Damages; Trial by Jury; and Judgments and Decrees of the Court for Money.

Sec.

6243. When and how clerks to make out docket of civil cases at law; how docket called and cases disposed of.
6244. Clerks shall make out criminal docket.
6245. When and how docket of chancery cases; how cases called and disposed of.
6246. Trial of issue out of chancery.
6247. Trial of issues, or inquiry of damages, by jury in other cases; province of court at trial.
6248. Removal of cloud on title; nature of plaintiff's title.
6249. When case, in which there is to be inquiry of damages, may be disposed of; when court to make the inquiry.
6250. Remedy, when at trial variance appears between evidence and allegations or recitals.
6251. When final judgment to be entered after verdict set aside; no extension of power over verdicts; after-discovered evidence.
6252. Bills of exceptions.
6253. Certificate in lieu of bill of exception.

Digitized by Google

Sec.
6254. To dispense with the necessity for a motion for a new trial in certain cases.
6255. Argument before jury.
6256. When non-suit not allowed.
6257. What papers jury may carry out.
6258. When faulty count disregarded; when verdict good.
6259. Verdict to fix period at which interest begins, if no period fixed, to be from date of verdict, judgment for interest where no jury; judgment to be for interest until payment.
6260. Power to grant new trial; how often.
6261. How judgment entered on bond for payment of money.

Sec.
6262. In action on annu etc., or for pen breaches assigned jury to do; how entered; when sc sued out, and for cution awarded.
6263. In joint actions, though barred as may have judgme others.
6264. Joint wrongdoers; judgment against
6265. Procedure on j tracts; when pla proceed to judgme part of defendants dismissal or disc as to some.

Sec. 6243. When and how clerks to make out docket of c at law; how docket called and cases disposed of.—Befo term of any court designated for the trial of civil cases juries are required, the clerk of said court shall make out of the following cases at law pending, to-wit:

First. Actions or motions in which the Commonwealth ested.

Second. Actions of forcible or unlawful entry and de

Third. Other motions and actions in the order in whic tices of the motions were filed, or in which the proceeding in the actions were terminated, docketing together as n those not on the docket at the previous term: and the cle Circuit Court of the city of Richmond and of each city co than corporation courts having general common law juris civil cases, shall also put on the docket with said new case as matured, and in the order in which they are matured, matured during the term of the said court. The clerk sh the control of the court, set the cases to certain days, and et shall be called and the cases on it tried or disposed o term in that order, except that the court may, for good ca up any case out of term. (Code 1887, § 3378.)

Revisors' Note.—General language is used in this section all proper courts, and the section relates to civil cases at Criminal cases are provided for by the following section, whi is new and requires a separate docket to be kept of those ca preference given to actions of forcible or unlawful entry and d in conformity with section 5446.

In debt on bond, if common order and common order have been regularly entered at rules, cause is properly on office docket at next term of court, though no indorsement of the p has been made on the papers in the suit. Wall v. Atwell, 21

Digitized by Google

Where common order is confirmed on first day of term, it is improper to place cause on docket for that term. White v. Archer, 2 Va. Cas. 201.

Cited in Hanks v. Lyons, 92 Va. 30, 22 S. E. 813; Furst v. Banks, 101 Va. 208, 43 S. E. 360.

See Burks' Pleading and Practice, pp. 166, 167, 258, 577.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 131, section 1.

Sec. 6244. Clerks shall make out criminal docket.—Before every term of any court in which criminal cases are to be tried, the clerk of said court shall make out a separate docket of criminal cases then pending, in the following order, numbering the same:

First. Felony cases.

Second. Misdemeanor cases.

He shall docket all felony cases in the order in which the indictments are found, and all misdemeanor cases in the order in which the presentments or indictments are found or informations are filed, or appeals are allowed by magistrates, and as soon as any presentments or indictments are made at a term of court, he shall forthwith docket the same in the order required above.

All criminal cases shall be disposed of before civil cases, unless the court, by an order entered of record, shall direct otherwise.

Revisors' Note.—See revisors' note to the preceding section.

Sec. 6245. When and how docket of chancery cases; how cases called and disposed of.—Before every term of a circuit or corporation court, and of the Chancery Court of the city of Richmond, the clerk of each of said courts shall make out a separate docket of chancery causes in which there are motions, and of other chancery causes which have been set for hearing as to any party, or which the court is to hear upon a plea or demurrer; and the clerk of the Circuit Court of the city of Richmond, the clerk of the Court of Law and Chancery of the city of Norfolk, the clerk of the Court of Law and Chancery of the city of Roanoke, the clerk of the Chancery Court of the city of Richmond, the clerk of the Law and Equity Court of the city of Richmond, the clerk of the Circuit Court of Henrico county, and the clerk of the Circuit Court of the City of Norfolk, shall also put upon their respective chancery dockets, as soon as matured at rules, and in the order in which they are matured, all chancery causes and motions matured during the respective terms of said courts.

Every cause on the docket shall be called and disposed of during the term. (Code 1887, § 3379; 1893-4, p. 785; 1908, p. 541.)

Revisors' Note.—The provisions applying to the clerks of the courts of law and chancery of the cities of Norfolk and Roanoke are new.

Sec. 6246. Trial of issue out of chancery.—Any court in which a chancery case is pending may direct an issue to be tried in such court or in any circuit or corporation court, and the court shall have the discretion to direct such an issue to be tried before any

Digitized by Google

proof has been taken by either the plaintiff or defendan
be shown by affidavit or affidavits after reasonable noti
case will be rendered doubtful by the conflicting evide
opposing party. (Code 1887, § 3381; 1897-8, p. 942.)

Pre-existing rule—Section largely declaratory.—This s
to be merely declaratory of the previously existing rule, exc
proof required for the submission of an issue out of chancer
permitted to be made by affidavit. Stevens v. Duckett, 107
S. E. 601.

When issue should be ordered.—Where the evidence in
suit involves not only the credibility of witnesses, but th
forgery and perjury on the part of some of them, it is pecul
for a jury, and the chancellor should, of his own motion, or
out of chancery. Failure to do so is reversible error. Sh
Shoemaker, 112 Va. 798, 72 S. E. 684.

May be awarded to ascertain damages.—Where court
decrees specific performance of a contract it may, as ancil
main relief, direct an issue "quantum damnificatus," to be
bar, to ascertain damages to which plaintiff is entitled. Nagl
22 Grat. 814.

When issue should not be ordered.—The mere affidavit
and counsel that the case will be rendered doubtful by con
dence is not sufficient to warrant a chancellor in orderin
Stevens v. Ducket, 107 Va. 17, 57 S. E. 601.

Proceedings on trial of issue.—On trial of issue out
the rule of evidence is the same as on hearing in cha
Powell v. Manson, 22 Grat. 177.

When an issue in chancery is tried, it is under superin
the court, who will prevent the introduction of improper tes
if the verdict be against the evidence the court will so
chancellor may set verdict aside. Plesants v. Ross, 1 Wash.
Dec. 449; Southall v. McKeand, Id. 336.

Where an issue in chancery is directed, any papers n
upon such issue which were read upon the hearing of the
former trial. McCall v. Graham, 1 Hen. & M. 13.

Finality of verdict.—In a case proper for an issue. ver
clusive where evidence is conflicting. Carter v. Campbell,

Where an issue is directed in chancery cause, and verd
to which no exception is taken, and a decree is rendered
facts found in verdict must be regarded in the appellate c
established facts in the case. Lee's Ex'r v. Boak, 11 Grat.

Generally.—The following cases while bearing genera
subject of the statute, do not construe it. Hartman v. Stric
228; Snouffer's Adm'r v. Hansbrough, 79 Va. 166; Steptoe
Adm'r, 31 Grat. 323; McRae's Ex'rs v. Woods' Ex'r, 1 Hen.
Watkins v. Carlton, 10 Leigh 560; Grisby v. Weaver, 5
Wilson v. Rucker, 1 Call 500; Lavell v. Gold's Adm'r, 25 Gra

The following cases illustrate the law as it stood (prev
statute as above amended) with reference to the propriety or
of directing issues. Loftus v. Maloney, 89 Va. 576, 16 S. E.
son v. Allen, 85 Va. 721, 8 S. E. 835; Carter v. Carter, 8
Keagy v. Trout, 85 Va. 390, 7 S. E. 329; Beverley v. Walde
147; Smith's Adm'r v. Betty, 11 Grat. 752; Crebs v. Jones,
Hord's Adm'r v. Colbert, 28 Grat. 49; Reed v. Cline's Heirs,
Samuel v. Marshall, 3 Leigh 567; Rowton v. Rowton, 1 Hen
Stannard v. Graves, 2 Call 369; Isler v. Grove, 8 Grat. 25
Adm'r v. Armstrong, 5 Grat. 354; Pryor v. Adams, 1 Call
Dec. 533; Cocke v. Upshaw, 6 Munf. 464; Galt v. Carter, Id.
v. Marquess, 4 Call 416, 2 Am. Dec. 570.

See note on "Issue Out of Chancery," Va. Rep. Anno.
Gold's Adm'r, 25 Grat. 473.

Digitized by Google

For W. Va. decisions on similar statute, see Justis' Annotations, hapter 131, section 4.

See Gregory's Forms No. 340.

Sec. 6247. Trial of issues, or inquiry of damages, by jury in other ases; province of court at trial.—The circuit court of any county nd the circuit, corporation or other court of any corporation may, n any other case before it, have an issue tried or an inquiry of amages made, by a jury, and determine all questions concerning he legality of evidence and other matters of law which may arise. Code 1887, § 3382; 1902-3-4, p. 642.)

An issue of devisavit vel non is not made a common-law proceed-ng because allowed by statute, any more than any other issue, under ections 4, 5, chapter 173, Code 1873 (corresponding to sections 6246 nd 6247). Hartman v. Strickler, 82 Va. 225.

See notes under section 6246.

Discussed, 5 Va. Law J. 279.

For W. Va. decisions on similar statute, see Justis' Annotations, hapter 131, section 5.

See Gregory's Forms No. 340.

Sec. 6248. Removal of cloud on title; nature of plaintiff's title.—Where a bill in equity is filed to remove a cloud on the title to eal estate, relief shall not be denied the complainant because he as only an equitable title thereto, and is out of possession, but the ourt shall grant to the complainant such relief as he would be ntitled to if he held the legal title and was in posesssion. If an ssue of fact be raised which but for this section would entitle ither party to a trial by jury, the court shall, upon the request f the party so entitled, order such issue to be tried by a jury at ts bar, and the verdict of the jury shall have the like effect as if t had been rendered in an action at law. (1912, p. 76.)

Revisors' Note.—This section is based on the third and fourth aragraphs of the act cited amending section 3058 of the Code of 1887 s theretofore amended. For the residue of that act, see section 5890.

For a case in which the court retained jurisdiction of a suit, in form o quiet title by a plaintiff claiming to be in possession of the land in ispute, but in fact a suit to try title and recover possession from an dverse claimant in possession, see Roller v. Armentrout, 118 Va. 173, 6 S. E. 906.

Under the act from which this section is taken it was held that a erson who has neither the complete legal and equitable title to land or the actual possession thereof may implead the unknown heirs and laimants under former owners who are also out of possession, and who ave long ago abandoned the land, to quiet his title, and remove a cloud herefrom. Buchanan Co. v. Smith, 115 Va. 704, 80 S. E. 794.

Bona fide claimants in adverse possession of a portion of land are ecessary parties to a suit under this section. Buchanan Co. v. Smith, 15 Va. 704, 86 S. E. 906.

Cited (as Acts 1912, p. 76) but not construed in Ely v. Johnson, 14 Va. 31, 75 S. E. 748.

Sec. 6249. When case, in which there is to be inquiry of damages, nay be disposed of; when court to make the inquiry.—At the next erm after an order at the rules for an inquiry of damages, or if the ase be one in which the order is made and the case matured and docketed under the provisions of section sixty-two hundred and

Digitized by Google

forty-three during term of the said court, then at the
such order may be executed and final judgment be rend
upon, unless good cause be shown for a continuance. Th
neither party require a jury, shall ascertain the damag
what sum and from what time interest shall be computed
judgment for such damages and interest. (Code 1887, §

In an action on the case, if there be an office judgm
defendant, with a writ of inquiry, and afterwards, without a
jury be sworn as though there were an issue, and verdict b
defendant, verdict will be set aside and new trial awarded.
v. Dobbins, 9 Leigh 422. See section 6331.

Under this section court cannot render judgment by def
writ of inquiry has been awarded at rules. Commercial U
Co. v. Everhart's Adm'r, 88 Va. 952, 14 S. E. 836.

Continuances.—The following cases discuss the questi
tinuances, and under what circumstances the court will or wi
them. The decisions in all of them are based upon questions
do not construe the statute, for which reason they are not di
These general principles, deduced from them, are given for c
(1) The motion for a continuance is always addressed to the
cretion of the court, and while the exercise of that discretion is
on appeal it will not be affected except for plain error; (2
asking continuance must be without default, and have exhaust
means of preparing for trial; and (3) matters on account of
tinuance is sought must be of sufficient importance as to
fluence result of trial. Keesee v. Border Grange Bank, 7
Hewitt v. Com., 17 Grat. 627; Norfolk & W. R. Co. v. Shott,
22 S. E. 811; Harman v. Howe, 27 Grat. 676; Clinch River
v. Harrison, 91 Va. 122, 21 S. E. 660; Goodell's Ex'rs v
Va. 608, 22 S. E. 504; Carter v. Wharton, 82 Va. 264; Bla
Case, 33 Grat. 443; Mister's Case, 79 Va. 5; Shelton's Case,
16 S. E. 355; Walton's Case, 32 Grat. 855; Roussell's Case, 2

For W. Va. decisions on similar statute, see Justis'
chapter 131, sections 6, 7.

**Sec. 6250. Remedy, when at trial variance appears b
dence and allegations or recitals.**—If, at the trial of an
motion, there appears to be a variance between the ev
allegations or recitals, the court, if it consider that subs
tice will be promoted and that the opposite party canno
diced thereby, may allow the pleadings to be amended, on
as to the payment of costs or postponement of the trial,
it may deem reasonable. Or, instead of the pleadings be
ed, the court may direct the jury to find the facts, and,
finding, if it consider the variance such as could not have
the opposite party, shall give judgment according to t
the case. (Code 1887, § 3384.)

**Revisors' Note.—The words "or motion" found in lines
of the text are new. This insertion simply makes statutory
in McKee v. Bunting, McNeal Co., 114 Va. 639, 77 S. E. 515**

Section remedial.—This section is remedial, and sho
strued liberally. Langhorne v. Richmond City Ry. Co.,
22 S. E. 357; McKee v. Bunting, McNeal Co., 114 Va. 639, 7
Standard Paint Co. v. Vietor, 120 Va. 595, 91 S. E. 752.
motions as well as jury trials. Carter v. Grant's Adm'x, 3
McKee v. Bunting, McNeal Co., 114 Va. 639, 77 S. E. 515.
note above.

Digitized by Google

How question of variance raised.—In case of variance the proper ctice is to object to the evidence when offered, or move to exclude it, attention of the court being thereby called to the variance, and an portunity afforded to meet the emergency under this section. Portsuth St. R. Co. v. Peed's Adm'r, 102 Va. 662, 47 S. E. 850.

Raising question in appellate court.—A variance between evidence l allegation, which might have been cured under this section, cannot taken advantage of for first time in appellate court. Bertha Zinc Co. Martin's Adm'r, 93 Va. 791, 22 S. E. 869; Va. S. W. R. Co. v. Bailey, 3 Va. 205, 227, 49 S. E. 33.

Where no objection was made to the admissibility of evidence and motion was made to exclude on account of a supposed variance, the lection must be considered on appeal as waived. Newport News & P. Ry. & Electric Co. v. McCormick, 106 Va. 517, 56 S. E. 281.

If a defendant in the trial court fails to avail himself of the remedy ovided by this section, or to give the plaintiff or the court the opporiity to invoke it, he cannot, in the appellate court, take advantage of irregularity which the statute would have cured. Conrad v. Ellisonrvey Co., 120 Va. 458, 91 S. E. 763.

If a plaintiff declares on the common counts in assumpsit only when should have declared specially upon the contract sued on and its each, this section furnishes the defendant a remedy, and it is too late raise the question for the first time in the appellate court. Conrad v lison-Harvey Co., 120 Va. 458, 91 S. E. 763.

Amendments.—Under this section court may at trial, in case of riance between declaration and evidence, allow former to be amended thout remanding case to rules. Alexandria & F. R. Co. v. Herndon, Va. 193, 12 S. E. 289. But, if defendant requests it, jury should be charged, defendant allowed to amend plea, or plead anew, and cause continued. Tabb v. Gregory, 4 Call 225.

After mistrial, and before retrial, court may permit declaration to amended. Jude v. Syme, 3 Call 522.

Defendant may have leave to file additional set-offs when it will not lay plaintiffs, and is essential to substantial justice, and if the plaintiff tains leave to amend his declaration, as defendant is entitled to conuance, there can be no objection to filing account on ground of delay. rkins' Adm'r v. Hawkins' Adm'x, 9 Grat. 649-653.

Under Code 1873, chapter 173, section 7 (same as this), where deration charges that slanderous words were uttered in the presence of ree persons named, and proof showed only two, the variance is imaterial, and declaration may be amended at trial. Harman v. Cundiff, Va. 239.

Upon an issue of nul tiel record the court may allow amendment of claration. Anderson v. Dudley, 5 Call 529.

Where, in action on insurance policy, declaration omits one conion indorsed upon it, and on the trial, when policy is offered in evince, it is objected to for variance, the court may permit declaration be amended by inserting the omitted condition, and proceed with trial. w York Life Ins. Co. v. Hendren, 24 Grat. 536. But see section 6094.

If a corporation is sued for a personal injury, and evidence of dndant tends to show that the injury was committed by another corration, the plaintiff upon request, under this section, should be allowed amend his declaration so as to charge that the two corporations were e same, and known by both names. Langhorne v. Richmond City Ry. ., 91 Va. 364, 22 S. E. 357.

An answer will be allowed to be amended in order to allow the dendant to plead the statute of frauds, or the statute of limitations. epperson v. Shepperson, 2 Grat. 502.

Declaration recited that contract sued on was under seal but copy ven in declaration did not show seal. When contract was introduced evidence it appeared that seal was affixed. Held, the plaintiff may end his declaration. Mathieson Alkali Wks. v. Mathieson, 150 Fed. 1.

Digitized by Google

The court, under this section, may permit the plaintiff, the evidence is all in, to amend his declaration, and its action is not reversible error in the absence of a demand by the de the imposition of terms or a continuance; an exception to th the court is not sufficient. Long Pole Lumber Co. v. Gro Court of Appeals, Fourth Circuit), 180 Fed. 5, 16 Va. Law R

The reason for amending is to admit new evidence w have been theretofore inadmissible. This statute is remedial be liberally construed. Norfolk & W. R. Co. v. Perdue, 1 83 S. E. 1058.

Where there is a variance between the evidence and the it is in conformity with this section to allow the pleadings to and to continue the case, and the practice is to be commende tive of substantial justice. Ches. & O. R. Co. v. Swartz, 1 80 S. E. 568.

If a court is unable to give judgment in a case because o between the plaintiff's pleadings and his evidence, it ought plaintiff leave to amend his pleadings in accordance with th of this section. McKee v. Bunting, McNeal Co., 114 Va. 639, 7

In an action by a vendee against a vendor for fraud an warranty in the sale of personal property, the dates of the s were each alleged in the declaration under a videlicet. Th knew the precise dates of each sale, and after one of its wi supplied those dates, the trial court permitted each count in tion to be amended by the insertion of the precise dates whi been proved by the vendor's witnesses. While of opinio amendments were not material, the court said that even if they were fully authorizd by this section and by what is 6104 of the Code. Standard Paint Co. v. Vietor, 120 Va. E. 752.

Such amendments as are mentioned in the preceding pa not add new, separate and distinct causes of action to each o in the original declaration, and are within the rule laid do River Mineral Co. v. Painter, 100 Va. 507, 42 S. E. 300, he objectionable on this ground. Standard Paint Co. v. Viet 595, 91 S. E. 752.

What variance not material.—Where notice of motion to R., late sheriff, and his surviving sureties, by name, survivo selves and James Sims, and on trial the bond is introduced R. and surviving sureties, but is objected to on ground that pe in notice, James Sims, signs as Jos. Sin, this is not a materi and is one that ought to have been cured by amendment und tion. Beasley v. Robinson, 24 Grat. 325.

Where record of one case is used as basis for another variance between such records and the declaration, which wo vent the record in the present case from being a bar to and for the same cause, are not sufficient to exclude it. Forbes 75 Va. 168.

Generally.—Cited but not construed, Norfolk & P. Tra Daily, 111 Va. 665, 69 S. E. 963; Norfolk & W. R. Co. v. W Va. 801, 86 S. E. 103.

See Burks' Pleading and Practice, pp. 170, 467, 493, 587, 1014; Gregory's Forms No. 294; note to 2 Va. Law R

See notes to section 6104.

Discussed, 14 Va. Law J. 21; 8 Va. Law J. 65.

As to amendment before appearance and of bill in va section 6095.

For W. Va. decisions on similar statute, see Justis' A chapter 131, section 8.

Sec. 6251. When final judgment to be entered after aside; no extension of power over verdicts; after-disco

Digitized by Google

nce.—When the verdict of a jury in a civil action is set aside by trial court upon the ground that it is contrary to the evidence, or ithout evidence to support it, a new trial shall not be granted if ere is sufficient evidence before the court to enable it to decide e case upon its merits, but such final judgment shall be entered to the court shall seem right and proper. If necessary to assess mages, which have not been assessed, the court may empanel a ry at its bar to make such assessment, and then enter such final dgment. Nothing in this section contained shall be construed to ve to trial courts any greater power over verdicts than they w have under existing rules of procedure, nor to impair the right move for a new trial on the ground of after-discovered evidence.

Revisors' Note.—This section is new, and is intended to apply to all il actions and, of course, to motions under section 6046, as these have en held to be actions. The object is to end the action at once and put e losing party to his writ of error, thus avoiding the temptation to per- ry and in many cases the unnecessary expense of a second trial.

The further effect of the section is that it will probably be used as substitute for a demurrer to the evidence. Instead of demurring to e evidence, the trial will proceed to verdict, and the losing party will ve to set aside the verdict because contrary to the evidence or without idence to support it; and if the court sustains the motion, it will enter dgment accordingly, and the party in whose favor the verdict was ndered will then apply for a writ of error. The verdict is not robbed any of the weight heretofore given to the verdict of a jury, but the dgment of the appellate court, instead of remanding the case for a new al, will be a final judgment, just as it was under the former law on demurrer to the evidence. The advantage of getting rid of the addi- nal trial seems to be manifest.

This section should be read in connection with section 6363.

Sec. 6252. Bills of exceptions.—In the trial of a case at law, in hich an appeal, writ of error or supersedeas lies to or from a higher urt, a party may except to any opinion of the court, and tender bill of exception, which, if the truth of the case be fairly stated erein, the judge shall sign, and it shall be a part of the record of e case. Any bill of exception may be tendered to the judge and gned by him, at any time before final judgment is entered, or ithin sixty days from the time at which such judgment is en- red, whether another term of the said court has intervened or ot; and any bill of exception so tendered to and signed by the dge, as aforesaid, either in term time or in vacation, shall be a art of the record of the case. The same rule shall apply when ses are heard or opinions are rendered in vacation, in which se the party excepting shall have sixty days from the day that ch opinion is rendered. This section shall apply to criminal ses as well as to civil cases. (Code 1887, § 3385; 1901, p. 186; 02-3-4, p. 864; 1914, p. 419; 1916, p. 722.)

Revisors' Note.—Section 3385 of the Code of 1887 was last amended an act approved March 21, 1916 (Acts 1916, p. 722). The General

Digitized by Google

Assembly at the same session also passed an act abolishing ceptions and prescribing certificates of exceptions in lieu the 1916, p. 708.) These acts were approved on the same da named act contained an emergency clause; the other contai clause. In Ellis v. Town of Covington, 94 S. E. 154, 15 Va. was held that "The emergency act was operative at once, an in force during the interval between its passage and the ti the act abolishing bills of exceptions took effect, when it was repealed." But the court further held that "The act abolis exception, now in force, was intended, however, to simplify th and is very liberal in its provisions as to what shall constitut certificate. * * * The mere form of the exception, the a formal bill of exception under the former practice will no consideration if the provisions of the act are substantially com This Code re-instates the formal bill of exception (section contains also in the main the substance of the act of 1916 on of the certificate (section 6253). The former is re-insta benefit of those practitioners who prefer not to depart from to which they are accustomed; the latter is preserved for t those who prefer that method. Objections to bills of excep the former practice, were based, not upon their form (such one of the most informal documents connected with the trial but generally upon their contents or time of filing. Section fixes a definite time within which the bill must be signed. observed that sixty days are given instead of thirty, as w formerly, but that the time may not be increased by consen record. It was thought that this period would be sufficient poses, and that by making it a fixed, definite, unchangeable ficulties formerly encountered would be obviated. It sho observed that the time for signing is made the same for bot bill of exception and for the certificate, thus preventing c tween the two as to the time of signing, and that the prov act prescribing certificates permitting, by consent, a longer that stated in the act, has been stricken out altogether. It that, by giving the practitioner his election between the two preserving exceptions, and by making the time for signing f and definite, and the same in both methods, the saving of in the trial courts has been made as simple and as safe fro ability of fatal defects as could be reasonably desired.

Office of bill.—It is the office of a bill of exceptions to specific and definite allegation of error, and as much of the is necessary to show error of ruling made by court, and if i so it avails nothing. Holleran v. Meisel, 91 Va. 143, 21 S. E

Nothing not made part of the record by bill of exceptio of court can be regarded as such by appellate court, and c clerk that judgment was based on certain papers is no par Roanoke Land & Improvement Co. v. Karn, 80 Va. 589.

An entry in the order book that defendant excepted t ruling of the court will not supply place of bill of exceptio Case, 90 Va. 360, 18 S. E. 440; Norfolk & W. R. Co. v. A Va. 10, 17 S. E. 757, 44 Am. St. Rep. 884; Fry v. Leslie, 12 S. E. 671; Ferguson's Adm'r v. Willis, 88 Va. 140, 13 S.

Form and contents.—A general bill of exceptions certif evidence, and noting at intervals that objection was made propounded, and objection overruled and exception taken, is n exception to ruling of court on such questions. In order to of exception on motion to admit or reject evidence, there n

Digitized by Google

xceptions clearly and distinctly pointing out each erroneous ruling plained of, and, while several exceptions may be saved by same yet each must set forth clearly and distinctly the ground of objection d on, so that there may be no confusion among them. Norfolk & t. Co. v. Shott, 92 Va. 34-46, 22 S. E. 811; Holleran v. Meisel, 91 43, 21 S. E. 658; Brown v. Hall, 85 Va. 146, 7 S. E. 182

Any evidence contained in any bill of exception may be considered certified in each. Section 6364.

Exception must state enough of evidence to show propriety or impriety of question asked to which objection is made and the answer itness thereto. Johnson's Ex'x v. Jennings' Adm'r, 10 Grat. 1, 60 Dec. 323; De Jarnette's Case, 75 Va. 867; Langhorne's Case, 76 1012; Stoneman's Case, 25 Grat. 887.

Where exception is to refusal of court to give instruction bill must ut enough of evidence to show its relevancy; but if court, instead erely refusing such instruction, gives another in lieu thereof, it is a onable inference that there was evidence as to matter of such in-ctions. Chapman v. Wilson, 1 Rob. 267; Fitzhugh's Ex'r v. Fitz-, 11 Grat. 300, 62 Am. Dec. 653; Carpenter v. Utz, 4 Grat. 270; ey Mut. Life Ass'n v. Teewalt, 79 Va. 421.

The evidence is not a part of the record unless made so by a proper of exceptions. It is not a bill of exception and fails of its purpose ss it is authenticated by the signature of the judge presiding at the . Colby v. Reams, 109 Va. 308, 63 S. E. 1009.

Where a bill of exception does not contain any evidence in support n objection to evidence made in the trial court, the objection will be considered in the appellate court. Ramsay v. Harrison, 119 Va. 89 S. E. 977.

A bill of exception to a ruling on the admissibility of evidence is sufficient, although it gives the question and the answer, unless it contains sufficient of the evidence which has preceded to give the t a clear apprehension of the propriety or impropriety of the trial t's ruling. Jacobs v. Warthen, 115 Va. 571, 80 S. E. 113; Wash. & . Ry. Co. v. Ward, 119 Va. 334, 89 S. E. 140.

A bill of exception to the action of the court in refusing to allow a ess to answer a question is not sufficient when it does not show at t stage of the examination the question was asked, nor contain enough he evidence to enable the court to obtain a clear understanding of propriety or impropriety of the ruling of the court. Powers v. ilton, 117 Va. 810, 86 S. E. 98.

A bill of exception to the ruling of the court, refusing to permit a ess to answer a question, must show what answer was expected of witness. The same rule applies to questions on cross-examination o questions in chief. Holladay v. Moore, 115 Va. 66, 78 S. E. 551.

If the bill of exception to the action of the court in excluding an-rs to questions does not disclose what the answers would have been, ils to disclose any prejudice to the exceptor. Bowman v. First Nat. k, 115 Va. 463, 80 S. E. 95.

Time of signing.—See revisors' note above. Formerly, the time n by the statute then in force could be extended by consent entered ecord. See in this connection Moore v. Harrison, 114 Va. 424, 76 E. 920; Wright's Case, 111 Va. 873, 69 S. E. 956; Battershall v. erts, 107 Va. 269, 58 S. E. 588.

Under this section, as it formerly read, a bill of exceptions could be signed more than thirty days after the adjournment of the court, ept by consent of the parties entered of record, and an error in the er stating that the defendant, instead of the plaintiff, excepted, could be cured by a nunc pro tunc order made after the expiration of the ty days. Ratliff v. Meadows, 116 Va. 975, 83 S. E. 395.

Under the former law it was held that after the expiration of more n thirty days from the adjournment of the term of a court at which inal judgment was entered, the judge was without jurisdiction to

Digitized by Google

enter a consent order extending the time for signing a bill
Lancaster v. Stokes, 119 Va. 149, 89 S. E. 85.

The former section gave the court power to retain t
the purpose of signing bill of exception, during the vacation
following the term at which the opinion excepted to was ann
for thirty days after the adjournment of such term, if the va
last so long; but the beginning of the new term, although
days, put an end to the court's jurisdiction for that purpose
not afterwards be resumed. Hoover v. Saunders, 104 Va. 7
657, 11 Va. Law Reg. 1001, and note.

Formerly bills of exception were parts of the record
in vacation within thirty days after the end of the term a
judgment was rendered, though they were to opinions of t
nounced neither at the term during which the bills were
within thirty days after the end of such term. Manchester
& Loan Assn. v. Porter, 106 Va. 528, 56 S. E. 337.

Under the law as it existed formerly, bills of exceptio
at the term or in vacation within thirty days thereafter, or
at which the parties by consent entered of record at same
that they should be signed but signed at a subsequent term,
considered. Midget's Case, 107 Va. 846, 59 S. E. 606.

Under the law as it formerly stood, correct practi
that a bill of exception, not signed during the term at whi
complained of was announced, should show that it was s
thirty days after the end of the term or at such other time
by consent entered of record may have agreed upon, but whe
certificate was dated within thirty days of a day on whic
showed the court was in session, it was held sufficient. Bu
v. Hickman, 108 Va. 665, 62 S. E. 804.

Where the judge left the bench without any order for
ment, and without again holding the court for that term, or
do so, until a day after the beginning of the next term, the
which he so left the bench was, under the former law, t
end of that term for the purpose of signing bills of ex
Beach D. Co. v. Murray, 113 Va. 692, 75 S. E. 81.

Where judgment was rendered on July 6, 1909, and
exceptions were signed on July 31, 1909, they were signed
time. Williams' Case, 111 Va. 870, 69 S. E. 1031.

Duty of court—Bills tendered in time.—When a bill
is tendered which does not fairly state the truth of the c
duty of the judge, with aid of counsel, to alter the bill. Pa
30 Grat. 415-427.

Mandamus lies to compel judge to sign bill of except
truth of the case is fairly stated therein. Page v. Clopton,
But refusal to sign a bill of exceptions when record does
appellant excepted at trial cannot be maintained as erro
v. Karn, 87 Va. 242, 12 S. E. 404.

If tendered in time but not signed, the signature may
by mandamus after the expiration of the time prescribe
tendering such bills. Conaway v. Commonwealth, 118 Va.
75; Lancaster v. Stokes, 119 Va. 149, 89 S. E. 85.

Proper bills of exception tendered to the judge wit
prescribed by law are valid though not signed by him unt
tion of such time, or if he die, though signed by his succ
after the expiration of such time. Conaway v. Commonwe
792, 88 S. E. 75; Anderson v. Com., 105 Va. 533, 54 S. E. 3

If a trial judge dies or becomes permanently incapacit
reason of sickness pending a motion to set aside a verdict
that it is contrary to the evidence, his successor or the ju
to hold his court, has jurisdiction to hear and determine
and to sign a proper bill of exception to his ruling thereon
Evans, 114 Va. 461, 76 S. E. 929. See Coke v. Gordon
Va. L. Reg. 166.

Digitized by Google

Where a proper bill of exception was tendered to the judge for his nature within the time prescribed by law, but was not signed until e expiration of such time, it will be held to be a part of the record, the exceptor has done everything required of him by law to perfect bill. Lancaster v. Stokes, 119 Va. 149, 89 S. E. 85.

The duty of the judge with respect to signing bills of exception is risdictional, and the time within which it should be exercised is easured by the statute. Lancaster v. Stokes, 119 Va. 149, 89 S. E. 85.

A judge has no right to defer signing bills of exception which have en tendered in due time until after the statutory limitation has ex-ed, and thereby to deprive a litigant of the privilege of having his ls of exception made parts of the record. The judge should settle estions of dispute between counsel with regard to the evidence; and "cannot require counsel to agree upon a statement of the evidence a condition precedent, nor plead lack of time or memory as justifica-n * * * of refusal to certify the same." Lancaster v. Stokes, 9 Va. 149, 89 S. E. 85.

After discovered evidence.—Bill of exceptions to refusal of new trial after-discovered evidence must show not only newly discovered evi-nce, but must set forth evidence given or facts proved on former trial. llaghan v. Kippers, 7 Leigh 608.

Rules in appellate court.—Where bill of exceptions to action of urt overruling a motion for a new trial, on ground that verdict is con-ry to law and evidence, states neither evidence nor facts, nor refers another bill of exceptions in which the facts or evidence is shown, pellate court cannot review the judgment. Washington & N. O. Tel. . v. Hobson, 15 Grat. 122.

Bill of exceptions, not properly signed, will not be considered. rdon v. Brown's Ex'r, 3 Hen. & M. 219.

Allegations contained in bill of exceptions as to what passed at al, if no proof thereof appears in record, are not presumed to be ad-tted to be true by courts signing and sealing it. Ford v. Gardner, 1 n. & M. 72.

Where bill of exceptions to refusal of new trial does not show that ception was to damages given by jury as excessive, the objection can-t be made in appellate court. Law v. Law, 2 Grat. 366.

Appellate court will not consider matters arising on bills of excep-n not presented to court below. Newsum v. Newsum, 1 Leigh 86, Am. Dec. 739.

Exceptions of every kind must be taken in the trial court. They nnot be taken for the first time in the appellate court. Norfolk & Co. v. Norfolk, 115 Va. 169, 78 S. E. 545.

A plea that is stricken out by the trial court is not a subject of view by the appellate court unless it is made a part of the record a bill of exception. It is not sufficient to except to the order striking t the plea. Leary v. Briggs, 114 Va. 411, 76 S. E. 907.

Bills of exception in a completed form are required to be authen-ated by the signature of the presiding judge and the record should show ch authentication. The signature of the judge to a skeleton bill—a ll not containing the evidence, but referring to unidentified papers as ntaining it—leaves the bill incomplete, and is not such authentication the law requires. The stenographer's report of the evidence and other pers intended to be made part of a bill of exception by reference must so articulated as to form but one paper, or in some way earmarked identified by the judge who signs the bill, and the record must show Thornton's Case, 113 Va. 736, 73 S. E. 481.

The provisions of this section in reference to filing bills of exception e mandatory and unless the record shows affirmatively that the bills exception are signed in compliance therewith, they are not part of e record. Standard Peanut Co. v. Wilson, 110 Va. 650, 66 S. E. 772.

While the statute declares that as soon as the bill of exceptions is gned by the judge it "shall be a part of the record of the case," still it

Digitized by Google

must appear from the record itself when the bill of exceptio and thereby made a part of the record. That fact cann to appear by parol evidence. Neither parol evidence, nor long practice in a particular court, nor any statement by t avail to add to or take from the record as made under the s the trial judge. Standard Peanut Co. v. Wilson, 110 Va. E. 772.

In case of conflict between a stenographer's notes t trial and the statements in a bill of exception, the latter upon the appellate court. Va. Ry. & P. Co. v. Davidson, 89 S. E. 229.

The rule that facts in one bill of exceptions cannot be r appellate court in considering another bill unless the one other cannot apply to a case where the bill of exceptions c the evidence to which reference is made is taken after all is introduced and the trial is over. Moore v. City of Richm 538, 8 S. E. 387.

If no bill of exceptions to ruling of court refusing to set because excessive, objection cannot be raised in appellate D. R. R. Co. v. George, 88 Va. 223, 13 S. E. 429.

In an appealable case a party has a right to a bill which fairly states the truth of the case, and if necessary, same by mandamus. But if he elects to accept bill as sign its correctness cannot be questioned in appellate court. George, 102 Va. 509, 10 Va. Law Reg. 27, 34 and note, 4

Time at which exceptions must be taken.—Unless it a record that points excepted to were saved before the jury will not be considered on appeal, but bill of exceptions signed at that time. Powell v. Tarry's Adm'r, 77 Va. 2 Bank v. Waddill's Adm'r, 31 Grat. 469.

Where record shows that exceptions were taken during trial, but no formal bills are filed to any ruling, it will that all points saved during progress of trial have been aban v. Leslie, 87 Va. 269, 12 S. E. 671; Trumbo's Adm'r v. Ci Co., 89 Va. 780, 17 S. E. 124; Peery's Adm'r v. Peery, 2 Whalen's Case, 90 Va. 544, 19 S. E. 182.

Evidence set out in one bill of exception may be looke sidering another. Spencer v. Pilcher, 10 Leigh 490; Perki Hawkins' Adm'x, 9 Grat. 649-659.

Exception to particular evidence is not waived by dem dence. Dishazer v. Maitland, 12 Leigh 524. Nor can a bill be treated as demurrer to evidence. Wroe v. Washington, 362.

Vague and uncertain bills.—It was formerly decided th of exception does not state all evidence given on issue, an is given to jury that if they believe certain facts they n plaintiff, judgment will be reversed on ground that facts perfectly stated for court to decide whether or not the i correct. McVeigh v. Allen, 29 Grat. 588. And where bill is so vague and imperfect that the court cannot ascertain e case, nor the import and effect of instructions, appellate cour judgment. Bowyer v. Chestnut, 4 Leigh 1. And where a tions states case imperfectly, the cause ought to be rem new trial. Brooke v. Young, 3 Rand. 106. But these rule changed by Harman v. City of Lynchburg, 33 Grat. 37; Wri 81 Va. 777, and Joslyn v. State Bank of Hartford, 86 Va. 287.

When bill of exceptions unnecessary.—It is not neces bill of exceptions to action of court overruling motion f (Central Land Co. v. Obenchain, 92 Va. 130, 22 S. E. 876) must show that motion was made and overruled and excep berry v. Williams, 89 Va. 298, 15 S. E. 865).

Generally.—The amendment of 1916 to this section w in its operation. Canter v. Com., 118 Va., 800, 88 S. E.

Digitized by Google

Cited but not construed in Yellow P. Co. v. Thompson, 108 Va. 612, 2 S. E. 358; 14 Va. Law Reg. 493.

For discussion of the effect of death of judge in a Federal court, ending a motion for new trial, see 19 Va. L. Reg. 75.

As to failure of judge to sign bill of exceptions within required time ue to his absence from the State, see Lengelson v. McGregor (Ind.), 10 a. Law Reg. 19, 23, and note.

See generally on this section notes to Page v. Clopton, 30 Grat. 416, a. Rep. Anno.; note to Johnson's Ex'x v. Jennings' Adm'r, 10 Grat. 1, a. Rep. Anno.; Stoneman v. Com., 25 Grat. 887, Va. Rep. Anno., for onographic note. See Burks' Pleading and Practice, pp. 519, 523; note Anderson's Case, 8 Va. Law Reg. 660.

For W. Va. decisions on similar statute, see Justis' Annotations, apter 131, section 9.

See Gregory's Forms Nos. 294, 295.

See notes to section 4929.

Sec. 6253. Certificate in lieu of bill of exception.—

(a) *What may be certified, and how.*—In lieu of the bill of exception provided by the preceding section, it shall be sufficient hat, by a note thereto appended or thereon endorsed, in case of he denial by the trial court of any instruction to the jury, the rial judge shall certify that such instruction was requested by ny party and denied by the court, and that the party requesting he same excepted; in case of any instruction granted by the court, hat any party excepted thereto; in case of any question propounded to a witness, that said question was allowed or disallowed, according to the fact, and that any party excepted; and shall further certify briefly, where such question is disallowed, the nswer which such question would have elicited, if at the time that bjection was made to the question by a party excepting there-, the tenor of the answer was ascertained by the court, the name the witness to whom the question was propounded, the party whom such witness was introduced, and at what stage of the xamination, whether upon direct, cross, re-direct examination, cetera, as the case may be, the question was propounded; in case the granting or over-ruling of a motion for a new trial, that ny party excepted; in case of an exception by any party to any her action, ruling, order or judgment, of any trial court, or of ny other matter arising in the course of the trial or hearing of cause, it shall be sufficient, instead of a bill of exception, that he trial judge shall certify that any party excepted to such acon, ruling, order, judgment or matter.

(b) *Certificate of evidence or facts.*—It shall be sufficient for all he purposes of a review by any appellate court of any action, ruling, order, judgment, or matter, arising in the course of the trial hearing of a cause, that the trial judge shall certify the evidence introduced at the trial or hearing of such cause when a consideration of the evidence may be necessary, in order to a decision pon an appeal of any question involved in such review; but nothing in this section shall be construed to preclude the trial judge

Digitized by Google

from certifying, in lieu of the evidence, the facts pro
trial or hearing of the cause.

(c) *Forms of the respective certificates.*—The forms
spective certificates hereinabove provided for shall be
ly as follows:

"The foregoing instruction was granted at the req
plaintiff (or defendant) and the defendant (or plainti
ed. Teste: this ..... day of .....
....., Judge."

"The foregoing instruction requested by the plaint
fendant) was denied, and the plaintiff (or defendant
Teste: this ..... day of ..... 19....,
Judge."

"To the foregoing question propounded to .....
witness for the plaintiff (or defendant) upon direct,
direct examination, et cetera, by the plaintiff (or defe
notwithstanding the defendant's (or plaintiff's) obj
lowed by the court, the defendant (or plaintiff) except
this ..... day of ..... 19.....
....., Judge."

"The foregoing question propounded to .....
witness for the plaintiff (or defendant), upon direct,
direct examination, et cetera, by the plaintiff (or defe
on objection by the defendant (or plaintiff), was dis
the court, and the plaintiff (or defendant) excepted;
to the question excepted by the plaintiff (or defe
..... Teste: this ..... day of ...
19....., ..., Judge."

"The following evidence on behalf of the plaintiff
defendant, respectively, as hereinafter denoted, is all th
that was introduced on the trial of this cause (here
dence). Teste: this ..... day of .....
....., Judge."

"The following instructions granted at the request of
iff and of the defendant, respectively, as hereinafter de
all the instructions that were granted on the trial of this
insert instructions). Teste: this ..... day of ..
19....., ..., Judge."

(d) *Effect if exceptions are certified in accordance wi
tion.*—In all cases to preserve of record to all the intent
poses any exception to any action, ruling, order or ju
the trial court, or any matter arising in the course of t
hearing of a cause, it shall be sufficient that the trial
the application of any party, shall certify the same s
substantially in accordance with the provisions of this s

(e) *What matters appellate court to consider; what*

Digitized by Google

to embody; transcript of record not to contain repetition.— e appellate court in reviewing, upon a writ of error or super- leas to a final judgment, or upon an appeal from a final decree, an inferior court in a cause, any question arising upon the re- rd in such cause, shall in every instance, wherever necessary to decision of such question, consider any exception, the evidence roduced on the trial or hearing of the cause, or any other mat- , preserved of record in such cause by the certificate of the trial dge as provided by this section; nor in the determination of any h question shall it be necessary to enable the appellate court to nsider any other exception, or the evidence introduced at the al or hearing of the cause, or any other matter preserved of ord in the cause, by the certificate of the trial judge as pro- ded by this section that there shall be any express reference in e certificate of the exception under which such question may se to the certificate of any other exception, of the evidence in- duced at the trial or hearing, or of any other matter, preserved record in the cause, as herein provided. No certificate by the al judge under the provisions of this section shall embody the me of the court or style of the cause, or be otherwise than as rein substantially provided; nor shall the clerk of any trial court making up a transcript of the record in the cause for any party r the purpose of praying a writ of error, supersedeas or an ap- al, after having once identified the cause by its proper style in e trial court, in the caption of such transcript, thereafter in such anscript, reproduce or repeat the style of such cause, except ere the style of such cause appears as a part of the matter pre- rved by a certificate of the trial judge, made under the pro- sions of this section.

(f) *When certificate may be signed.*—Any certificate to the in- nts and purposes of this section may be signed by the trial judge any time before final judgment is entered, or within sixty days m the time at which such judgment is entered, whether another rm of the said court has intervened or not. The same rule shall ply when cases are heard or opinions are rendered in vacation, which case the party excepting shall have sixty days from the y that such opinion is rendered. This section shall apply to iminal cases as well as to civil cases. (1916, p. 708.)

Revisors' Note.—See revisors' note to the preceding section.

Sec. 6254. To dispense with the necessity for a motion for a new ial in certain cases.—The failure to make a motion for a new ial in any case in which an appeal, writ of error, or supersedeas s to or from a higher court shall not be deemed a waiver of any jection made during the trial if such objection be properly made part of the record. (1897-8, p. 754.)

This act changes the rule laid down in Newberry v. Williams, 89 a. 298, 15 S. E. 865; Central Land Co. v. Obenchain, 92 Va. 130, 22

Digitized by Google

S. E. 876; Town of Bridgewater v. Allemong, 93 Va. 5
595; City of Norfolk v. Pollard, 94 Va. 279, 26 S. E. 832.
Va. Law Reg. 200.

See Burks' Pleading and Practice, pp. 518, 559, 764.

For W. Va. decisions on similar statute, see Justis'
chapter 131, section 9.

Sec. 6255. Argument before jury.—Not more than
shall argue in a civil case, on the same side, unless by
court. (Code 1887, § 3386.)

Discussed, 6 Va. Law J. 75.

For W. Va. decisions on similar statute, see Justis'
chapter 131, section 10.

Sec. 6256. When non-suit not allowed.—A party
allowed to suffer a non-suit, unless he do so before th
from the bar. (Code 1887, § 3387.)

A non-suit is not a final judgment, but the opposite.
the ending of the present suit without prejudice to the r
another. Mallory v. Taylor, 90 Va. 348, 18 S. E. 438;
Palmer, 134 Fed. 755.

A plaintiff where no counterclaim has been filed by d
take a non-suit at any stage of the case except after the
submitted to the jury and they have retired from the court
son v. Clemens, 112 Va. 371, 71 S. E. 538.

See section 6117.

For W. Va. decisions on similar statute, see Justis'
chapter 131, section 11.

Sec. 6257. What papers jury may carry out.—Pa
evidence, though not under seal, may be carried from
the jury. (Code 1887, § 3388.)

A deposition which has been read to the jury may b
them in their retirement, if what is objectionable in it has
Hansbrough v. Stinnett, 25 Grat. 495.

The plaintiff has no right under this section to deman
shown to a witness for the purpose of identifying the si
defendant thereto, but which were never introduced in e
be allowed to go to the jury for their inspection after the
the evidence and arguments. Wilson v. Wooldridge, 118
S. E. 872.

Applied in Johnson's Case, 102 Va. 927, 46 S. E. 78

For W. Va. decisions on similar statute, see Justis'
chapter 131, section 12.

Sec. 6258. When faulty count disregarded; when v
—When there are several counts in a declaration, one
which are faulty, the defendant may demur to the fau
counts, or move the court to instruct the jury to dis
If he does neither, and entire damages be found, jud
be entered against the defendant for the damages f
count be good, although others be faulty, unless th
plainly see that the verdict could not have been found
count. If he demurs to the faulty count, or moves
instruct the jury to disregard it, and his demurrer
overruled, and entire damages be found, and it canno
which count the verdict was founded, if the jury h
charged the verdict shall be set aside, but if it is n

Digitized by Google

ne verdict could not have been found on the bad count, the verict shall be allowed to stand. If the jury have not been disharged, the court shall send them back with instructions to desigate on which count of the declaration their verdict is found. Code 1887, § 3389.)

Revisors' Note.—The revised section contains some changes, the easons for which are too lengthy to be set out in full, but they may be ound discussed in Burks' Pl. & Pr., section 301, pp. 550-554. The orresponding section in criminal procedure is 4923.

See note bearing on this section, appended to C. & O. Ry. Co. v. Ielton, 110 Va. 728, 67 S. E. 346, 16 Va. Law Reg. 205.

See Burks' Pleading and Practice, pp. 548, 555, 766.

Sec. 6259. Verdict to fix period at which interest begins; if no eriod fixed, to be from date of verdict; judgment for interest where o jury; judgment to be for interest until payment.—In any action whether on contract or for tort, the jury may allow interest on the um found by the verdict, or any part thereof, and fix the period at which the interest shall commence. If a verdict be rendered which oes not allow interest, the sum thereby found shall bear interest rom its date, and judgment shall be entered accordingly. In any uit in equity, or in an action or motion founded on contract, where o jury is impaneled, decree or judgment may be rendered for interest on the principal sum recovered, until such decree or judgment be paid; and where there is a jury, which allows interest, the udgment shall, in like manner, be for such interest until payment. Code 1887, § 3390, 3391.)

Province of jury.—A declaration contained the common counts in ssumpsit and also a special count upon the contract, and the evidence vas such as to have made it possible for the jury to find for the plaintiff ither upon the special contract or upon the general assumpsit. In view f this fact, and of all the circumstances of the particular case, a peremptory instruction of the court to the jury that if they found for the laintiff they should allow interest from the time the plaintiff's demand ccrued under the terms of the contract, was held to be in conflict with his section and such an invasion of the province of the jury as to constitute reversible error, as the jury had the right, in their discretion to ix the date from which the interest should begin to run. Wash. & O. D. ty. v. Westinghouse Co., 120 Va. 620, 89 S. E. 131, 91 S. E. 646.

By an equally divided court it was held that an instruction which irected the jury that liability of defendant was amount of plaintiff's amages, "with interest from September 28, 1898," did not deprive jury f their right, under this section, to fix time at which interest begins, and vas not therefore reversible error. Kimball v. Borden, 97 Va. 486, 34 . E. 45.

Discretion under statute—Word "may."—This statute gives no discretion, in cases where interest is allowed, as to the rate or the time to which interest runs, where there is a lawful contract rate. Boswell v. Big Vein Pocahontas Coal Co., 217 Fed. 822. See an extended review of the Virginia authorities in this case.

Where there is by an express contract, a right on the part of the lebtor that the interest shall be at the rate of 5 per cent. until payment he word "may" in this section is equivalent to "shall" quoad the rate f interest and the time to which interest shall run. Boswell v. Big Vein Pocahontas Coal Co., 217 Fed. 822.

Method of computing.—Where payments are made from time to time

Digitized by Google

on debt bearing interest, the interest is to be computed on
date of payment, and the payment is to be deducted from
principal and interest. It is error to compute interest on
a future day when the debt is to be paid or settlement ma
credit the payment and interest upon the debt, principal
Fultz v. Davis, 26 Grat. 903. But this may be changed b
to credit payment on principal. Pindall's Ex'x v. Bank, 1

Upon a judgment in an action for tort pending when
went into effect, it is proper, where jury do not fix date w
shall begin, to charge it from the date of verdict. Lewi
13 Grat. 454.

Where verdict does not give interest, it is to be compute
of verdict. Fry v. Leslie, 87 Va. 269, 12 S. E. 671.

Judgment on contract held usurious as to part bears i
date of judgment for amount found to be due. King v. Bu
828.

Where bond for payment of money bears interest, unde
law, at rate higher than is allowed by present law, judgm
will bear interest at rate stipulated in bond. Cecil v. Hicks,
26 Am. Rep. 391; Strayer v. Long, 83 Va. 715, 3 S. E. 372.

Abatement of interest—War.—Where, during state of
tor resided within the territory of one of the belligerent pow
debtor within that of other of said powers, such debtor w
the rules of public law, be entitled to abatement of interest
the war lasted. Roberts' Adm'r v. Cocke, 28 Grat. 207.

Fiduciaries.—If upon first settlement by guardian of
a balance remain in his hands on which he is to account
such interest must in his second annual account be cited to h
other profits of his estate; and if the interest and profits cre
second account exceed the disbursements, the surplus, whet
from the interest aforesaid or from other profits, will constitu
against the guardian on which, if it remains in his hands,
count for interest, which interest must in the third annual
credited toward and so on toties quoties. Garrett v. Carr,

When executor unnecessarily sells slave and buys him
account for hire or slave, with interest from end of each ye
v. Depriest, 5 Grat. 6, 50 Am. Dec. 94.

A fiduciary whose duty it is to hire out slaves for bene
que trust will be held to account for interest on their estim
Cross' Curatrix v. Cross' Legatees, 4 Grat. 257. But interest
hire of slaves should be allowed only from date of decree, an
to allow interest from date of report ascertaining the amo
hire. Shields v. Anderson, 3 Leigh 729.

On unliquidated amounts.—Interest on unliquidated acc
not to be allowed. Kerr v. Love, 1 Wash. 172; Waggone
Adm'rs, 2 Hen. & M. 603; McConnico v. Curzen, 2 Call
Dec. 540.

It is proper to charge interest on hire of slaves actually r
not on amounts conjectured to be what such hire ought to b
Bland, 5 Munf. 492. But see note under title "Fiduciaries,"

As against Commonwealth.—A claim against Commonwe
sented to auditor, which claim is doubtful, and therefore the
allows it; and an appeal is taken from auditor to a court
which adjudges claim against Commonwealth. Held, interes
to be allowed. Quaere, ought interest ever to be allowe
against Commonwealth? Auditor of Public Accounts v.
Leigh 241.

Generally.—A commissioner's report shows a balance co
tirely of interest found due on an account never before settled
that such balance is to bear interest from a remote day; the
ception to the report, and the court decrees the balance, with
cordingly. Held, the decree was erroneous in giving interes

Digitized by Google

terest except from date of decree. Dunbar's Ex'rs v. Woodcock's x'r, 10 Leigh 629.

In debt on bond with collateral condition jury trying issue find e same for plaintiff, and assess his damages, and allow interest thereon, d then judgment is entered for damages so assessed, with interest, and sts, instead of being for penalty of bond and costs, to be discharged by e damages, interest and costs. Held, though judgment is not entered proper form, yet, the error in the form producing no injury to de- ndant, judgment will not be reversed. Wilson v. Spencer, 11 Leigh 1.

Where deed of marriage settlement settled rents and profits of cer- in property upon wife, but husband collected and used them, but made equent promises to pay them to wife, who after his death brings suit ainst husband's representatives, held, that she is entitled to decree for ch rents and profits, but not to interest thereon. Roper v. Wren, 6 igh 38.

Where one partner leases property for five years without knowledge co-partners, who, after his death, remove therefrom, they will be ble for rent for the term, but not for interest thereon. Kyle v. berts' Ex'r, 6 Leigh 495. See Fred v. Dixon, 27 Grat. 541, Va. p. Anno.

In an action of debt on decree for an amount of interest found due e plaintiff from defendant, interest on amount of decree may be re- vered in shape of damages for its detention, though the decree makes provision for the payment of interest thereon. Stuart v. Hurt, 88 . 343, 13 S. E. 438.

Quaere, if in action on bond surplus interest beyond penalty may given as damages. Baker v. Morris' Adm'r, 10 Leigh 285.

Courts of equity will decree interest upon bond or judgment beyond e penalty against the principal debtor. Tazewell's Ex'r v. Saunders' r, 13 Grat. 354.

This section reverses rule in Hepburn v. Dundas, 13 Grat. 219.

Cited but not construed, Atlantic Coast Line v. Grubbs, 113 Va. 214, S. E. 144.

See Gregory's Forms Nos. 298, 300, 303, 318, 320, 321.

For W. Va. decisions on similar statute, see Justis' Annotations, apter 131, section 18.

See notes to sections 5323, 5324.

Sec. 6260. Power to grant new trial; how often.—In any civil se or proceeding, the court before which a trial by jury is had, ay grant a new trial, unless it be otherwise specially provided. new trial may be granted as well where the damages awarded e too small as where they are excessive. Not more than two new ials shall be granted to the same party in the same cause on the ound that the verdict is contrary to the evidence, either by the ial court or the appellate court, or both. (Code 1887, § 3392.)

Revisors' Note.—The latter part of the last sentence is new, to-wit: n the ground that the verdict is contrary to the evidence, either by e trial court or the appellate court, or both." This addition is in- ded to remedy the uncertain meaning of the section as it stood before e revision, as to which see Spriggs v. Jamerson, 115 Va. 250, 78 E. 571.

Under former decisions (Brockenbrough's Ex'rs v. Spindle's Adm'rs, Grat. 21; Lavell v. Gold's Adm'r, 25 Grat. 473; Lamberts v. Cooper's r, 29 Grat. 61, 65; Reed v. Receivers, 84 Va. 231, 4 S. E. 587) new als of issues out of chancery could be granted only by the chancery urts ordering them. The rule is changed by this section.

Applications for new trials are addressed to sound discretion of

Digitized by Google

court, and where it is based on ground of after-discovere must have been discovered after trial, must be material ar cumulative, and such as ought to produce a different res trial, and such as that it could not have been discovered b use of reasonable diligence. Nicholas' Case, 91 Va. 741,

New trial for after-discovered evidence will not be g it is shown that the party wishing to produce it was ignor istence; that by use of reasonable diligence he could not it at the former trial, and that the new evidence is not c with any of that offered at the last trial. He must produce of witnesses stating the facts they will testify, or if this is the affidavits of persons who have conversed with them, facts that they will state. Brown v. Speyers, 20 Grat. 308

The Supreme Court of Appeals has no jurisdiction to gr circuit court to hear and determine a motion for a new trial case after the end of the term at which final judgment Allens' Case, 114 Va. 826, 77 S. E. 66.

Court of chancery cannot award new trial at law. chancery has no power to set aside a judgment rendered grant plaintiff new trial. Wynne v. Newman's Adm'r, 75

When new trial awarded.—Where plaintiff was unavoid from trial, and at same term at which his suit is dismisse fact, he is entitled to new trial. Smith v. Rawlings' Adm'r 3 S. E. 238.

A verdict for $5 and costs will be set aside as inadeq of slander of girl of unblemished reputation by false imp her chastity, for the purpose of injuring an opposing candi Blackwell v. Landreth, 90 Va. 748, 19 S. E. 791.

Where, in case not warranting them, jury gives exemp verdict will be set aside. Norfolk & W. R. Co. v. Neely 22 S. E. 367.

When new trial will not be awarded.—Verdict for dam be disturbed unless it is so excessive as to show that jury by passion, prejudice, or other undue influence (Bertha Black's Adm'r, 88 Va. 303, 13 S. E. 452); or manifest ab White, 86 Va. 212, 9 S. E. 1021, 19 Am. St. Rep. 883; Vir R. Co. v. White, 84 Va. 498, 5 S. E. 573, 10 Am. St. Rep. v. Barrett, 76 Va. 128, 44 Am. Rep. 152; Norfolk & W. R 92 Va. 34, 22 S. E. 811); or corruption (Norfolk & W. R. son, 90 Va. 1, 17 S. E. 757, 44 Am. St. Rep. 884); or gross (Richmond Ry. & Electric Co. v. Garthright, 92 Va. 627, 32 L. R. A. 220, 53 Am. St. Rep. 839).

Court should not set aside verdict as contrary to law where it appears that verdict was not plainly against evide evidence to support it. Michie v. Cochran, 93 Va. 641, Noell v. Noell, 93 Va. 433, 25 S. E. 242.

New trial for misconduct of jury will not be grante conduct consisted of jury hearing statement of witness o presence of accused, who did not object, and which was aft to attention of court, in presence of accused and counsel, a afforded them to examine witness, which they did not a objection with regard thereto was made until on motion Williams' Case, 93 Va. 769, 25 S. E. 659.

A verdict of $2,500 in favor of employe for injury capacity to work is very much impaired will not be set asid Iron Co. v. Elkins, 90 Va. 249-260, 17 S. E. 890.

Verdict for $1,000 damages caused by fire will not b excessive, where witnesses estimated it at twice that amo & W. R. Co. v. Draper, 90 Va. 245, 17 S. E. 883.

On what verdict judgment entered.—Where two ver dered in succession, giving plaintiff damages for injury re through negligence, and each is set aside on defendant's a third verdict is rendered giving plaintiff a larger amoun

Digitized by Google

bject, however, to a demurrer to the evidence, which is erroneously cided by court below against plaintiff, he is entitled to judgment on t verdict. Jones v. Old Dominion Cotton Mills, 82 Va. 140, 3 Am. Rep. 92.

Generally.—For discussion of this section, as it stood before the esent revision, see opinion of Buchanan, J., in Spriggs v. Jamerson, 5 Va. 250, 78 S. E. 571. See editorial on this case, 19 Va. L. Reg. 302.

See Burks' Pleading and Practice, pp. 545, 558, 569, 763; Gregory's rms No. 356.

For monographic note on New Trials, see Boswell v. Jones, 1 Wash. 2, Va. Rep. Anno.

For W. Va. decisions on similar statute, see Justis' Annotations, apter 131, section 15.

Sec. 6261. How judgment entered on bond for payment of money. hen there is a recovery on a bond with condition for the pay- ent of money the judgment shall be for the penalty of the bond be discharged by the payment of the principal and the interest ie thereon, but when the judgment is against a surety of limited ability in such bond the sum to be paid by such surety in dis- arge thereof shall not exceed the amount to which he has limited s liability on said bond. (Code 1887, § 3393; 1895-6, p. 240.)

On bond conditioned for payment of money, judgment should be for nalty of bond to be discharged by principal sum found by jury, with terest and costs; but where judgment is for sum found by jury, with sts, such error is formal and not fatal. Collier v. Southern Exp. Co., Grat. 718; Moore v. Fenwick, Gilmer 214; Atwell's Adm'rs v. Towles, Munf. 175.

The clause in act of assembly, Rev. Code 1819, chapter 128, section , p. 509 (similar to this section), which prescribes the sum for which dgment is to be entered on bond, meant that in cases of penalty by ay of security the final justice of the case should be attained in courts law, in effectuating which objects those courts are to be governed by me principles which influence courts of equity. Waller v. Long, 6 unf. 71.

Where principal and interest on bond amount to more than penalty, d damages are found, judgment ought not to be entered for penalty, be discharged by principal and interest, with damages so assessed, d costs, but for penalty and damages, not exceeding those in writ. ennant's Ex'r v. Gray, 5 Munf. 494.

Where penalty and condition of bond for payment of money is same, is not error to treat it as a single bill, and to give judgment for amount bond, with interest. Fleming v. Toler, 7 Grat. 310.

Interest beyond penalty of bond or judgment may be decreed against incipal debtor. Tazewell's Ex'r v. Saunders' Ex'r, 13 Grat. 354.

Quaere, if in action on bond the surplus interest beyond penalty ay be given as damages. Baker v. Morris' Adm'r, 10 Leigh 285.

As to how jurisdiction in actions on penal bonds is determined, e section 6374.

For W. Va. decisions on similar statute, see Justis' Annotations, apter 131, section 16.

See Gregory's Forms No. 304.

Sec. 6262. In action on annuity bonds, etc., or for penalty, how reaches assigned; what jury to do; how judgment entered; when ire facias sued out, and for what execution awarded.—In an ac- on on an annuity bond, or a bond for money payable by instal- ents, where there are further payments of the annuity, or fur- er instalments to become due after the commencement of the

Digitized by Google

action, or in any other action for a penalty for the n
ance of any condition, covenant, or agreement, the pl
assign as many breaches as he may think fit, and shall
claration or scire facias assign the specific breaches fo
action is brought, or the scire facias is sued out. Th
paneled in any such action shall ascertain the damage
or the sum due, by reason of the breaches assigned, an
shall be entered for the penalty, to be discharged by t
of what is so ascertained, and such further sums as ma
wards assessed, or be found due upon a scire facias
further breach. Such scire facias may be sued out, fr
time, by any person injured, against the defendant or
representative, and for what may be assessed or foun
the new breach or breaches assigned, execution may b
(Code 1887, § 3394.)

An action of debt will not lie on bond of sheriff for failu
execution, but motion must be resorted to. An averment o
of condition of bond, though it may not entitle plaintiff t
mands, will entitle him to recover what he is legally entitle
sequence of such breach. McDowell v. Burwell's Adm'rs, 4

In action on sheriff's bond in name of Commonwealth f
person aggrieved by misconduct of sheriff, the judgment sh
tered for penalty, to be discharged by payment of dama
and costs, and such other damages as may be hereafter a
suing out a scire facias and assigning new breaches by pla
other person injured. Bibb v. Cauthorne, 1 Wash. 91.

Where aggregate of judgments against guardian and
ceeds penalty of bond, judgment will be given for whole
amount apportioned between wards. Call v. Ruffin, 1 Call 3

In attachment in equity against A. and B., property of
as property of B., and, being sold, the court decrees payment
to A. The sheriff failing to pay, A. moves against him
and judgment is entered for penalty of bond, to be discha
Previous to decision in favor of A. he brought an action on
of sheriff, against him and sureties, for trespass in taking hi
former judgment was set up as defense. Held, that action is
barred, but A. may recover the difference between value of g
taken and amount of proceeds paid to A., and it is not
proceed by scire facias on former judgment, but action o
be sustained. Sangster v. Com., 17 Grat. 124.

Other actions may be maintained on an official bond,
previous action judgment has been rendered for the penalt
charged by payment of the sum assessed in that action, and
sums as might be afterwards assessed or be found to be du
facias assigning a further breach. Sangster v. Com., 17 Grat

In action on constable's official bond the assignment o
not set out specially the claims put into the constable's hand
that relator had placed divers claims in his hands for colle
were specifically set out in a receipt given by him and ther
and then proceeded to aver the collection of the monies
stable, and his failure and refusal to pay over to relator.
the breach was well assigned. In such action the assignme
sets out specifically the claims for which constable has given
and receipt is referred to in and annexed to the declaratio
is committed in stating amount of one of the claims. This
for excluding receipt as evidence of other claims correctl
Governor v. Roach, 9 Grat. 13.

Digitized by Google

Form of scire facias upon a judgment on a bond with collateral onditions, and assigning new breaches, 4 Min. (3d Ed.) 1778.

See notes to section 4926; 17 Va. L. Reg. 516.

See Burks' Pleading and Practice, pp. 95, 265, 583, 956.

For W. Va. decisions on similar statute, see Justis' Annotations, hapter 131, section 17.

Sec. 6263. In joint actions, plaintiff, though barred as to some, ay have judgment against others.—In an action or motion, found- d on contract, against two or more defendants, although the plaint- f may be barred as to one or more of them, yet he may have udgment against any other or others of the defendants, against hom he is not so barred. (Code 1887, § 3395.)

Revisors' Note.—The words "or motion" appearing in line one of he text are new. The last five words of this section are used in lieu of he would have been entitled to recover if he had sued them only." his change is made to express what is believed to have been the legis- ative intent.

This section refers only to cases in which some of the defendants re discharged upon defences purely personal, and, where ground of efence goes to foundation of whole contract, the case remains as at ommon law, where judgment must be for or against all. Steptoe v. ead, 19 Grat. 1.

This section applied in Beazley's Adm'r v. Sims' Adm'r, 81 Va. 644.

As for rule regarding merger of action under this section, see orbin v. Bank, 87 Va. 661, 13 S. E. 98, 24 Am. St. Rep. 673.

In joint action against partners, judgment is confessed by one. and ter during the same term is rendered against the other. Held, cause f action was not merged by confession, and the judgment rendered is alid. Pitts v. Spotts, 86 Va. 71, 9 S. E. 501.

In a proceeding by motion against ex-treasurer and sureties to re- over a balance of county levies, a confession of judgment by principal oes not merge cause of action against sureties, and judgment may be endered against latter at succeeding term of court. Nor are rights of laintiff in any wise affected by suffering a non-suit, but he may at a sub- equent term renew his action or motion on same cause of action on any r all the parties against whom he has not already obtained judgment. ahoon v. McCulloch, 92 Va. 177, 23 S. E. 225.

Two defendants jointly sued on a contract, having agreed that a erdict might be rendered against both or either liable, and a verdict nd judgment having been rendered against one and in favor of other efendant, on writ of error to judgment against defendant held liable ie court cannot inquire which of said defendants is primarily liable, as ther defendant is not before court. New York, P. & N. R. Co. v. Crom- ell, 98 Va. 228, 35 S. E. 444, 49 L. R. A. 462, 81 Am. St. Rep. 722.

Action is brought against two persons as partners and two as in- orsers. At next term of court cause stands on office judgment docket, nd one sued as partner pleads nil debit, which is sworn to, and on otion of plaintiff's counsel cause is discontinued to him and judgment endered against others. Held, judgment is good. Muse v. Farmers' ank, 27 Grat. 252.

Where action is against maker of note and four indorsers, upon a lea of usury by indorsers jury find that note indorsed by first three ndorsers was sold by principal to fourth indorser at a usurious rate of nterest, who before it became due transferred it for value to plaintiff. pon this verdict judgment should be rendered in favor of maker and rst three indorsers and against fourth indorser. Moffett v. Bickle, 21 rat. 280.

Under this section there may be judgments in favor of some of de- endants at one time and against other defendants at another, and it pplies to actions on contract against two or more defendants, where

Digitized by Google

defence of some is personal to themselves, though the defe
they never were parties to the contract sued on, as non est fac
v. Campbell, 26 Grat. 403.

Where action is against firm, which declaration allege
of five members, but at trial evidence is that at time firm
debt three of said parties were not members of firm, no ju
be entered against said individuals as such firm. Adams
82 Va. 612.

The common law rule is that in an action against several
upon a contract, judgment must be either for or against a
rule is the same whether the contract is joint or several. W
action against two who file a joint plea of non-assumpsit, a
has action dismissed as to one, and asks leave to amend de
to other, and there is nothing to show that the defense re
personal to the former; held, no error to refuse such leave, a
section has no application. Gibson v. Burrage, 90 Va. 696, 1

Where one of two joint defendants alone pleads matter
merely personal to such defendant, but which goes to the r
judgment cannot be rendered against the other defendant,
well taken. This section does not apply in such case.
Palmer, 134 Fed. 753, 11 Va. Law Reg. 31.

Under this section's provisions relating to actions on cont
two or more defendants there may be a judgment in favor of
defendants at one time and against others at another and
to actions on contracts against two or more defendants wh
fense of some is personal to themselves, though the defense
never were parties to the contract sued on as non est factum.
v. Smith, 108 Va. 736, 62 S. E. 930.

Where there is a judgment against A., principal, and
jointly, and A. dies, even though the judgment may be barre
6477 as to him, it is not thereby barred against B. or is e
liability rests directly on the time elapsed as to him, and th
to be barred against the surety must be barred by time agains
himself. Manson v. Rawlings, 112 Va. 384, 71 S. E. 564.

See Burks' Pleading and Practice, pp. 54, 75, 181.

Cited but not construed in Southern Ry. Co. v. Forge
604, 54 S. E. 477.

For W. Va. decisions on similar statute, see Justis' A
chapter 131, section 19.

Sec. 6264. Joint wrongdoers; effect of judgment aga

A judgment against one of several joint wrongdoers sh
the prosecution of an action against any or all the othe
injured party may bring separate actions against the
and proceed to judgment in each, or, if sued jointly, h
ceed to judgment against them successively until jud
been rendered against, or the cause has been otherwis
of as to, all of the defendants, and no bar shall arise as
them by reason of a judgment against another, or others
judgment has been satisfied. If there be separate
against different defendants for a joint wrong, the pla
elect which of them he will prosecute, but the paymen
faction of any one of such judgments shall be a discha
except as to the costs.

**Revisors' Note.—This section is new, and overturns P
City of Richmond, 95 Va. 456, 28 S. E. 566, which follows
rule, and which is in accord with a much earlier Virginia dec
said, however, that the great weight of authority in the Unit**

Digitized by Google

otherwise (Burks' Pl. & Pr., p. 19), and the new section makes this view tatutory in Virginia; the revisors being of opinion that the bar should ot fall until there has been a satisfaction for the wrong done.

Sec. 6265. Procedure on joint contracts; when plaintiff may proceed to judgment against part of defendants; effect of dismissal or discontinuance as to some.—Upon all contracts hereafter made by more than one person, whether joint only or joint and several, an action or motion may be maintained and judgment rendered against all liable thereon, or any one or any intermediate number, and if, in an action on any contract heretofore or hereafter made, more than one person be sued and process be served on only a part of them, the plaintiff may dismiss or proceed to judgment as to any so served, and either discontinue as to the others, or from time to time as the process is served, proceed to judgment against them until judgment be obtained against all. Such dismissal or discontinuance of the action as to any defendant shall not operate as a bar to any subsequent action which may be brought against him for the same cause. (Code 1887, § 3396.)

Revisors' Note.—Before the revision this anomaly existed in Virginia: Under section 3212 of the Code of 1887 (6047 of this Code), the plaintiff could proceed by motion against any one or any intermediate number of joint contractors, and even the personal representative of one bound on a joint contract. This could not have been done in an ordinary action. Again, under section 2853 (5760 of this Code), the plaintiff could proceed against all, any one, or any intermediate number of persons jointly bound on negotiable instruments, which could not have been done except by the statute allowing it. Section 3396 of the Code of 1887 (upon which the revised section above is based) was limited to actions against two or more defendants where the process had been served on part of them, in which case the plaintiff might proceed to judgment as to any so served, and either discontinue as to the others, or from time to time as the process was served on the others, proceed to judgment as to them until judgments were obtained against all. No good reason being seen for allowing a different method of procedure on negotiable paper from that allowed on common law paper, nor for allowing a different procedure by motion from that allowed by action, the revised section above provides that, "Upon all contracts hereafter made by more than one person, whether joint only or joint and several, an action or motion may be maintained and judgment rendered against all liable thereon, or any one or any intermediate number," etc. It will be observed that the new language is restricted to future contracts. This was done because it was thought that otherwise constitutional difficulties might be encountered.

The last sentence of section 3396 of the Code of 1887 changed rule in Beazley's Adm'r v. Sims' Adm'r, 81 Va. 644, and discontinuance there provided for was a discontinuance against one or more defendants upon whom process had not been served. Corbin v. Planters' Bank, 87 Va. 61, 13 S. E. 98, 24 Am. St. Rep. 673.

Upon a scire facias against heirs and devisees to revive a judgment in ejectment, if one of the defendants confess the plaintiff's right to revive the judgment in the scire facias mentioned, and thereupon judgment be entered against him, that the plaintiff have execution for the

Digitized by Google

whole tract of land in question, there is no error in such which he can complain. Jones v. Doe, 6 Munf. 105.

Where only one of several joint defendants has been process judgment may be rendered against him. Norfolk & Shippers' Compress Co., 83 Va. 272, 2 S. E. 139.

Where, in action against seven defendants, summons executed as to four, "no inhabitants" as to two, and as understand he is dead." At rules the six pleaded in abatem joinders of surviving with dead obligor, and clerk abated those returned "No inhabitants" and "Dead," and court, re gave judgment against those summoned. Held, judgment is this section. Dillard v. Turner's Adm'r, 87 Va. 669, 14 S

Under this section judgment may be had against surety coming bond, though principal has not been served with noti Newberry v. Sheffey, 89 Va. 286, 15 S. E. 545. See note Campbell, Muse v. Farmers' Bank, and Cahoon v. McCulloch preceding section.

See Burks' Address, 2 Barton, L. Pr. (2d Ed.) 1393; P ing and Practice, pp. 53, 54, 181.

CHAPTER 264.

Decrees of Sale, and Receivers; Orders for Executing Deeds Trustees and Requiring Them to Give Security; Reserva fants; Decrees and Orders in Vacation; Disposition of M tody of Court Unclaimed; Copies of Decrees and Orders and Filed by Clerks.

Sec.

6266. Decree or order for sale; how sale made; bond required of commissioner.
6267. In taking accounts of debts or liens, commissioner to report delinquent taxes and sales, if any, therefor.
6268. Certain sales of land to be confirmed; apportionment of purchase price of land between taxes, levies, and assessments.
6269. Sale or renting of property not to be advertised until bond given by commissioner; its penalty; what certificate to be appended to advertisement; duty of clerk; his fee.
6270. When purchaser relieved of liability from purchase money or rent.
6271. Penalty on clerk for false certificate.
6272. Commissioner making sale, etc., to receive purchase money, etc.; duty of clerk

Sec.

when another pointed collecto payment by pu to commissio sale, etc., befo appointment of lector; penalty failure to give
6273. When collection commissioner,
6274. Proceeding by commissioners, and purchasers sales, and their
6275. How cause hear and judgment
6276. Trial by jury of upon rule.
6277. When sureties o commissioner, may be procee by rule.
6278. When sheriff or execute decree sale.
6279. Commissions for collecting.

Digitized by Google

Sec.
6280. Appointment of general receivers; their duties.
6281. How securities taken and kept; power of receivers over same.
6282. How dividends and interest collected and invested.
6283. How accounts kept by receivers; when and how reports made to their courts.
6284. Their liability.
6285. Their bonds.
6286. Their compensation.
6287. Penalty for failure of duty.
6288. When interest payable; when compounded.
6289. Settlement of accounts of receivers, and examination of their bonds and of the securities held by them.
6290. Reports of such settlements, etc., to be recorded; when new bond or additional security to be required; effect of new bond.
6291. Suits against receivers in certain cases.
6292. Effect of judgment against receiver.
6293. Warrants against receiver, when to be tried.
6294. "Receivers' Book;" what recorded therein; how indexed; open to inspection.
6295. Fees of clerks and commissioners.
6296. Court may appoint commissioner to execute a deed or writing; effect of such deed, etc.
6297. After final decree the cause may be re-instated to appoint a commissioner to make a deed, or to substitute a new one.
6298. How trustee appointed in place of one who is dead, resigned, removed, or declined the trust.
Sec.
6299. Notice of motion under preceding section.
6300. Who to execute the trust until new trustee appointed.
6301. How trustee required to give bond; when to be removed and another appointed.
6302. Courts of equity may exercise same powers.
6303. When new trustee appointed in suit in equity in place of one who has died.
6304. Substituted trustees, their powers, duties, etc.; how removed or proceeded against; their bonds.
6305. Right of infant to show cause against decree.
6306. When title of purchaser at judicial sale not to be affected.
6307. Vacation powers of chancery judges; when to be exercised; effect of vacation decrees.
6308. How actions and proceedings at law heard in vacation; consent; when unnecessary; effect of judgment, etc.
6309. Power of judge in vacation to enforce obedience to decrees and orders.
6310. How money under control of court deposited; record kept; list furnished Auditor and examiners of records; how taxes collected.
6311. Proceedings where money has remained under control of court for five years without known owner or claimant.
6312. When court shall order it to be paid into the treasury.
6313. How Auditor to keep account of it.
6314. How person entitled to the money may recover it.

Sec. 6266. Decree or order for sale; how sale made; bond required of commissioner.—A court, in a suit properly therein, may make a decree or order for the sale of property in any part of the State, and may direct the sale to be for cash, or on such credit and terms as it may deem best, and it may appoint one or more special

Digitized by Google

commissioners to make such sale. No special commissi
pointed by a court, shall receive money under a decree,
until he gives bond, with approved security, before the
or its clerk in a penalty to be prescribed by the court;
dition for the faithful discharge of his duties as suc
sioner, and to account for and pay over as the court may
money that may come into his hands as such commission
1887, § 3397; 1912, p. 434.)

**Revisors' Note.—The act of 1912 upon which this sectio
failed to provide that the bond of the commissioner should
approved security," neither did it prescribe the condition of
Both of these subjects are now covered. The provision in
1912 making non-residents ineligible to appointment as speci
sioners to make sales has been stricken out, the revisors being
that such an exclusion would in some cases work an injustice
residents. Usually counsel representing the interests in the c
pointed commissioners, and it was thought that non-reside
non-resident counsel should be allowed to be represented by th
at the sale of the property.**

Account of liens.—It is error to decree sale of land befo
of liens is taken. Bristol Iron & Steel Co. v. Caldwell, 95
S. E. 838; Sims v. Tyrer, 96 Va. 14, 30 S. E. 443. Quaere, doe
it is premature and erroneous to sell lands before account of
thereon apply to sale under vendor's lien? Effinger v. Kenn
551.

Terms of sale.—Terms of sale are within court's discreti
action will not be reversed unless palpably erroneous. Yost
80 Va. 855. But in judicial sales under instruments where
sale are agreed on the contract governs, and the court hath no
as to terms. Stimpson v. Bishop, 82 Va. 190.

A decree for sale of land under a deed of trust must be
so required by the deed and the terms cannot be changed, an
sold on credit, except by the consent of creditors secured by
Fultz v. Davis, 26 Grat. 903.

When sale will not be confirmed.—Where sale under decr
on day so inclement as to deter intending purchasers from
and only one bidder is present, court will set aside sale
quiring into adequacy of bid. Roberts v. Roberts, 13 Grat. 6
Dec. 435. But the fact that only a few bidders were present
cause for vacating a judicial sale. Hudgins v. Lanier, 23 Gr

A purchaser at judicial sale cannot before confirmatio
bargain to another at an advance, and court knowing that i
done will not confirm sale, as such contract tends to prever
bringing best price, and is therefore contrary to public policy
Camp v. Bruce, 96 Va. 521, 36 S. E. 901, 43 L. R. A. 146,
Rep. 873.

Bond of commissioner.—This section requires a bond
sioners of sale, and it must be given before they receive
under the decree, whether decree requires it or not. Mc
Bodkin, 76 Va. 809. But it is not error to appoint commi
make sale without requiring them to give bond. Southwest
Smith's Adm'r, 85 Va. 306, 7 S. E. 365, 17 Am. St. Rep. 59.

Bond required of commissioner is for benefit of those
fund, and if he collects without bond, and they ratify his a
can complain. Lee v. Swepson, 76 Va. 173, and Lloyd v. Erwi
29 Grat. 598, distinguished.

A commissioner has no right to resell land, without

Digitized by Google

ond, unless first bond is broad enough to cover resale. Tompkins v. yerle, 102 Va. 219, 46 S. E. 300.

Liability of purchaser where bond is not given.—Where purchaser t judicial sale pays money to commissioner, who has not given bond, r bond given is not approved by clerk, he will be liable for default of ommissioner (Lloyd v. Erwin's Adm'r, 29 Grat. 598; Hess v. Rader, 26 rat. 746); unless certificate of clerk that bond has been given is pub- shed with advertisement of sale (Whitehead v. Bradley, 87 Va. 676, 3 S. E. 195). Nor is he exonerated by fact that commissioner was ttorney for judgment debtor. Shumate v. Williams, 2 Va. Dec. 180, 2 S. E. 808.

Where commissioner is appointed to sell land publicly after giving ond, and he sells it privately without giving bond, it is a judicial sale hen confirmed by the court, but purchaser at such sale is liable to arty entitled to money if commissioner fails to account therefor. Hess . Rader, 26 Grat. 746.

Where two commissioners are appointed to sell land after executing ond, and execute separate bond, each going other's security, the bond s not sufficient, though given in court, and purchaser is liable, although he purchase price was paid commissioner, who deposited it in bank to heir credit as commissioners, it being lost by failure of bank. Tyler . Toms, 75 Va. 116.

Remedy of parties entitled to money.—Parties entitled to money nproperly paid to commissioner may proceed directly against the land, vithout pursuing commissioner and his sureties. Lloyd v. Erwin's dm'r, 29 Grat. 598.

Remedy of purchaser.—In such case, commissioner, having received he money without authority, is liable to purchaser. Tyler v. Toms, 75 'a. 116.

Purchaser who has to pay second time money improperly paid to ommissioner is entitled to be subrogated to rights of creditors under decree requiring commissioner to pay them. Lee v. Swepson, 76 'a. 173.

Confirmation of sale.—The court, in acting upon a report of sale, nust exercise a sound judicial discretion in the interest of fairness and rudence. Berlin v. Melhorn, 75 Va. 639; Terry v. Cole's Ex'r, 80 Va. 95; Hazlewood v. Forrer, 94 Va. 703, 27 S. E. 507; Todd v. Gallego Mills Mfg. Co., 84 Va. 586, 5 S. E. 676; Brock v. Rice, 27 Grat. 812.

In a judicial sale, if it should be made to appear, either before or fter it is ratified, that there has been any injurious mistake, fraud, or nisrepresentation, the reported sale will be rejected, or the ratification escinded, and the property resold. Merchants' Bank v. Campbell, 75 'a. 455.

Upon the question of confirmation of judicial sale it is customary o allow either party to read ex parte affidavits. But trial court may, n its discretion, require depositions to be taken either in whole or in art, or refer matter to commissioners. Robertson v. Smith, 94 Va. 250, 6 S. E. 579, 64 Am. St. Rep. 723.

Mere objection to price obtained at judicial sale, without an upset id, is not ground for refusal to confirm sale. Effinger v. Ralston, 21 Grat. 430.

No fixed rule can be laid down as to amount of upset bid to set aside judicial sale, but confirmation will depend on facts of each case. Hansucker v. Walker, 76 Va. 753.

Purchaser of land under decree of court of equity, after sale is confirmed, is the equitable owner of land, subject to be compelled to comply with his contract by payment of the purchase price. Hurt v Jones, 75 Va. 341. But bidder at judicial sale acquires no right until bid is accepted and sale confirmed by court. Terry v. Cole's Ex'r, 80 Va. 695.

Subsequent confirmation is equivalent to previous authority, cures departures from terms prescribed, and supplies all defects in execution of decree, except those founded in lack of jurisdiction. It makes the

Digitized by Google

sale the court's, and renders it no longer executory, but ex
chasers should not be refused confirmation merely because
bargain. Langyher v. Patterson, 77 Va. 470; Robertson
Va. 250, 26 S. E. 579, 64 Am. St. Rep. 723.

How sale set aside after confirmation.—This can be don
motion or petition after notice to all parties interested a
cause shown. Langyher v. Patterson, 77 Va. 470; Effinge
24 Grat. 116; Yost v. Porter, 80 Va. 855.

Caveat emptor applies strictly to judicial sales. Ob
defect in title must be made before confirmation of report
fraud, mistake, or surprise, or other cause for which equity
relief, if sale had been made by parties in interest, sales ma
firmation, be set aside, but for no other cause. Long v. W
29 Grat. 347; Boyce v. Strother, 76 Va. 862; Berlin v. Mell
639; Hickson v. Rucker, 77 Va. 135; Sexton's Ex'x v. Patt
Dec. 551.

And if mistake is relied on, it must be the mist
parties. Long v. Weller's Ex'r, 29 Grat. 347. But it is othe
confirmation. See Brock v. Rice, 27 Grat. 812; Berlin v.
Va. 639.

Proceedings against delinquent purchaser.—Upon fail
chaser to comply with terms of sale, he may be proceede
rule to show cause why land shall not be sold to pay purc
and upon that proceeding a decree may be made for a res
Thornton v. Fairfax, 29 Grat. 669; Clarkson v. Read, 15 G

A purchase by commissioner declared valid.—Where la
under decree to M., who, without paying therefor, assign
assignee in bankruptcy, and such assignee and M. conveyed
H., who had been appointed as special commissioner to res
consideration of H. paying to parties entitled thereto amo
chase money, held, fact that H. was commissioner to res
not avoid transaction, as the equitable title was in M., su
contract to pay purchase price. Hurt v. Jones, 75 Va. 341.

Generally.—Where judgment debtor bought his own
under decree in creditors' suit, and failed to pay therefo
decree for resale on terms of one-fourth cash, and balance
and three years, is not inequitable under this section.
Clement, 87 Va. 41, 12 S. E. 105.

Where purchaser at judicial sale fails to pay his bo
rule against him and surety a personal decree is rendered ag
such decree is void. Anthony v. Kasey, 83 Va. 338, 5 S. E.
St. Rep. 277.

After decree to sell real estate to satisfy liens, and
that decree, the court below many appoint receiver to rent
v. Edwards, 83 Va. 316, 2 S. E. 439.

Commissioner to sell is one of the parties to the suit
and in his own right, and is also next friend of the infants
in appointing him commissioner. Teel, &c., v. Yancey, &c., 2

It is proper to allow fees to an auctioneer for sellin
Hogan v. Duke, 20 Grat. 244.

For monographic note on Judicial Sales, see Walker's E
21 Grat. 636.

For W. Va. decisions on similar statute, see Justis'
chapter 132, section 1.

**Sec. 6267. In taking accounts of debts or liens, commi
report delinquent taxes and sales, if any, therefor.**—In
hereafter brought in this State for the sale of lands fo
ment of debts or to subject lands to the payment of lie
thereon, and in every such suit now pending in which t
of debts or liens has not been taken it shall be the d

Digitized by Google

court in ordering the account of debts or liens to be taken to specially direct that an account be taken of all delinquent taxes upon said land. The commissioner to whom such decree is referred shall ascertain and report the amount of such delinquent taxes, together with the interest thereon, from the fifteenth day of December of each year for which said lands were so returned delinquent. And where said lands have been sold for said taxes said commissioner shall further report to whom sold and when and the amount that will be required to redeem the same. (1897-8, p. 514.)

Sec. 6268. Certain sales of land to be confirmed; apportionment of purchase price of land between taxes, levies and assessments; validating certain former sales.—Whenever, in any proceedings held in any chancery court for the purpose of subjecting real estate to the payment of debts, or for the sale of real estate for any other purpose, it appears that the real estate cannot be sold for enough to pay off the lien of taxes, levies, and assessments returned delinquent against it, and it appears that the purchase price offered is, in the opinion of the court, adequate and reasonable, the said sale shall be confirmed, and the court shall further order and decree the payment and distribution of the proceeds of said sale pro rata to the taxes, levies, and assessments due the said State, county, and corporation, after having first deducted the cost of said proceedings in court, which order shall be certified to the Auditor of Public Accounts and to the clerks of the counties and corporations, and the said clerks shall cause the lien of the said taxes, levies, and assessments to be marked satisfied upon the list of delinquent lands. Whenever it appears in any chancery proceedings heretofore had that the proceeds of any sale of land have been applied to the payment of taxes, levies, and assessments, and the same was not sufficient to fully satisfy the said taxes, levies, and assessments, it shall be the duty of the clerks of the said counties and cities to cause the said liens to be marked satisfied, and a certificate from the clerk of said chancery court of the facts shall be sufficient authority for the same. (1899-00, p. 397; 1901-2, p. 731.)

Sec. 6269. Sale or renting of property not to be advertised until bond given by commissioner; its penalty; what certificate to be appended to advertisement; duty of clerk; his fee.—No special commissioner appointed by a decree or order of court, or of a judge in vacation, to sell or rent any property, shall advertise the property for sale or renting, or sell or rent the same, until he shall have given bond before the court or judge, or the clerk of the court in his office, in a penalty, to be prescribed by the court or judge, sufficient to cover at least the probable amount of the whole purchase money or rent, and shall have obtained from the said

Digitized by Google

clerk a certificate that the bond required by law or b
or order has been given, which certificate or a copy
be appended to the advertisement. The clerk shall m
tificate whenever the bond has been given and note
the proceedings in the cause, and shall receive there
twenty-five cents, to be taxed in the costs of the suit.
cate or a copy thereof shall be returned with the repor
or renting. (Code 1887, § 3398.)

The bond required by statute to be given by commiss
lands can only be given before the court which requires th
given, or before the judge thereof, or clerk of court in h
it is error to direct clerk of other court to take it. South
Mineral Co. v. Chase, 95 Va. 55, 27 S. E. 826.

Where advertisement to rent is not referred to in
the commissioner, or in the decree of sale, it will not, t
in the record, be considered a part thereof on appeal.
Pannill's Ex'or, 86 Va. 33, 9 S. E. 419.

Payment to commissioner who has not executed bon
Whitehead v. Bradley, 87 Va. 676, 13 S. E. 195.

Where receiver or commissioner collects money at a
before giving bond and fails to account for same, although
gives the bond, the purchaser of land can be made to pay it
Woods v. Ellis, 85 Va. 471, 7 S. E. 852.

See notes to section 6266. See, also, section 6270.

**Sec. 6270. When purchaser relieved of liability fro
money or rent.**—When such certificate shall have bee
with an advertisement of the sale or renting of proper
such bond shall have been given prior to a sale or
publicly advertised, any person purchasing or renting
erty in pursuance of such advertisement, or in pursu
decree or order of sale or renting, shall be relieved of
for the purchase money or rent, or any part thereof, w
pay to any special commissioner, as to whom the prope
shall have been appended to such advertisement, or wh
given the bond aforesaid. (Code 1887, § 3399.)

Applied in Tompkins v. Dyerle, 102 Va. 219, 46 S.
notes to section 6266.

Sec. 6271. Penalty on clerk for false certificate.—I
make a certificate as to the bond, which is untrue, he a
ties in his official bond shall be liable to any person in
by; and, if he issue such certificate, knowing it to be fa
in addition to such liability, be fined not less than fif
than five hundred dollars, and, upon conviction, be re
his office, and any commissioner who shall advertise p
sale or rent, and sell or rent the same before he shall
bond as is required by section sixty-two hundred an
shall be guilty of a misdemeanor. (Code 1887, § 3400.

**Revisors' Note.—The latter part of this section fixing
the commissioner is new. The headline does not indicate**

**Sec. 6272. Commissioner making sale, etc., to recei
money, etc.; duty of clerk when another person appointe**

Digitized by Google

ect of payment by purchaser, etc., to commissioner making sale, ., before notice of appointment of another collector; penalty on rk for failure to give such notice.—The commissioner, appointed the purpose, who makes the sale or renting, shall receive and llect all the purchase money or rent, unless by decree or order, ne other person be appointed to collect the same; in which case, e court shall require of such person bond with surety in such nalty as to it may seem fit. When such appointment is made, it all be the duty of the clerk to give notice thereof, in writing, to e purchaser or lessee, to be served as other notices are required law to be served; but no payment shall be made to the person appointed, until he shall have given the bond required by the dee or order: Provided, however, that if, before the purchaser or see has received notice of such appointment, he shall have made y payment, on account of the purchase money or rent, to the ecial commissioner, or any person appointed for the purpose, o made the sale or renting, such special commissioner, or other rson, who made the sale or renting, and the sureties in his bond, all be responsible for the money so paid, and the purchaser or see, who made the payment, shall not be responsible therefor. any clerk fail to give the notice hereinbefore required to be ven by him, he and the sureties in his official bond shall be liable any person injured by such failure; and he shall, moreover, be ed not less than ten nor more than one hundred dollars. (Code 87, § 3401.)

Revisors' Note.—The words "with surety" appearing in line five of e text are new.

Sec. 6273. When collection of money by commissioner, etc., larny.—If any special commissioner or receiver, appointed by any urt or judge to collect money, and required by law, or decree or der of the court or judge, to give bond before collecting the me, shall collect said money, or any part thereof, without giving ch bond, and fail properly to account for the same, he shall be eemed guilty of larceny of the money so collected and not so accunted for. (Code 1887, § 3402.)

Sec. 6274. Proceeding by rule against commissioners, receivers, d purchasers at judicial sales, and their sureties.—Any court of is Commonwealth, or the clerk thereof in vacation, may, at the stance of any party in interest, award a rule or rules against any mmissioner or receiver appointed by or acting under the authory of such court, and against the surety of such commissioner or ceiver, or against a purchaser at a judicial sale under a decree order of such court, and against the surety or sureties of such rchaser, returnable to such a day of the term of said court as e court or clerk may fix, to show cause why judgment shall not e entered against them for any amount which the court may asrtain to be due from such commissioner, receiver, or purchaser.

Digitized by Google

A rule issued under this section shall be executed at
days before the return day thereof. (1887-8, p. 261.)

**Revisors' Note.—This and the three following sectio
from the same act. The present sections are not limited t
and corporation courts as was true under the act, but gene
is used to cover all proper courts. The act required a not
days before proceeding on the rule. Section 6274 above
notice to fifteen days, which corresponds to the time give
6046, and which is believed to be sufficient. The act prov
entry of an order having the force and effect of a judgme
6274 simply provides that the court shall enter judgment,
ment, of course, will stand like any other judgment, and in
of this change, section 5 of the act has been eliminated.**

Sec. 6275. How cause heard upon rule and judgment
Upon the return of a rule executed under the preced
upon any of the parties thereto, the court may, at a
neither party demand a jury, proceed to hear and de
questions raised by such rule, and shall enter a judgm
such receiver, commissioner, or purchaser, as the case n
his surety or sureties, for the amount appearing to be d
receiver, commissioner, or purchaser, or may enter
against such of them as may appear to have been su
answer such rule. The judgment shall be in favor of th
titled to the money, or of the general or special rece
court, but subject to the control of the court, in suc
cause. If it shall appear in such proceeding that suc
commissioner, purchaser, or any of them, or their sureti
insane, or has been convicted of felony, then such ru
awarded against the personal representative of those
the committee of those who are insane or convict, and
may be rendered jointly and severally against such pe
resentative, committee, and those laboring under no d
the same proceeding. (Id.)

Sec. 6276. Trial by jury of issues made upon rule.—I
return of such rule, any party thereto demand a trial b
court shall enter an order in such chancery cause direct
by jury to ascertain what liability, if any, exists agains
commissioner, receiver, or purchaser, as the case may be
sureties; and the court shall enter judgment on the verd
ed by the jury, but new trials may be granted as in o
and notwithstanding such rules be awarded and judgme
dered against part only of the persons liable thereto, the
award new rules and proceed to judgment against all
who are liable thereto at the same or any subsequent t
said court. The provisions of this and the two precedi
shall apply to sheriffs, sergeants, and other officers, and
ties, acting under any decree or order of any such chan
(Id.)

Digitized by Google

Sec. 6277. When sureties of purchaser, commissioner, or receiver may be proceeded against by rule.—Whenever in any case a purchaser at a judicial sale, commissioner, general or special receiver, or his personal representative, can be proceeded against by rule for the recovery of money under the three preceding sections, in such case the surety of such purchaser, commissioner, or receiver, and the personal representatives of said sureties, may also be proceeded against under said sections in the same manner for the like purpose. (Id.)

Sec. 6278. When sheriff or sergeant to execute decree or order of sale.—Where no special commissioner is appointed for the purpose, a decree or order of any court for the sale of property shall be executed by the sheriff or sergeant who attends such court, unless the place of sale be out of his county or corporation, in which case the sale shall be by the sheriff of the county wherein the place of sale is, or, if the place be in a corporation, by the sergeant thereof, or the sheriff of the county including such corporation, as the court may direct. Any sheriff, sergeant, or other officer, receiving money under any order or decree, shall pay the same as the court may order; and if he fail so to do, he and the sureties in his official bond shall be liable therefor. (Code 1887, § 3403.)

If sergeant of city where property is located is appointed receiver, it is not necessary to require him to give bond for the faithful performance of his duties, as it is covered by his official bond. Moran v. Johnston, 26 Grat. 108.

Sec. 6279. Commissions for selling and collecting.—For the services of commissioners or officers under any decree or order for a sale, including the collection and paying over the proceeds, there shall not be allowed any greater commission than five per cent. on the first three hundred dollars received by them, and two per cent. on all above that. And if a sale be made by one commissioner or officer, and the proceeds be collected by another, the court under whose decree or order they acted, shall apportion the commission between them as may be just. (Code 1887, § 3404.)

Where on judicial sale but part of purchase price is collected, commissions should be allowed only on part collected, and no extra compensation is allowable for extraordinary efforts to sell the land. Womack v. Paxton's Ex'rs, 84 Va. 9, 5 S. E. 550.

Cited but not construed, Young v. Young, 109 Va. 222, 63 S. E. 748.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 132, section 3.

Sec. 6280. Appointment of general receivers; their duties.—Each circuit, corporation and city court may appoint a general receiver of the court, who shall hold his office at its pleasure, and whose duty it shall be, unless it be otherwise specially ordered, to receive, take charge of, and invest in such securities as the court may order, and in the manner required by such order, all moneys paid into court, or into bank or other place of deposit, and standing subject to the order of such court, and all moneys thereafter so

Digitized by Google

paid under any judgment, order, or decree of the court to pay out or dispose of the same as the court may or cree; and, to this end, the general receiver shall have au check for, receive, and give acquittances for all such mon 1887, § 3405.)

Revisors' Note.—The words "and city" found in line two are new.

Where there are conflicting claimants of a trust fund prosecuting separate suits in same court, to subject it, the a of a receiver in one of the suits on motion of plaintiff therein to benefit of plaintiff in other suit upon establishing his sup to the fund. Beverley v. Brooke, 4 Grat. 187.

One aggrieved by decree of court which appointed a rece against whom decree is rendered may appeal in proper case, ceiver cannot question decree of court appointing him. Barbour, 78 Va. 544.

An order appointing a receiver is in nature of sequestr venting any alienation of or interference with the property w sent of court, and lessee of land from receiver on lease not by court acquires no rights thereunder. Thornton v. Washi Bank, 76 Va. 432.

Receiver of railway company may be held responsible fo actually sustained by a person through the negligence of agents and employees in any case in which the company sh held. Melendy v. Barbour, 78 Va. 544.

The order appointing receiver gives no advantage to par for it over other claimants. Beverley v. Brooke, 4 Grat. 18

For monographic note on Receivers, see Gibson v. R Munf. 310, Va. Rep. Anno.

For W. Va. decisions on similar statute, see Justis' A chapter 133, section 15.

Sec. 6281. How securities taken and kept; power of over same.—The securities, in which under the orders of such investments may be made, shall be taken in the n general receiver, and be kept by him, unless otherwis ordered; and he shall have power to sell, transfer, or same, when ordered by the court to do so, but not othe in case of his death, resignation, or removal, his success person specially appointed by the court for that pur have like power. (Code 1887, § 3406.)

For W. Va. decisions on similar statute, see Justis' A chapter 133, section 16.

Sec. 6282. How dividends and interest collected and The general receiver shall collect the dividends and inte the securities in which investments have been or may be der the orders or decrees of his court, or under the pr sections sixty-two hundred and eighty, when and as of same may become due and payable thereon, and shall same in like securities, unless the court has ordered some other investment, or disposition to be made thereof case he shall invest or dispose of the same as the court ordered or decreed. (Code 1887, § 3407.)

For W. Va. decisions on similar statute, see Justis' A chapter 133, section 17.

Digitized by Google

Sec. 6283. How accounts kept by receivers; when and how reports made to their courts.—He shall keep an accurate and particular account of all moneys received, invested, and paid out by him, showing the respective amounts to the credit of each case in the court, and designating in the items the judgments, orders, or decrees of court under which the respective sums have been received, invested, or paid out; and on the first day of each regular term of the circuit court, and each term of the corporation and city courts designated for the trial of civil cases in which juries are required, he shall report to his court a general statement, showing the balance to the credit of each case in the court in which money has been received by him, the manner in which it is invested, the amounts received, invested, or paid out since his last report, and the whole amount then invested and subject to the future order of the court; and he shall, at any time when required by the court so to do, furnish a statement of the amount subject to the order of the court in any case pending therein. (Code 1887, § 3408.)

For W. Va. decisions on similar statute, see Justis' Annotations, Chapter 133, section 18.

Sec. 6284. Their liability.—He shall be liable for all moneys which may come into his hands as general receiver; and if at any time he fail to invest any sum of money, as required by the four preceding sections, for the space of sixty days after the same shall be, or ought to have been, received by him, or fail to pay out any sum of money, when required by the court to pay the same, for the space of sixty days after it shall come into his hands for the purpose of such payment, he shall be charged with interest thereon, from the day when such money was, or ought to have been, received by him, until such investment or payment is made, unless, for good cause shown to the court, it shall order otherwise. (Code 1887, § 3409.)

Where receiver is appointed to hold office during pleasure of court, and executes several annual bonds with different sureties, conditioned for faithful performance of his office, and dies without accounting, the several bonds are cumulative securities, taking effect from their respective dates, and liability of different sureties is in proportion to penalties of various bonds. Walton v. Williams, 1 Va. Dec. 579.

Where receiver is directed to lend fund on notes payable to himself secured by real estate, at six per cent., with power to sell same on default in interest, and he lends the money on notes secured on real estate payable to another, at eight per cent., and neglects to enforce sale on default, so that money is lost, he is liable therefor, though bad faith is not shown. Carr's Adm'r v. Morris, 85 Va. 21, 6 S. E. 613; Barton v. Barbour, 104 U. S. 126, 26 L. Ed. 672.

Where a receiver failed to invest funds, as required by the court appointing him, but held same in his hands until time of application for settlement of his accounts, it was held that the receiver was chargeable only with simple interest on the funds notwithstanding section 3413 of the Code of 1887. Roller v. Paul, 106 Va. 214, 55 S. E. 558.

For W. Va. decisions on similar statute, see Justis' Annotations, Chapter 133, section 19.

Sec. 6285. Their bonds.—He shall annually give, before the

Digitized by Google

court, a bond, to be approved by it, in such penalty a
may direct, sufficient at least to cover the probable am
may come into his hands in any one year, and each succ
shall be deemed a cumulative security from the time o
tion for the faithful discharge by him thereafter of h
receiver. (Code 1887, § 3410.)

The provision that "each successive bond shall be deem
lative security," etc., was incorporated by the revisors of
formity with the decision of Walton v. Williams, 1 Va. D
only three judges sat in this case, one of whom dissented, it
best that the ruling of the majority (which the revisor
should be made by the Code the rule of decision in future ca
Address, 2 Barton, L. Pr. (2d Ed.) 1396.

For W. Va. decisions on similar statute, see Justis'
chapter 133, section 20.

Sec. 6286. Their compensation.—He shall receive as
sation for his services such per cent. of the amount re
invested or paid out by him in such case, as the court
for receiving, investing, or paying out the same. (
§ 3411.)

For W. Va. decisions on similar statute, see Justis'
chapter 133, section 21.

Sec. 6287. Penalty for failure of duty.—If he fail t
account, or to make out and return the statements r
section sixty-two hundred and eighty-three, he shall be
a fine of not less than one hundred nor more than on
dollars, to be imposed by the court at its discretion; and
tion of his official bond shall be taken to embrace the
himself and his sureties for any such fine. (Code 1887,

For W. Va. decisions on similar statute, see Justis'
chapter 133, section 22.

Sec. 6288. When interest payable; when compounde
terest on all loans made to individuals under an order of
become due and payable on the first day of January nex
loan was made, and semi-annually on the first days of J
July of each succeeding year, until the principal is pa
1887, § 3413.)

Revisors' Note.—Under this section as it stood prior to
the interest was made due and payable on the first day of J
after the loan was made and ANNUALLY on the first day of
each succeeding year, further enacting that "unless the inte
at the time it becomes due and payable, compound inter
charged thereon to the borrower from such time until payn
is made." The present section enacts that the interest shall
SEMI-ANNUALLY on the first days of January and July, an
sion concerning compound interest has been omitted and
pealed.

The words "when compounded" should have been strie
the headline of this section.

For W. Va. decisions on similar statute, see Justis' A
chapter 133, section 23.

See note to 6284, taken from Roller v. Paul, 106 Va.
E. 558.

Digitized by Google

Sec. 6289. Settlement of accounts of receivers, and examination of their bonds and of the securities held by them.—Each circuit, city and corporation court, at its first regular term after the first day of January in each year, by an order entered of record, shall require one of its commissioners in chancery, other than a commissioner who may have been appointed general receiver thereof, to state and settle the accounts of all the receivers of such court, both general and special, and of all persons to whom any money has been loaned under the order of the court, or who have money subject to the future order of the court, and which then remains undisbursed. The clerk of the court shall furnish to such commissioner a copy of the order so made, with a list appended thereto, exhibiting the names of all such receivers and persons. The said commissioner shall summon such receivers and persons, or the personal representatives of such of them as are dead, before him, and audit, state, and settle their accounts, and report the same to the court at its next term after such order has been made. He shall also cause the bonds of the receivers of the court, and the bonds or other securities given for any money loaned under the order of the court, to be produced before him, and shall ascertain if the obligors in such bonds, or if such other securities are sufficient, and report thereon to the court at the times before mentioned. (Code 1887, § 3414.)

Revisors' Note.—The word "city" in line two of the text is new.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 133, section 24.

Sec. 6290. Reports of such settlements, etc., to be recorded; when new bond or additional security to be required; effect of new bond.—The court shall examine the reports required by the preceding section, when the same are made to it; and, if satisfied of the correctness thereof, shall order them to be recorded. If it appears from the report of the commissioner that any bond of a receiver, or any bond or other security given by any person to whom money has been loaned under its order, is insufficient, the court shall order additional security to be given, or a new bond to be executed before it, in such penalty as may seem right, and with sufficient sureties. But the execution of such new bond shall not discharge the sureties in any prior bond from their liability for acts of the principal obligor done previous to the execution of such new bond. (Code 1887, § 3415.)

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 133, section 25.

Sec. 6291. Suits against receivers in certain cases.—Any receiver of any property appointed by the courts of this Commonwealth may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver was appointed; but

Digitized by Google

the institution or pendency of such suit shall not inter
delay a decree of sale for foreclosure of any mortga
said property. (1887, p. 231.)

**Revisors' Note.—This and the two following sectio
from the same act. Parts of the act no longer necessa
omitted. Attention is called to the fact that the language o
limited to receivers of corporations, whereas the revised s
to all receivers, the word "property" being used in lieu of "
thus making the sections conform to the Federal statute on t
ject. (1 Sup. Rev. St. U. S., p. 614, section 3.)**

See Burks' Pleading and Practice, pp. 61, 633.

Sec. 6292. Effect of judgment against receiver.—
against a receiver under the preceding section shall n
on the property or funds under the control of the cou
any execution issue thereon, but upon filing a certified
judgment in the cause in which the receiver was ap
court shall direct payment of such judgment in the s
as if the claim upon which the judgment is based had
and allowed in said cause. (Id.)

Sec. 6293. Warrants against receiver, when to be tri
rant before a justice of the peace under the two prece
shall be tried only after ten days' notice. (Id.)

**Sec. 6294. "Receivers' Book;" what recorded ther
dexed; open to inspection.**—Each clerk of the said c
tively shall procure, at the expense of his county or c
book, to be called the "Receivers' Book," wherein he
the said reports, when approved by the court; and h
an index thereto, showing the style of the suit or othe
in which money has been paid as aforesaid, and the
any report respecting the same is recorded; and the sa
be open to the examination of any person interested,
sel, without the payment of any fee therefor. (Code 1

Sec. 6295. Fees of clerks and commissioners.—For r
reports required by section sixty-two hundred and eigh
clerks may charge, in each case mentioned in such rep
eighteen cents to any party in the case seeking to recov
therein and mentioned in the report; and said commi
charge, for the reports made under the said section, t
allowed by law to commissioners in chancery for othe
be paid out of the fund in court, and charged to th
cases therein, in such proportions as the court shall
(Code 1887, § 3417.)

For W. Va. decisions on similar statute, see Justis
chapter 133, section 27.

**Sec. 6296. Court may appoint commissioner to exec
writing; effect of such deed, etc.**—A court of equity, in
in it is proper to decree or order the execution of any
ing, may appoint a commissioner to execute the same

Digitized by Google

ution thereof shall be as valid to pass, release, or extinguish the ght, title, and interest of the party on whose behalf it is executed, if such party had been at the time capable in law of executing e same, and had executed it. (Code 1887, § 3418.)

Revisors' Note.—See, as affecting this section, Acts 1918, chapter 2, p. 444.

Courts of this State are without jurisdiction to sell and convey lands t of this State (Wimer v. Wimer, 82 Va. 890, 5 S. E. 536, 3 Am. St. ep. 126; Gibson v. Burgess, 82 Va. 650); but they can act upon the rson if he be within its jurisdiction, and compel him to convey it, or herwise comply with its decree (Poindexter v. Burwell, 82 Va. 507); d compel him to cancel a deed for such lands obtained by fraud (Guernt v. Fowler, 1 Hen. & M. 5).

A deed made by a special commissioner appointed and empowered convey land under the statute passes the legal title of all parties to e suit. Hurt v. Jones, 75 Va. 341.

Cited but not construed in Clem v. Given's Ex'r, 106 Va. 145, 55 E. 567.

For W. Va. decisions on similar statute, see Justis' Annotations, apter 132, section 4.

Sec. 6297. After final decree the cause may be re-instated to appoint a commissioner to make a deed, or to substitute a new one.—ny cause, notwithstanding there has been a final decree therein, ay be re-instated for the purpose of entering an order directing deed to be made to any party which the record clearly shows is titled thereto, or for the purpose of substituting a new commisoner to make a deed in the place of one previously appointed for at purpose, but who has died or become incapacitated to act bere making such deed. (1899-00, p. 582; 1901-2, p. 384.)

For comment on this section, see 11 Va. Law Reg. 699.

Sec. 6298. How trustee appointed in place of one who is dead, resigned, removed, or declined the trust.—When a trustee in a will, ed, or other writing dies or removes beyond the limits of the ate, or declines to accept the trust, or when, having accepted, he signs the same, as he may be allowed to do, the circuit court of e county, or the circuit, corporation or other court of the city which such will was admitted to probate, or such deed or other riting is or might have been recorded, or the judge thereof in cation may, on motion of any party interested, and upon satisctory evidence of such death, removal, declination, or resignaon, appoint a trustee or trustees in place of the trustee named in ch deed. (Code 1887, § 3419; 1889-90, p. 41; 1897-8, p. 687; 1902-4, p. 633; 1910, p. 578.)

Revisors' Note.—This and the two following sections are taken from cts 1910, p. 578. This act conferred on the clerks of circuit courts in cation the right to substitute trustees, but the revised section above kes away this jurisdiction from the clerks and confers it upon judges all the courts named in the section in vacation. It will be observed, so, that the latter part of the above section requires "satisfactory evience" to be furnished as a pre-requisite to the substitution. See 11 a. Law Reg. 1035. The last word in the section, "deed," should be nstrument." The error was inadvertent.

Digitized by Google

A proceeding by motion under statute to substitute a for one who has resigned determines no question under the c v. Atlantic Savings & Loan Ass'n, 94 Va. 477, 26 S. E. 834.

This section does not apply to trustees who exercise a power, or one of personal confidence, and court of equity ha interfere with such trustee so long as he acts in good faith Dillard, 97 Va. 442, 34 S. E. 60, 5 Va. Law Reg. 562.

When a trust is discretionary or one of personal con section does not apply; otherwise, it does apply, although th invested with the legal title. Roller v. Catlett, 118 Va. 185,

Where order substituting trustee does not show on whc was, or that it was on motion of any one, it is null, and s such substituted trustee is void. Pitzer v. Logan, 85 Va. 374

See cases collected in note on Deeds of Trust Va. Wythe, p. 189.

For W. Va. decisions on similar statute, see Justis' chapter 132, section 5.

Sec. 6299. Notice of motion under preceding section. under the preceding section shall be after reasonable n persons interested in the execution of the trust othe plaintiff in such motion, and if any of the parties on notice is required to be served be under twenty-one y the court or clerk shall appoint some discreet and co torney at law as guardian ad litem to such infant de whom notice may be served. If any such party shoul or a convict, the notice shall be served on his committee if none, a guardian ad litem shall be appointed for him ner hereinbefore provided for appointment of a guardi for an infant. No notice need be given to a trustee moved from the State, declined to accept the trust, signed, nor to the personal representative of one wh (Id.)

Revisors' Note.—See revisors' note to the preceding s act provided that the court or clerk should appoint a guardian an insane party. The present section provides that, in ca person or a convict be interested, notice shall be served on hi if he have any, but if none, then a guardian ad litem shall b The last sentence of this section is new and settles two of th tions raised in 11 Va. Law Reg. 1035, the other being settle 6298.

Sec. 6300. Who to execute the trust until new trustee —Until such appointment is made under section sixty-t and ninety-eight: The personal representative of a so trustee, or if there be more than one trustee, and one them have died, resigned, or removed from the State, or accept the trust, the remaining trustee or trustees, sh the trust, or so much thereof as remained unexecuted a removal, declination, or resignation aforesaid (whethe subject be real or personal property) unless the instru ing the trust directs otherwise, or some other trustee b for the purpose by a court of chancery having jurisdi

Digitized by Google

case. This section and the two preceding sections shall not apply to any case provided for by section five hundred and ninety. (Id.)

Revisors' Note.—See revisors' notes to the two preceding sections.

When a court should appoint a new trustee in place of one deceased, though there is a personal representative of the dead one, see Strayer v. Long, 83 Va. 715, 718, 3 S. E. 372.

Personal representatives of trustees are vested only with naked powers. Sulphur Mines Co. v. Thompson, 93 Va. 293, 25 S. E. 232.

Property was held by a testator at the time of his death upon a trust which vested in him no discretion as to the time or manner of its disposition. Under this section the executor of the deceased trustee was charged with the duty of "executing the trust or so much thereof as remained unexecuted." Williams v. Bond, 120 Va. 678, 91 S. E. 627.

Under section 9, chapter 174, Code 1873 (similar to this), personal representative of sole trustee may execute trust, yet under section 6303 the court may appoint a trustee to execute the trust, and the appointment, when made conformably with statute, is valid. Fisher v. Dickenson, 84 Va. 318, 4 S. E. 737, 3 Va. Law Reg. 667.

Sec. 6301. How trustee required to give bond; when to be removed and another appointed.—After reasonable notice to a trustee, whether appointed by will, deed, or other writing, the circuit court of the county, or any court which would have jurisdiction in equity to administer the trust, or a judge thereof in vacation, may, on motion of any person interested, if it deem the same proper for the security of the trust estate, order such trustee to give bond with surety before such court, or before the clerk thereof, within a reasonable time and in a penalty to be prescribed by such court or judge, for the faithful execution of the trust, and may, if such order be not complied with, or whenever for any cause it appears proper, remove such trustee and appoint another in his place. (Code 1887, § 3420.)

See Burks' Address, 2 Barton, L. Pr. (2d Ed.) 1397.

Sec. 6302. Courts of equity may exercise same powers.—A court of equity, in a suit pending to enforce or administer the trust, may exercise all the powers conferred by the four preceding sections on the courts therein mentioned. (Code 1887, § 3421.)

Where debtor conveys property to trustees, who refuse to act, a court of equity may appoint others in their stead, but should have the trust administered under its own direction and control. Reynolds v. Bank, 6 Grat. 174.

On bill to enjoin sale of land under trust deed, where injunction is dissolved, it appearing that trustee is bankrupt, it is proper for court to retain control of cause and administer trust under its direction, and to require trustee to give security. Hogan v. Duke, 20 Grat. 244.

Where injunction for sale of land is dissolved, court may retain cause, and have sale made by trustee under its direction. Michie v. Jeffries, 21 Grat. 334, 346.

Whether on dissolving an injunction to sale under trust deed a court should dismiss bill or retain it with view of supervising the trust lies within discretion of court. Robinson v. Mays, 76 Va. 708.

Chancery court has power independently of this statute, to remove trustees in deeds to secure creditors, and appoint others. Lewis v. Glenn, 84 Va. 947, 6 S. E. 866.

Sec. 6303. When new trustee appointed in suit in equity in place of one who has died.—And when in a suit in equity it appears that

Digitized by Google

a trustee has died, although the heirs of such trustee
ties, yet, if his personal representative and the other
terested be parties, the court may appoint another trus
of him who has died, to act alone, or in conjunction w
viving trustee, as the case may require. (Code 1887, §

Under this section the person substituted as trustee
powers and privileges, and is subject to all the restrictions
instrument creating trust. Lewis' Adm'r v. Glenn, 84
S. E. 866.

Under section 8, chapter 174, Code 1873 (same as thi
annul deed of settlement by debtor to trustee for wife and
court's duty, upon trustee's death, to appoint a substitute,
tion 9 provides that his personal representative shall exec
Strayer v. Long, 83 Va. 715, 3 S. E. 372.

See case of Fisher v. Dickenson, 84 Va. 318, 4 S. E. 73
section 6300.

A substituted trustee is the proper plaintiff to recover
due to company of which he is assignee. Glenn v. Spring
Fed. 494.

**Sec. 6304. Substituted trustees, their powers, dutie
removed or proceeded against; their bonds.**—Any pers
trustee by virtue of this chapter shall be substitute
rights, powers, duties, and responsibilities of the trust
such will, deed, or other writing: and such substituted
in like manner, be removed or required to give bond v
or give a new bond where one has already been given
ceeded against in every respect as an original trustee.
§ 3423.)

Sec. 6305. Right of infant to show cause against dec
not be necessary to insert in any decree or order a pro
ing an infant to show cause against it within a certai
he attains the age of twenty-one years. But in any ca
but for this section, such provision would have been
infant may, within six months after attaining the ag
one years, show such cause in like manner as if the de
contained such provision. This right of an infant
affected by section sixty-two hundred and ninety-six.
§ 3424.)

This section, though allowing infant to show cause a
within six months after becoming of age, does not preve
asserting his rights by next friend as soon as he sees
Harrison v. Wallton's Ex'r, 95 Va. 721, 30 S. E. 372, 41
64 Am. St. Rep. 830.

It is well settled in Virginia that an infant, as a gene
much bound by a decree as an adult. He is not permitte
decree except on grounds for which adult could, such as fra
or error. Zirkle v. McCue, 26 Grat. 517; Harrison v. Wall
Va. 721, 30 S. E. 372, 41 L. R. A. 703, 64 Am. St. Rep. 8

The right of infant to show cause against a decree wh
interest after he arrives at age must be limited to extent
existing at rendition of decree, and not such as arose afterw
Ex'r v. Page, 21 Grat. 636; Morris v. Virginia Ins. Co.,
S. E. 383; Lancaster v. Barton, 92 Va. 615, 24 S. E. 251

After sale of infant's land has been confirmed, thou

Digitized by Google

has been irregular, yet if purchaser's title can be made good, and it is for infant's interest to confirm same, purchase will not be released, but if interest of infant will be injured by sale it will be set aside. Daniel v. Leitch, 13 Grat. 210.

Upon a bill by surviving partner against infant heirs of deceased partner for sale of partnership land, a decree for sale being made, after infants become of age, they show that surviving partner was largely indebted to firm. Held, this did not invalidate sale. Pierce's Adm'r v. Trigg's Heirs, 10 Leigh 406, 429.

Although answer of infant defendant over fourteen years of age to a bill of sale of lands was neither signed nor sworn to, yet where record shows answer, both signed and sworn to, she having full knowledge of all proceedings, consents to decree for sale, is regularly proceeded against as an infant on the record, and sale is not made until after she becomes of age, of which she has full knowledge, such infant will thereafter be estopped from setting up against a bona fide purchase, the fact that she had not signed and sworn to her answer. Lancaster v. Barton, 92 Va. 616, 24 S. E. 251.

A guardian ad litem may appeal in the names of the infants by himself as such guardian, but if he fails to do so the infants may by some one as their next friend. Givens v. Clem, 107 Va. 435, 59 S. E. 413.

See notes to section 6316.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 132, section 7.

Sec. 6306. When title of purchaser at judicial sale not to be affected.—If a sale of property be made under a decree or order of a court, and such sale be confirmed, the title of the purchaser at such sale shall not be disturbed unless within twelve months from such confirmation, the sale be set aside by the trial court or an appeal be allowed by the Supreme Court of Appeals, and an order or decree be therein afterwards entered requiring such sale to be set aside, but there may be restitution of the proceeds of sale to those entitled. (Code 1887, § 3425.)

Revisors' Note.—Section 3425 of the Code of 1887 was taken without change from the Code of 1849 (Code 1849, p. 676, chapter 178, section 8). The section furnished protection to purchasers only in cases where the sales had been made under decrees or orders after six months from the date thereof, and as the vast majority of sales are made under decrees less than six months old, it followed that formerly a vast majority of the purchasers at judicial sales were not protected. The evil spoken of by the Revisors of 1849 (Report of Revisors, p. 878, note) applies as much to sales made before the expiration of six months as to those made after the expiration of that period or any other less or greater period. It being of great importance that the title of purchasers at judicial sales should be as stable as the circumstances will permit, and also of equal importance that no man shall be deprived of his lands without a sufficient opportunity to have the decree set aside or reversed if erroneous, the present revisors were of opinion that purchasers at judicial sales should be protected by providing that their titles should not be disturbed unless within some reasonable period (named in the above section as twelve months from the confirmation), the sale be set aside by the trial court, or an appeal be allowed by the Supreme Court of Appeals, on which appeal an order or decree is entered requiring the sale to be set aside. Of course, there may be restitution of the proceeds to those entitled, as formerly.

Section 3425 of the Code of 1887 was held not to apply to a pro-

Digitized by Google

ceeding to compel purchasers to comply with their contra
head v. Bradley, 87 Va. 676, 13 S. E. 195.

That section applied to sales of lands of infants made i
erly brought for that purpose. Lancaster v. Barton, 92
S. E. 251.

When sale under decree was confirmed, confirmation re
and purchaser was entitled to everything he would have
to had confirmation and conveyance been contemporaneou
Taylor v. Cooper, 10 Leigh 317, 34 Am. Dec. 737.

Where a sale of infant's land was made six months
and confirmed without objection, it was too late for the pu
teen months afterward to object to irregularities. Cooper
15 Grat. 551.

Where sale was made more than six months after dec
and had been confirmed, it could not be set aside as to
Dixon v. McCue's Admx., 21 Grat. 373. This was true,
decree was erroneous. Quesenberry v. Barbour, 31 Grat. 4

If the sale was made under decree, and after six mon
date of the decree, and such sale was confirmed the rights
were fixed by the statute. Garland v. Pamplin, 32 Grat.

Under this section as it stood before the revision, it w
it gave no protection to a purchaser who had bought land
decree, although the sale was made more than six months f
of the decree. Brenham v. Smith, 120 Va. 30, 90 S. E. 657

In the case referred to in the preceding paragraph, th
held void because the statutes relating to the sale of infant
not been substantially complied with.

**Sec. 6307. Vacation powers of chancery judges; when
cised; effect of vacation decrees.**—Judges of courts exer
cery jurisdiction shall have the same jurisdictional p
chancery causes in vacation as is conferred upon suc
term, but such jurisdiction shall not be exercised exce
days' notice to all parties to be affected thereby, or th
Chancery causes, however, submitted in term may be
vacation without such notice; nor shall any notice be ne
defendant proceeded against by an order of publication
the cause has been matured and who has not entered
ance. Decrees in vacation shall have the same force a
if made in term, but the lien of such decree shall take
from the time of day at which it is received by the cle
tered of record. (Code 1887, § 3426; 1893-4, p. 233; 189
1897-8, p. 744; 1902-3-4, p. 633.)

**Revisors' Note.—This section as it stood before the
ferred only limited vacation powers on chancery judges.
of the Code of 1887, as variously amended, was more liberal
of the parties was generally required. It was thought that
powers should be enlarged to such an extent as to obviate
of from time to time amending the statute so as to confe
powers. The revised section above is intended to do this,
same time amply protect all parties in interest. It is inte
to confer jurisdiction, however, and not to compel its exer**

A vacation decree becomes effective only from time it i
order book of the court in which it is pending. Such an
on Sunday is void, and decree signed by judge remains as i
been entered on order book. Lee v. Willis, 99 Va. 17, 37 S

Judge, having before him bill and exhibits making a

Digitized by Google

case, may, in vacation, order an account. Three days' notice is inadequate, but decree will not be reversed unless the party be injured thereby. Moore v. Bruce, 85 Va. 139, 7 S. E. 195.

A decree entered without authority in vacation may be so approved at a subsequent term as to become binding and will not be disturbed if no prejudical error is discovered therein. Mountain Lake Co. v. Blair, 109 Va. 147, 63 S. E. 751.

Where plaintiff applied for injunction to enjoin collection of judgment on ground that process had not been served on him, but raised no issue as to merits, and defendant by answer raised such issue, and the court of its own motion in vacation made order for an account, whereupon commissioner reported judgment to be valid, and court decreed against plaintiff. Held, the only question before court was validity of judgment, and it had no right, under the law as it then stood, to take jurisdiction of merits of judgment. Finney v. Clark, 86 Va. 354, 10 S. E. 569.

Under the law as it then stood. it was held that defendants in injunction suit might after notice move judge in vacation to dissolve the injunction, and in such case the judge might dissolve the injunction in vacation, but he could not then dismiss the bill. Muller v. Bayly, 21 Grat. 521; Mount v. Radford Trust Co., 93 Va. 427, 25 S. E. 244.

Where a cause has been submitted for hearing in vacation at day not later than a specified day to be fixed by further agreement, depositions, taken and returned after such submission and before day fixed for hearing, may be read. Radford v. Fowlkes, 85 Va. 820, 8 S. E. 817.

Where suit was brought to enforce vendor's lien, and an account was ordered, and the purchaser at sale under decree was owner of lien and unsecured debt reported by commissioner, and this suit was consolidated with another suit to sell other property of debtor, which was sold and sale thereof confirmed without notice to creditor, held he was a party to suits, and entitled to notice of vacation proceedings; but confirmation will not be set aside unless he was prejudiced thereby. Patterson v. Eakin, 87 Va. 49, 12 S. E. 144.

Court has power in vacation to remove person named as commissioner, and to name another in his stead. Fayette Land Co. v. Louisville & N. R. Co., 93 Va. 274, 24 S. E. 1016.

After a case had been fully argued and submitted, the court might, under section 3427 of the Code of 1887, as amended, either in term or vacation, without the consent of the parties, direct the cause to be submitted for decision and decree in vacation. Wingfield v. McGehee, 108 Va. 120, 60 S. E. 755.

A decree confirming a report of liens disposed of a cause on its merits, and formerly could not be entered in vacation except by consent of parties. Harris v. Jones, 96 Va. 659, 32 S. E. 455.

Section 53, chapter 167, Code 1873, provided that decree in vacation in chancery suit may be rendered by consent of parties. Acts 1869-70, p. 427, authorized, in certain cases, judge of hustings court of city of Richmond to perform any duty of judge of chancery court. Where a chancery cause pending in said court was by consent submitted to judge thereof in vacation, decree entered in vacation by judge of hustings court, acting as judge of chancery court, was held valid. Morriss v. Virginia Ins. Co., 85 Va. 588, 8 S. E. 383.

Sec. 6308. How actions and proceedings at law heard in vacation; consent; when unnecessary; effect of judgment, etc.—Any action or proceeding at law pending in any court may, by consent of the parties, either in person or by counsel, next friend, or guardian ad litem, in term time entered of record, or by like consent in vacation, be submitted to the judge of said court for such decision and judgment in vacation as might be made in term. Actions and proceedings, however, submitted in term may be decided in vaca-

Digitized by Google

tion without such consent, nor shall such consent be r
to a defendant against whom the cause has been matur
of publication and who has not appeared. If the conse
in vacation it shall be so certified in any judgment
vacation. Whatever orders or proceedings are necess
pare the case for a writ of error may be made in va
orders made and judgments rendered in vacation shall
to the clerk of the court and be entered by him on th
book. All such orders and judgments entered in va
have the same force and effect as if made and entered i
a judgment for money shall be effective only from the
at which it is received in the clerk's office to be entere
(Code 1887, § 3427; 1895-6, p. 177; 1897-8, p. 754; 190
1902-3-4, p. 77; 1904, p. 312.)

**Revisors' Note.—In view of the preceding section, that
tion 3427 of the Code of 1887, as amended, upon which th
based, pertaining to chancery causes, has been omitted.
this the revised section makes no material alteration of the**

**Sec. 6309. Powers of judge in vacation to enforce o
decrees and orders.**—The judge of every court havi
law jurisdiction in civil cases shall have the same power
that he has in term by process of contempt to punish
of and enforce obedience to any decree or order made
in his court. The orders and proceedings in such case s
tified and entered of record as provided in the preced
and shall be as valid as if made or had and entered in t
1887, § 3428; 1895-6, p. 177.)

**Revisors' Note.—The words, "every court having comm
diction in civil cases," appearing in lines one and two of
used in lieu of "every circuit or corporation court." Th
made so as to cover by general language all proper courts
cases are provided for by section 6307.**

See Burks' Address, 2 Barton, L. Pr. (2d Ed.) 1389.
Misconduct toward judge see note, 12 Va. Law Reg. 6

**Sec. 6310. How money under control of court deposi
kept; list furnished Auditor and examiner of record;
collected.**—Whenever any court shall order any mone
control or in its custody to be deposited in any bank
institution the officer or person making such deposit s
certificate of deposit therefor and deliver the same to
the court in which such order was entered. Such cle
such certificate in the papers of the suit or proceedin
such order was made, and shall in a book kept for that p
a record of such money, showing the style of such su
proceedings, the date of the order of such deposit, the
such deposit, the place of such deposit, and the court in
order was entered; and he shall from time to time as
drawn on said fund charge the same against said de

Digitized by Google

shall also furnish the Auditor of Public Accounts on February first of each year with a copy of such record thus made by him showing the balance on hand February first; and the said Auditor shall keep a record of same in a book kept by him for that purpose. The said clerk shall also furnish a like list of such balances to the examiner of records who shall examine the same, and if found correct he shall report same to the commissioner of revenue of his county or city, who, if they be not otherwise taxed, shall enter the same upon his property book and assess the proper tax thereon, which shall be paid by such bank or banking institution to the treasurer of such county or city upon the presentation of the proper tax bill therefor, and the amount so paid shall be credited against such deposit, and the date and amount of such credit shall be endorsed on the certificate by the clerk. (Code 1887, § 3429; 1897-8, p. 758.)

Revisors' Note.—This section is taken from the first part of the act cited. The last two lines are new.

Sec. 6311. Proceedings where money has remained under control of court for five years without known owner or claimant.—Whenever any money shall have remained for five years in the custody or under the control of any court of this Commonwealth without any owner or claimant thereof known to the court claiming such funds, such court shall, where the amount is one hundred dollars or upwards, cause a publication to be made once a week for four successive weeks in some newspaper printed in the city of Richmond, and unless the court be a court held in the said city, also in some other convenient newspaper printed in the State, setting forth the amount of such money, the source from which it was derived, in what court and in what suit or proceeding it is held, and in whose hands it is, and requiring all persons having any claim to the said money to appear before the court within such time after the completion of the publication as the court may prescribe and establish their claim. If the sum be less than one hundred dollars, the court shall direct the same to be paid into the treasury of the State, and a proper voucher for the payment taken and filed among the records of the court. (1897-8, p. 758.)

Revisors' Note.—This section is taken from the latter part of the act cited. It should be noted that now the publication applies only to sums of one hundred dollars or more, and that the section directs sums of less than one hundred dollars to be paid into the treasury without publication. Small sums of money will not bear the expense of the publication.

Sec. 6312. When court shall order it to be paid into the treasury.—If no person appear and show title in himself the court shall order the money, after deducting therefrom the costs of such publication if such publication is made, and any other proper charges, to be paid into the treasury of the State and a proper voucher for the payment to be taken and filed among the records of the court. (Code 1887, § 3430; 1897-8, p. 667.)

Digitized by Google

Sec. 6313. How Auditor to keep account of it.—The Public Accounts shall, in a book provided for the purpo account of all money thus paid into the treasury, sh amount thereof, when, by whom, and under what order and the name of the court, and, as far as practicable, a of the suit or proceeding in which the order was made, as known, the names of the parties thereto. (Code 1887,

Sec. 6314. How person entitled to the money may re Money thus paid into the treasury shall be paid thereout son entitled thereto, who has not asserted a claim to the suit or proceeding in which it was held as aforesaid, factory proof that he is so entitled. If the claim do not hundred dollars, it may be presented to and allowed by of Public Accounts upon the proof aforesaid. If the cl sented be rejected by the Auditor, or if the claim exce dred dollars, the claimant may proceed for its recovery cuit Court of the city of Richmond in the manner provi ter one hundred and three. If, in such proceeding, th established, the net amount thereof (after deducting cost proper charges) shall be paid to the claimant out of the the warrant of the said Auditor. The limitation prescri tions twenty-one hundred and seventy-nine and twen dred and eighty-three, shall apply to any claim presente ed under this section. (Code 1887, § 3432.)

CHAPTER 265.

Injunctions and Bills of Review.

Sec.
6315. Injunction to protect plaintiff in suit for specific property.
6316. Bill of review, within what time allowed, injunction may be awarded on it.
6317. Injunctions in certain cases.
6318. Jurisdiction of injunctions.
6319. General jurisdiction of judges to award them.
6320. When court or judge refuses injunction, judge of Court of Appeals may award it.
6321. To what clerk, judge's order for injunction directed.
6322. Equity of injunction bill to be shown by affidavit or otherwise. Notice to adverse party of application may be required.

Sec.
6323. Court or judge, junction to rest of property o may require bond.
6324. Injunction bon quired, and b given; its pena dition; endorse poena; when i no effect.
6325. How surety in bond may obta security.
6326. Dissolution of i vacation.
6327. Damages on dis
6328. Dismission of in

Digitized by Google

Sec. 6315. Injunction to protect plaintiff in suit for specific property.—An injunction may be awarded to protect any plaintiff in a suit for specific property, pending either at law or in equity, against injury from the sale, removal, or concealment of such property. (Code 1887, § 3434.)

For monographic note on Injunctions, see Claytor v. Anthony, 15 Gratt. 518, Va. Rep. Anno.

For W. Va. decisions on similar statute, see Justis' Annotations, Chapter 133, section 1.

Sec. 6316. Bill of review, within what time allowed, injunction may be awarded on it.—A court or judge allowing a bill of review may award an injunction to the decree to be reviewed. But no bill of review shall be allowed to a final decree, unless it be exhibited within one year next after such decree, except that an infant or insane person may exhibit the same within one year after the removal of his or her disability. And in no case shall such a bill be filed, without the leave of the court first obtained, unless it be for error of law apparent upon the face of the record. (Code 1887, § 3435; 1899-00, p. 770.)

Infants.—Under statute infant may file bill of review on becoming of full age, and is entitled to show and have corrected any error to his prejudice, but error must be such as existed at time of decree, and not such as may arise afterwards. If decree is for his benefit, there is no cause which they can show to their prejudice. Morris v. Virginia Ins. Co., 85 Va. 588, 8 S. E. 383.

On bill of review by infants they have right to show any cause in the record against the original decree, and court will not only correct errors of law apparent on the decrees, but will look into all the pleadings and proceedings, and correct whatever error of law there may be on the record. Pracht v. Lange, 81 Va. 711.

Assignees.—Neither bills of review nor petitions for rehearing lie for assignees. Armstead v. Bailey, 83 Va. 242, 2 S. E. 238. Gibson v. Green's Adm'r, 89 Va. 524, 16 S. E. 661.

After-discovered evidence.—A bill of review for after-discovered evidence should be refused where the finding sought to be reviewed had been made more than one year prior to the filing of the bill, or where, if filed in time, the allegations would not have been sufficient to warrant a reversal, or where the allegations related to matters with which complainants were no longer concerned. Goode v. Bryant, 118 Va. 314, 87 S. E. 588.

Bill of review must be supported by affidavit that the evidence is not only new, but could not have been obtained by due diligence before the hearing, and there must be also an affidavit of the witness to the newly-discovered evidence. Kern, &c. v. Wyatt, &c., 89 Va. 885, 17 S. E. 549.

Limitations.—It is not necessary to plead the act of limitation to a bill of review, for it ought to appear in the bill itself that it is exhibited within the time prescribed by law, or that the complainant is protected by some of the savings in the act; otherwise it ought not to be received. Shepherd v. Larue, 6 Munf. 529.

Whilst a bill of review (under Code 1873, chapter 175, section 5) to a final decree cannot be brought after three (now one) years (Hancock v. Hutcherson, 76 Va. 609), a petition to rehear interlocutory decree is not limited by any statutory bar. Kendrick v. Whitney, 28 Grat. 546.

Where bill in nature of a bill of review is filed to correct a mistake against which court might have relieved as a matter of original equity

Digitized by Google

jurisdiction, and such bill is filed within a year of the discovery of s mistake, the limitation prescribed by law as to bills of review will apply. Fore v. Foster, 86 Va. 104, 9 S. E. 497, 6 Va. Law Reg. 52.

The limitation of one year prescribed by this section within wh a bill of review must be filed is subject to no exceptions which are contained in this section. No inherent equity can create an except when the statute does not make one. Matthews Co. v. Progress Co., Va. 777, 62 S. E. 924.

Generally.—For decisions bearing upon the subject of this statu though not expressly construing it, see Diamond State Iron Co. v. Al K. Rarig Co., 93 Va. 595, 25 S. E. 894, as to bill of review for aft ward discovered evidence; Craufurd's Adm'r v. Smith's Ex'r, 93 Va. 6 23 S. E. 235, 25 S. E. 657; Heermans v. Montague, 2 Va. Dec. 6, 20 S. 899; Sanders v. Burk, 2 Va. Dec. 175, 22 S. E. 516; Shepherd's Ad v. Chapman's Adm'r, 2 Va. Dec. 88, 21 S. E. 468: Beatty v. Barley, Va. 11, 32 S. E. 794; Dellinger v. Foltz, 93 Va. 729, 25 S. E. 998; Mas v. King, 1 Va. Dec. 63; Trevelyan's Adm'r v. Lofft, 83 Va. 141, 1 S. 901; Thomson v. Brooke, 76 Va. 160; Davis v. Morris' Ex'rs, Id. Rawlings' Ex'r v. Rawlings, 75 Va. 76; Armistead v. Bailey, 11 Va. L J. 620, 2 S. E. 38; Connolly v. Connolly, 32 Grat. 657; Sands v. Lynha 27 Grat. 291, 21 Am. Rep. 348; Wayland v. Crank's Ex'r, 79 Va. 6 Ambrouse's Heirs v. Keller, 22 Grat. 769; Campbell's Ex'rs v. Cam bell's Ex'r, Id. 649; Carter v. Allan, 21 Grat. 241; Laidley v. Merrifie 7 Leigh 346; Thornton v. Stewart, Id. 128; Royall's Adm'rs v. Johns 1 Rand. 421; Hodges v. Davis, 4 Hen. & M. 400; Braxton v. Lee's Hei Id. 376; Quarrier v. Carter's Representatives, Id. 242; Banks v. And son, 2 Hen. & M. 20; Triplett v. Wilson, 6 Call 47; Roberts' Widow Stanton, 2 Munf. 129, 5 Am. Dec. 463; Winston v. Johnson's Ex' Id. 305.

See monographic note on Bills of Review to Campbell's Ex'rs Campbell's Ex'r, 22 Grat. 649, Va. Rep. Anno., and note to Metter Adm'r v. Hagan, 18 Grat. 231, Va. Rep. Anno.

See notes to section 6305, Gregory's Forms No. 138.

Discussed, 13 Va. Law J. 45.

For W. Va. decisions on similar statute, see Justis' Annotation chapter 133, section 5.

Sec. 6317. Injunctions in certain cases.—Every court or judge a thorized to award injunctions shall, where such injunction is gran ed without notice to the adverse party, prescribe in the injunctio order the time during which the injunction shall be effective, an after the expiration of such time the said injunction, unless prev ously enlarged as hereinafter provided, shall stand dissolved. T party to whom such injunction is awarded may within such tim give notice to the adverse party or to his attorney at law or fact of the time and place at which he will move the court or judg to whom the bill is addressed to enlarge such injunction, or to gra a further injunction, and such adverse party may within such tim and after like notice move the said court or judge to dissolve suc injunction, and on such motion by either of said parties the sai court or judge may dissolve or enlarge said injunction or grant further injunction. From any order dissolving such injunction refusing to grant a further injunction there shall be no appeal; bu this section shall not prevent either party from applying to a judg of the Supreme Court of Appeals for an injunction as provided i section sixty-three hundred and twenty, who may award an in

Digitized by Google

nction in accordance with that section. (1895-6, p. 728; 1908, p. .)

A decree that not only dissolved an injunction but dismissed the aintiff's bill, awarded costs, and directed the sheriff to proceed with rtain executions as if no injunction had been granted, is a final ecree and may be appealed from, notwithstanding this section. Neblett Shackleton, 111 Va. 707, 69 S. E. 946; see editorial on this case, 16 a. Law Reg. 853.

Sec. 6318. Jurisdiction of injunctions.—Jurisdiction of a bill for n injunction to any judgment or judicial proceeding shall be in ne court in which the judgment was rendered or such proceeding pending; except that jurisdiction of an injunction to a judgment f a justice, or to any proceeding before a justice, shall be in the rcuit court of the county, or the circuit, corporation, or other court f the city, having chancery jurisdiction of the county or city in hich the judgment was rendered or such proceeding is pending; nd jurisdiction of an injunction to any other act or proceeding hall be in the circuit court of the county or the circuit, corpora- on, or other court of the city, having chancery jurisdiction, in hich the act or proceeding is to be done, or is doing, or appre- ended. (Code 1887, § 3436; 1899-00, p. 996; 1902-3-4, p. 572.)

Jurisdiction in vacation.—The judge of the circuit court has no juris- ction to perform any judicial functions in vacation, except where the ower is expressly conferred, as to grant injunctions and appeals. and ich other functions as are expressly authorized by law. Chase v. iller, 88 Va. 791, 14 S. E. 545; and note, 6 Va. Law Reg. 720. See ctions 6307, 6308.

What court must hear and determine injunction.—An injunction nnot be entertained in any county or corporation other than that in hich the act or proceeding is to be done, or is doing, or apprehended. orfolk & W. R. Co. v. Postal Tel. Cable Co. (two cases) 88 Va. 932, 36, 14 S. E. 689, 690.

Bill by defendant in execution to enjoin a levy thereunder must be ed in court of county in which the judgment was rendered. Beckley v. almer, 11 Grat. 625.

The forty-first section of the circuit superior law (Supp. to Rev. ode 1819, chapter 109), conferring on judges of superior courts gen- al jurisdiction to award injunctions either within or without their rcuits, but requiring such injunctions to be directed to the clerk of the ourt of the county or corporation in which the judgment is rendered or roceeding apprehended, does not give them jurisdiction to hear and etermine the cause, but the injunction only. Randolph's Ex'r v. Tucker,) Leigh 655.

Where injunction is ancillary.—Section 4, chapter 179, Code 1860, milar to this section, applies only to a pure bill of injunction; and, here injunction is merely ancillary to principal relief prayed for, the ourt having jurisdiction of the parties may properly award injunction, ough property embraced in injunction order be located elsewhere. Win- on v. Midlothian Coal Min. Co., 20 Grat. 686; Muller v. Bayly, 21 rat. 521. But see Muller v. Bayley, 21 Grat. 521.

Generally.—As to whether judge of court not having jurisdiction to ear and determine may award injunction, see 6 Va. Law Reg. 720.

For W. Va. decisions on similar statute, see Justis' Annotations, apter 133, section 4.

Sec. 6319. General jurisdiction of judges to award them.—Every dge of a circuit or corporation court or of a city court having

Digitized by Google

chancery jurisdiction shall have a general jurisdiction in awardi injunctions, whether the judgment or proceeding enjoined be in out of his circuit or city, or the party against whose proceedin the injunction be asked resides in or out of the same. (Code 18 § 3437.)

Revisors' Note.—The words "or of a city court having chanc jurisdiction" found in lines two and three of the text are new.

See note from Randolph's Ex'r v. Tucker, 10 Leigh 655, und section 6318.

For W. Va. decisions on similar statute, see Justis' Annotatio chapter 133, section 6.

Sec. 6320. When court or judge refuses injunction, judge Court of Appeals may award it.—When a circuit or corporati court, or city court having chancery jurisdiction, or a judge the of, shall refuse to award an injunction or having awarded a te porary injunction, dissolves or refuses to enlarge the same, a co of the proceedings in court, and the original papers presented the judge in vacation with any orders entered in the proceedin may be presented to a judge of the Supreme Court of Appeals, w may thereupon either award an injunction, or reinstate the injun tion dissolved, or enlarge the injunction. (Code 1887, § 3438; 19 p 37.)

Revisors' Note.—The words "or city court having chancery jur diction" appearing in line two of the text are new.

Where a circuit court refuses to award an injunction, the reme is by application, accompanied by original papers, and order of refu to a judge of Court of Appeals, who may review action of lower co and award the injunction. Wilder v. Kelley, 88 Va. 274, 13 S. E. 4

Judge of Court of Appeals has original jurisdiction to grant junction refused by inferior court; but where inferior court awards junction, and then dissolves it on merits, he cannot grant a new junction or reinstate old one on case made by bill. Fredenheim v. Ro 87 Va. 764, 13 S. E. 193, 266. This case was decided before the amen ment of 1908.

An injunction refused by judge of circuit court and by a judge Supreme Court may be awarded by another judge of Supreme Cou Jaynes v. Brock, 10 Grat. 211.

This section does not restrict the right of appeal under secti 6336, in a case for equitable relief by injunction. French v. Chapin Co., 118 Va. 117, 86 S. E. 842.

Quaere. Whether judge of Court of Appeals has authority as anc lary to his power to grant an injunction under this section, to appo a receiver? Va.-Tenn. & Car. S. & I. Co. v. Wilder, 88 Va. 942, S. E. 809. It seems to have been held in Fredenheim v. Rohr, 87 764, 13 S. E. 193, that a judge of the Court of Appeals has such pow

Cited but not construed, Neblett v. Shackleton, 111 Va. 707. S. E. 946.

For W. Va. decisions on similar statute, see Justis' Annotatio chapter 133, section 7.

Sec. 6321. To what clerk, judge's order for injunction directed. Every order, awarding an injunction, made under the two prece ing sections, shall be directed to the clerk of such court as h jurisdiction under section sixty-three hundred and eighteen a the proceedings thereupon shall be as if the order had been ma by such court, or the judge thereof. (Code 1887, § 3439.)

Digitized by Google

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 133, section 9.

Sec. 6322. Equity of injunction bill to be shown by affidavit or otherwise; notice to adverse party of application may be required.—No injunction shall be awarded in vacation, or in court, in a case not ready for hearing, unless the court or judge be satisfied, by affidavit or otherwise, of the plaintiff's equity; and any court or judge may require that reasonable notice shall be given to the adverse party, or his attorney at law or in fact, of the time and place of moving for it before the injunction is awarded, if, in the opinion of the court or judge it be proper that such notice should be given. (Code 1887, § 3440.)

Affidavit by president of complainant corporation that facts alleged are true so far as the same are within his knowledge, and that as to other matters he believes them to be true, is sufficient. Southern Ry. Co. v. Washington, A. & Mt. V. Ry. Co., 102 Va. 483, 46 S. E. 784.

It is error for the issues in an injunction suit to be heard and determined upon affidavits only and a perpetual injunction granted thereon. Virginian R. Co. v. Echols, 117 Va. 182, 83 S. E. 1082.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 133, section 3.

See Gregory's Forms Nos. 149, 357.

Sec. 6323. Court or judge, awarding injunction to restrain removal of property out of State, may require forthcoming bond.—A court or judge, awarding an injunction to restrain the removal of property out of the State, may require bond with security to be given before such officer, and in such penalty as the court or judge may direct, with condition to have the property forthcoming to abide the future order or decree of the court, and, unless such bond be given, may order the officer serving its process to take possession of the property, and keep it until the bond be given, or until the further order of the court. (Code 1887, § 3441.)

The requiring of the bond is in the discretion of the court, Holliday v. Coleman, 2 Munf. 162.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 133, section 8

Sec. 6324. Injunction bond; when required, and before whom given; its penalty and condition; endorsement on subpoena; when injunction of no effect.—An injunction (except in the case of a personal representative or other person from whom, in the opinion of the court or judge awarding the same, it may be improper to require bond), shall not take effect until bond be given in such penalty as the court or judge awarding it may direct, with condition, as to the court shall seem just and proper in the case, either to pay the judgment or decree (proceedings on which are enjoined) or to pay the value of the property levied on by the officer, where there has been a levy, or to have the property forthcoming to abide the future order or decree of court, and, in either case, to pay all such costs as may be awarded against the party obtaining the injunction, and all such damages as may be incurred, in case the injunction

Digitized by Google

shall be dissolved, and with a further condition, if a bond has been given under said judgment or decree, and save harmless the sureties in said forthcoming b representatives against all loss or damage in conseq suretyship, or, if the injunction be not to proceedings o or decree, with such condition as the said court or ju scribe. The bond shall be given before the clerk of which judgment or decree is, and, in other cases, be of the court in which the suit is wherein the injunctio If the bond be not given before the summons is issu shall endorse thereon that the injunction is not to tal the bond be given, and the clerk, who afterwards ta shall endorse on the summons that it is given. But i quired by this section be not given within sixty days at which the injunction was awarded, then the order a injunction shall be of no effect. (Code 1887, § 3442.)

Where statute does not prescribe the form of an in one substantially following the directions of the statut White v. Clay's Ex'rs, 7 Leigh 68.

Where injunction bond is executed in accordance wi cannot set up as defense to action thereon that by express a principal, made in presence of clerk at time of taking bond named should sign it, such agreement being unknown to man v. Howe, 27 Grat. 676.

The surety in an injunction bond being held insuff other bond being executed with other sureties, upon dis junction sureties in both bonds are equally liable. Ben Adm'r, 2 Grat. 357.

It is error in chancellor to award injunction withou curity, except in case of fiduciaries. Lomax v. Picot, 2 R see note to preceding section.

Principal debtor in judgment obtains injunction tho cutes bond with third person as surety, the surety in the being a party to injunction. Upon a dissolution thereof is liable for debt enjoined before surety in judgment. Be Adm'r, 2 Grat. 357.

Security on bond for prosecution of injunction is not and damages which may accrue on appeal to superior co v. Johns, 3 Munf. 230.

An injunction order requiring an injunction bond to condition "according to law" is sufficient authority to the the condition "to answer all costs and damages that may reason of the suing out the injunction in case the same sha and is a substantial compliance with the provisions of the Code directing the court to prescribe the condition o is the usual, if not almost the universal, practice of the ginal jurisdiction to prescribe the conditions of such manner when the circumstances are not such as to render tions necessary. Columbia Amusement Co. et als. v. Pine ment Corporation, 109 Va. 325, 63 S. E. 1002.

The liability of the obligors in an injunction bond is the bond alone. The damages must be such as are th proximate result of the issuance of the writ. Va. Beach D 115 Va. 280, 78 S. E. 617.

Discussed, 9 Va. Law J. 1.

Form of injunction bond, 4 Min. (3d Ed.) 1583; Forms No. 29.

Digitized by Google

Sec. 6325. How surety in forthcoming bond may obtain additional curity.—Any surety in such forthcoming bond, or his personal representative, may move for and obtain an order for other or additional security, in like manner as a defendant in the injunction may. Code 1887, § 3443.)

Discussed, 9 Va. Law J. 1.

For W. Va. decisions on similar statute, see Justis' Annotations. apter 133, sections 10, 11.

Sec. 6326. Dissolution of injunction in vacation.—The judge of a rcuit or corporation court, or of a city court having chancery jurisction, in which a case is pending, wherein an injunction is awarded, may in vacation dissolve such injunction, after reasonable notice the adverse party. His order for the dissolution shall be directed the clerk of said court, who shall record the same in the order ook. (Code 1887, § 3444.)

Revisors' Note.—The words "or of a city court having chancery risdiction" appearing in lines two and three of the text are new.

Injunction may be dissolved in vacation, but, without consent, cause nnot then be decided on its merits; it must stand over until next term. ount v. Radford Trust Co., &c., 93 Va. 427, 25 S. E. 244. But see ction 6307.

Where an injunction has been obtained in vacation, the defendant ay file his answer and move the court to dissolve the injunction, without filing the answer at rules or in term Goddin v. Vaughan's Ex'x. c., 14 Grat. 102.

Refusal to dissolve injunction appealable. Bristow v. Home Building Co., 91 Va. 18, 20 S. E. 946.

When injunction to be dissolved. Spence v. Jones, 85 Va. 172, S. E. 180.

Sec. 6327. Damages on dissolution.—Where an injunction to stay roceedings on a judgment or decree for money is dissolved wholly r in part, there shall be paid to the party having such judgment r decree, damages at the rate of ten per centum per annum from he time the injunction took effect until the dissolution, on such um as appears to be due, including the costs; but the court, where- the injunction is, may direct that no such damages be paid, or uch portion thereof as it may deem just. In a case wherein a forthoming bond was forfeited, and no execution thereon, before the njunction took effect, a court awarding such execution shall include in its judgment or decree damages as aforesaid; in other ases they shall be included in the execution on the judgment or decree to which the injunction was awarded. The damages shall be n satisfaction of so much of the interest for the time they are given s may not exceed said damages. (Code 1887, § 3445.)

When condition of bond broken.—The condition of an injunction ond is broken as well by a partial as a total dissolution, so that action es on bond. White v. Clay's Ex'rs, 7 Leigh 68.

How damages computed.—Where upon bill of review an injunction s granted to a judgment, and afterwards dissolved, the damages are to be omputed on the amount of judgment at time injunction was granted on ill of review. Claytor v. Anthony, 15 Grat. 518.

Where injunction is dissolved, and on appeal order of dissolution is ffirmed, the ten per cent. damages is to be computed from the time

Digitized by Google

when the injunction was granted to the date of dissolution thereof i the court below, but not for the time it was pending in the appellat court. Jeter v. Langhorne, 5 Grat. 193.

Upon dissolution of injunction on judgment, the damages for re tarding judgment by injunction should be computed on the aggregat principal, interest and costs, appearing due on judgment at the date o the execution, and the damages should be ascertained and precept t levy them inserted in the body of the execution. Washington's Ex'r v Parks, 6 Leigh 581.

Damages not dependent on condition of bond.—Although injunctio bond provided only for judgment and costs of injunction, in action there on after dissolution of injunction interest and damages may be recovered Fox v. Edwards' Ex'r, 6 Munf. 36.

Damages in excess of penalty of bond.—If the judgment, principa interest, costs and damages on the injunction amount to more than th penalty of the injunction bond, yet plaintiff having sued out executio on the judgment, and made principal, interest and costs, may sue fo damages on bond. Claytor v. Anthony, 15 Grat. 518.

Damages are incident of dissolution.—Where injunction bond pro vides for payment of such damages as may be awarded by court, an court simply dissolves injunction and dismisses bill, such order of di solution necessarily imports that damages are to be paid unless they b expressly remitted by terms of order. Claytor v. Anthony, 15 Grat. 51

Damages on dissolution become part of judgment.—Where injun tion is obtained to judgment which is lien upon an equity of redemptio in land, the damages on dissolution thereof become, as to the party ob taining it, a part of the judgment, and are embraced in the lien of th judgment upon the equity of redemption. Michaux's Adm'r v. Brow 10 Grat. 612.

Generally.—If person not party to a judgment enjoins it, and i junction is dissolved, he is liable to pay ten per cent. damages prescribe by statute. Claytor v. Anthony, 15 Grat. 518.

Where execution is awarded on forthcoming bond against princip and surety, the principal obtains injunction thereto, which is afterward dissolved. The surety is not liable for the damages awarded in injunctio proceedings, and if execution issue against surety as well as principal o surety's motion it will be quashed. The execution should be so frame as to exempt surety from the damages, and make principal alone liabl therefor. Garnett v. Jones, 4 Leigh 633.

Where, pending an injunction to judgment for money, creditor die and injunction, but not suit at law, is revived against administrato court cannot make decree in suit in equity for money which will b payable to creditor on dissolution. Medley v. Tunis' Ex'rs, 1 Rob. 6

Common law damages may be recovered independent of and in add tion to damages provided for in this section. 15 Va. Law Journal (1891 572.

For W. Va. decisions on similar statute, see Justis' Annotation chapter 133, section 12.

Sec. 6328. Dismission of injunction bill.—Where an injunctio is wholly dissolved, the bill shall stand dismissed of course wit costs, unless sufficient cause be shown against such dismission a the next term of the court after the dissolution. The clerk of th court shall enter such dismission on the last day of said term. (Cod 1887. § 3446.)

Code 1873, chapter 175, section 14 (same as this section), applie only to pure bills of injunction, and not to a case where the bill pray for other relief besides the injunction; and pending the litigation for th subjection of the land to sale for the purchase money it is not error t appoint a receiver to rent the land, and, if necessary, to collect bond given by vendee for rent. Adkins v. Edwards, 83 Va. 300, 2 S. E. 43

After an injunction has been wholly dissolved, if the cause be s

Digitized by Google

for hearing on motion of defendant he cannot take advantage of fact that bill should have been dismissed. Franklin v. Wilkinson, 3 Munf. 112.

The third section of act January 20, 1804, same as this section (3 St. at Large [N. S.] p. 98), does not apply to bill which is not merely bill of injunction, but has the farther object in view of obtaining a conveyance. Pulliam v. Winston, 5 Leigh 324; Hough v. Shreeve, 4 Munf. 490; Singleton v. Lewis 6 Munf. 397.

The word "term" should be construed to mean the next regular term fixed by law, and not a special term fixed by court, unless otherwise provided. Stulty v. Pratt, 103 Va. 536, 49 S. E. 654..

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 133, section 13.

CHAPTER 266.

Errors Insufficient in an Appellate Court.

Sec.
6329. Errors, which might be corrected on writ of error coram vobis, may be corrected on motion, after notice.
6330. Judgment on confession a release of errors.
6331. For what a judgment not to be reversed.
6332. Same as to decrees only.
6333. Error in judgment or decree; when by default may on motion be corrected in same court and in other cases by same court or judge when there is something in the record by which to amend, or excess may be released; within what time motion to be made.
6334. What appellate court to do in a case in which there might be redress under the preceding section.
6335. Allowing appeal when verdict reduced and accepted under protest.

Sec. 6329. Errors, which might be corrected on writ of error coram vobis, may be corrected on motion, after notice.—For any clerical error, or error in fact for which a judgment or decree may be reversed or corrected on writ of error coram vobis, the same may be reversed or corrected, on motion after reasonable notice, by the court, or by the judge thereof in vacation. (Code 1887, § 3447.)

The Court of Appeals has no power to award writs of error to its own judgment, or to allow bills of review to or appeals from its own decrees, for any error of law or fact appearing upon the face of its records. Nor can it, for errors of fact not apparent upon its records, grant writs of error coram vobis or entertain bills of review. Reid's Adm'r v. Strider's Adm'r, 7 Grat. 76, 54 Am. Dec. 120.

A judgment by confession entered by mistake of clerk instead of judgment nil dicit cannot be corrected at the next term of court under either the first or fifth sections of chapter 181, Code 1849, similar to sections 6329, 6333. Richardson's Ex'x v. Jones, 12 Grat. 53.

Cited but not construed in Allens' Case, 114 Va. 826, 77 S. E. 66. See 4 Min. (3d Ed.) 1054-1057.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 134, section 1.

Sec. 6330. Judgment on confession, a release of errors.—A judgment on confession shall be equal to a release of errors. (Code 1887, § 3448.)

Digitized by Google

Confession of judgment.—An entry that the defendant his plea of payment, saith he cannot gainsay the plaint the sum of, etc., is a judgment by confession, and releas errors in the proceedings. Richardson's Ex'x v. Jones, 1

Confession of judgment is valid, though no suit be pe the parties. Brockenbrough's Ex'x v. Brockenbrough's A 580-589.

Confession of judgment on a forthcoming bond is a errors in the previous proceedings. Stanard v. Timber 681.

Valid, confessed by power of attorney executed by ment confessed on power of attorney to confess judgment, firm, is valid, and may be in favor of a woman, under A 353. Alexander v. Alexander, 85 Va. 353, 7 S. E. 335, 1

How advantage taken of release of errors.—A defen wishing to avail himself of a release of errors, or of an not being properly a part of the record, ought not to mo quash the supersedeas, but should plead in bar such re matter. Hite's Heirs v. Wilson, 2 Hen. & M. 268.

When equity will not relieve.—After a confession o an executor, in an action brought on his official bond for recovering against him and his securities for a devasta resort to a court of equity for relief on ground that he ha istered the assets of his testator. Worsham v. McKenzie 343.

Where it appears that in a suit on an executorial fendants confessed an unconditional judgment, as to court of equity relieves, see Freelands v. Royall, 2 Hen.

For W. Va. decisions on similar statute, see Justis chapter 134, section 2.

Sec. 6331. For what, a judgment not to be reversed. ment or decree shall be arrested or reversed for the either party, being under the age of twenty-one years if the verdict (where there is one), or the judgment for him and not to his prejudice; or for want of war ney; or for the want of a similiter, or any misjoinin for any informality in the entry of the judgment or clerk; or for the omission of the name of any juror; may not appear that the verdict was rendered by t jurors required by law; or for any defect, imperfec sion in the pleadings, which could not be regarded on for any other defect, imperfection, or omission in the any error committed on the trial where it plainly the record and the evidence given at the trial that th had a fair trial on the merits and substantial jus reached. For the purposes of this section, the tria upon the request of either party, give a certificate proved, or, if this be not practicable, of the eviden the trial, which certificate when signed by the jud part of the record. Such certificate, however, shall except during the term at which the evidence was within sixty days thereafter; if given in vacation sha by the judge to the clerk of his court, and the latt with the papers in the cause. The certificate shall be

Digitized by Google

rendered by the party requesting it, or his counsel. (Code 1887, § 3449.)

Revisors' Note.—This section is, and is intended to be, a very substantial change in the statute of jeofails. It is intended to render it practically impossible for a case to be reversed on any mere technicality, and to allow all judgments to stand when fairly rendered on the merits, if substantial justice has been reached.

Statute of jeofails (this section and the next) is intended to cure defective statement of cause of action, but not a statement which makes no case. O. A. & M. R. Co. v. Miles, 76 Va. 773.

A motion in arrest of judgment should be overruled where the declaration contains a defective statement of a good cause of action. This is a class of error which the statute of jeofails is designed to cure. Richmond v. McCormack, 120 Va. 552, 91 S. E. 767.

The omission to appoint a guardian ad litem is reversible error in all cases unless it appear that the judgment is for the infant, and not to his prejudice. Weaver v. Glenn, 104 Va. 443, 51 S. E. 835.

When statute does not apply.—If, at the hearing of a cause, the case made upon the pleading and proof is one of which a court of equity has no jurisdiction, the bill should be dismissed, though defendant has made no objection to jurisdiction, by plea, demurrer, or answer, but has defended the case upon merits, and on appeal it will be dismissed, though no objection was taken in court below. Green v. Massie, 21 Grat. 356.

Where bill fails to state a proper case for relief in equity it will be dismissed at hearing, though no objection has been made in the pleadings. But a defective bill may be aided by answer and evidence. Salamone v. Keiley, 80 Va. 86.

Where first and second counts of declaration allege that animals were killed by defendant's negligence, and in third and fourth counts there is no allegation, the third and fourth counts are fatally defective, and are not cured by verdict, under statute of jeofails. O. A. & M. R. Co. v. Miles, 76 Va. 773.

Where defendant appears not to have been included in the original process and the returns thereon, the judgment entered in the suit is void, the presumption of jurisdiction being overcome by the record. Ward v. Funsten, 86 Va. 359, 10 S. E. 415.

When demurrer necessary.—Counts ex delicto cannot be joined with counts ex contractu. Such misjoinder makes the declaration bad on demurrer. But under section 3, chapter 177, Code 1873 (corresponding to this section), unless demurrer has been filed and overruled such misjoinder will not be ground for motion in arrest of judgment or writ of error. Norfolk & W. R. Co. v. Wysor, 82 Va. 250.

Judgment will not be reversed for defect, imperfection, or omission in the pleading unless in court below there was a demurrer. But a failure to state any cause at all is not cured by section 3, chapter 177, Code 1873 (corresponding to this section), Roanoke Land & Improvement Co. v. Karn, 80 Va. 589.

A plea, though defective, and not demurred to, is cured. Davis' Adm'r v. McMullen's Adm'r, 86 Va. 256, 9 S. E. 1095.

Informality of judgment.—Where informality of judgment is harmless, and can work no injury, it will not be reversed therefor. Long v. Pence's Committee, 93 Va. 584, 25 S. E. 593.

Declaration showing plaintiff's intention to proceed under statute to simplify declarations in actions against insurance companies is a good statutory declaration, even though largely following the form of a declaration in debt. Virginia Fire & Marine Ins. Co. v. Saunders, 84 Va. 216, 4 S. E. 584.

Generally.—For statute of jeofails generally, see 4 Min. (3d Ed.) 939, 940, 946, 1056, 1073; Burks' Pleading and Practice, pp. 355, 356, 363, 571, 737; Southside R. Co. v Daniel, 20 Grat. 344.

Discussed, 14 Va. Law J. 21.

Digitized by Google

Cited in Mandeville v. Suckley, 1 Pet. 136, 7 L. Ed.
See sections 6085 and 6118 and notes.
For W. Va. decisions on similar statute, see Justis' chapter 134, section 3.

Sec. 6332. Same as to decrees only.—No decree shal for want of replication to the answer, where the d taken depositions as if there had been a replication; appears that there was a full and fair hearing on th that substantial justice has been done, a decree sha versed for want of a replication, although the defend have taken depositions; nor shall it be reversed, for an in the proceedings, at the instance of a party who has sitions. (Code 1887, § 3450.)

Where defendant has taken depositions it is imma section 4, chapter 177, Code 1873 (same as this section) plication to answer is filed or not. Harris v. Harris, 31 G this is true where plea, instead of replication, is put in Simmons v. Simmons' Adm'r, 33 Grat. 451.

Where decree was entered in cause when there was to the answer of D., and after an appeal was perfected by on motion of the plaintiffs, made an order permitting pla replication nunc pro tunc, if it was proper case for such should have allowed D. time to take testimony to meet case presented by replication. Dabney v. Preston's Adm'rs,

Where record discloses that decree was entered in a cessary parties, appellate court will reverse it, though no taken in court below. Dabney v. Preston's Adm'rs, 25 Gr

Followed in Jones v. Degge, 84 Va. 685, 5 S. E. 799

For W. Va. decisions on similar statute, see Justis' chapter 134, section 4.

Sec. 6333. Error in judgment or decree; when by on motion be corrected in same court and in other ca court or judge when there is something in the record amend, or excess may be released; within what time made.—The court in which there is a judgment by decree on a bill taken for confessed, or the judge of vacation thereof, may, on motion reverse such judgme for any error for which an appellate court might rev following section was not enacted, and give such judg cree as ought to be given. And the court in which i judgment or decree in a cause wherein there is in a d pleading or in the record of the judgment or decree miscalculation, or misrecital of any name, sum, quan when the same is right in any part of the record or or when there is any verdict, report of a commission other writing whereby such judgment or decree ma amended, or in which a judgment is rendered on a bond for a sum larger than by the execution or warra appears to be proper, or on a verdict in an action fo ages than are mentioned in the declaration, or in the the court in which any such judgment or decree is judge thereof may, on the motion of any party, amen

Digitized by Google

ment or decree according to the truth and justice of the case, or in any such case the party obtaining such judgment or decree, may, in the same court, at any future term, by an entry of record, or in the vacation by a writing signed by him, attested by the clerk and filed among the papers of the cause, release a part of the amount of his judgment or decree, and such release shall have the effect of an amendment and make the judgment or decree operate only for what is not released. Every motion under this chapter shall be after reasonable written notice to the opposite party, his agent or attorney in fact or at law, and shall be within three years from the date of the judgment or decree. (Code 1887, § 3451; 1893, p. 376.)

Remedy is cumulative.—Section 5, chapter 177, Code 1873 (similar to this section), is a cumulative remedy, and does not supersede or abolish petitions for rehearing which may still be had according to the course of equity, in the same manner as before this statute. Kendrick v. Whitney, 28 Grat. 646. It applies only to judgments by default and decrees on bills taken for confessed, and to cases of mistake or misrecital or miscalculation, for which no appeal lies to this court. Thompson v. Carpenter, 88 Va. 702, 14 S. E. 181.

Judgment by default.—All judgments where there has been no appearance by the defendant are judgments by default, within the meaning of the statute, under section 5, chapter 181, Code 1849 (similar to this section). Davis v. Com., 16 Grat. 134.

Where judgment is erroneous by reason of misprision of clerk in entering it up, such case comes within section 5, chapter 177, Code 1873 (similar to this section), and is not ground for equitable interference. Judgment by default in this statute means judgment against person who does not appear, whether legally summoned or not. Goolsby v. St. John, 25 Grat. 146.

An injunction will not be awarded to a judgment by default upon summons directed to sheriff of county other than where action is brought, although the summons was issued contrary to law, as the judgment, though erroneous, is not void, and the defendant has a complete remedy at law under this section. Brown v. Chapman, 90 Va. 174, 17 S. E. 855.

Notice under this section to reverse a judgment by default and to quash an execution thereon on the ground that judgment was obtained by default, and after service of process by publication only and not by personal service thereof, sufficiently raises the constitutionality of section 3225, of the Code of 1887, under which the service was made. Ward Lumber Co. v. Henderson-White Mfg. Co., 107 Va. 626, 59 S. E. 476.

Notice need not specify errors.—The notice, under Code 1873, section 5, chapter 177 (similar to this section), need not specify the errors for which the court is asked to correct or reverse its judgment by default. Saunders v. Griggs' Adm'r, 81 Va. 506.

When statute applies.—An original bill which seeks to correct errors in decree by default apparent on its face, and also set it aside on the ground of mistake and surprise, having been filed without leave, cannot be treated as a bill of review. But a copy of original record being filed with bill, the court may consider and correct any errors apparent on face of decree, which may be corrected under section 5, chapter 181, Code 1849 (similar to this section). Hill v. Bowyer, 18 Grat. 364.

Under Code 1873, section 5, chapter 177 (similar to this section), an amendment of a judgment for plaintiffs in ejectment "for their terms yet to come in lands," so as to conform with plaintiff's claim and the requirements of Code 1849, where ejectment was adopted to try titles as well as to get possession of lands, was not error. Alvey v. Cahoon, 86 Va. 173, 9 S. E. 994.

Digitized by Google

Upon notice to adverse party, the court wherein decree is rendere may correct any clerical error therein, where there is enough in ti record to enable court safely to amend same. Dillard's Adm'r v. Dillar 77 Va. 820.

A judgment and award of execution on forthcoming bond havin been entered by default upon a day prior to that on which notice wa given, the court in which the judgment and award of execution wa rendered has jurisdiction, under section 5, chapter 181, Code 184 (similar to this section), on motion of plaintiff to set aside judgment an quash execution upon reasonable notice to defendants. Ballard Whitlock, 18 Grat. 235.

When statute does not apply.—Where defendant, in decree by d fault, does not, within statutory period, proceed to correct errors theret under this section, he cannot, after lapse of such time, make such com plaint on reinstatement of the cause by other parties. Groseclose Harman, 1 Va. Dec. 564.

In absence of objection in court below that commissioner had no regularly adjourned from time to time the taking of accounts, an ap pellate court would presume that they were regular, and objection not available under this section. Hill v. Bowyer, 18 Grat. 364.

A judgment by confession entered by mistake of clerk instead a judgment upon nil dicit cannot be corrected at next term of the cour under either the first or the fifth sections of chapter 181, Code 184 (corresponding to sections 6329, 6333). Richardson's Ex'x v. Jone 12 Grat. 53.

This section confers no power to give validity and force to vac tion judgment and decrees which are void by want of power in the judg to render them. Wingfield v. McGehee, 108 Va. 120, 60 S. E. 755.

Remedy under this section held not to apply under the circum stances appearing in the case of Battaile v. Maryland, etc., 76 Va. 63.

Section does not apply to errors in reasoning.—Where a final decre has been entered in a cause confirming report of commissioner witho exception or objection, appellate court will not reverse such decree f errors alleged in said report, and not appearing on face of it. And in litigated case such errors cannot be corrected by trial court on motio under this section. This section applies to errors generally, on judg ment by default or bill taken for confessed, and for misprisions of cler or clerical misprisions of the judge, where judgment may be safely co rected in the manneer prescribed by that section, but has no applicatio to errors in reasoning and conclusions of court about contested matter Shipman v. Fletcher, 91 Va. 473, 22 S. E. 458.

This section in its present form overrules Dillard v. Thornton, Grat. 393.

Judgment nunc pro tunc.—When on application to a trial court correct judgment by default under provisions of this section it appea that no order was entered by court on day to which notice of motion f judgment was returnable, but that judgment by default was entered a subsequent term, it is within discretion and power of court to ent an order nunc pro tunc docketing the motion and continuing it to th next term, and validating the judgment as between the original partie and annexing a condition thereto that such judgment shall not affect th rights of innocent third parties whose rights have accrued since th original judgment, and before the nunc pro tunc order. Such orde when made, is an entirety, and is not valid as to the judgment and voi as to condition. Powers v. Carter Coal & Iron Co., 100 Va. 455, 4 S. E. 867, 8 Va. Law Reg. 351.

During the term of court at which a judicial act is done the recor remains in the breast of the court, and may be altered or amended: bu after adjournment of term amendments can only be made in case ther is something in record by which they can be safely amended. Amend ments cannot be made after the term upon individual recollection judge or upon proof aliunde. Barnes' Case, 92 Va. 794, 23 S. E. 78

Digitized by Google

In proper cases to further the ends of justice, courts may make entries of judgments nunc pro tunc in either civil or criminal cases, and the time within which this may be done is not limited. Weatherman's Case, 91 Va. 796, 22 S. E. 349.

Under section 5972, providing that all cases on docket, not determined before term, shall stand continued without order of continuance, held it was in the power of court at its July term to enter judgment nunc pro tunc, which it had omitted on verdict rendered at April term. Van Gunden v. Kane, 88 Va. 591, 14 S. E. 334.

See note to section 5972.

In Carpenter v. Gray, 113 Va. 518, 75 S. E. 300, the court at the instance of the defendant, set aside the office judgment and allowed the defendant to plead. At a subsequent term, upon the motion of the plaintiff, the court reconsidered its former action, and a nunc pro tunc judgment was rendered in favor of the plaintiff.

Court cannot set aside order vacating former judgment.—In 1889 circuit court reversed judgment of county court, and remanded the case, with costs. Afterwards circuit court set aside previous order, and later made an order reversing county court, and ordering road to be opened. Held, the last order of circuit court was erroneous, it being without jurisdiction after final order of 1889. Thompson v. Carpenter, 88 Va. 702, 14 S. E. 181.

Where a court on motion of defendant vacates a judgment previously rendered, it cannot, on motion of plaintiff, subsequently vacate the order vacating the judgment. In such case remedy is by appeal. Dillard v. Thornton, 29 Grat. 392.

When injunction does not lie.—Injunction is not proper remedy where relief against decree erroneously entered can be obtained under this section. Preston v. Kindrick, 94 Va. 765, 27 S. E. 588, 64 Am. St. Rep. 777, and note 3 Va. Law Reg. 431.

When appeal does not lie.—Court of Appeals has no jurisdiction of an appeal from a decree by default until relief has been sought under this section. When the time allowed by it has expired decree becomes final and irreversible. Davis v. Com., 16 Grat. 134; Smith's Ex'r v. Powell, 98 Va. 437, 36 S. E. 522.

Where error in amount of judgment is released according to this section, appellate court will not reverse it on that account. Dickinson v. Clement, 87 Va. 41, 12 S. E. 105.

When defective return may be amended.—Where defendant under this section moves the judge to reverse the judgment by default upon a defective return of the summons instituting the case, the judge may allow the sheriff to amend his return, and if a proper service is shown the motion of the defendant will be dismissed. Stolz v. Collins, 83 Va. 423, 2 S. E. 737.

When improper to dismiss motion.—Where, on bill in equity not stating a proper case on its face, a decree on said bill taken for confessed is rendered, and defendant gives notice of motion to reverse and annul it under this section, it is error for such court to dismiss the motion, as bill should have been dismissed at hearing. Graveley v. Graveley, 84 Va. 145, 4 S. E. 218.

Section does not apply to Court of Appeals.—The Court of Appeals is without power to correct a clerical error in its own decree when the application for relief is made after the expiration of the term at which the decree was rendered, or after the period within which a petition for a rehearing may be heard. Southern Ry. Co. v. Glenn's Adm'r, 7 Va. Law Reg. 533. See, also, editorial, Id. 576.

Where motion is made to dismiss appeal on ground that appellant's remedy, if any, was by motion under this section, and nothing is involved in such appeal of practical importance, such motion will not be considered. Flynn v. Jackson, 93 Va. 341, 25 S. E. 1.

Generally.—Applied in Goode v. Bryant, 118 Va. 327, 87 S. E. 588.

Digitized by Google

Cited but not construed in Park Land & Imp. Co. v. Lane, 10 Va. 304, 55 S. E. 690; Allens' Case, 114 Va. 826, 77 S. E. 66.

See Burks' Pleading and Practice, pp. 535, 541, 738; Gregory' Forms No. 358.

For W. Va. decisions on similar statute, see Justis' Annotations chapter 134, section 5.

Sec. 6334. What appellate court to do in a case in which there might be redress under the preceding section.—No appeal, writ o error, or supersedeas shall be allowed by an appellate court or judg for any matter for which a judgment or decree is liable to be re versed or amended, on motion as aforesaid, by the court which rendered it, or the judge thereof, until such motion be made and overruled in whole or in part. And when an appellate court hear a case wherein an appeal, writ of error, or supersedeas has been allowed, if it appears that, either before or since the same was al lowed, the judgment or decree has been so amended, the appellate court shall affirm the judgment or decree, unless there be other er ror; and if it appear that the amendment ought to be, and has no been made, the appellate court may make such amendment, and affirm in like manner the judgment or decree, unless there be other error. (Code 1887, § 3452.)

A mistake of the trial court in rendering judgment for damages under section 2776, after the verdict may be corrected by this court under the provisions of this section. Powers v. Hamilton, 117 Va. 810, 8 S. E. 98.

Applied in Brown v. Chapman, 90 Va. 174, 17 S. E. 855.

See Burks' Pl. & Pr., pp. 738, 773.

For W. Va. decisions on similar statute, see Justis' Annotations chapter 134, section 6.

Sec. 6335. Allowing appeal when verdict reduced and accepted under protest.—In any action at law in which the trial court shall require a plaintiff to remit a part of his recovery, as ascertained by the verdict of a jury, or else submit to a new trial, such plaintiff may remit and accept judgment of the court thereon for the re duced sum under protest, but, notwithstanding such remittitur and acceptance, if under protest, the judgment of the court in requiring him to remit may be reviewed by the Supreme Court of Appeals upon a writ of error awarded the plaintiff as in other actions at law; and in any such case in which a writ of error is awarded the defendant, the judgment of the court in requiring such remittitur may be the subject of review by the Supreme Court of Appeals regardless of the amount. (1906, p. 251.)

If the court has no right to set aside a verdict as excessive—there being no measure of damages—it has no right to put a party upon terms to accept a less amount. Boyd v. Boyd, 116 Va. 328, 82 S. E. 110.

A defendant in ejectment obtained a writ of error to a judgment of the trial court which awarded the entire premises to the plaintiff. The latter asked the appellate court to affirm the judgment in part, although the defendant's defenses went to the entire action. This prayer was re fused. The granting of it would be putting, not the successful, but the unsuccessful party on terms. Grizzle v. Davis, 119 Va. 567, 89 S. E. 870.

Digitized by Google

CHAPTER 267.

Appeals, Writs of Error, and Supersedeas.

Sec.
6336. In what cases petitions for appeal, writ of error, or supersedeas may be awarded.
6337. When prohibited.
6338. How person desiring to present such petition may procure suspension of execution.
6339. Transcript of record to be exhibited with such petition; person applying for transcript to notify opposite party or his counsel; certificate of clerk to transcript.
6340. How the record made up.
6341. Where parties differ, the judge to decide.
6342. Parties may agree upon what shall be copied, or may agree the facts to be copied in lieu of complete record.
6343. Court of Appeals may change rules for making out and printing records.
6344. If part of record unnecessarily copied, who to pay for it.
6345. Appellate court, or, etc., may inspect former record before it; power to award writ of certiorari.
6346. Petition for appeal, etc., how prepared and certified.
6347. To whom presented; endorsement of judge thereon.
6348. When to be rejected; when rejection final.
6349. When appeal, etc., allowed; when supersedeas awarded.
6350. In what court appeal, etc., to be docketed; what process to issue.
6351. Bond of appellants or petitioners; penalty and condition.
6352. When and by whom taken; endorsement on process from Court of Appeals.
6353. How surety in such bond may obtain indemnity.
6354. When appeal is of right from State Corporation Commission record to be delivered to clerk of Supreme Court of Appeals; when that court to dismiss appeal.
6355. Limitation of appeals, writ of error, or supersedeas.
6356. When their dismission final; when they may be re-instated.
6357. In case to be heard by Court of Appeals, how clerk thereof to prepare record; what to be printed and how; how printed copies distributed, and cost of printing paid.
6358. Clerks to advertise for bids for the printing.
6359. What the bids to state.
6360. How the contracts awarded; the bond required; how cost of printing certified and paid.
6361. How docket of causes ready for hearing made out; in what order cases heard.
6362. What cases heard out of turn.
6363. Rule of decision where the evidence (and not the facts) is certified.
6364. What evidence may be considered in the appellate courts.
6365. Decision of appellate court.
6366. What damages awarded appellee.
6367. When clerk of Court of Appeals to transmit its decisions.
6368. Postage to be paid by him and repaid out of treasury.
6369. How decision of Court of Appeals entered in court or State Corporation Commission from which cause came; issue of execution thereon, etc.

Digitized by Google

Sec.
6370. Order books, dockets, etc., of district courts, to remain in custody of clerks of Court of Appeals; their duties in respect thereto; how printed and manuscript orders disposed of, etc.
6371. Court of Appeals to direct the clerk of the court to destroy manuscript records in cases where the printed; binding with briefs of
6372. When Court of A rehear and revi cided by it; wh tion therefor to where rehearin take place; whe entered.

Sec. 6336. In what cases petitions for appeal, writ of e persedeas may be awarded.—Any person who thinks h grieved by any judgment, decree, or order in a contro cerning the title to or boundaries of land, the conde property, the probate of a will, the appointment or qual a personal representative, guardian, committee, or curat cerning a mill, roadway, ferry, wharf, or landing, or the State, county, or municipal corporation to levy tolls o involving the construction of any statute, ordinance, proceeding imposing taxes, or by any final order, ju finding of the State Corporation Commission, irrespec amount involved, except the action of the said commis certaining the value of any property or franchise of a canal company, for the purpose of taxation and asse thereon, or any person who is a party to any case i wherein there is a decree or order dissolving an injunc quiring money to be paid, or the possession or title of be changed, or adjudicating the principles of a cause, son thinking himself aggrieved by the order of a judg refusing a writ of quo warranto, or by the final judgm writ, or by a final judgment, decree, or order in any civi present a petition, if the case be in chancery, for an a the decree or order; and if not in chancery, for a writ supersedeas to the judgment or order, except as prov following section: provided, however, that the Common take an appeal from the action of the State Corporati sion in all cases, irrespective of the amount involved. § 3454; 1902-3-4, p. 779.)

A writ of error cannot be awarded to an order set judgment and granting a rehearing, as it is not a final ju writ of error does not lie in any case at law until there has judgment or order in the cause. Smiley v. Provident Tru Va. 787, 56 S. E. 728.

A commissioner appointed in a decree directing a resal a suit to subject the assets of the deceased owner to the debts cannot in his official capacity alone appeal from a de aside the decree for a resale, rendered on a petition aga alone. Brown v. Howard & Whitehead, 106 Va. 262, 55 S.

A party is given, by this section, the right to appeal

Digitized by Google

interlocutory decrees. He is not bound to appeal at the time they are rendered but may do so at any time within a year after the final decree has been rendered in the cause. All other requisites for an appeal must exist. Southern Ry. Co. v. Glenn, 98 Va. 309, 36 S. E. 395; Quoted in Hess v. Hess, 108 Va. 483, 62 S. E. 273.

A judgment is final when it is a determination of the particular action or suit, although it is not a final determination of the rights of the parties. Brown v. Carolina, C. & O. R. Co., 116 Va. 597, 83 S. E. 981.

This section, read with section 5, clause 13, permits an appeal by counties and cities both at law and in equity. Com. v. Schmelz, 116 Va. 62, 81 S. E. 45.

The right of appeal given by this section is the same in a case for equitable relief by injunction as in other equity cases, and this right is not taken away by section 6320. French v. Chapin-S. Co., 118 Va. 117, 86 S. E. 842.

See Va. Pass. & P. Co. v. Fisher, 104 Va. 121, 51 S. E. 198; Burks' Pleading and Practice, pp. 48, 740, 742, 744.

See note to section 2392, taken from Board of Sup. of Elizabeth City v. Newport News, 106 Va. 764, 56 S. E. 801.

Cited but not construed in Hobson v. Hobson, 105 Va. 400, 53 S. E. 964 and 14 Va. Law Reg. 470.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 135, section 1.

See notes to the next section.

Sec. 6337. When prohibited.—No petition shall be presented for an appeal from, or writ of error or supersedeas to, any final judgment, decree, or order, whether the Commonwealth be a party or not, which shall have been rendered more than one year before the petition is presented, or if it be an appeal from a final order, judgment, or finding of the State Corporation Commission which shall have been rendered more than six months before the petition is presented; nor to any judgment of a circuit or corporation court, which is rendered on an appeal from a judgment of a justice, except in cases where it is otherwise expressly provided; nor to a judgment, decree, or order of any court when the controversy is for a matter less in value or amount than three hundred dollars, exclusive of costs, unless there be drawn in question a freehold or franchise or the title or bounds of land, or the action of the State Corporation Commission or some matter not merely pecuniary: provided, however, that if the final decree from which an appeal is asked is a decree refusing a bill of review to a decree rendered more than six months prior thereto, no appeal from or supersedeas to such decree so refusing a bill of review shall be allowed unless the petition be presented within six months from the date of such decree. (Code 1887, § 3455; 1887-8, p. 17; 1902-3-4, p. 590.)

Revisors' Note.—As to appeals from State Corporation Commission, see, also, section 6355 and revisors' note.

Sections 6336 and 6337 largely annotated together.—As section 6337 limits and defines right of appeal conferred by section 6336, the sections are largely annotated together.

The Constitution of 1902, in so far as it relates to the Court of Appeals, conforms in the main to that of 1869. The changes are as follows: (1) It provides that no law shall be declared unconstitutional save with the assent of three judges, and if, in a case involving the constitutionality

Digitized by Google

of any such law, not more than two of the judges sitting ag on the constitutional question involved and the case cannot without passing on such question, no decision shall be ren but the case shall be reheard by a full court. The forme required the assent of a majority of the judges elected to number of judges in each instance being five. (2) It exp appellate jurisdiction in cases involving the life or liberty Upon this point the Constitution of 1869 is silent. (3) minimum jurisdictional amount in matters merely pecuniary dred dollars, reserving to the Legislature the right after 1 the jurisdiction of the court in such matters. (4) It provi case where the jurisdiction of the court depends solely that the constitutionality of a law is involved shall the co case upon the merits, unless the contention of the appel constitutional question be sustained, thus abrogating the r in W. U. Tel. Co. v. Powell, 94 Va. 268, 26 S. E. 828; W. Bright, 90 Va. 778, 20 S. E. 146. (5) It also provides th the requisite majority of judges sitting are unable to agr cision, the case shall be reheard by a full bench, and any v by any one or more of the judges being unable, unwilling to sit, shall be temporarily filled in a manner to be presc This is a new provision in toto. As to it, see section 636 and Funkhouser v. Spahr, 102 Va. 306, 46 S. E. 378. (6) of appeal are prescribed for, the only change being that courts of record may sit thereon in addition to judges Court of Appeals and judges of circuit courts. (7) It also the jurisdiction of the court shall be subject to such reaso may be prescribed by law as to the course of appeals, the to time, the security to be required, if any, the granting appeals, and the procedure therein. This provision is also

Appeals generally—Jurisdiction of court—How exer sions of article 6, section 2, Const. 1869, did not proprio jurisdiction upon Court of Appeals, but it exercises juris constitutional limitations by virtue of statutes, under that exception by which it has original jurisdiction in habeas damus, and prohibition simply vests court with capacity ginal jurisdiction in that class of cases in event General fers it. Prison Asso. v. Ashby, 93 Va. 667, 25 S. E. 893.

If its jurisdiction is invoked on the ground that a fre chise, title or bounds of land, or some matter not merely involved, these jurisdictional matters must be directly t controversy, and not merely incidentally involved. Cook 99 Va. 591, 39 S. E. 223; note to Price v. Smith, 2 Va. L Hutchinson v. Kellam, 3 Munf. 202; Clark v. Brown, Umbarger v. Watts, 25 Grat. 167; Skipwith v. Young, Hancock v. Railroad, 3 Grat. 328.

Court of Appeals had jurisdiction under article 6, sec 1869, and laws in pursuance thereof, of writs of error in p mandamus, although amount involved is less than $500 Mandamus, in proper case, always involves matters not mer The Constitution did not proprio vigore confer jurisdiction under what are now sections 6336 and 6337 of the Co Smith, 93 Va. 14, 24 S. E. 474.

Court of Appeals has original jurisdiction in cases of n prohibition by virtue of statute (Page v. Clopton, 30 Grat [3d Ed.] 277); and has power by mandamus to compel jud court to sign bill of exceptions (Collins v. Christian, 92 S. E. 472).

Court of Appeals has no jurisdiction of appeals from decrees except as it is given by statute. Elder's Ex'rs v. H 68; Lancaster v. Lancaster, 86 Va. 201, 9 S. E. 988.

Jurisdiction of Court of Appeals must affirmatively record, and does so appear when court can see that judgr

Digitized by Google

court involved constitutionality of some statute or ordinance, or some right under state or Federal Constitution. Any proceeding which necessarily puts their validity in issue, whether it be by demurrer, plea, instruction, or otherwise, gives jurisdiction. Adkins v. Richmond, 98 Va. 91, 34 S. E. 967, 47 L. R. A. 583, 81 Am. St. Rep. 705.

Burden of showing existence of jurisdiction to hear appeal is on plaintiff in error, and such jurisdiction must affirmatively appear from record. Com. v. Chaffin, 87 Va. 545, 12 S. E. 972; Southern Fertilizing Co. v. Nelson, 6 Va. Law J. 192; Ritter L. Co. v. Coal Moun. Co., 115 Va. 370, 79 S. E. 322.

Where right of county to levy taxes is involved, appeal lies under article 6, section 2, Const. 1869, although less than $500 be in controversy. Prince George v. Railroad, 87 Va. 283, 12 S. E. 667.

A husband may appeal from a decree denying him a divorce though he has failed to pay an attorney's fee decreed against him. Hairston v. Hairston, 117 Va. 207, 84 S. E. 15.

An appeal lies in a proceeding to determine the regularity and validity of an election to determine whether or not county bonds shall be issued for permanent road improvements in the magisterial districts of a county. Supervisors v. Spilman, 113 Va. 391, 74 S. E. 151.

No appeal lies from a consent decree as the consent cures all errors. Hounshell v. Hounshell, 116 Va. 675, 82 S. E. 689.

Where no exception is taken to the action of the trial court in abating an attachment at law, the correctness of its ruling cannot be inquired into in this court. Hilton & Allen v. Consumers' Ice Co., 103 Va. 255, 48 S. E. 899.

Mandamus—Prohibition—Quo warranto.—Appeal lies to judgment of circuit court refusing to entertain petition for writ of quo warranto tendered by bona fide claimant of office to test title thereto. Watkins v. Venable, 99 Va. 440, 39 S. E. 147.

Court of Appeals has no original jurisdiction in cases of quo warranto, nor has any judge thereof jurisdiction to issue the writ and send case to circuit court to be proceeded in as in cases of injunction. Watkins v. Venable, 99 Va. 440, 39 S. E. 147.

Decree which declines to grant relief prayed until the General Assembly enacts further law on subject is not final, nor does it adjudicate principles. Appeal which is to correct errors does not lie. Mandamus to compel court to hear and determine case is proper remedy. Supervisors v. Alexandria, 95 Va. 470, 28 S. E. 882.

Where appeal lies from decision of court refusing to allow persons to become parties to a suit, mandamus will not lie to compel court to admit them. Moon's Adm'r v. Wellford, 84 Va. 34, 4 S. E. 572.

Where, pending appeal, trial court in divorce suit awarded plaintiff alimony of $25 per month, and $150 for expenses of suit, amount being less than jurisdictional amount, remedy is by prohibition, and not by appeal. Cralle v. Cralle, 81 Va. 773.

Parties to appeals.—To entitle any person to appeal, he must be party to cause, and aggrieved by judgment or decree. Little v. Bowen, 76 Va. 724; Edmunds' Adm'r v. Scott, 78 Va. 720; Osborne v. Kammer, 96 Va. 228, 31 S. E. 19; also Board v. Gorrell, 20 Grat. 484.

Only a person who is a party to the suit below and presents a petition for appeal can be an appellant. Southern Ry. Co. v. Glenn's Adm'r, 102 Va. 529, 46 S. E. 776.

Bankrupt may appeal from decree distributing fund in creditors' suit in which he has claimed homestead in fund. Barger v. Buckland, 28 Grat. 850.

Vendor of land conveyed by deed declared to be fraudulent cannot alone appeal. Price v. Thrash, 30 Grat. 515.

Party, though defendant in form, may appeal from decree dismissing bill as insufficient in law. Atkinson v. McCormick, 76 Va. 791.

Trustee in assignment, as representative of whole fund, may ap-

Digitized by Google

peal, though none of the claims secured separately amount to jurisdi tional sum. Saunders v. Waggoner, 82 Va. 316.

Person aggrieved by judgment for or against receiver by cou which appointed him may appeal, even though receiver cannot. Melend v. Barbour, 78 Va. 544.

In action by grantor against grantee and surety on bond given fo purchase price of land, if joint plea of set-off be filed by them, claimin damages for breach of warranty, and plea be found against them, suret cannot alone appeal. Kinzie v. Riely's Ex'rs, 8 Va. Law Reg. 64 and note.

Decree as to one of several defendants whose interests are not co nected with each other, with decree for payment of costs as to him, final as to him, although cause is pending in court as to rest. Royall Adm'rs v. Johnson, 1 Rand. 421.

Vendee of lands decreed to be sold may move court to annul orde of sale, and, if such motion be overruled, prosecute appeal in name vendor. Hendricks v. Fields, 26 Grat. 447.

Three several judgments, rendered in three different proceeding commenced at different times, in which different defenses were mad and never consolidated before the judgments were rendered, though b tween the same parties, cannot be brought to this court by a single wr of error. Com. v. Round Mountain Co., 117 Va. 30, 83 S. E. 1061.

Practice—What appeal brings up.—An appeal brings before cou for review entire record, and, under rule 8 of court (see 120 Va. p. vii.) errors to prejudice of appellee may be corrected without requiring hi to take formal cross-appeal. Appellant cannot appeal from so much decree as is prejudicial to him, and leave residue in force. Gaines Merryman, 95 Va. 660, 29 S. E. 738.

Where complainant and defendant whose rights are involved in sam question both appeal from same decree, but complainant permits h appeal to be dismissed for failure to give appeal bond, he may, unde rule 9 (now 8), have his rights determined in defendant's appeal. Nichol son v. Gloucester Charity School, 93 Va. 101, 24 S. E. 899.

Where parties to cause stand upon distinct and unconnected ground and their rights are separate, and not affected by same decree, appea from one will not bring up for adjudication rights of others; but wher parties appealing and parties not appealing stand on same ground, an their rights are involved in same question, and equally affected by decre appealed from, appellate court will consider whole case and settle right of all parties. Alexander v. Alexander, 85 Va. 353, 7 S. E. 335, 1 L. R A. 125; Anderson v. DeSoer, 6 Grat. 363; Rorer's Heirs v. Roanoke Na Bank, 83 Va. 608, 4 S. E. 820; Walker's Ex'r v. Page, 21 Grat. 636 Lewis v. Thornton, 6 Munf. 87; Burkholder v. Ludlam, 30 Grat. 25 32 Am. Rep. 668; Simmons v. Lyles, 27 Grat. 931; Burton v. Brown' Ex'rs, 22 Grat. 1; Tate v. Liggat, 2 Leigh 84; Lenow v. Lenow, 8 Grat 349; Purcell v. McCleary, 10 Grat. 246.

An appellant under section 6336, can only be one who is a party t the suit in the court below, and presents a petition for an appeal fro such decree, and where parties stand on distinct and unconnected ground the appeal of one on behalf of the others will not bring up for adjudica tion the rights of any but the one appellant. Southern Ry. v. Glenn' Adm'r, 102 Va. 529, 10 Va. Law Reg. 131, 46 S. E. 776.

Where interests are separate and distinct on part of appellants decree may be reversed as to one and dismissed as to another as having been improperly awarded, because, subject of controversy as to him less than $500 (now $300); but where amount in controversy is above jurisdictional amount as to one of appellants the question is properly before the court as to that one, and when questions as to all others are identical, and claims have been consolidated and heard together, the validity or invalidity of decree affects them all, and involves the validity of decree as to all and in all respects. The interests in such case are such that they cannot be severed in any court where they are considered, and decision here as to right of one will conclude rights of all in like

Digitized by Google

condition. Craig v. Williams, 90 Va. 500, 18 S. E. 899, 44 Am. St. Rep. 934; Witz v. Osburn, 83 Va. 227, 2 S. E. 33.

Court of Appeals does not determine mooted questions upon which no right depends and wherein no relief can be afforded. If controversy is one that has been determined by time, and there is now no wrong to right and no relief to be afforded, the appeal will be dismissed. Shumate v. Spilman, 1 Va. Dec. 604.

The act of February 27, 1867, by which it was enacted that appeals to Supreme Court of Appeals of State from district courts should not be allowed when judgment of district court affirmed judgment of county court, unless the matter in controversy exceeded $1,000, is not inconsistent with provision of Constitution which excluded appeals from said district courts to Supreme Court unless matter in controversy amounted to $500. Downham v. Alexandria, 9 Wall. 659, 19 L. Ed. 929.

No appeal lies from order of circuit court refusing injunction, the remedy being application to Court of Appeals to grant the injunction refused (Hudson v. Barham, 8 Va. Law Reg. 736, 43 S. E. 189); nor where judgment is entered upon agreement that judgment be entered in accordance with result in another case (Bransford v. Karn, 87 Va. 242, 12 S. E. 404).

When it appears that court has no jurisdiction of appeal, it will be dismissed, though not objected to on hearing. Hobson v. Hobson, 100 Va. 216, 40 S. E. 899.

Petition.—A petition for appeal is in the nature of a pleading, and should state clearly and distinctly all the errors relied on for a reversal. Otherwise the appeal, if granted, should be dismissed. But motion to dismiss for this cause will not be granted after right of appeal is barred by limitation. Orr v. Pennington, 93 Va. 268, 24 S. E. 928. See section 6346 and notes.

Finality of decision.—The General Assembly cannot grant new trials nor direct rehearings in cases which have been judicially settled upon the merits. Martin v. South Salem Land Co., 94 Va. 28, 26 S. E. 591. Questions necessarily involved in decision on writ of error are finally determined by such decision, and are not thereafter open to debate in trial court, nor generally subject to re-examination in this court on second appeal in same case. Decision on first appeal becomes law of case. Rosenbaum's Ex'rs v. Seddon, 94 Va. 575, 27 S. E. 425; Sims v. Tyrer, 96 Va. 14, 30 S. E. 443. Nor can party to first appeal object because other persons whose rights are affected, but who make no complaint on first appeal, were not before court. McClanahan v. Hockman, 96 Va. 392, 31 S. E. 516.

The decree of the Court of Appeals upon a question decided by the court below is final and irreversible; and upon a second appeal in the cause, a question decided on the first appeal is res adjudicata. The fact that other evidence was taken in the cause after it was remanded does not affect the conclusiveness of the decree whereby the principles of the cause were settled. Turner's Adm'r v. Staples, &c., 86 Va. 300, 9 S. E. 1123; Campbell's Ex'ors v. Campbell's Ex'ors, 22 Grat. 649.

Errors for want of necessary parties cannot be corrected in lower court by an amended and supplemented bill and bill in nature of bill of review, after appeal is allowed, and while it is pending in appellate court. Almond v. Rothgeb, 1 Va. Dec. 138.

In action at law appeal lies only to final judgment. Lockridge v. Lockridge, 1 Va. Dec. 61.

An order setting aside a verdict as to two of three notes sued on, and awarding a new trial as to them, but refusing to set aside as to the other note, and directing that the plaintiff take nothing by his action as to that note is not a final judgment to which a writ of error will lie. Salem Loan Co. v. Kelsey, 115 Va. 382, 79 S. E. 329.

Final order—What is.—Ludlow v. City of Norfolk, 87 Va. 319, 12 S. E. 612; Serles v. Cromer, 88 Va. 426, 13 S. E. 859; 15 Va. Law Journal (1891) 724; Postal, &c., Co. v. N. & W. R. R. Co., 87 Va. 349,

Digitized by Google

12 S. E. 613; Bonsack Machine Co. v. Woodrom, 88 Va. 512, 13 S. E. 904.

A final order is one which disposes of the whole subject, gives all the relief contemplated, provides with reasonable completeness for giving effect to the sentence, and leaves nothing to be done in the cause save to superintend ministerially the execution of the order. Salem Loan Co. v. Kelsey, 115 Va. 382, 79 S. E. 329.

Decrees from which appeals lie—Final decrees.—Decree is final not only as to matters actually determined, but as to every matter which parties might have litigated within scope of pleadings, and which might have been decided. Beale's Adm'r v. Gordon, 2 Va. Dec. 35, 21 S. E. 667.

Decree disposing of and deciding entire matter in controversy, and awarding costs, leaving nothing to be done in cause, is final. Sexton's Ex'x v. Patterson, 1 Va. Dec. 551; Sims v. Sims, 94 Va. 580, 27 S. E. 436, 64 Am. St. Rep. 772; Yates' Adm'r v. Wilson, 86 Va. 625, 10 S. E. 976; Parker v. Logan, 82 Va. 376, 4 S. E. 613; Vanmeter's Ex'rs v. Vanmeter, 3 Grat. 148; Norfolk Trust Co. v. Foster, 78 Va. 413; Battaile v. Maryland Hospital for Insane, 76 Va. 63; Norfolk Trust Co. v. Foster, 78 Va. 413. And so in case of prohibition, if order is final in form, disposing of whole case, though it should have been interlocutory. Burch v. Hardwicke, 23 Grat. 51. And so is decree confirming sale of land, and ordering conveyance after payment of costs, leaving nothing to be done but to order purchase money to be applied to notes. Johnson v. Anderson, 76 Va. 766. And so is decree in suit for administration of estate, which settles principles of cause, distributes whole property to parties interested, leaving nothing to be done, though measures may be necessary to enforce it (Rawlings' Ex'r v. Rawlings, 75 Va. 76); or though it appoints commissioners to sell part of land and account for proceeds to parties, with liberty to them to apply to court to add new or substitute other commissioners, or for partition in kind of part of subject directed to be sold (Harvey v. Branson, 1 Leigh 108). And so is decree reciting, "The plaintiff failing to prosecute his suit, it is ordered that the same be dismissed." Jones v. Turner, 81 Va. 709. And so is decree upon bill by daughter of testator against purchaser of his real estate, and two sons of surety upon executor's bond, that each of said sons shall pay one-half of arrears of annuity arising under the will, and reserving liberty to plaintiff, if decree should prove unavailing as to either, to resort to the court for further proceedings against the other, and ordering cause to be retained in court for purpose of taking further accounts of annuities to accrue in future, is a final decree, notwithstanding this reservation. Thornton v. Fitzhugh, 4 Leigh 209. And so is decree on settlement of executorial account by commissioners under order of court of probate overruling legatee's exceptions to said report, ordering account to be recorded, and awarding costs. Farneyhough's Ex'rs v. Dickerson, 2 Rob. 582.

When judgment of superior court, reversing judgment of county court, and directing other pleadings in lower court, is interlocutory in character, though final there, judgment of county court, being final as regards jurisdiction of this court, imparts that character to judgment of superior court, and is appealable. Cowling v. Justices of Nansemond County, 6 Rand. 349. And so is order of circuit on appeal from county court, reversing judgment with costs, but failing to give such judgment as county court should have given and retaining cause. Janey v. Blake's Adm'r, 8 Leigh 88. And so where it reverses judgment of county court, and retains cause for trial. Brumbaugh v. Wissler's Ex'r, 25 Grat. 463; Crawford v. Railroad, Id. 467.

Decree which settles principles of a cause, determines rights of creditors, validity of stock subscriptions, and liability of stockholders to pay same, and leaves nothing to be done except to execute and give effect to it, is a final decree. Martin v. South Salem Land Co., 97 Va. 349, 33 S. E. 600.

Decree passing upon whole subject-matter, so as to be final in its nature, is not made interlocutory by addition of order suspending de-

Digitized by Google

cree as to amount of an item in an account involved in cause until decision of another suit brought by another party against both plaintiff and defendant in first suit, claiming amount of that item. Fleming v. Bolling, 8 Grat. 292.

Decree which dismisses bill, and directs payment of costs, is final decree, and its finality is not affected by the fact that it is heard with another cause which was continued on the docket, where parties were not and could not have been originally joined in one controversy. Home Building & Conveyance Co. v. London, 98 Va. 152, 35 S. E. 362.

Measures necessary to enforce a decree which gives completely the relief contemplated by the court do not alter or affect such decree as to its character of finality, nor is decree less final in character because measures may be necessary to compel parties to obey it. Rawlings' Ex'r v. Rawlings, 75 Va. 76.

A decree which finally disposes of all issues arising, or which could properly arise upon an original bill and the answer thereto, as well as upon the answer to the cross-bill is a final decree. Goode v. Bryant, 118 Va. 314, 87 S. E. 588.

A final decree is not deprived of its quality of finality by the fact that it is based in part upon a former decree which was never signed by the judge, nor entered on the order book, but was acted on by both the parties and the court, without objection from any source. Goode v. Bryant, 118 Va. 314, 87 S. E. 588.

Interlocutory decrees appealable—Decrees adjudicating principles of cause.—By adjudicating the principles of a cause is meant that the rules or methods by which the rights of parties are to be worked out have been so far determined that it is only necessary to apply these rules or methods to the facts of the case in order to ascertain relative rights of parties with regard to subject-matter of suit. Lancaster v. Lancaster, 86 Va. 201, 9 S. E. 988.

Every decree that leaves anything to be done in the cause between the parties is interlocutory, even though it disposes of the costs. Noell's Adm'r v. Noell's Adm'r, 86 Va. 109, 9 S. E. 584.

Appeal lies from an interlocutory decree adjudicating the principles of the cause, but the final decree may be awaited and the appeal is in time. Harper v. Vaughan, 87 Va. 426, 12 S. E. 785.

Decree which leaves anything to be done by court is interlocutory as between parties remaining in court. Sims v. Sims, 94 Va. 580, 27 S. E. 436, 64 Am. St. Rep. 772.

Where a particular relief is sought, if anything remains to be done by the court decree is interlocutory, but if no further action of court is necessary decree is final. If interlocutory decree settles principles of cause, it is appealable. Ryan's Adm'r v. McLeod, 32 Grat. 376.

Decree overruling exceptions to commissioner's report, and confirming same as to questions involved therein, although report is recommitted as to other matters, adjudicates principles as to such exceptions, and is appealable. Garrett's Adm'x v. Bradford, 28 Grat. 609; Barton, C. Pr. (2d Ed.) 828; Farneyhough's Ex'rs v. Dickerson, 2 Rob. 582.

Order overruling motion to dissolve injunction may be appealed from if the principles of the cause are thereby adjudicated (Baltimore & O. R. Co. v. City of Wheeling, 13 Grat. 40; Kahn v. Kerngood, 80 Va. 342; Bristow v. Home Bldg. Co., 91 Va. 23, 20 S. E. 946, 947; Talley v. Tyree, 2 Rob. 500; Richmond & Y. R. R. Co. v. Wicker, 13 Grat. 375); but if court overrules such motion without adjudicating principles of cause no appeal lies (Baltimore & O. R. Co. v. City of Wheeling, supra; Norfolk & W. Ry. Co. v. Old Dominion Baggage Co., 97 Va. 89, 33 S. E. 385).

Decree directing an issue out of chancery, if it impliedly involves settlement of principles of cause, is appealable. Reed v. Cline's Heirs, 9 Grat. 136; Wise v. Lamb, Id. 309.

Appeal lies from order of chancellor overruling motion to dissolve an injunction, where motion has been overruled on ground that plain-

Digitized by Google

tiff is entitled to relief on merits, and fixing principles on depends. This is based upon Act 1818, chapter 66, sect ferent from present law, in that it provides for appeals locutory orders in order that principles of cause may be de appeal. Lomax v. Picot, 2 Rand. 247.

On bill to settle testator's estate, construe will, and ment of legacy, there is decree adjudging complainant enti sum of such legacy, and directing cause to be proceeded w ably to these views in order to collect funds to pay legac interlocutory, but appealable. Jameson v. Jameson's Adm'x 9 S. E. 480, 3 L. R. A. 773.

Order which refuses to dissolve injunction and discha decides, in effect, that property held by receiver is for th proper hands, and to this extent adjudicates principles of c such an order appeal may be taken. Bristow v. Home B Va. 23, 20 S. E. 946, 947. And so with decree which decid attacked as fraudulent per se is not so. Norris v. Lake, 16 S. E. 663. And so with decree not final, nor dissolvin nor in terms requiring money to be paid, nor possession or erty to be changed, if it adjudicates principles of cause. Byrd, 85 Va. 690, 8 S. E. 577.

Interlocutory decrees not appealable.—"Where the fu of the court in the cause is necessary to give completely th templated by the court, there the decree upon which the ques to be regarded not as final, but interlocutory. I say the fu of the court in the cause to distinguish it from that action which is common to both final and interlocutory decrees, measures which are necessary to execution of decree that h nounced, and are to be regarded as adopted not in but beyo and as founded on the decree itself or mandate of the co respect to the relief to which the party was previously e merits of the case." Cocke's Adm'r v. Gilpin, 1 Rob. 22.

It will be easily conceived that it is not every order a cause, however incidental such order may be, that will, i and wise policy, warrant an appellate proceeding, in order apprehended error therein, and that such proceeding must confined to those orders which have about them a certain finality and conclusiveness, either in respect to the gener the cause, or in respect to some branch thereof, or of som lateral thereto, and yet of great interest to the parties or 4 Min. (3d Ed.) 859.

Decree sustaining demurrer to bill, and allowing plaint in specified time, does not settle principles of cause, nor order until expiration of specified time. London-Virginia Moore, 98 Va. 256, 35 S. E. 722; Commercial Bank v. R Dec. 350, 24 S. E. 388.

Decree in suit to execute testator's will, sell land, a proceeds, wherein some land is unsold, and some sold, but n for. The objects of suits are unaccomplished, and decree Yates' Adm'r v. Wilson, 86 Va. 625, 10 S. E. 976.

Although decree is marked "Final Decree," those word termine its character or effect, for that must be determine contained in decree, and if there is nothing therein whic the court intended to end cause the unauthorized act of cle it off docket does not prevent court from reinstating it. sten, 86 Va. 359, 10 S. E. 415.

Sustaining or overruling demurrer is not final judgme judgment sustaining demurrer final there must be dismissal. Coleman, 98 Va. 276, 36 S. E. 377, and cases cited; Comme Rucker, 2 Va. Dec. 350, 24 S. E. 388. Nor is decree o murrer, giving defendant leave to answer and continuing force until further order of court, where there was no m solve, and cause was heard solely on demurrer to bill. N

Digitized by Google

Ry. Co. v. Old Dominion Baggage Co., 97 Va. 89, 33 S. E. 385. Nor is decree by default until relief has been sought under section 6333. When time allowed by that section expires, decree becoms final and irreversible. Smith's Ex'r v. Powell, 98 Va. 431, 36 S. E. 522. Nor is decree overruling demurrer to bill for an accounting. Lancaster v. Lancaster, 86 Va. 201, 9 S. E. 988. Nor decree sustaining claim of homestead, but directing commissioner to make certain inquiries. Barker v. Jenkins, 84 Va. 895, 6 S. E. 459. Nor is a non-suit. Mallory v. Taylor, 90 Va. 349, 18 S. E. 438. Nor is order appointing commissioners to fix just compensation for land to be taken in condemnation proceedings. Postal Tel. Cable Co. v. Norfolk & W. R. Co., 87 Va. 349, 12 S. E. 613; Ludlow v. City of Norfolk, 87 Va. 319, 12 S. E. 612. Nor is a decree which settles the principles of a case. and refers it to a commissioner to state accounts, which are necessary to enable the court to pass finally upon the rights of the parties. Trammell v Ashworth, 99 Va. 646, 39 S. E. 593; Richmond, F. & P. R. Co. v. Johnson, 99 Va. 284, 38 S. E. 195; Jeter v. Board, 27 Grat. 910, distinguished and explained. Nor is order of circuit court remanding cause to county court from which it has been improperly removed to circuit court. Valley Turnpike Co. v. Moore, 100 Va. 702, 42 S. E. 675. Nor is decree directing sale of land to satisfy charges. Spoor v. Tilson, 97 Va. 279, 33 S. E. 609. Nor is decree in creditors' suit which decides rights of one lien creditor and remands cause to commissioner for further report. Repass v. Moore, 96 Va. 147, 30 S. E. 458. Nor is order declaring summons void as alias summons, but good as original summons. Roger's Adm'r v Bertha Zinc Co., 1 Va. Dec. 827, 19 S. E. 782. Nor is judgment in favor of all defendants except one, in joint action of trespass, until suit has been abated, dismissed or decided as to that one. Wells v. Jackson, 3 Munf. 458. Nor is decree on bill to enjoin judgment in an action at law, directing issue to be tried to ascertain amount due by judgment debtor. Moore v. Lipscombe, 82 Va. 546. Nor is order setting aside verdict of jury trying issue as to whether paper is a true will, and awarding a new trial. Section 2, chapter 178, Code 1873 (same as section 6336), allowing appeal to any person aggrieved by an order in controversy concerning will, must be considered along with section 32, chapter 118 (same as section 5257), which provides that the court shall make a sentence or final order as to will. Tucker v. Sandridge, 82 Va. 532. Nor is decree confirming and approving account of representative of trustee ascertaining balance due from decedent's estate to trust fund without giving judgment for it or making any disposition of it or without dismissing case as to him. Southern Ry. Co. v. Glenn's Adm'r, 98 Va. 309, 36 S. E. 395. Nor is rule in action at law requiring plaintiff to elect by next term whether he will proceed at law or in chancery. Priddy v. Hartsook, 81 Va. 67. Nor is a decree which does not adjudicate the principles of cause. nor give costs, but sends it back to commissioner to settle further distribution accounts and account of fund to credit of cause, and providing for further receipts to be disbursed under orders thereafter to be entered. Miller's Adm'r v. Cook's Adm'rs. 77 Va. 806. Nor is decree which leaves anything to be done to afford complete relief contemplated. Wright v. Strother, 76 Va. 857. Nor is decree which denies plaintiff specific execution of contract, but gives leave to amend bill, and continues case for that purpose. Ambrouse's Heirs v. Keller, 22 Grat. 769.

No appeal lies from interlocutory order in controversy concerning roads. Trevilian v. Railroad, 3 Grat. 326; Hancock v. Railroad, Id. 328; Ludlow v. City of Norfolk, 87 Va. 322, 12 S. E. 612; Postal Tel. Cable Co. v. N. & W. R. R. Co., 87 Va. 351, 12 S. E. 613; Jeter v. Board, 27 Grat. 910, overruled. Nor to an interlocutory order granting or refusing amendments to pleadings until there has been a final decree, except as otherwise provided by statute. Hobson v. Hobson, 100 Va. 216, 40 S. E. 899; Smith v. Pyrites Mining & Chemical Co., 101 Va. 301, 43 S. E. 564.

Digitized by Google

Decree directed commissioner to take an account of p erty and rents of lands. Report is returned and exceptio court, without passing on report, directs jury to try issu to value of personal property. Held, decree decides no princ Elder's Ex'rs v. Harris, 75 Va. 68.

No appeal lies from order dissolving an injunction w ject involved is pecuniary and less than $500 (now $300) of appeal given by section 6336 is limited by section 6337. v. Bowman, 98 Va. 688, 37 S. E. 278. Nor to review de settling accounts of receiver, who has died and has no pe sentative. Overholt v. Old Dominion Mfg. Co., 98 Va. 654,

When the ultimate liability of the defendant is wholl and cannot be ascertained until certain land, the primary the payment of the debt, has been sold, such a case is n provisions of section 6336 as to appeal from an interloc Ritter L. Co. v. Coal Moun. Co., 115 Va. 370, 79 S. E. 322

Decrees affecting title to property and its possession. sale of land in partition suit, though interlocutory, is app requires change of title and possession, especially where it ciples of cause. Stevens v. McCormick, 90 Va. 736, 19 S. E

Appeal lies to decree appointing receiver, whereby made in possession or control of property, though made Shannon v. Hanks, 88 Va. 338, 13 S. E. 437; Deckert v. Western Co., 101 Va. 804, 45 S. E. 799.

Jurisdiction of appeals in cases concerning title to la jurisdiction of appeals in cases of unlawful entry and detai v. Coles, 81 Va. 380.

Subsequent to married woman's act, E., wife of C., estate in fee. Issue has been born alive of that marriage. action against C., a non-resident, and attached his suppose said land for less than $500 (then the jurisdictional minimu E. sell, and convey land to B., and obtain injunction again D.'s attachment. Held, controversy concerned E.'s title appeal lies. Breeding v. Davis, 77 Va. 639, 46 Am. Rep. 74

Trust deed to secure debt less than $500 having been an interest in land, and question having arisen whether such vested or contingent, it was decided that appeal lay, as con cerns title to land. Sellers' Ex'r v. Reed, 88 Va. 377, 1 And so where decree appealed from allowed widow homes band's lands. Barker v. Jenkins, 84 Va. 895, 6 S. E. 459

For a discussion of the question whether the title to l issue, in an action of trespass quaere clausum fregit, by the of evidence as to the title, under a plea of not guilty, see L Co. v. Thayer, 113 Va. 239, 74 S. E. 215.

It is well settled that an appeal lies from a decree app ceiver, whereby a change in the possession or control of th required. This case was an appeal from a State court app ceiver of property of a corporation, a receiver of which had appointed in the Federal court in a suit instituted subseque stitution of the suit in the State court, authorizing the re tervene in the other suit, and requesting a vacation of the F and a turning over of the property to the State court. senger & Power Co. v. Fisher, 104 Va. 121, 51 S. E. 198.

Decrees which do not affect title to property or its In suit to subject land to judgment, where defendant appe asserted against him fixes jurisdiction, the title or bounda not involved, although the appeal be taken by one who is debtor, and the controversy is over liability of land. Cash v. 98 Va. 477, 36 S. E. 517.

Where decree is for less than $500 (then the jurisdi mum), including interest, no appeal lies, though it provides land be sold in default of payment. Cook v. Bondurant, S. E. 618.

Digitized by Google

Suit to subject land to lien for taxes is not a controversy concerning title thereto, and if decree for taxes amounts to less than $500 (now $300) no appeal lies. Florance v. Morien, 98 Va. 26, 34 S. E. 890. Nor is suit to set aside deed as fraudulent, and to sell property thereby conveyed for debts, a suit concerning title or boundaries of lands, within the meaning of Const. 1869, article 6, section 2. Fink v. Denny, 75 Va. 663; Hawkins v. Gresham, 85 Va. 34, 6 S. E. 472.

In suit by creditor to subject land sold by judgment debtor subsequent to date of judgment against him, the matter in controversy is the value of the land, and not the title thereof. Buckner v. Metz, 77 Va. 107.

Amount involved in appeal from decree subjecting land to payment of debt is amount of debt, irrespective of value of land. Showalter v. Rupe, 2 Va. Dec. 553, 27 S. E. 840. Nor is the case altered by the fact that defendant claims homestead in lower court (Cook v. Daugherty, 99 Va. 590, 39 S. E. 223), nor by the fact that homestead was claimed in land sought to be sold for debt (Smith v. Rosenheim, 79 Va. 540); nor by the fact that it has been conveyed by deed alleged to be fraudulent (Thompson v. Adams, 82 Va. 672).

It is the amount of judgment sought to be satisfied out of real estate, and not value of latter, which determines jurisdiction of appellate court. Pitts v. Spotts, 86 Va. 71, 9 S. E. 501.

Where right of county to levy taxes is called in question, Supreme Court had jurisdiction of appeal in action to recover tax of less than $500 (now $300) illegally collected. Prince George County v. Atlantic, M. & O. R. Co., 87 Va. 283, 12 S. E. 667.

Franchises.—Although amount involved in controversy is less than $500 (now $300), yet if franchise is involved appeal will lie. 4 Min. (3d Ed.) 857; Supervisors v. Catlett's Ex'rs, 86 Va. 158, 9 S. E. 999; City of Staunton v. Stout's Ex'rs, 86 Va. 321, 10 S. E. 5.

Constitutionality.—Where constitutionality of law is attacked appeal lies, though less than $500 (now $300) involved. N. & W. R. R. v. Pendleton, 86 Va. 1004, 11 S. E. 1062.

Where jurisdiction of appellate court has been invoked in good faith to determine constitutionality of law, writ of error will not be improvidently awarded merely because, after awarding, but before hearing, law has been held to be constitutional in another case. Having jurisdiction for one purpose, it has it for all, although amount is less than $500. W. U. Tel. Co. v. Powell, 94 Va. 268, 26 S. E. 828. But see section 88, Const. 1902.

Where the only ground of jurisdiction is the constitutionality of a statute, the validity of which has been established by former decisions, the writ of error will be dismissed for want of jurisdiction. Western Union Tel. Co. v. White, 113 Va. 421, 74 S. E. 174.

When constitutionality of act has been determined by court it ceases to be debatable, and does not furnish ground for jurisdiction in cases thereafter arising. W. U. Tel. Co. v. Reynolds, 100 Va. 459, 41 S. E. 856, 93 Am. St. Rep. 971.

Act of March 12, 1884, was declared unconstitutional in so far as it conferred upon Supreme Court jurisdiction in all coupon cases, without regard to amount in controversy, being in conflict with article 6, section 2, Const. 1869. McIntosh v. Braden, 80 Va. 217.

Where the constitutionality of no statute is called into question, the decision of the corporation court on appeal from magistrate is final. Bransford v. Karn, 87 Va. 242, 12 S. E. 404.

Corporation and hustings courts are of co-ordinate jurisdiction with circuit courts. Article 6, section 14, Const. 1869. And no right of appeal from former to latter can be conferred by General Assembly. Section 5 of 1889-90, p. 197, as amended by 1899-00, p. 1204, is unconstitutional, and such courts cannot entertain such appeals. Watson v. Blackstone, 98 Va. 618, 38 S. E. 939.

Whether or not an act of assembly authorizing establishment of pub-

Digitized by Google

lic roads, and which allows appeals to this court on matters
is constitutional, does not arise on appeal from decree di
junction to proceedings under the act, as it is not an appe
judgment pronounced in condemnation proceedings unde
Painter v. St. Clair, 98 Va. 85, 34 S. E. 989.

Amount in controversy—*When appeal lies—How jurisd*
mined, etc.—Appeal lies in suit to recover costs awarded in
if amount exceeds $500 (now $300). Shipman v. Fletcher'
Va. 585, 29 S. E. 325.

Jurisdiction as to appeals in matters merely pecuniary b
to $500 (now $300), jurisdiction is determined by amount
claim, or by amount to be paid by defendant, as one or other
In calculating amount involved in decree appealed from a
excluded, and interest is not estimated beyond date of decree
controversy must not only be of value of $500 (now $300
troversy in relation to matter of that value must be continue
although action was for more than jurisdictional amount; w
is for less appeal does not lie for defendant. The matter in
is that for which suit is brought or judgment rendered, a
which may or may not come in question. Hawkins v. Gresh
34, 6 S. E. 472; Hartsook's Adm'r v. Crawford's Adm'r,
7 S. E. 538; Gage v. Crockett, 27 Grat. 735; Eacho v. Cosby, 2
Harman v. City of Lynchburg, 33 Grat. 37; Fink v. Denny,
McCrowell v. Burson, 79 Va. 290; Tebbs v. Lee, 76 Va. 744;
79 Va. 28; Duffy v. Figgat, 80 Va. 664; Barton, C. Pr. (2
Campbell v. Smith, 32 Grat. 288; Railroad v. Colfelt, 27
Southern Fertilizing Co. v. Nelson, 6 Va. Law J. 162.

The amount in controversy as to appellee, under rule 9
(now 8, 120 Va. vii.), is the difference between the sum clai
as of date of decree appealed from and amount decreed in
such decree. Ware v. Bankers' Loan & Investment Co.,
29 S. E. 744, 64 Am. St. Rep. 826.

Amounts decreed against appellant is amount in contro
him, and not several amounts decreed to appellees. If a
sums decreed against appellant exceeds $500 (now $300)
although amount decreed to no one of appellees amounts to
$300). Hicks v. Roanoke, etc., Co., 94 Va. 741, 27 S. E. 596.

As between grantee and creditor assailing deed as fraudul
in controversy is value of property conveyed, and not amo
claimed. Kahn v. Kerngood, 8 Va. 342.

Where shareholder is sued for call on subscription to st
than jurisdictional amount, and denies validity of subscri
amounts to more, the amount in controversy is the amount o
scribed for, such denial going to validity of whole subscript
v. Valley R. R. Co., 32 Grat. 146.

Where full amount of set-off allowed defendant excee
tional amount, an appeal lies on behalf of complainant, altho
decreed against him is less. Bunting v. Cochran, 99 Va. 5
229. Where injunction is awarded to restrain sale of proper
notes amounting to $500 (then the jurisdictional minimum)
that usurious interest was charged, and defendant admits
sets up claim to $448 as money actually lent, the amount of n
is amount in controversy. Schmelz v. Rix, 95 Va. 509, 2
Where amount adjudged as due to complainant from dec
surety may be shown by commissioner's report to be less th
tional limit by reason of his co-surety having paid more tha
and being entitled by way of contribution to part of the de
does not void an appeal. Alexander v. Byrd, 85 Va. 690,
Where whole amount of judgment against appellant's
is more than $500 (then the jurisdictional minimum), appea
dock's Adm'x v. Skinker, 93 Va. 479, 25 S. E. 535.

Where judgment of $500 (now $300) or more is assi
parties to be divided between them, the amount in contro

Digitized by Google

to enforce judgment is amount of judgment, though interest of one party is less than jurisdictional amount. Neither assignee has claim founded on independent contract which he can enforce without regard to other. In such case appeal lies from decree affecting the judgment. Cheatham's Adm'r v. Aistrop's Adm'r, 97 Va. 457, 34 S. E. 57.

Where for debt against decedent there is no decree in solido against his representative, but severally against each distributee for portion of debt exceeding $500 (then the jurisdictional minimum), substantially it is decree against decedent's estate, and appeal lies. Updike's Adm'r v. Lane, 78 Va. 132. And conversely, see Peters v. McWilliams. 78 Va. 567; Martin's Adm'r v. Fielder, 82 Va. 455, 4 S. E. 602. And so in case of trustee in assignment, where no debt is $500 (now $300), but the aggregate more. Saunders v. Waggoner, 82 Va. 316; Cabell v. Southern Mut. Ins. Co., 10 Va. Law J. 729. And so in case of administrator. Williams' Adm'r v. Clark's Representatives, 93 Va. 690, 25 S. E. 1013.

Where appellant is owner of two judgments sought to be enforced which aggregate more than jurisdictional amount, but each less than that sum, an appeal will lie, though one of such judgments was acquired after suit brought, if such acquisition was in good faith and not merely colorable, in order to procure appeal. Filler v. Tyler, 91 Va. 458, 22 S. E. 235.

Where trial court decides that the holder of a certified check on a suspended bank had failed to present it in time, and must bear any loss occasioned thereby, the amount in controversy is such loss, the same being the amount of the check less any dividends which may be declared out of the assets of the bank. Lamb v. Thompson, 112 Va. 134, 70 S. E. 507.

The amount in controversy must, as a general rule, be made to appear affirmatively, and if it cannot be ascertained the appeal will be dismissed. But if the record is silent on the subject, affidavits may be filed in the appellate court to show the real amount in controversy. Lamb v. Thompson, 112 Va. 134, 70 S. E. 507.

If jurisdictional amount be changed (when not prescribed by the Constitution) the amount when appeal is allowed prevails and not amount when decree was rendered. McGruder v. Lyons, 7 Grat. 233.

In calculating the amount involved in the decree appealed from, costs are to be excluded, and interest is not estimated beyond date of decree. See note to Wheby v. Moir, 102 Va. 875, 10 Va. Law Reg. 338, 47 S. E. 1005.

The Court of Appeals has jurisdiction involving liability on a stock subscription amounting to $1,000, though the judgment appealed from was for $140. Elliott v. Ashby, 104 Va. 716, 52 S. E. 383.

Where the original demand is pecuniary and in excess of the jurisdictional amount, but it is alleged by the appellee to have been reduced below that amount by payment, the burden is upon him to make that fact appear. Williamson v. Payne, 103 Va. 551, 49 S. E. 660.

The value or amount in controversy, on appeal, must. as a general rule, be made to appear affirmatively, and, if it cannot be sustained. the appeal will be dismissed. Williamson v. Payne, 103 Va. 551, 49 S. E. 660.

Where a debt is secured by a deed of trust on personal property, which also secured the expenses of executing the trust and of drawing and recording the deed, and the validity of the deed is assailed, such expenses are proper to be considered in arriving at the amount in controversy on appeal. Williamson v. Payne, 103 Va. 551, 49 S. E. 660.

On a writ of error to a judgment sustaining a demurrer to a declaration in an action sounding in damages, the amount in controversy in appellate court is the amount asserted in the declaration. Sanger v. C. & O. Ry. Co., 102 Va. 86, 9 Va. Law Reg. 881, and note, 45 S. E. 750.

For article upon jurisdictional amount in matters merely pecuniary, see 9 Va. Law Reg. 577.

Digitized by Google

When appeal does not lie.—Where several judgment
of whose claims amount to jurisdictional amount, and a
on separate contracts, bring suit to subject debtor's land
joint interest or community of interests which make the
such judgments the amount in controversy. Umbarger
Grat. 167; Thompson v. Adams, 82 Va. 672; Hartsook's A
ford's Adm'r, 85 Va. 413, 7 S. E. 538; White v. Valley Bl
96 Va. 270, 31 S. E. 20.

Where jurisdiction on appeal is fixed by amount i
and claim of each complainant is less than such amount,
Gilman v. Ryan, 95 Va. 494, 28 S. E. 875.

If assignment of error affects only one person, whos
than $500 (now $300), no appeal lies as to him. Crockett
Va. 391, 34 S. E. 96.

Where difference between debt asserted by plaintiff i
and amount paid thereon by sale of debtor's land is less th
$300), no appeal lies. Marchant v. Healy, 94 Va. 614,

An appellee whose claim is less than jurisdictional a
assign error under rule 9 of the court (now 8, 120 Va. vii
was not intended to enlarge or extend jurisdiction of court,
court to correct errors against appellees in cases where the
right of appeal. Wilson's Adm'r v. Wilson, 93 Va. 546,

Where suit is to enforce judgment for more than
amount and defendant pleads set-offs, which, being allowe
cree to less, no appeal lies. Kendrick v. Spotts, 90 Va. 148,

No appeal lies from decree dissolving injunction whe
volved is pecuniary, and less than $500 (now $300). Se
limited by section 6337. Shoemaker v. Bowman, 98 Va.
278. Nor where matter in controversy is judgment soug
forced, and not title or boundaries or rents and profits of la
ment is less than $500 (now $300). Patteson v. McKinney
14 S. E. 379. Nor where amount involved is less than $500
and no constitutional question is raised. Shacklett v. As
313, 12 S. E. 678.

When sum required to discharge judgment is less th
the case comes not within any exception, no appeal lie
Appeals has no jurisdiction of a writ of error by a railroa
condemnation proceedings from award of second set of c
where difference between said award and that of first set, t
pany did not object, and which was set aside on landowne
less than jurisdictional minimum. Atlantic & D. R. Co v.
119, 12 S. E. 222; Atlantic & D. R. Co. v. Smith, 87 Va. 123,

Where compensation for land condemned is less than
amount no appeal lies. R. F. & P. R. R. v. Knopffs, 86
S. E. 881.

Where several judgments are given against defendant,
amount to $500 (now $300), they cannot be united to give
peals jurisdiction. Lawson v. Bransford, 87 Va. 75, 12 S.
also, Litchford v. Day, 87 Va. 71, 12 S. E. 107; Gregory
87 Va. 77, 12 S. E. 109; Bransford v. Karn, 87 Va. 242, 12 S

Appeal does not lie to judgment against plaintiff in
sumpsit brought to recover from the tax collector less tha
$300), paid for taxes, when neither right to levy tax nor co
of any law is involved. Callan v. Bransford, 86 Va. 535,

Where, on defendant's motion to quash execution, co
motion, but allowed defendant credit of less than jurisdict
thereon, plaintiff in judgment cannot appeal, as amount i
as to him is amount of credit. Campbell v. Smith, 32 Gra

Decree required S. to pay $975 to other heirs as owelty
Later it was found that S.'s wife was entitled to one-fifth
decreed accordingly. Amount in controversy held to be
decreed to wife of S. Whitmer's Heirs v. Spitzer, 81 Va.

Where, on money demand, the difference between am

Digitized by Google

laintiff and the amount claimed is less than $500 (now $300), no appeal es. Batchelder v. Richardson, 75 Va. 835.

Where debt of one party in creditor's suit is less than jurisdictional nount, the fact that another party, whose claim is more, unites in ap- eal, does not give right to appellate court to review decree as to former. ebbs v. Lee, 76 Va. 744.

Creditor whose claim was less than jurisdictional amount filed bill annul trust deed. Other creditors, whose separate claims exceeded iat sum, filed petition in clerk's office without leave of court and notice grantor, asking to be made parties. Decree dismissed bill without ticing petitions. Held, petitioners were not parties, and cannot ap- eal. Walter v. Chichester, 84 Va. 723, 6 S. E. 1.

Where parties to cause stand upon distinct and unconnected ground, id their rights are separate, and not equally affected by same decree, peal for one does not bring up for adjudication rights of others. Alex- nder v. Alexander, 85 Va. 353, 7 S. E. 335, 1 L. R. A. 125; Rorer's eirs v. Roanoke Nat. Bank, 83 Va. 539, 4 S. E. 820; Walker's Ex'r v. age, 21 Grat. 636; Tate v. Liggat, 2 Leigh 84; Burkholder v. Ludlam, Grat. 255, 32 Am. Rep. 668; Simmons v. Lyles, 27 Grat. 922.

Where plaintiff, at institution of suit, had judgment for less than risdictional amount, but purchased another judgment, the aggregate eing more, and such purchase was bona fide, and reported to and con- rmed by trial court, the amount in controversy as to him is aggregate such judgments. Fink v. Denny, 75 Va. 663. But where plaintiff's ebt was less than jurisdictional amount, as claimed in bill, allowed by aster and confirmed by court, it cannot be supplemented by taking as- gnment of another debt, unless assignment was recognized by master id by court. McCarty v. Hamaker, 82 Va. 471, 5 S. E. 538.

When the ultimate liability of the appellant is wholly conjectural, id cannot be ascertained until certain land, the primary subject for e payment of the debt, has been sold, the appeal will be dismissed. itter L. Co. v. Coal Moun. Co., 115 Va. 370, 79 S. E. 322.

Change in law.—Writs of error must be disposed of in accordance ith law as it existed at date of rendition of judgment appealed from. nderson v. Hygeia Hotel Co., 92 Va. 687, 24 S. E. 269; Kennaird v. nes, 9 Grat. 183; Currin v. Spraull, 10 Grat. 145; N. & W. R. R. Co. v. ougherty, 92 Va. 372, 23 S. E. 777; Wilson v. Hundley, 96 Va. 96, S. E. 492, 70 Am. St. Rep. 837.

The latest amendment of this section reduced the jurisdictional sum r appeal from $500 to $300. Where a judgment was rendered for ore than $300 but less than $500 prior to the amendment, but the dgment did not become final by adjournment of the term of court ntil after this amendment became a law, the appellate court has juris- ction. Allison's Ex'r v. Wood, 104 Va. 765, 52 S. E. 559.

The amendment of 1902-4 was remedial in its nature and its lan- uage is sufficiently comprehensive to apply as well to judgments ren- ered before, as those rendered since its passage. Allison's Ex'r v. Vood, 104 Va. 765, 52 S. E. 559.

Fraud.—Defendant sued for less than $500 (now $300) will not be llowed to set up fraudulent or specious off-set in order to maintain peal. Manchester Paper-Mills Co. v. Heth, 1 Va. Dec. 776, 18 S. E. 39.

On action for slander jury award plaintiff $500 (then the jurisdic- onal minimum). Plaintiff releases $5 of said judgment, and court enders judgment for $495. This was done to avoid jurisdiction of ourt of Appeals, and is void. Appeal lies in such case. Hansbrough Stinnett, 22 Grat. 593.

Cited in Pattie v. Guggenheimer & Co., 86 Va. 993, 12 S. E. 950.

Limitation of appeals.—Limitation applies only to final, and not to nterlocutory, decrees. There is no limitation of time wherein appeal es from interlocutory decree settling principles of case, such running nly as against final decree. Jameson v. Jameson's Adm'x, 86 Va. 51,

Digitized by Google

9 S. E. 480, 3 L. R. A. 773; Sexton's Ex'x v. Patterson, 1
Harper v. Vaughan, 87 Va. 426, 12 S. E. 785; South
Glenn's Adm'r, 98 Va. 309, 36 S. E. 395; Barker v. Jenki
6 S. E. 459; Cocke's Adm'r v. Gilpin, 1 Rob. 22.

Decree directed cause to be recommitted to commi
an account, and subsequently bill was dismissed. Hel
decree was not a final judgment, such as starts statute
to running. Penn v. Railroad, 2 Va. Dec. 224, 23 S. E.

Petition for an appeal from decree refusing bill of r
rendered more than six months prior thereto must be p
six months from the actual date of decree appealed from
beginning or end of term at which rendered. Mason v.
108, 33 S. E. 1015; Buford v. North Roanoke Land C
27 S. E. 509.

It matters not whether decree of refusal is to fili
prayer of bill of review to final decree rendered more than
before, petitions from such decree of refusal must be p
six months from date of refusal. Jordan v. Cunningha
7 S. E. 540.

If decree appealed from was rendered within statu
appeal, this court has jurisdiction, though decree was
reverse a former decree pronounced anterior to said period
v. Ford, 86 Va. 917, 12 S. E. 1.

The time between reception of petition and record
of appeal is to be excluded in computing year in which su
must be executed. Acker v. Railroad, 84 Va. 648, 5 S. E
Va. Law J. 361.

The statute of limitations with regard to appeals
Commonwealth. Com. v. Moore's Adm'r, 1 Grat. 294.

No appeal lies from final decree dismissing bill of r
rendered more than six months prior to such final decree,
for such appeal be presented within six months from da
decree. Mason v. Mason, 97 Va. 108, 33 S. E. 1015.

Where two causes are heard together, and one of th
and the other continued, the decree is final as to the one
unless the appeal is taken within one year, the right of
and the same applies to so-called amended or supplemen
make an entirely new case, and which are dismissed. S
Mining & Chemical Co., 101 Va. 301, 43 S. E. 564.

Generally.—Cited but not construed in Adams v. E
796, 77 S. E. 611.

For monographic note on Appeal and Error, see H
Pepper's Ferry Turnpike Co., 1 Rob. 263, Va. Rep. Ann

Discussed, 1 Va. Law J. 519, as to conclusiveness of
Law J. 577.

See Burks' Pleading and Practice, pp. 48, 740, 742

See notes to section 6352; section 88 of Constitutio

Under section 2709 there is an appeal as of right f
circuit court in passing on title to real estate bought for

For W. Va. decisions on similar statute, see Justi
chapter 135, section 3.

**Sec. 6338. How person desiring to present such pet
cure suspension of execution.**—At the instance of an
desires to present such petition, the court in which
decree, or order is, may, during the term at which it
made, or the judge rendering such judgment, order o
within thirty days after such term is ended, make
pending the execution of such judgment, decree, o
reasonable time, to be specified in such order, whe
shall give bond, with surety, before the clerk of said

Digitized by Google

enalty as the court or judge may require, with a condition recit-g such judgment, decree, or order, and the intention of said per-n to present such petition, and providing for the payment of all ich damages as may accrue to any person by reason of the said spension, in case a supersedeas to such judgment, decree, or or-er, should not be allowed, and be effectual within the time so ecified. But where the judgment, decree or order appealed from ssolves an injunction the judge may in his discretion decline to ant a suspension of such judgment, decree or order. (Code 1887, 3456; 1908, p. 36.)

Revisors' Note.—The words "with surety" appearing in line eight the text are new.

Judgment was rendered on September 28, 1886, and supersedeas nd executed September 28, 1887; but record and petition was in hand appellate court three days before that time. Held, bond was executed thin year from judgment, as the three days must be excluded. Acker Railroad, 84 Va. 648, 5 S. E. 688.

Discussed, 1 Va. Law J. 519, as to conclusiveness of decree.

Cited but not construed in Va. & S. W. R. Co. v. Nickels, 116 Va. 2, 82 S. E. 693.

For W. Va. decisions on similar statute, see Justis' Annotations, apter 135, section 4.

Sec. 6339. Transcript of record to be exhibited with such peti-on; person applying for transcript to notify opposite party or his ounsel; certificate of clerk to transcript.—With such petition there all be a transcript of the record of so much of the case wherein e judgment, decree, or order is as will enable the court, or judge ereof in vacation, to whom the petition is to be presented, prop-ly to decide on such petition, and enable the court, if the petition e granted, properly to decide the questions that may arise before . The person intending to apply for such transcript shall notify e opposite party, or his counsel, if either reside in this State, of s intention, and no clerk of any court, nor the clerk of the State orporation Commission, shall make out and deliver such transcript nless it is made to appear that such notice was given. A certifi-te of the clerk stating the fact shall in every case accompany e transcript when presented to the appellate court or judge. It all be sufficient to give such notice to the attorney who appeared s counsel for the adverse party in the court or tribunal which endered the judgment, decree, or order, unless such party has re-ined other counsel to represent him in the appellate court and at fact is known to the petitioner, in which case the notice shall e given to such counsel. (Code 1887, § 3457; 1902-3-4, p. 779.)

What constitutes record.—Record in cases at common law comprises rit, when necessary for purposes of amendment, papers of which profert as made or oyer demanded, or such as have been specially submitted the court by bill of exceptions, demurrer to evidence, special verdict inseparably connected with some paper or evidence referred to, the veral proceedings at rules or in court until rendition of judgment, the hole pleadings between the parties, and these and no others are to be oticed by the court. Mandeville v. Perry, 6 Call 78.

The record proper is nothing but formal allegations or pleadings on

Digitized by Google

either side, the issue, impaneling of jury, the verdict, and judgme
Rulings of court and action of court as to evidence and proceedings m
be made part of record by bill of exceptions. Id.; Magarity v. Shipm
82 Va. 806, 1 S. E. 381.

If opinion of trial judge is referred to in decree deciding cause
setting forth the reasons for his decision, it becomes part of reco
Todd v. Sykes, 97 Va. 143, 33 S. E. 517.

What not part of record unless made so by bill of exception.—Pap
inserted in record by clerk cannot be considered part of record, unl
they have regularly been made so by bill of exception or otherwise
party wishing to avail himself of them. The certificate of the cl
that papers copied by him were evidence upon which judgment w
founded is no part of record. Cunningham v. Mitchell, 4 Rand. 18
Bowyer v. Chestnut, 4 Leigh 1; Roanoke Land & Improvement Co.
Karn, 80 Va. 589; Magarity v. Shipman, 82 Va. 806, 1 S. E. 381; Johns
v. Norton Land & Improvement Co., 90 Va. 267, 18 S. E. 36. Nor
deposition part of record without bill of exceptions, though copied
transcript and certified by trial court and clerk. Id.

A writ of error will not lie where record does not show judgme
of court, but merely says that judgment was entered. Read's Case,
Va. 168, 17 S. E. 855.

Instructions.—Instructions given jury are no part of record unl
made so by bill of exception. Mitchell's Case, 93 Va. 775, 20 S. E. 89

Rejected pleas.—Pleas tendered by defendant in action at law a
rejected by court are not part of record, unless made so by bill
exception to rejection, or by order of court that they shall be made s
and mere memorandum that when pleas were rejected the court declar
that matter thereof might be given in evidence without pleas being fil
and that this was done at trial, does not make them part of recor
White v. Toncray, 9 Leigh 347.

Nothing that transpired during trial in the lower court will be co
sidered part of record on appeal, unless made so by bill of exception
order of court, and mere statement on record that certain pleas we
rejected, and that parties excepted to various rulings of court, is n
sufficient. Lawrence's Case, 86 Va. 573, 10 S. E. 840.

Court of Appeals can only consider case on writ of error, on reco
as made in trial court. If this fails to disclose errors complained
they cannot be considered. Barnes v. Com., 92 Va. 794, 23 S. E. 78

Papers upon which a case was not heard in lower court constitu
no part of record of cause, and cannot be considered on appeal. Floran
v. Morien, 98 Va. 26, 34 S. E. 890.

Appellate court will not consider certificate or other papers us
in argument, but not made part of record. Taylor v. Mallory, 96 V
18, 30 S. E. 472.

What is sufficient record.—Writ of venire facias need not be set ou
in record of criminal trial. Combs' Case, 90 Va. 88, 17 S. E. 88
Taylor v. Com., 90 Va. 109, 17 S. E. 812.

Where, on appeal to Supreme Court from circuit court, affirmin
order on appeal from county court, clerk of circuit court certifies
record in circuit court the original transcript certified from the count
court, with transcript of judgment in circuit court, it is sufficient com
pliance with statute. Effinger v. Kenney, 24 Grat. 116.

Division of record.—The practice adopted in this case, whereby th
record of the trial court was divided and one part of it brought up b
an appeal by one party, and the other part by an appeal by another party
is disapproved. Wheeler v. Thomas, 116 Va. 259, 81 S. E. 51.

When bill of exceptions unnecesary.—On appeal from judgment o
circuit court on writ of error to county court, bill of exception to judg
ment of circuit court is not necessary, as error therein, if any, appear
by record of that court without such bill. Morris v. Deane, 94 Va. 572
27 S. E. 432. Nor is it necessary to action of court on demurrer
Russell Creek Coal Co. v. Wells, 96 Va. 416, 31 S. E. 614. But other
wise as to instructions. Mitchell's Case, 93 Va. 775, 20 S. E. 892. No

Digitized by Google

it necessary to take bill of exceptions to action of trial court overruling otion for new trial. It is sufficient if it appears otherwise from record at motion was overruled and exception taken. Central Land Co. v. benchain, 92 Va. 130, 22 S. E. 876; Newberry v. Williams, 89 Va. 298, S. E. 865, explained; Town of Bridgewater v. Allemong, 93 Va. 542, S. E. 595; City of Norfolk v. Pollard, 94 Va. 279, 26 S. E. 832.

Insufficient record.—Where record on appeal is unsatisfactory, and idence not clearly stated, report of commissioner who had the witnesses fore him, and knew the particular items to which evidence was directed, d which appears to do substantial justice, will be affirmed, though the nclusions reached are not absolutely accurate. Browning's Ex'r v. rowning, 2 Va. Dec. 714, 36 S. E. 525; Rhea v. Preston, 75 Va. 757. e note to section 6341.

In proceedings involving deprivation of life or liberty, whatever is sential must affirmatively appear from the record, and where waiver defendant of record leaves record destitute of essential part he may terwards take advantage of defect notwithstanding waiver. Spurgeon's se, 86 Va. 652, 10 S. E. 979. But see section 4895; Barnes v. Com., Va. 794, 23 S. E. 784.

Omission to direct new venire facias, or omission of any statutory sential apparent on record, is error, and may be taken advantage of ter verdict by motion in arrest of judgment, failure of accused to make jection before jury sworn being no waiver. Hall's Case, 80 Va. 555.

Where defendant appears not to have been included in original ocess and return thereon, the judgment entered is void, presumption jurisdiction being overcome by record. Blanton v. Carroll, 86 Va. 9, 10 S. E. 329.

Provision as to notice directory.—Providing that notice of intention apply for transcript of record with view of applying for writ of error directory, and not a limitation of jurisdiction of court. Mears v. exter, 86 Va. 828, 11 S. E. 538. But it is plain violation of duty by erk to make out and deliver such transcript until the notice has been ven. Norfolk & W. R. Co. v. Dunnaway's Adm'r, 93 Va. 29, 24 S. E. 8.

Where record contradicts plea.—Where record shows that defendant eaded "not guilty," appellate court will disregard exception that isoner was tried without plea. Cash v. Com., 2 Va. Dec. 1, 20 S. E. 893.

Generally.—See Burks' Address, 2 Barton, L. Pr. (2d Ed.) 1403; urks' Pleading and Practice, pp. 758, 759; Gregory's Forms No. 361.

For W. Va. decisions on similar statute, see Justis' Annotations, apter 135, section 5.

Sec. 6340. How the record made up.—In no case shall the clerk, nless specially directed in writing so to do, copy into the record ny process, any order at rules, order of continuance, return, evi- ence of service of process, any affidavit of parties or witnesses, any commission or notice to take depositions, captions thereto r certificate of their having been sworn to, but the name of each itness and the time of taking his deposition, and for whom taken, hall be stated at the head thereof. Nor shall he copy, unless so irected, any injunction, appeal, or supersedeas bond, any certifi- ate of the acknowledgment or proof of a deed or other writing, r any report or account made by a commissioner to which there is o exception, or any voucher in support thereof, or any opinion f the court or judge rendering the judgment, decree, or order, or ny printed document, of which either party will furnish to the lerk a copy, but such duplicate shall be attached to what is so opied. When a deed, patent, will, or other writing, is once copied

Digitized by Google

into the record, or into a bill of exceptions, it shall copied by the clerk, but may be identified by prop And when a case has before been in the appellate shall only be copied the proceedings subsequent to t peal, writ of error, or supersedeas. (Code 1887, § 345

Where, in a chancery cause, there is a decree in a a report not excepted to by either party, and on appeal omitted in accordance with statute of 1825, chapter 51, se the latter part of which is same as latter part of this party may call for report, and have it brought up; but, i does so, no objection can be considered which the re necessary to explain or support. Poindexter's Ex'rs v. G Leigh 504.

Sec. 6341. Where parties differ, the judge to decid pellee, or defendant in error, or his counsel, desire a record to be copied, and the appellant or his counsel same, the question may be referred to the judge of t the tribunal in which the case was decided, who sh same, and the clerk in making out the transcript sha instructions given him by such judge or tribunal. § 3459; 1902-3-4, p. 780.)

Parties unable to agree on what part of record sh referred the matter to judge of court, who directed cle "In respect to copying the records for appeals in cases me make one complete record in one case, which record record in all the cases which are identical, omitting onl may mutually agree to omit." In one case complete re up, but others are not copied, the names only being ment not such record as will enable court to consider them. Day, 87 Va. 71, 12 S. E. 107.

This section authorizes selections from the record a pleted, and is not intended to authorize additions ther decision. A deed placed among papers, without being fi to in the proceedings, is not made part of record on a copied into the transcript by order of judge. Barksda Adm'rs, 87 Va. 141, 12 S. E. 344.

Sec. 6342. Parties may agree upon what shall be c agree the facts to be copied in lieu of complete reco ties, or their counsel, may agree upon such part of be copied by the clerk as they think will enable the a properly to decide the case, or they may agree the part of them, to be copied by the clerk in lieu of th cord. The clerk, on the application of the appellant shall make and deliver him a typewritten copy, paged of the record agreed on, or if no record be agreed on, required by section sixty-three hundred and forty. copy is made and delivered, counsel for either side an abridgement thereof, or any part thereof, which when agreed on by counsel for both sides, together v tions, if any, of the record not abridged, and the pe appeal or writ of error, shall constitute the record Such agreement, however, shall not affect the right o

Digitized by Google

o correct any mistake or supply any omission from the typewrit-en copy. (Code 1887, § 3460; 1902-3-4, p. 780.)

Revisors' Note.—The first sentence of this section is taken from ection 3460 of the Code of 1887. The residue is substantially new. he transcript of the record must be typewritten, paged and indexed, nd a provision is made for an abridgment of the transcript by counsel or either side, which abridgment must, of course, be agreed on by coun-el for both sides. The reduction of the size of records in the appellate ourt is "a consummation devoutly to be wished," and the revisors gave he subject much consideration in an effort to solve the problems con-ected with it. The conclusion reached, however, was that further legis-ation of a satisfactory character at this time could do no more than ncourage, and in a sense, REQUEST, the gentlemen of the bar to take teps to reduce the size of the records. This and other sections furnish he means by which the size of the records may be reduced, and this was s far as the revisors felt justified in going in recommending legislation o remedy the existing evils.

See note to section 6341.

Sec. 6343. Court of Appeals may change rules for making out nd printing records.—The Supreme Court of Appeals may from me to time change or modify either of the four preceding sections, nd in lieu thereof adopt such other rules for making out and rinting the records, as it may deem proper. (Code 1887, § 3461.)

Sec. 6344. If part of record unnecessarily copied, who to pay for .—If any paper, document, or writing be improperly or unneces-arily copied into the record, the appellate court may, in its discre-ion, direct the cost of said copying and printing the same to be aid by the party at whose instance such copying was so made or one. (Code 1887, § 3462.)

Sec. 6345. Appellate court, or, etc., may inspect former record efore it; power to award writ of certiorari.—The appellate court, r a judge thereof, may, when a case has before been in such court, nspect the record upon the former appeal, writ of error, or super-edeas; and such court, or any judge thereof in vacation, may, in ny case, after reasonable notice to counsel in the appellate court, ward a writ of certiorari to the clerk of the court below, and ave brought before it, when part of a record is omitted, the whole r any part of such record. (Code 1887, § 3463.)

Revisors' Note.—The words "counsel in the appellate court" appear-ng in line five of the text are used in lieu of "the adverse party."

See note to section 6340.

Cited but not construed in McMenamin v. Southern R. Co., 115 Va. 22, 80 S. E. 596.

For W. Va. decisions on similar statute, see Justis' Annotations, hapter 135, section 7.

Sec. 6346. Petition for appeal, etc., how prepared and certified. —A petition for an appeal, writ of error, or supersedeas shall as-ign errors; and it shall not be presented until some counsel or ttorney of the appellate court shall certify that, in his opinion, it s proper that the decision should be reviewed by such court. (Code 887, § 3464.)

Petition must state clearly and distinctly all errors relied on for

Digitized by Google

reversal.—A petition for appeal is in the nature of a pleading, and should state clearly and distinctly all the errors relied on for a reversal of the decree; otherwise appeal should be dismissed. But a motion to dismiss for this cause will not be granted after lapse of more than three years when right of appeal has become barred by limitation. Orr v. Pennington, 93 Va. 268, 24 S. E. 928; Barton, L. Pr. (2d Ed.) 1310, 1311.

A petition for a writ of error is in the nature of a pleading, and should state clearly and distinctly all the errors relied on for reversal, and errors not assigned in the petition will not, as a rule, be considered. Sutherland v. Wampler, 119 Va. 800, 89 S E. 875; Worley v. Mathiesen Alkali Works, 119 Va. 862, 89 S. E. 880; Ewell v. Brock, 120 Va. 475, 91 S. E. 761.

Compliance and non-compliance with rule.—The petition for a writ of error in this case points out specifically the errors claimed to have been committed by the court below, and in such manner as to enable the court and opposing counsel to see on what points counsel for the petitioner intends to seek a reversal and hence is sufficient. Belmont v. McAllister, 116 Va. 285, 81 S. E. 81.

The discussion in a petition for a writ of error may be treated as a substantial compliance with this section when the motion to dismiss for failure to comply with the statute is not made until after the right of appeal is barred by limitation. New York Life Ins. Co. v. Franklin, 118 Va. 418, 87 S. E. 584.

Petition for an appeal is in the nature of a pleading, and should state the case which appellant wishes to make. It must assign all errors relied on for reversal. Errors assigned for first time in reply brief will not be considered. Hawpe v. Bumgardner, 103 Va. 91, 98, 48 S. E. 554.

Assignments of error made for the first time in a reply brief will not be considered. A statement in a petition that there are other errors to be assigned does not reserve to the petitioner the right to assign such errors in a reply brief. Va. Ry. & P. Co. v. Sam'l Meyer, 117 Va. 409, 84 S. E. 742; American L. Co. v. Hoffman, 105 Va. 346, 54 S. E. 25.

An assignment of error relating to fourteen alleged errors contained in fourteen bills of exceptions was held to be insufficient where all that was said in support of the assignment was "that defendant is advised that errors were committed to his prejudice by said rulings of the court." Such a statement is not a compliance with the rule that a petition for a writ of error, being in the nature of a pleading, must state clearly and distinctly the errors relied on to reverse the judgment. Honaker L. Co. v. Call, 119 Va. 374, 89 S. E. 506.

When all the assignments of error are based upon matters not in the record, and there are no proper bills of exceptions, there are no errors assigned within the meaning of this section. Moore v. Harrison, 114 Va. 424, 76 S. E. 920.

Jurisdiction of court.—The general rule is that a question not raised in the trial cannot be raised in the appellate court. This rule, however, is subject to exceptions, one of which is that a question which goes to the jurisdiction of the court may not only be raised for the first time in the appellate court, but, where it appears that the trial court did not have jurisdiction, the appellate court may of its own motion take notice of that fact.

As was said by President Tucker in Jones & Ford v. Anderson, 7 Leigh 309, 314: "It must always be ex-officio the duty of a court to disclaim a jurisdiction which it is not entitled to exercise. To do otherwise would be to usurp a power not conferred by law."

To hold that the question of the jurisdiction of the trial court could not be made in the appellate court for the first time would be in effect to hold that consent could give jurisdiction, and might result in the affirmance of a judgment which the trial court had no authority to enter. South & W. Ry. Co. v. Com., 104 Va. 314, 51 S. E. 824; Philips v. Com., 19 Grat. 485; Ryan v. Com., 80 Va. 385; Saunders v. Griggs, 81 Va. 506;

Digitized by Google

McAllister v. Guggenheimer, 91 Va. 317, 320, 21 S. E. 475; Boston Blower Co. v. Carman Lumber Co., 94 Va. 94, 100, 26 S. E. 390.

Generally.—Cited but not construed in Laskey v. Burrill, 105 Va. 83, 54 S. E. 23; Wash. So. Ry. v. Cheshire, 109 Va. 741, 65 S. E. 27.

Sec. 6347. To whom presented; endorsement of judge thereon.—The petition may be presented to the Supreme Court of Appeals, or to a judge thereof, and if it be presented to a judge, he shall endorse thereon the day and year he receives it. (Code 1887, § 3465; 1902-3-4, p. 780.)

Sec. 6348. When to be rejected; when rejection final.—The petition shall be rejected when it is from an interlocutory decree or order, if the court or judge to whom it is presented deems it proper that the case should be proceeded in further in the court below before an appeal is allowed therein. If the court shall deem the judgment, decree, or order complained of plainly right, and reject the petition on that ground, the order of rejection shall so state, and no other petition therein shall afterwards be entertained. But the rejection of such petition by a judge in vacation shall not prevent the presentation of such petition to the court at its next term. (Code 1887, § 3466; 1902-3-4, p. 780.)

We have no such practice as an absolute right of appeal in civil or criminal cases. But the law requires a petition, accompanied by a transcript of record, to be presented to the court, or one of its judges, whose duty it is to examine the errors assigned and to grant or refuse writ, as may seem proper. It is as much the duty of the court, or judge, to deny the petition when of opinion that the decision complained of is plainly right, as it is to grant it when any doubt exists as to the propriety of the decision. McCue's Case, 103 Va. 1008, 49 S. E 623.

As to what is interlocutory decree, see notes to section 6337.

In a suit for separate maintenance, an interlocutory decree awarding the plaintiff a pendente lite allowance for her support until the further order of the court, requiring the defendant to pay the costs of suit incurred by the complainant to date of decree and referring the cause to a commissioner in chancery to inquire and report on the value of the property of the defendant, the amount of his income and what would be a reasonable allowance to be paid for the support of the complainant and her child, was not appealable. Beatty v. Beatty, 105 Va. 113, 53 S. E. 2.

Where a petition for a writ of error has been rejected on the ground that the judgment complained of is plainly right, and the order of rejection so states, the court is without jurisdiction to entertain any other petition with respect to it. Morgan's Case, 115 Va. 943, 79 S. E. 388.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 135, section 11.

Sec. 6349. When appeal, etc., allowed; when supersedeas awarded.—The court or judge, to whom a petition is duly presented, if of opinion that the decision complained of ought to be reviewed, may allow an appeal or writ of error, and in either case may award a supersedeas to stay proceedings in whole or in part. (Code 1887, § 3467; 1902-3-4, p. 780.)

A supersedeas is only intended to stay further proceedings and to leave matters in the condition it finds them until appellate court can hear case and determine questions involved in appeal. If a receiver is in possession of property at the time the supersedeas is awarded, he is not thereby removed. Either party may move in lower court for appoint-

Digitized by Google

ment of receiver pending appeal, or if there be a receiver he may apply to the court appointing him for its guidance. Bristow v. Home Bldg. Co., 91 Va. 18, 20 S. E. 946, 947; 2 Barton, L. Pr. (2d Ed.) 1315, 1316.

Under rule 8 (120 Va. vii.), an appeal brings before court for review the whole record. Section 6349, permitting a restriction to be placed upon a supersedeas so that it may be framed to stay proceedings in part, does not impose or authorize any limitation upon the appeal. Appellant cannot appeal from so much of decree as is prejudicial to him and leave residue in force. Gaines v. Merryman, 95 Va. 663, 29 S. E. 738.

Pending appeal from decree to which a supersedeas has been issued and perfected by bond, the only orders the court below can make in suit are such as are needed to preserve the rem in litigation. Cralle v. Cralle, 81 Va. 773; Littlejohn v. Ferguson, 18 Grat. 53; Moran v. Johnston, 26 Grat. 108; Edmund's Adm'r v. Scott, 78 Va. 720.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 135, section 12.

See Gregory's Forms No. 361.

Sec. 6350. In what court appeal, etc., to be docketed; what process to issue.—Every appeal, writ of error, or supersedeas shall be docketed in the Supreme Court of Appeals, at the place of session, where it may be heard and determined according to sections five thousand eight hundred and sixty-seven to five thousand eight hundred and seventy-one, inclusive. The clerk of the said court shall issue a summons against the parties interested, other than the petitioners, that they may be heard, and also issue any supersedeas which may be awarded. (Code 1887, § 3469; 1902-3-4, p. 780.)

Under this section appellee cannot, under rule 8 (120 Va. vii.), have determined a question not raised by appellants, where the party interested in such question adversely to such appellee has not been summoned as provided by this section, and is not a party to proceedings on appeal. Rhea v. Preston, 75 Va. 757.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 135, section 13.

Cited but not construed in Roanoke v. Blair, 107 Va. 639, 60 S. E. 75.

Sec. 6351. Bond of appellants or petitioners; penalty and condition.—Except where an appeal, writ of error or supersedeas is proper to protect the estate of a decedent, infant, convict or insane person, or to protect the interest of any county, city or town of this Commonwealth, the same shall not take effect until bond be given by the appellants or petitioners, or one or more of them, or some other person, in a penalty to be fixed by the court or judge, by, or in which, the appeal, writ of error or supersedeas is allowed or entered (which penalty, in a case where the judgment, decree or order, proceedings on which, in whole or in part, are stayed by supersedeas, is for the payment of money, shall in no case be less than the amount of money, the payment of which is stayed, with interests and costs), with condition, if a supersedeas be awarded, to perform and satisfy the judgment, decree or order, or the part thereof, proceedings on which are stayed, in case the said judgment, decree, or such part be affirmed, or the appeal, writ of error or supersedeas be dismissed, and also to pay all damages, costs

Digitized by Google

and fees which may be awarded against or incurred by the appellants or petitioners, in the appellate court, and all actual damages incurred in consequence of the supersedeas, and if it be an appeal from a decree or order dissolving an injunction, or dismissing a bill of injunction, with a further condition to indemnify and save harmless the surety in the injunction bond against all loss or damage in consequence of his suretyship, and with condition, when no supersedeas is awarded, to pay such specific damages, and such costs and fees, as may be awarded or incurred; provided, however, that the judge or court granting the appeal, writ of error or supersedeas may subsequently, on motion of any party in interest, require such bond of any county, city or town, and provide in the order requiring the same that the appeal, writ of error or supersedeas shall stand dismissed unless such bond is executed within a time to be specified in such order, not, however, to exceed thirty days from the entry of said order. (Code 1887, § 3470; 1914, p. 713.)

Provisions as to bonds.—If bond is not given within time prescribed by statute, appeal will be dismissed. Pace v. Ficklin's Ex'x, 76 Va. 292.

Who may give.—Statute allows any person to execute bond. Section 6375.

Condition precedent.—Giving of bond is condition precedent, and supersedeas does not operate until it is given. Williamson v. Gayle, 4 Grat. 180; 2 Barton, L. Pr. (2d Ed.) 1315.

Construction of statute.—That portion of section 13, chapter 178, Code 1873 (same as this section), prescribing penalty of appeal bond, refers only to the damages mentioned in section 24 of same chapter (same as section 6366), and was not intended to cover rents and profits of real estate in possession of appellant, who had given deed of trust thereon to secure a debt fully its value, he having obtained an injunction to prevent sale of such real estate, which injunction was dissolved, and the bill dismissed, and penalty of appeal and supersedeas bond will not be fixed with reference to such rents and profits. Cardwell v. Allen, 28 Grat. 184. It would seem otherwise under the present statute, 13 Va. Law J. 170.

The word "awarded" in that section refers to "damages and costs," and word "incurred" to the word "fees," so as to make meaning same as if it were written: "And also to pay all damages and costs which may be awarded against and all fees which may be incurred by appellant or petitioners." Cardwell v. Allen, supra.

The language of this section declaring what the condition of every supersedeas bond shall be, is to be read into every statutory supersedeas bond taken since its enactment, whether inserted in the bond or not. Bemiss v. Com., 113 Va. 489, 75 S. E. 115.

Penalty.—The penalty of appeal and supersedeas bond should be sufficient to indemnify and save harmless the surety in the injunction bond. Cardwell v. Allen, supra.

Where condition of appeal bond prescribed by judge awarding supersedeas was "to pay all costs and damages according to law, and also any deficiency in the funds arising from land sales decreed in meeting and discharging the sums decreed against the parties, respectively, in case the decree complained of be affirmed or appeal or supersedeas be dismissed," and the condition inserted in bond by clerk was to "pay the judgment" in addition to that prescribed by judge, the stipulations in bond to "pay the judgment," and "also the deficiency," on resale of lands, are alternative provisions, intended to accomplish same object.

Digitized by Google

namely, the satisfaction of the decree and the payment of costs and damages according to law. Harnsberger v. Yancey, 33 Grat. 527.

What defects do not vitiate bond.—Appeal bond made payable to Commonwealth is sufficient. Acker v. Railroad, 84 Va. 648, 5 S. E. 688.

Bond reciting judgment as that of "circuit court of Alexandria," omitting words "the city of," is not vitiated by such omission. Id.

A bond not containing waiver of homestead may be insufficient, and may be made sufficient any time on motion of defendant in error, but is not a void bond. Id. Nor is bond omitting to provide, as part of condition, for payment of "all actual damages incurred in consequence of the supersedeas." Virginia Fire & Marine Ins. Co. v. New York Carousal Mfg. Co., 95 Va. 515, 28 S. E. 888, 40 L. R. A. 237.

When insufficient bond does not avoid the appeal.—Where an appeal and supersedeas has been awarded and defendant moves to dismiss appeal for want of proper or sufficient bond, court may modify order so as to grant appeal only. Reid v. Norfolk City R. Co., 94 Va. 120, 26 S. E. 428, 36 L. A. 274, 64 Am. St. Rep. 708.

Where condition of appeal bond recites judgment as $3,900 when it was for $3,957 and costs, for which appeal was taken, certifies in record that appellant did execute such bond as was required, appellate court will not dismiss appeal on ground of such defect, as appellee ought to have had it promptly corrected or be held to waive it. Jackson's Adm'x v. Henderson, 3 Leigh 196; Pugh's Ex'r v. Jones, 6 Leigh 299.

Where supersedeas was allowed by court without bond when one ought to have been required, and the cause is docketed without, appeal will not be dismissed for such failure after time for allowance of another supersedeas. Pugh's Ex'r v. Jones, 6 Leigh 299.

A writ of error will not be dismissed for "informality in appeal bond," where defendant has had ample opportunity in which to object to bond, but has delayed doing so until it is too late to give a new bond or to award a new writ of error. Virginia Fire & Marine Ins. Co. v. New York Carousal Mfg. Co., 95 Va. 515, 28 S. E. 888, 40 L. R. A. 237; Acker v. Railroad, 84 Va. 648, 5 S. E. 688.

An appeal is taken from county court sitting in chancery, and bond is given which is in fact a certiorari bond, and not an appeal bond. No objection is made to its regularity in chancery court. On appeal to Supreme Court from chancery court it is too late to object to bond. Brown v. Matthews, 1 Rand. 462.

Objection that surety on appeal bond was also surety on injunction bond is not good. Johnston v. Syme, 3 Call 522, see note to section 6352.

Effect of bond.—Where, on a decree in favor of attaching creditor, the defendant appeals, and gives an appeal bond, the giving of appeal bond does not release the lien of the attachment. Magvill v. Sauer, 20 Grat. 540. See, also, note to section 6365.

Condition of bond.—Party appealing from order dissolving an injunction can only be secured to give bond to perform judgment of inferior court and to pay costs and damages in appellate court. McKay v. Hite's Ex'rs, 4 Rand. 564.

Where plaintiff obtained injunction against judgment at law, which was afterwards dissolved, and he appeals to Court of Appeals, he cannot be required to give security for amount of judgment, but only for such costs as may be awarded against him in Court of Appeals. Eppes v. Thurman, 4 Rand. 384; Harnsberger v. Yancey, 33 Grat. 527.

Action on bond—Damages.—In an action on a supersedeas bond, under this section, to recover damages by reason of the suspension of a decree for the delivery of certain bonds in kind, the plaintiff is entitled to recover the depreciation in the market value of the bonds, together with the interest (less taxes) he could have made on the money and that actually received on the bonds. Bemiss v. Com., 113 Va. 489, 75 S. E. 115, 18 Va. L. Reg. 362.

Digitized by Google

For form of declaration of debt on an appeal bond, 4 Min. (3d Ed.) 1659.

Executors and administrators.—When an executor or administrator on sufficient qualification has given bond and security according to law, he is allowed to prosecute an appeal without giving an appeal bond in all cases where his object is to assert the rights or protect the interests of decedent's estate. McCauley's Adm'r v. Griffin's Ex'r. 4 Grat. 9; Linney's Ex'r v. Holliday, 3 Rand. 1; Sadler's Ex'rs v. Green, 1 Hen. & M. 26; Wilson v. Wilson's Adm'rs, Id. 15. And where executor or administrator c. t. a. has been allowed, by direction of testator and order of probate court, to qualify without security, he ought not to be required to give bond on appeal in representative capacity. Id. But where decree against appellant is in part against him as an executor and part in his own right, he must, on appeal, give bond and security as to such part as is in his own right. Dunton v. Robins, 2 Munf. 341; Shearman v. Christian, 1 Rand. 393. And so on appeal by executor from decree in favor of legatees for their proportions of estate, bond must be given by executors. Porter's Ex'rs v. Arnold, 3 Rand. 479. And where, in suit against person as executor and as legatee, there is personal decree against him, he cannot appeal without giving bond with surety. Where interlocutory decree required defendant to deliver slaves to be divided among plaintiffs, and there was a final decree for profits, and he complied with interlocutory decree, and he appeals from both, no appeal bond is required, but otherwise if he has not so complied. Erskine v. Henry, 6 Leigh 378. And in an action against executor, where judgment is rendered against him personally instead of de bonis testatoris, though the judgment be plainly erroneous, yet if the executor pray an appeal or supersedeas it can only be allowed him upon giving bond with security. Pugh's Ex'r v. Jones, 6 Leigh 299. And assignee in bankruptcy must give bond on appeal, as he is not one of persons excepted by statute. Pace v. Ficklin's Ex'x, 76 Va. 292.

And so must legatees in possession of property. Sadler's Ex'rs v. Green, 1 Hen. & M. 26; Wilson v. Wilson's Adm'rs, Id. 15.

Death of appellant.—Where party procures an appeal and dies, and appeal is not revived, security on appeal bond is exonerated. Nelson v. Anderson, 2 Call 286.

Generally.—As to changes made in this section by revision of 1887, see Burks' Address, 2 Barton, L. Pr. (2d Ed.) 1403.

Cited but not construed in Louisa v. Yancey, 109 Va. 229; 63 S. E. 452.

See Burks' Pleading and Practice, pp. 758, 760; Gregory's Forms No. 30.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 135, section 14.

Sec. 6352. When and by whom taken; endorsement on process from Court of Appeals.—When an appeal of right is entered from the State Corporation Commission to the Supreme Court of Appeals, such bond shall be taken by the clerk of said commission before the appeal is entered. When an appeal or writ of error, with or without a supersedeas, is allowed on a petition by the Supreme Court of Appeals, the clerk of that court shall endorse on the summons or supersedeas that it is not to be effectual until such bond be given before the clerk or court below, who shall take said bond and endorse on the process that it has been given, and the names of the sureties therein. (Code 1887, § 3471; 1902-3-4, p. 780.)

Digitized by Google

Where in accordance with this section (before amendment) clerk of court from whose judgment appeal was taken prepared appeal bond, but omitted to provide, as part of condition, for payment of "all actual damages incurred in consequence of the supersedeas," bond being in all other respects correct, and objection is not made until it is too late to give new bond or allow another appeal, such defect will not be ground for dismissing appeal. Virginia Fire & Marine Ins. Co. v. New York Carousal Mfg. Co., 95 Va. 515, 28 S. E. 888, 40 L. R. A. 237.

Where appeal and supersedeas are awarded, and insufficient bond given, court may dismiss supersedeas, but continue the appeal. Reid v. Norfolk City R. Co., 94 Va. 117, 26 S. E. 428, 36 L. R. A. 274, 64 Am. St. Rep. 708.

Party injured by insufficiency of appeal bond has remedy by action on the official bond of the clerk of the court. Chase v. Miller, 88 Va. 791, 14 S. E. 545.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 135, section 15.

Sec. 6353. How surety in such bond may obtain indemnity.—On the motion of any surety in such bond, after reasonable notice to or a rule against his principal, the appellate court may order bond to be given, in such time as it may prescribe, with sufficient surety to indemnify and save harmless such surety against all loss or damage in consequence of his suretyship; and if such order be not complied with, may order the appeal, writ of error, or supersedeas to be dismissed. (Code 1887, § 3472.)

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 135, section 16.

Sec. 6354. When appeal is of right from State Corporation Commission record to be delivered to clerk of Supreme Court of Appeals; when that court to dismiss appeal.—In the cases where there is an appeal of right from the State Corporation Commission to the Supreme Court of Appeals, the clerk of the State Corporation Commission shall deliver a copy of the record to the clerk of the Supreme Court of Appeals as soon as practicable, with a certificate that the bond required by section six thousand three hundred and fifty-two has been given, unless the appellant direct him not to deliver it. If such direction be given, the clerk of the State Corporation Commission shall deliver to the clerk of the Supreme Court of Appeals a copy of the entry of the appeal and a certificate of such direction. On the production of such copy and certificate, the Supreme Court of Appeals shall enter a dismissal of the appeal. (Code 1887, § 3473.)

Revisors' Note.—Section 3473 of the Code of 1887 was repealed by Acts 1902-3-4, p. 778, but it has been reinstated with such changes as were necessary to make it cover the cases of appeals of right from the State Corporation Commission.

Sec. 6355. Limitations of appeals, writs of error, or supersedeas.—No process shall issue on an appeal, writ of error, or supersedeas, allowed to or from a final judgment, decree, or order, if when the record, with the petition required by section six thousand three hundred and thirty-nine, is delivered to the clerk of the appellate court there shall have elapsed one year since the date of such final

Digitized by Google

judgment, decree, or order, or six months if the decree appealed from was a decree refusing a bill of review to a final decree rendered more than six months prior thereto.

No such process shall issue upon an appeal, writ of error, or supersedeas allowed to a final judgment, order, or finding of the State Corporation Commission if, when the record, with the petition required by law, is delivered to the clerk of the appellate court, there shall have elapsed six months since the date of such final judgment, order, or finding.

The appeal, writ of error, or supersedeas shall be dismissed whenever it appears that one year or six months, as the case may be, has elapsed since the said date before the record, with the said petition, is delivered to such clerk, or before such bond is given as is required to be given before an appeal, writ of error, or supersedeas takes effect: provided, that the time which shall elapse from the presentation of the petition for an appeal, writ of error, or supersedeas, and the delivery of the record, with the petition required by law, to the clerk of the appellate court as aforesaid, shall be excluded from the computation of the said period of one year or six months, as the case may be. (Code 1887, § 3474; 1902-3-4, p. 781.)

Revisors' Note.—As to appeals from the State Corporation Commission the following may be observed: Section 3734 of this Code fixes the limitation at six months with a proviso that the section shall not be construed to interfere in any way with the provisions of sub-sections (d), (e), (f) and (g) of section 156 of the Constitution as to appeals in the class of cases referred to in those sub-sections of the Constitution. Section 3474 of the Code of 1887, as amended, upon which section 6355 of this Code is based, prescribed a limitation of ONE YEAR, "or six months in those cases in which by law the period of six months is prescribed as the period within which such appeal, writ of error, or supersedeas may be allowed." It appeared, therefore, that the one-year limitation applied only to those cases in which appeals may be allowed under section 156 (d), etc., of the Constitution. No sufficient reason being seen for a limitation of one year in some cases and six months in others, the revised section above prescribes a uniform limitation of six months. See, also, section 6337, where the same uniform limitation is now prescribed.

The statute of limitations prescribing time within which a writ of error or appeal may be awarded ceases to run when the petition for writ of error is presented, and does not begin to run again until the petition and record are delivered to clerk. But this delivery is the actual receipt of petition and record by him. The omission of clerk to examine a box containing the papers, or, if he examine it, his mistake as to its contents or failure to discover the papers does not affect the statute, which begins to run from actual receipt of petition and record by clerk. Bull v. Evans, 96 Va. 2, 30 S. E. 468.

Where judgment was obtained May 13, 1872, and one of the parties on 9th November, 1872, obtains supersedeas thereto, but does not execute bond until April 15, 1875, and counsel had marked his name on docket as counsel for appellee, the bond not having been given within statutory period, appeal must be dismissed. Counsel marking his name on docket, although it may be a waiver of process is not waiver of bond (this was under chapter 178, section 17, Code 1873, which is same

Digitized by Google

as section 6355, except that limitation is two years); and so where appeal from final decree, June 2, 1877, was allowed May 8, 1879, but bond was not given until June 9, 1879. Otterback v. Railroad, 26 Grat. 940; Pace v. Ficklin's Ex'x, 76 Va. 292.

Where final decree was rendered November 30, 1880, and record was presented for appeal November 28, 1881, and indorsed by judge, who on April 24, 1882, indorsed thereon that he declined to act because no petition accompanied record. His official term expired December 31, 1882, and record went into hands of his successors. On January 8, 1883, one of these successors indorsed thereon, "Appeal allowed." The time during which the first judge held record must be excluded from computation of two-year limitation for appeals under chapter 178, section 17, Code 1873, as amended by 1876-7, p. 30, chapter 42 (similar to this section), as statute ceased to run from indorsement by first judge of receipt of record. Frazier v. Frazier, 77 Va. 775.

Under the provisions of this section, if the decree appealed from is a decree refusing a bill of review to a final decree rendered more than six months prior thereto, the party aggrieved has six months from the date of the decree refusing such bill of review within which to perfect his appeal, but if the bill of review is refused within six months after the final decree, the time for perfecting an appeal from the final decree is the same as if no bill of review had been refused. Adams v. Booker, 114 Va. 796, 77 S. E. 611.

Under section 17, chapter 182, Code 1849 (same as section 6355, except that limitation is five years instead of one), if appeal bond is not executed within statutory period from date of decree the appeal will be dismissed. Yarborough v. Deshazo, 7 Grat. 374; Williamson v. Gayle, 4 Grat. 180, noticed and distinguished

If bond be given, though faulty, appeal will not be dismissed when objection thereto was not made until it was too late to execute new bond or award another appeal. Virginia Fire & Marine Ins. Co. v. New York Carousal Mfg. Co., 95 Va. 515, 28 S. E. 888, 40 L. R. A. 237.

And where supersedeas is awarded, but bond on appeal is conditioned to pay only costs and damages, the supersedeas will be dismissed, but appeal retained. Reid v. Norfolk City R. Co., 2 Va. Dec. 86, 21 S. E. 27.

Where appeal from decree is not taken until more than one year has expired since its rendition, appeal is barred by section 6355. Diehl v. Marchant, 87 Va. 447, 12 S. E. 803.

When petition for appeal is not presented until the statutory limitation has expired, appeal, if granted, will be dismissed as improvidently awarded. Callaway v. Harding, 23 Grat. 542. See notes to sections 6336-7.

See, also, "Limitations to Appeals," sections 6336-7.

Cited but not construed in Louisa v. Yancey, 109 Va. 229, 63 S. E. 452.

See Burks' Pleading and Practice, p. 756.

Sec. 6356. When their dismission final; when they may be re-instated.—After the dismission of an appeal, writ of error, or supersedeas, no other appeal, writ of error, or supersedeas shall be allowed to or from the same judgment, decree, or order. When an appeal, writ of error, or supersedeas is dismissed by reason of the non-payment of the writ tax within the time required by law, the court, at its first place of session after such dismission, may, on motion of any party, for good cause shown, and upon payment of such tax, set aside the dismission; and thereupon the appeal, writ of error, or supersedeas may be perfected as though no such dismission had taken place. A motion under this section shall be

Digitized by Google

after reasonable notice to the adverse party or his counsel. (Code 1887, § 3475.)

Revisors' Note.—The second sentence of this section as it stood prior to the revision provided for a reinstatement of the case where it had been dismissed for failure to pay the costs of printing. This sentence has been omitted. Under section 3507 of the former Code, as last amended by Acts 1906, p. 239, the case was required to be dismissed if the costs of printing were not paid within ninety days from the date of the notice giving the amount of costs due. Section 3486 of this Code, however, which is taken from the Act of 1906 just cited amending section 3507 of the former Code, as aforesaid, increases the period from ninety days to six months. The effect of these changes is to allow six months after notice for the payment of the costs of printing the record, and if the case be dismissed for failure to pay the costs within that time, no power is given the Supreme Court of Appeals to reinstate it.

Rule 9 of court provides that no appeal which shall have been dismissed or abated by the court shall be reinstated or revived after the lapse of sixty days from such abatement or dismission, except for good cause shown the court, verified by affidavits and upon reasonable notice to the adverse party of the time of making the motion; nor then, except in very special cases, unless such motion be made within one hundred and twenty days from the time of such dismission or abatement, provided that if the court shall not be in session on the day to which such notice shall be given a further time of ten days shall be allowed the party to exhibit his motion after the next meeting of the court. 120 Va. viii.

Dismissal of appeal for failure to give appeal bond operates as an affirmance of decree of lower court. Hicks v. Roanoke Brick Co., 94 Va. 744, 27 S. E. 596; Cobbs v. Gilchrist's Adm'r, 80 Va. 503. And so for failure to print record. Woodson's Ex'r v. Leyburn, 83 Va. 843, 3 S. E. 873.

The case made for the Court of Appeals by an appeal from decree of lower court, whether final or interlocutory, is to Court of Appeals a complete case in itself, and the decree in that court is final and conclusive between parties, as well upon the court itself as the court below, and Court of Appeals can do nothing more in course of same litigation until a new and different appeal is brought up to it from some decree of court below rendered in the cause upon subsequent proceedings, and then the court can only review and reverse that decree without disturbing its own former decree. Campbell's Ex'rs v. Campbell's Ex'r, 22 Grat. 649; Hicks v. Roanoke Brick Co., 94 Va. 744, 27 S. E. 596; Barksdale v Fitzgerald, 76 Va. 892.

Where Court of Appeals affirms an interlocutory decree of circuit court, and afterwards a petition to rehear said decree is filed in circuit court and dismissed, such a decree cannot be reheard on appeal. Woodson's Ex'r v. Leyburn, 83 Va. 843, 3 S. E. 873.

Sec. 6357. In case to be heard by Court of Appeals, how clerk thereof to prepare record; what to be printed and how; how printed copies distributed and cost of printing paid.—In every case docketed in the Supreme Court of Appeals, the clerk of the court, where the case is docketed, shall make a table of contents to the whole record. Of the petition, so much of the record as the counsel for any party interested or the court may direct, and the table of contents, the clerk shall cause twenty-five copies to be printed, unless a larger number be ordered by the court, preserving in the margin of the printed record the paging of the record from the

Digitized by Google

court below, which shall be used in printing and returned to the clerk's office. The clerk shall take care that the printing be properly done. Of the copies printed, he shall deliver one to each judge, two to each of counsel on each side, retain one in his office, transmit one to the clerk of the court below (in which the case was originally decided), and deliver one copy to the reporter. The cost of the printing, after being allowed by the court, shall be paid out of the treasury. (Code 1887, § 3476.)

Revisors' Note.—Formerly, the clerk was required to print only twelve copies of the record, and counsel on each side were entitled to but two copies. The present section provides that twenty-five copies shall be printed, and that EACH OF counsel on each side shall be entitled to two copies. This change was made because the additional cost is insignificant, and apart from the fact that in many instances there are more than two of counsel on each side, it is often convenient for each of counsel to have two copies.

Sec. 6358. Clerks to advertise for bids for the printing.—The clerks of the Supreme Court of Appeals at Richmond, Staunton and Wytheville, respectively, shall, annually, in the month of June, solicit proposals by advertising in some newspaper published in their respective localities, for the printing, for one year, required by the preceding section to be done. (Code 1887 § 3477.)

Sec. 6359. What the bids to state.—The proposals shall state the amount per page of fifteen hundred ems, small pica type, and include the paper, printing, binding, and a neat cover, with the style of the case, and the court from which the record comes, neatly printed thereon. (Code 1887, § 3478.)

Sec. 6360. How the contracts awarded; the bond required; how cost of printing certified and paid.—The several clerks shall award the contracts for such printing to the lowest responsible bidders in their respective localities, and take from them bond, with ample surety, in a penalty equal to double the cost of the work to be executed, to be ascertained by the cost of the work of the preceding year, and with condition for the faithful performance of such contracts. The accounts for such printing shall be certified by the clerks respectively and paid out of the public treasury. (Code 1887, § 3479.)

Revisors' Note.—The words "and with condition for the faithful performance of such contracts" appearing in lines six and seven of the text are new.

Sec. 6361. How docket of causes ready for hearing made out; in what order cases heard.—Annually, before the Supreme Court of Appeals commences its session at Richmond, Wytheville, and Staunton, respectively, the clerk at each place shall make out a docket of the causes then ready for hearing. Those at each place shall be numbered by figures, and shall be docketed in the order in which the causes were matured, and be heard in the same order; except, that upon the docket at Wytheville and Staunton, the clerk shall docket

Digitized by Google

the cases from each circuit separately, in the order in which they may be matured. (Code 1887, § 3480.)

Sec. 6362. What cases heard out of turn.—The court may hear out of turn cases concerning the probate of a will, or the appointment or qualification of a personal representative, guardian, curator or committee, or concerning a mill, roadway, ferry, wharf, or landing, and any others which it may see good cause for so hearing. (Code 1887, § 3481.)

Sec. 6363. Rule of decision where the evidence (and not the facts) is certified.—When a case at law, civil or criminal, is tried by a jury and a party excepts to the judgment or action of the court in granting or refusing to grant a new trial on a motion to set aside the verdict of a jury on the ground that it is contrary to the evidence, or when a case at law is decided by a court or judge without the intervention of a jury and a party excepts to the decision on the ground that it is contrary to the evidence and the evidence (not the facts) is certified, the judgment of the trial court shall not be set aside unless it appears from the evidence that such judgment is plainly wrong or without evidence to support it. (Code 1887, § 3484; 1889-90, p. 36; 1891-2, p. 962.)

Revisors' Note.—As this section stood before the revision the latter part of it provided that "the rule of decision in the appellate court in considering the evidence in the case shall be as on a demurrer to the evidence by the appellant, except that when there have been two trials in the lower court, in which case the rule of decision shall be for the appellate court to look first to the evidence and proceedings on the first trial, and if it discovers that the court erred in setting aside the verdict on that trial it shall set aside and annul all proceedings subsequent to said verdict and enter judgment thereon." Under the present section "the judgment of the trial court shall not be set aside unless it appears from the evidence that such judgment is plainly wrong or without evidence to support it." The effect of this change is to abolish the rule of decision as on a demurrer to the evidence in such a case, and to substitute therefor a much simpler rule.

Under section 6251 if a verdict is set aside because contrary to the evidence or without evidence to support it, no new trial is ordered, but final judgment is entered by the trial court. There is no necessity, therefore, for retaining the provision about two trials in the lower court where the verdict has been set aside, for the reason stated, and it has been omitted.

Section 6251 is applicable to civil cases only. The above section (6363) expressly applies to civil and criminal cases. So far as the above section changes the law in criminal cases it is very limited in its operation. In the ordinary criminal case the trial court would have no power to grant a new trial at the instance of the Commonwealth, except in the case of a law relating to the State revenue. Section 8 of the Constitution provides that no man shall "be put twice in jeopardy for the same offense, but an appeal may be allowed to the Commonwealth in all prosecutions for the violation of a law relating to the State revenue." In matters affecting the State revenue, there may be more than one trial in the trial court. In such cases, as a writ of error would lie only to the

Digitized by Google

final judgment of the trial court, the appellate court could consider only the evidence introduced on that trial, and would not set aside the verdict or judgment on that trial unless it was "plainly wrong or without evidence to support it." Attention is called to this so that counsel in the few cases of this nature will observe that they must not fail on the second trial to introduce the evidence of their defense just as had been done on the first trial. There will be so few cases of this kind that it was not deemed necessary to make special provision for them.

History of section.—Section 3484 of the Code of 1887 (corresponding to this section) was original with that Code, and was framed by the revisors to avoid the uncertainty and conflict of previous decisions on the subject.

In an address to the Bar Association (4 Va. Bar Asso. Rep. 1891, p. 146, 2 Barton, L. Pr. 1403, 1404), Judge E. C. Burks said: "Under the law as it stood at the time of revision, the question was constantly arising as to what should be the rule of decision in the appellate court in a case at law wherein the evidence, not the facts, was put into the record by a bill of exceptions in the court below. There seemed to be several rules as applied to different classes of cases. The precise state of the law, it is believed, is given in an article published in 9 Va. Law J. 257. It seemed to the revisors very desirable that there should be one uniform rule of decision in all the classes of cases, and it was determined that in considering the evidence the rule should be as on a demurrer to the evidence by the party excepting. It was supposed that this rule operated harshly on the excepting party where there had been two trials, and it was amended by the General Assembly in this particular."

The provisions of section 3484 of the Code of 1887 (corresponding to this section) were held to apply as well to appeals before Code went into effect as those arising since. Eastern Ice Co. v. King, 86 Va. 97, 9 S. E. 506; South West Imp. Co. v. Smith's Adm'r, 85 Va. 306, 7 S. E. 365, 17 Am. St. Rep. 59.

Present revision—Material changes.—The present revision makes material changes in the section, as will be seen from the section and revisors' note above.

Certificate of evidence or facts.—Since Code of 1887 went into effect, a case at law, heard by court or tried by jury, may be heard in appellate court either upon certificate of facts or of evidence. In either case court should certify facts when it can do so, but if it be unable to do so because evidence is conflicting it should certify evidence. W. U. Tel. Co. v. Powell, 94 Va. 276, 26 S. E. 828.

Where evidence and not facts is certified.—Where evidence is certified, and not facts proved, the case stands as on demurrer to appellee's evidence (but see revisors' note above), and verdict will not be disturbed where there is conflict of evidence. Cash's Case, 2 Va. Dec. 1, 20 S. E. 893; Robertson's Case, 1 Va. Dec. 851, 20 S. E. 362; Driver v. Hartman, 96 Va. 518, 31 S. E. 899; McDonald's Adm'r v. Norfolk & W. R. Co., 95 Va. 106, 27 S. E. 821; C. & O. R. R. v. Chambers, 95 Va. 507, 28 S. E. 872; Va., etc., Ins. Co. v. Goode, 95 Va. 768, 30 S. E. 370; note, 2 Va. Law Reg. 877; Gray's Case, 92 Va. 772, 22 S. E. 858; Nicholas' Case, 91 Va. 741, 21 S. E. 364; Blakey v. Morris, 89 Va. 717, 17 S. E. 126; Norwich Lock Mfg. Co. v. Hockaday, 89 Va. 557, 16 S. E. 877; Gaines' Case, 88 Va. 682, 14 S. E. 375; Muscoe's Case, 87 Va. 460, 12 S. E. 790; Eastern Ice Co. v. King, 86 Va. 97, 9 S. E. 506; Adams v. Hays, 86 Va. 153, 9 S. E. 1019; South West Imp. Co. v. Andrew, 86 Va. 270, 9 S. E. 1015; Wood's Case, 86 Va. 929, 11 S. E. 798; South West Imp. Co. v. Smith's Adm'r, 85 Va. 306, 7 S. E. 365, 17 Am. St. Rep. 59; Bernard v. Railroad, 85 Va. 792, 8 S. E. 785, 17 Am. St. Rep. 103; Riverside Cotton Mills v. Lanier, 102 Va. 148, 45 S. E. 875. And this was so in criminal cases. Gordon's Case, 100 Va. 825, 41 S. E. 746, 57 L. R. A. 744; Andrews v. Com., 100 Va. 801, 40 S. E. 935; Mills' Case,

Digitized by Google

93 Va. 815, 22 S. E. 863; Gravely's Case, 86 Va. 396, 10 S. E. 431; Gaines' Case, 88 Va. 682, 14 S. E. 375.

When the evidence (and not the facts) is certified, a plaintiff in error stands in this court as on demurrer to the evidence (but see revisors' note above), and if there was any evidence to support a verdict against him in the trial court, it will not be set aside. Johnston v. Geo. D. Witt Shoe Co., 103 Va. 613, 50 S. E. 153; Johnson v. Com., 104 Va. 881, 52 S. E. 625.

Where both fact and law are submitted to the court the rule in the appellate court is to give the judgment of the trial court upon the evidence the same effect as if it were the verdict of a jury. Hamman v. Miller, 116 Va. 873, 83 S. E. 382.

When a case at law is decided by the court, without a jury, and the judgment is excepted to, because contrary to the evidence, and the evidence and not the facts is certified, the rule of decision in the appellate court is to give the judgment of the trial court the same effect as the verdict of a jury. The judgment will not be disturbed, unless it is contrary to the evidence, or the evidence is plainly insufficient to support it. If the evidence is conflicting on material points, the judgment will be affirmed. Martin's Adm'r v. R. F. & P. R. Co., 101 Va. 406, 44 S. E. 695.

The mere fact that appellate court doubts correctness of verdict, or if on jury would have rendered different verdict, is not sufficient to warrant it in setting verdict aside. Kimball v. Friend's Adm'r, 95 Va 143, 27 S. E. 901. It must be plainly insufficient. Southern Ry. Co. v. Bryant's Adm'r, 95 Va. 215, 28 S. E. 183; Richardson v. Bank, 94 Va. 139, 26 S. E. 413.

Additional cases before present revision.—Tucker v. Com., 88 Va. 20, 13 S. E. 298; Bell's Case, 88 Va. 365, 13 S. E. 742; Lyles' Case, 88 Va. 396, 13 S. E. 802; N. & W. R. R. Co. v. Groseclose's Adm'r, 88 Va. 267, 13 S. E. 454, 29 Am. St. Rep. 713; Va., etc., Co. v. Buck, 88 Va. 517, 13 S. E. 973; Richmond & D. R. Co. v. Burnett, 88 Va. 538, 14 S. E. 372; Boulware v. Jewett, 87 Va. 253, 12 S. E. 403.

Distinction between granting and refusing new trial.—Verdict of a jury which has been approved by trial judge ought not to be set aside save for strongest reasons. But if he is dissatisfied with verdict, and grants new trial, some latitude must be allowed for his discretion, especially where verdict on new trial is for party on whose motion first verdict was set aside. In setting aside verdict trial court must to some extent pass on evidence, and a stronger case must be made to justify appellate court in disturbing order granting a new trial than one refusing it, because refusal operates as final adjudication, while new trial simply invites further investigation. Chapman v. Virginia Real Estate Inv. Co., 96 Va. 177, 31 S. E. 74; Patteson v. Ford, 2 Grat. 19; Barton, L. Pr. (2d Ed.) 723.

Where part of facts and part of evidence certified.—Where on appeal proof consists of certificate of facts as to part and certificate of evidence as to residue, the rule is to consider the facts as certified and the evidence as on demurrer New York, etc., R. R. v. Thomas, 92 Va. 606, 24 S. E. 264. But see revisors' note above.

When all evidence is not certified.—Where all the evidence is not certified, appellate court will presume that there was some testimony not set out which justified verdict, especially where it is approved by trial judge. Adams v. Hays, 86 Va. 153, 9 S. E. 1019; McArter v. Grigsby, 84 Va. 159, 4 S. E. 369.

Where there have been two trials—Cases relating to this provision of the section as it stood before the present revision.—Barnes v. Morrison, 97 Va. 373, 34 S. E. 93; Patteson v. Railroad, 94 Va. 17, 26 S. E. 393; Hudgins v. Simon, 94 Va. 661, 27 S. E. 606; Stearns v. City of Richmond, 88 Va. 992, 14 S. E. 847, 29 Am. St. Rep. 758; Humphreys' Adm'x v. Valley R. Co., 100 Va. 749, 42 S. E. 882; Cohen v. Bellenot, 2 Va. Dec. 639, 32 S. E. 455; Eastern Ice Co. v. King, 86 Va. 97, 9 S. E. 506;

Digitized by Google

Mears v. Dexter, 86 Va. 828, 11 S. E. 538; Northington v. Norfolk Ry. & Light Co., 102 Va. 446, 46 S. E. 475; Humphreys' Adm'x v. Valley R. Co., 100 Va. 749, 42 S. E. 882; Cohen v. Bellenot, 2 Va. Dec. 639, 32 S. E. 455; Tucker v. Sandidge, 85 Va. 546, 8 S. E. 650; Eastern Ice Co. v. King, 86 Va. 97, 9 S. E. 506; Chapman v. Virginia Real Estate Inv. Co., 96 Va. 177, 31 S. E. 74; Reichenstein v. Va. Ry. & P. Co., 115 Va. 862, 80 S. E. 564; Chesapeake & O. Ry. Co. v. Parker, 116 Va. 368, 82 S. E. 183; Cardwell v. Norfolk & W. R. Co., 114 Va. 500, 77 S. E. 612; Stevinson v. Levinson, 103 Va. 591, 49 S. E. 974.

List of cases upon subject of this section prior to Code of 1887.—Dillard v. Dunlop, 83 Va. 755, 3 S. E. 383; Magarity v. Shipman, 82 Va. 806, 7 S. E. 381; Virginia Min. & Imp. Co. v. Hoover, 82 Va. 449, 4 S. E. 689; Hartman v. Strickler, 82 Va. 225; Pruner's Case, 82 Va. 115; Weaver v. Bliven, 82 Va. 53; Muse v. Stern, 82 Va. 33. 3 Am. St. Rep. 77; Moses v. Nail Works, 82 Va. 19; Hollingsworth v. Sherman, 81 Va. 668; Payne v. Grant, Id. 164; Benn v. Hatcher, 81 Va. 25, 59 Am. Rep. 645; Baltimore & O. R. Co. v. McKenzie, 81 Va. 72; Farley v. Tillar, Id. 275; Valley Mut. Life Ass'n v. Teewalt, 79 Va. 428; Snouffer's Adm'r v. Hansbrough, Id. 166; Proctor v. Spratley, 78 Va. 254; Taylor's Case, 77 Va. 692; Powell v. Tarry's Adm'r, Id. 250; Brighthope Ry. Co. v. Rogers, 76 Va. 443; Brown v. Rice's Adm'r. Id. 629; Creekmur v. Creekmur, 75 Va. 430; Harman v. City of Lynchburg, 33 Grat. 43; Baccigalupo's Case, 33 Grat. 807, 36 Am. Rep. 795; Terry v. Ragsdale, 33 Grat. 342; Dean's Case, 32 Grat. 912; Danville Bank v Waddill's Adm'r, 31 Grat. 469; Backhouse's Ex'x v. Selden, 29 Grat. 581; Pryor's Case, 27 Grat. 1009; Stoneman's Case, 25 Grat. 887; Read's Case, 22 Grat. 924; Hodge's Ex'r v. Bank, Id. 51; Caldwell v. Craig, 21 Grat. 132; Blosser v. Harshbarger, Id. 215; Tyler v. Taylor, Id. 700; Mitchell v. Baratta, 17 Grat. 445; Wickham v. Martin, 13 Grat. 427; Pryor v. Kuhn, 12 Grat. 615; Grayson's Case, 6 Grat. 712; Taliaferro v. Franklin, 1 Grat. 332; Brooks v. Calloway, 12 Leigh 466; Dudleys v. Dudleys, 3 Leigh 436.

Discussed, 13 Va. Law J. 171; 9 Va. Law J. 257.

Sec. 6364. What evidence may be considered in the appellate courts.—Any evidence in the record may be considered by the appellate courts, if certified in any bill of exception, as though certified in each. (1901, p. 286.)

Sec. 6365. Decision of appellate court.—The appellate court shall affirm the judgment, decree, or order if there be no error therein, and reverse the same, in whole or in part, if erroneous, and enter such judgment, decree, or order as to the court shall seem right and proper and shall render final judgment upon the merits whenever, in the opinion of the court, the facts before it are such as to enable the court to attain the ends of justice. A civil case shall not be remanded for a trial de novo except where the ends of justice require it, but the appellate court shall, in the order remanding the case, if it be remanded, designate upon what questions or points a new trial is to be had.

The assent of at least three of the judges shall be required for the court to determine that any law is or is not repugnant to the Constitution of this State or of the United States; and if, in a case involving the constitutionality of any such law, not more than two of the judges sitting agree in opinion on the constitutional question involved, and the case cannot be determined without passing on such question, no decision shall be rendered therein, but

Digitized by Google

the case shall be reheard by a full court; and in no case where the jurisdiction of the court depends solely upon the fact that the constitutionality of a law is involved shall the court decide the case upon its merits, unless the contention of the appellant upon the constitutional question be sustained. Whenever the requisite majority of the judges sitting are unable to agree upon a decision, the case shall be reheard by a full bench, and any vacancy caused by any one or more of the judges being unable, unwilling, or disqualified to sit shall be temporarily filled in the manner prescribed by law. (Code 1887, § 3485; 1902-3-4, p. 781.)

Revisors' Note.—This section as it stood before the revision provided that the appellate court should enter such judgment, decree, or order "as the court whose error is sought to be corrected ought to have entered." The revised section makes a material change, and in lieu of the quoted language enacts that the appellate court shall enter such judgment, decree, or order "as to the court shall seem right and proper and shall render final judgment upon the merits wherever, in the opinion of the court, the facts before it are such as to enable the court to attain the ends of justice." The provision (applicable to civil cases only) relating to the designation of questions or points upon which a new trial is to be had instead of remanding the case for a trial de novo is also new. The object of these changes is apparent, namely, to extend the power of the appellate court over the cases before it, and to enable the court to end the litigation as far as practicable consistent with the demands of justice. See Preface, ante, p. xii.

Number of judges necessary for decision—Constitutional questions.—In Funkhouser v. Spahr, 102 Va. 306, 46 S. E. 376, 9 Va. L. Reg. 954, it was held that the assent of at least three of the judges was required by section 88 of the Constitution only when it was necessary to determine whether a law was unconstitutional, and that in cases not involving a constitutional question, section 3485 of the Code of 1887 applied, which required the court to affirm "where the voices on both sides are equal." This case was decided before the amendment of said section 3485 by Acts 1902-3-4, p. 781, went into effect, by which amendment the words "affirming in those cases where the voices on both sides are equal" were stricken out, and changes made to make the section conform to section 88 of the Constitution. The words quoted do not appear in the section as it now reads. The law was not changed, however, by the striking out of these words by the amendment of 1902-3-4, because they were merely declaratory of the law independently of statute, and under the law as it now stands, the assent of at least three of the judges is required only in cases involving the constitutionality of a law. In other cases, if the voices on both sides be equal, the judgment of the lower court will be affirmed. Charlottesville R. Co. v. Rubin, 107 Va. 751, 60 S. E. 101. See, also, 9 Va. L. Reg. 826; 13 Va. L. Reg. 810.

Judgment of appellate court.—Formerly, if the judgment of the lower court was plainly erroneous the appellate court would reverse the same and enter such judgment as the lower court should have entered. Harman v. Stearns, 95 Va. 72, 27 S. E. 601; Knifong v. Hendricks, 2 Gratt. 212, 44 Am. Dec. 385. See, also, Flemings v. Riddick's Ex., 5 Grat. 272, 50 Am. Dec. 119; Metropolitan Life Ins. Co. v. Rutherford, 2 Va. Dec. 707, 35 S. E. 719; N. & W. R. Co. v. Dunnaway's Adm'r, 93 Va. 29, 24 S. E. 698; Baker v. Butterworth, 119 Va. 402, 89 S. E. 849. The changes made by the present section are pointed out in the revisors' note above.

Where decree otherwise proper erroneously charges executor with

Digitized by Google

compound interest, it will be reversed to that extent. Chapman's Adm'rs v. Shepherd's Adm'r, 24 Grat. 377.

Where a case is heard by the trial court, without the intervention of a jury, the Supreme Court of Appeals on reversing the judgment of the trial court, will enter up judgment for the adverse party. Danville v. Danville Ry. Co., 114 Va. 382, 76 S. E. 913.

For the rule of decision in Supreme Court of Appeals where the defendant objects to evidence which is improperly admitted and afterwards demurs to the evidence, which demurrer should have been sustained, see Norfolk & W. R. Co. v. Warden, 117 Va. 801, 86 S. E. 103.

In reversing a judgment for the plaintiff because there was no evidence to support the verdict upon which the judgment was entered, where the appellate court can see that no new trial could avail the plaintiff anything, it will enter judgment dismissing the plaintiff's action. Conn. Fire Ins. Co. v. Roberts, 119 Va. 479, 89 S. E. 945.

Where the appellate court finds reversible error in a case consisting of a peremptory instruction relating to interest which took away the discretion given the jury by section 6259, under which instruction the jury found interest for the plaintiff from the time his demand accrued to the date of the verdict, the appellate court may direct that the judgment shall stand affirmed if the interest be relinquished by the plaintiff. Wash. & O. D. Ry. v. Westinghouse Co., 120 Va. 620, 89 S. E. 131, 91 S. E. 646. See Buena Vista Co. v. McCandlish, 92 Va. 306, 23 S. E. 781; Moreland v. Moreland, 108 Va. 107, 60 S. E. 730; revisors' note above. The present section greatly increases the power of the appellate court.

Record certified from wrong court.—Where record on appeal is certified by clerk of court from which cause has been removed instead of clerk of court to which it has been removed, the court must dismiss appeal, because, although decree appealed from was entered by court from which removed, judgment of this court would have to be certified under this section to clerk of court in which it is to be entered, and as the cause is no longer in court from which it has been removed there would be nothing upon which such judgment could operate. Smith v. Pyrites Mining & Chemical Co., 100 Va. 294, 43 S. E. 564.

Rule as to liens.—Where decree is reversed in part and affirmed as to residue, such reversal does not destroy lien of so much as is affirmed. Shepherd's Adm'r v. Chapman's Adm'r, 83 Va. 215, 2 S. E. 273; Magill v. Sauer, 20 Grat. 540; Barton, L. Pr. (2d Ed.) 295, and note; Id. Section 315.

Where there is decree against administrator and sureties, and on appeal by plaintiffs decree is reversed, and administrator is held liable for larger amount than was decreed against him, and it is also reversed in favor of purchaser of land from administrator, whilst appellate court reverses decree so far as erroneous, it will affirm it so as to continue the lien of the decree for the security pro tanto of the amounts which may be found due by parties respectively against whom decree was rendered. Moss v. Moorman's Adm'r, 24 Grat. 97.

Generally.—Where money awarded by decree is collected by plaintiff's attorneys from a party who did not appeal therefrom, and subsequently it was, on appeal of another defendant thereto, reversed as to all parties affected thereby, action will not lie against attorneys to recover money disbursed by them under orders from client before reversal, as there is no privity between defendant and attorneys. Green v. Brengle, 84 Va. 913, 6 S. E. 603.

Cited in Bristol Belt Line Ry. Co. v. Bullock Electric Mfg. Co., 101 Va. 652, 44 S. E. 892; Roanoke v. Blair, 107 Va. 639, 60 S. E. 75.

See Burks' Pleading and Practice, pp. 735, 768.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 135, section 22.

Sec. 6366. What damages awarded appellee.—When any judgment, decree, or order is affirmed, damages shall be awarded to

Digitized by Google

the appellee; such damages, when the judgment, decree, or order, is for the payment of money, shall be the interest to which the parties are legally entitled in the cause, (to be computed upon the whole amount of the recovery, including interest and costs), from the time the appeal, writ of error, or supersedeas took effect, until the affirmance, or if the affirmance be by the Supreme Court of Appeals, until a copy of its decision is entered in the order book of the court below, which damages shall be in satisfaction of all interest during that time. When the judgment, decree, or order is not for the payment of any money, except costs, the damages shall be such specific sum as the appellate court may deem reasonable, not being more than one hundred dollars, nor, in the Supreme Court of Appeals, less than thirty dollars. (Code 1887 § 3486.)

Where statute provided that where injunction was obtained to stay proceedings on judgment for money, and such injunction was dissolved, damages shall be awarded at rate of 10 per centum from time injunction was awarded until dissolved, the damages are to be computed from time of awarding injunction until its ultimate dissolution by order of Court of Appeals affirming dissolution of lower court. Jeter v. Langhorne, 5 Grat. 193.

On appeal from judgment for money which was a lien on land, if judgment is affirmed damages and costs on appeal become a part of lien on land. McClung v. Beirne, 10 Leigh, 400, 34 Am. Dec. 739.

See, also, Hudson v. Ross, 1 Wash. 74.

Cited but not construed in Seaboard R. Co. v. Vaughan, 104 Va. 113, 51 S. E. 452.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 135, section 27.

Sec. 6367. When clerk of Court of Appeals to transmit its decisions.—When any term of the Supreme Court of Appeals is ended, or sooner, if the court so direct, the clerk thereof shall certify, and by mail or otherwise transmit its decision to the clerk of the court below or State Corporation Commission, as the case may be, except that it shall not be his duty to certify or transmit a copy of a decree or judgment of affirmance unless the appellee or defendant in error shall have paid all fees due from him in the case, or shall endorse on such copy so much of the decree or judgment, for the benefit of the clerk, as the unpaid fees shall amount to. If any clerk fail to comply with this section for twenty days, except as aforesaid, he shall forfeit fifty dollars to any person aggrieved thereby. (Code 1887, § 3488; 1902-3-4, p. 781.)

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 135, section 28.

Sec. 6368. Postage to be paid by him, and repaid out of treasury.—On all decisions so transmitted by mail, the clerk shall pay the postage. His accounts for such postage, verified by oath, may, from time to time, at intervals not exceeding eighteen months, be certified by the Supreme Court of Appeals to the Auditor of Public Accounts for payment out of the treasury. (Code 1887, § 3489.)

Sec. 6369. How decision of Court of Appeals entered in court or State Corporation Commission from which cause came; issue of

Digitized by Google

execution thereon, etc.—The court and the State Corporation Commission from which any case may have come to the Supreme Court of Appeals shall enter the decision of the appellate court as its own, and execution or other appropriate process may issue thereon accordingly. When that decision is received by the clerk of the court or tribunal below, he shall enter it of record in his order book, and thereupon such execution may issue and such proceedings be had in the case as would have been proper if the decision had been entered in court. (Code 1887, § 3490; 1902-3-4, p. 782.)

Finality of judgment.—A question that has once been decided on first appeal in any cause cannot be reviewed or reversed upon any subsequent appeal in the same case. Cobbs v. Gilchrist's Adm'r, 80 Va. 503; Stuart v. Preston, Id. 625; McCormick's Ex'rs v. Wright's Ex'rs. 79 Va. 524; N. Y. L. Ins. Co. v. Clemmitt, 77 Va. 366; Frazier v. Frazier, Id. 775; Bank v. McVeigh, 29 Grat. 546; Holleran v. Meisel, 91 Va. 143, 21 S. E. 658; Norfolk & W. R. Co. v. Mills, 91 Va. 613, 22 S. E. 556; Turner's Adm'r v. Staples, 86 Va. 300, 9 S. E. 1123; 4 Min. (3d Ed.) 1091; Campbell's Ex'rs v. Campbell's Ex'r, 22 Grat. 649; Alexandria Sav. Inst. v. McVeigh, 84 Va. 48, 3 S. E. 885; Beecher v. Lewis, 84 Va. 630, 6 S. E. 367; 2 Barton, C. Pr. (2d Ed.) 1262, and note; Carter v. Hough, 89 Va. 503, 16 S. E. 665.

Rule that decision on first appeal is irreversible holds even in case where judges are equally divided. Chahoon's Case, 21 Grat. 822.

The court of chancery cannot correct on motion or by bill of review any error apparent on face of proceedings in a decree which has been confirmed by Court of Appeals. Price v. Campbell, 5 Call 115.

Where decree has been confirmed by this court on appeal it becomes res adjudicata, and no error in it can be corrected on rehearing in court below. Lore v. Hash, 89 Va. 277, 15 S. E. 549; Woodson's Ex'r v. Leyburn, 83 Va. 847, 3 S. E. 873.

Where an instruction given or verdict rendered at trial below is on appeal pronounced erroneous, it is improper at subsequent trial, evidence being same, to give same instruction or to enter up judgment on same verdict. Smith v. Sydner, 82 Va. 614.

The court of chancery cannot upon the same facts alter decree of Court of Appeals. Price v. Campbell, 5 Call 115; White v. Atkinson, 2 Call 376.

After the Court of Appeals has passed upon a case, and remanded it for new trial upon general issue, a demurrer to declaration or plea in abatement, upon the ground that the Christian names of the respective parties are not mentioned therein, ought not to be received. Lanier v. Cocke, 6 Munf. 580; Murdock v. Herndon's Ex'rs, 4 Hen. & M. 200.

When Court of Appeals decides a cause and sends it back for further proceedings, there cannot be a bill of review to correct decree of Court of Appeals for errors apparent on face of record, but there may be such bill to correct decree on ground of after-discovered evidence. In such a case the greatest caution should be observed, and new matter to be sufficient ground for rehearing, ought to be very material, newly discovered, unknown to party seeking relief at time the decree was rendered, and such as could not have been discovered by reasonable diligence. Campbell's Ex'rs v. Campbell's Ex'r, 22 Grat. 649; Connolly v. Connolly, 32 Grat. 661; Reynolds v. Reynolds' Ex'r, 88 Va. 152, 13 S. E. 395, 598.

Although upon second appeal question decided by first opinion cannot be raised, and such decision is final not only as to decree appealed from but also as to all prior orders in cause between appellants and appellees, yet the rule does not apply where a different question arises or same question arises between different parties Frazier v. Frazier, 77 Va. 775.

Matters once determined on appeal to this court cannot be reopened, and this is true whether those matters were actually adjudicated or not.

Digitized by Google

If they could have been adjudicated therein, they are equally settled. Carter v. Hough, 89 Va. 503, 16 S. E. 665; Diehl v. Marchant, 87 Va. 447, 12 S. E. 803; Effinger v. Kenney, 79 Va. 551; Findlay v. Trigg's Adm'r, 83 Va. 539, 3 S. E. 142; Burton v. Brown's Ex'rs, 22 Grat. 1; Hawthorne v. Beckwith, 89 Va. 786, 17 S. E. 241; McCullough v. Dashiell, 85 Va. 37, 6 S. E. 610; Krise v. Ryan, 90 Va. 711, 19 S. E. 783; Rosenbaum's Ex'rs v. Seddon, 94 Va. 575, 27 S. E. 425.

If proceeding on a judgment at law be enjoined by a court of chancery, and the injunction be afterwards dissolved, and on appeal the order of dissolution is affirmed in omnibus, an execution may be sued out on the judgment at law before decree of affirmance is entered up in chancery court. Epes' Adm'rs v. Dudley, 4 Leigh 145.

See, also, notes to section 6365.

Sec. 6370. Order books, dockets, etc., of district courts, to remain in custody of clerks of Court of Appeals; their duties in respect thereto; how printed and manuscript orders disposed of, etc.—The order books, dockets, and other office books belonging to the several district courts, shall remain in the custody of the clerks of the Supreme Court of Appeals at the places of session, respectively, having jurisdiction over the counties, or a majority of them, over which the said district courts respectively had jurisdiction. The said clerks shall furnish transcripts of the records and proceedings of the said district courts when required, and perform all other duties in respect to records and proceedings of the said district courts as might have been performed by the clerks of the said district courts if the said courts had continued to exist. All printed and manuscript orders, and other papers pertaining to cases decided in the said district courts, shall remain in the custody of the clerks of the circuit courts at the several places where the said district courts held their sessions, who shall be charged with the same duties in respect to said records and papers as might have been performed by the clerks of the said district courts respectively, if said courts had continued to exist, and who shall receive for any such service fees similar to those charged by the clerks of district courts for such services. (Code 1887, § 3491.)

Sec. 6371. Court of Appeals to direct the clerk of the court to destroy manuscript records in cases where the records are printed; binding of records with briefs of counsel.—The Supreme Court of Appeals may, whenever in its opinion it shall be necessary to relieve the clerk's office, direct its clerk to destroy the manuscript of records in cases where the records have been printed, and which have been decided for two years. The clerk of the said court shall, as soon as the case is decided, cause the record in the case to be bound, along with the briefs of counsel, in the same manner that Acts of Assembly are bound; and the clerk of the said court shall, when he collects the writ tax in each case, collect of the appellant, or plaintiff in error, as the case may be, a fee of fifty cents to pay the cost of such binding. (1902-3-4, p. 84.)

Sec. 6372. When Court of Appeals may rehear and review case decided by it; when application therefor to be made; where re-

Digitized by Google

hearing, etc., to take place; where decision entered.—The Supreme Court of Appeals on the application of a party shall rehear and review any case decided by the said court if one of the judges who decides the case adversely to the applicant certifies that in his opinion there is good cause for such rehearing. If the case was decided within the last fifteen days of the term the application shall be made before the end of the said term or within fifteen days after the commencement of the next term, wherever held. In all other cases the application shall be made during the term at which the decision was made and within fifteen days after the entry of the judgment. Such rehearing and review may be at any place of session, and the judgment, decree, or order made thereon shall be entered on the order book where it is made, and if not made at the place of session where the case was pending at the time it was originally determined, it shall be certified to the clerk of the court at the place of session where the case was originally pending as aforesaid, who shall forthwith enter the same on his order book and transmit a certified copy thereof to the clerk of the court below to be by him entered as provided by section sixty-three hundred and sixty-nine. (Code 1887, § 3492; 1887-8, p. 17.)

Revisors' Note.—Formerly, the third sentence of this section read as follows: "In all other cases the application shall be made within such time during the term at which the decision was made and under such rules and regulations as the court may prescribe." Under the revised section the application in such cases must be made "during the term at which the decision was made and within fifteen days after the entry of the judgment."

Neither bills of review nor petitions for rehearing lie for assignees. Armstead v. Bailey, 83 Va. 242, 2 S. E. 38.

A case decided at one term of court, at which no motion is made to rehear it, cannot be reheard at subsequent term. Griffin's Ex'r v. Cunningham, 20 Grat. 31. But see terms of above statute.

Where leave was reserved to file additional briefs until a certain date, and such briefs were not so filed, where case has been decided after that date a petition to rehear will not be granted. Nicholas v. Nicholas, 100 Va. 665, 42 S. E. 669, 866.

See Burks' Address, 2 Barton, L. Pr. (2d Ed.) 1404.

Digitized by Google

CHAPTER 268.

General Provisions as to Civil Cases.

Sec.
6373. Provisions under this title, rules for all courts.
6374. How jurisdiction determined, where proceeding is on a penal bond.
6375. Who may execute bond for obtaining a writ or order.
6376. How proceedings may be in cases pending when Code takes effect.
6377. Where judgment for specific personal property affirmed, or injunction to such judgment dissolved, damages may be given for detention of property; how party entitled to damages to proceed.

Sec. 6373. Provisions under this title, rules for all courts.—All things contained in any chapter under this title, not restricted by their nature, or by express provision, to a particular court, shall be the rules of decision and proceeding in all courts within this State. (Code 1887, § 3493.)

A demurrer to a bill in equity in the form prescribed by section 30, chapter 171, Code 1860 (same as section 6115), is good under section 1, chapter 183 (same as this section). Jones' Ex'rs v. Clark, 25 Grat. 642.

Sec. 6374. How jurisdiction determined, where proceeding is on a penal bond.—Where the proceeding before a court or justice is on a penal bond, with condition for the payment of money, the jurisdiction shall be determined as if the undertaking to pay such money had been without a penalty. And where jurisdiction depends on the amount of a judgment, if it be on such bond, the jurisdiction shall be determined by the sum, payment whereof will discharge the judgment. (Code 1887, § 3494.)

This section changes the rule in Heath v. Blaker, 2 Va. Cas. 215, and Newell v. Wood, 1 Munf. 555.

The claim that a bond sued on does not constitute a contract, but simply provides for a penalty, is unavailing to oust a court of equity of jurisdiction in view of the provisions of this section. Kabler v. Spencer, 114 Va. 589, 77 S. E. 504.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 137, section 1.

Sec. 6375. Who may execute bond for obtaining a writ or order.—A bond for obtaining any writ or order, in term or vacation, may be executed by any person with sufficient surety, though neither be a party to the case. (Code 1887, § 3495.)

See notes to section 6414.

Sec. 6376. How proceedings may be in cases pending when Code takes effect.—In any case pending at the time this Code takes effect, for a cause which arose theretofore, the proceedings, so far as it may not be practicable for them to conform to the other sections of this Code, may be according to the laws in force on the day before it takes effect. (Code 1887, § 3496.)

Digitized by Google

Sec. 6377. Where judgment for specific personal property affirmed, or injunction to such judgment dissolved, damages may be given for detention of property; how party entitled to damages to proceed.—When a judgment for specific personal property is affirmed by an appellate court, or an injunction to such judgment is dissolved, the person who is entitled to execution of such judgment, or who would be entitled if execution had not been had, may, on motion to the court from which such execution has issued, or might issue, after fifteen days' notice to the defendant or his personal representative, have a jury impaneled to ascertain the damages sustained by reason of the detention of such property, subsequent to such judgment, or if it was on a verdict, subsequent to such verdict; and judgment shall be rendered for the damages, if any, so ascertained. (Code 1887, § 3497.)

Revisors' Note.—The notice has been reduced from four weeks to fifteen days. This change conforms to the time in which a judgment may be had under section 6046, and more nearly approaches the time within which an action may be matured at rules.

Digitized by Google

TITLE 61.

Attachments; Mechanics' and Other Liens; Judgments and Executions.

Ch. 269. Attachments, and bail in civil cases.
270. Mechanics' and other liens.
271. Enforcing decrees and orders; docketing judgments and other liens of the like nature; the effect of such liens; and the limitation of proceedings on judgments.
272. Executions, and the means of enforcing recoveries of money otherwise than by such writ.
273. Forthcoming bonds.

CHAPTER 269.

Attachments,* and Bail in Civil Cases.

Sec.
6378. Who may sue out an attachment.
6379. Grounds of attachment.
6380. Courts having jurisdiction of attachment; practice and procedure therein.
6381. Venue of attachments.
6382. Pleadings in attachment.
6383. Petition for attachment; what to state; must be sworn to; who may be made defendants.
6384. When plaintiff gives the required bond, officer to take possession of the property.
6385. Bond required of plaintiff when defendant makes affidavit of substantial defense; effect of failure to give bond.
6386. Issuance of attachment; against what attachment to issue.

*Revisors' Note.—In the revision of this chapter it was thought best to retain in the main the body of the law as we then had it, but as far as possible to simplify the procedure. The former method was entirely too complicated. In some instances the attachment was an original proceeding. In most cases it was purely ancillary. Sometimes the proceeding was at law only; at others in equity only. In most cases the jurisdiction at law and in equity was concurrent. Sometimes the proceeding was inaugurated before a justice or clerk; sometimes before a justice only. It was this complication of procedure that gave rise to trouble and criticism in Virginia, and it seemed wise to adopt a single simpler method of procedure, except in the case of rent, which, for obvious reasons, ought not necessarily be confined to the procedure given in attachments in other cases.

After careful consideration of the subject, it was believed that the procedure should be original and not merely ancillary either to a proceeding at law or in equity, and that provision should be made in case service could be had upon the principal defendant for a personal judgment against him, even if the attachment failed. The procedure now adopted

Digitized by Google

Sec.
6387. To whom attachments may be directed; where returned.
6388. Issue of other attachments on the original petition.
6389. What attachment to be levied on and by whom; defendants to be summoned to answer.
6390. How attachment levied.
6391. Return by officer.
6392. Issue and execution of attachment on a Sunday.
6393. Lien of attachment.
6394. How any property seized under attachment restored; how the whole released; what bond to be given.
6395. Where bond returned and filed; exceptions to bond.
6396. How interest and profits of property applied in certain cases.
6397. How property to be kept; how sold, when expensive to keep or perishable.
6398. Proceedings against defendant for debts, etc., admitted to be due; when debtor may claim exemption out of amount due.
6399. If a defendant indebted to, or having effects of the principal defendant fail to appear, what court may do.
6400. When plaintiff suggests that a defendant has not fully disclosed the debts owing by him, etc., how court to ascertain same.
6401. When attachment not served other attachments to issue; when order of publication to be made.
6402. Who may make defense to attachments.
6403. What defense may be made to attachments.
6404. When attachment to be dismissed; when cause to be retained and proceeded to judgment.

---

is in the nature of code practice. There is neither formal action at law nor bill in equity, but the whole procedure is made statutory. It is in the nature of a proceeding at law, but with equity powers wherever necessary to attain the ends of justice. The procedure is made uniform in all cases except in case of rent. It is to be inaugurated by a simple petition to be filed before a justice or the clerk. As it is purely statutory, of course it is necessary to fix the jurisdiction of the courts with reference to attachments, and also the venue of attachments. As the procedure described is more legal than equitable, it is provided (section 6380) that the practice and procedure shall be, as near as may be, the same as in actions at law, so that the profession will understand, in preparing a case for the appellate court, as well as in the trial court, that they will proceed as at law. The pleadings are of the simplest kind—simply a petition by the plaintiff, and a demurrer by the defendant, or statement of his grounds of defense. Garnishees and persons having possession of the property which is sought to be attached are to be made defendants. Their grounds of defense having been stated in writing, no replication is required. As the remedy is a harsh one, defendants are protected by requiring a bond of the plaintiff within a very short time, whenever the defendant makes affidavit that he has a defense to the merits. (Section 6385.)

One of the important changes made in the revision is the abolition of a formal affidavit, which has been probably the source of more litigation than anything else in connection with attachments. The present statute simply provides that the plaintiff shall set out his claim in a petition, and that the petition shall be sworn to. This had been approved by our Court of Appeals as a substitute for an affidavit in Sims v. Tyrer, 96 Va. 5, 26 S. E. 508, and the change seemed to be a desirable

Digitized by Google

Sec.
6405. Judgment, etc., of court when claim of plaintiff established; real estate to be sold last; sale thereof under attachment at law.
6406. When plaintiff not to have benefit of the preceding section until he gives bond.
6407. How and when claims of other persons to the property tried.
6408. Levy of attachment on effects, etc., of defendant in hands of officer under process; lien thereof.
6409. Amendments.
6410. Attachments in connection with pending suits or actions.
6411. When and how debtor may have case reheard; protection of purchaser.
6412. Order of court on rehearing or new trial; restitution to defendant.
6413. When appeal-bond given, property to be delivered to owner.
6414. Bonds may be given by any person.
6415. How attachment for claim not exceeding twenty dollars obtained from and proceeded in before a justice; the proceeding when levied on real estate.
6416. Against tenant removing his effects from leased premises.
6417. Where an attachment for rent for twenty dollars or more returnable.
6418. Where attachments for rent for less than twenty dollars returnable, and how proceeded in.
6419. When and how bail required of defendant leaving the State; form of writ.
6420. Plaintiff to give bond before suing out capias.
6421. His arrest and commitment unless bond given; its condition.
6422. Who may take it; where filed.
6423. When and how capias quashed, and defendant discharged.
6424. When plaintiff may file interrogatories; if not filed court may discharge defendant.
6425. To whom conveyance to be made; what to be returned to court; disposition of the property.

one. We eliminate mere words about which there has been litigation, as, for instance, "that there is present cause of action therefor"; "that the plaintiff's claim is justly due," etc., all these matters being covered by the petition, showing whether or not the claim is due, and, if not due, when it will become due.

Section 2961 of the former Code gave an attachment at law where the claim was not due against a defendant removing his effects out of the State. The ground of attachment was substantially the same—indeed, almost word for word, with the third ground of attachment stated in the present section 6379. Under the new statute, as the right to sue out the attachment is given whether the claim is payable or not, section 2961 of the former Code was rendered useless and unnecessary, and hence has been omitted.

Under the former law there could be no attachment at law except under 2961 (Code 1887) unless the claim was due, and there could be no attachment in equity under section 2964 (Code 1887) where the claim was for a tort. These distinctions have been eliminated, and the first section of the new law provides that attachments may be sued out whether the claim is legal or equitable, and whether the debt be payable or not, and is given for damages for a wrong as well as for breach of contract.

Digitized by Google

Sec. 6378. Who may sue out an attachment.—If any persor have a claim, legal or equitable, to any specific personal property or a like claim to any debt, whether such debt be due and payable or not, or to damages for breach of any contract, express or implied, or to damages for a wrong, and such claim exceed twenty dollars, exclusive of interest, he may sue out an attachment therefor on any one or more of the grounds stated in the following section, except that if the claim be for a debt not due and payable, no attachment shall be sued out, where the only ground for the attachment is that the defendant or one of the defendants against whom the claim is, is a foreign corporation, or is not a resident of this State and has estate or debts owing to the said defendant within this State. (Code 1887, §§ 2959, 2964; 1891-2, p. 520.)

Revisors' Note.—This section is taken from sections 2959 and 2964 of the Code of 1887 without material change. See revisors' note at the beginning of this chapter.

A guarantor of a debt may maintain a foreign attachment against his principal before he has paid the debt. Moore v. Holt, 10 Grat. 284.

In a suit by foreign attachment to subject property of a non-resident, it must be shown that the debt on which the proceeding is based is such a one as comes within the meaning of the statute authorizing attachments, and not merely such a one as might be established by a suit for the specific performance of a contract out of which, if enforced, the debt would arise. Barksdale v. Hendree, 2 Pat. & H. 43.

A creditor residing in Maryland was allowed to sue out an attachment in chancery in Virginia against his debtor residing also in Maryland and others residing in Virginia indebted to or having in their hands effects of such debtor. Williamson v. Bowie, 6 Munf. 176.

Foreign attachment in equity lay against corporation of another

---

All of these cases were provided for by various sections in the old law, but the method of procedure was different. Sometimes, as for instance where it was for a tort, the proceeding was at law; if the claim was not due and any ground except the third paragraph of section 2959 of the Code of 1887 was the ground of attachment, the proceeding was in equity. If the claim was not due, and the ground of attachment was that mentioned in clause 3 of said section 2959, the proceeding was before a justice, and the profession was kept in a perfect turmoil where to go for these various cases, and no man dared attempt to sue out an attachment without the statute and some approved forms before him. The suing out of an attachment was rendered hazardous in the extreme. All of these cases are now provided for in section 6378 of the new law, and a very simple procedure is given.

Amendments.—Under the former Code, no provision was made for any amendments whatever, and where an affidavit was made by the secretary-treasurer of a corporation the court refused to remand the case to give the plaintiff an opportunity to show that the secretary-treasurer was an agent of the corporation, having held that he was not so ex-officio. Taylor v. Sutherlin-Meade Co., 107 Va. 787, 60 S. E.. 132. It seemed that the plaintiff in an attachment is entitled to a fair hearing on the substantial merits of his case as well as any other litigant, and hence that reasonable amendments should be allowed; that an attachment should never be dismissed for mere formal defects, and even for substantial defects it ought not to be dismissed as against the principal de-

Digitized by Google

State in favor of the corporation of another State. Bank of U. S. v. Merchants' Bank, 1 Rob. 573 (2d Ed.) 605.

A creditor at large could maintain a suit in equity in the nature of a foreign attachment to set aside a fraudulent deed conveying real estate made by his debtor, both debtor and his grantee living and being out of the Commonwealth. Peay v. Morrison's Ex'rs, 10 Grat. 149.

Under the present chapter, the proceeding is an original proceeding, and distinctions formerly made between attachments at law and in equity have been eliminated. The proceeding is in the nature of a proceeding at law, with equity powers wherever necessary to attain the ends of justice.

Attachments cannot be maintained on undue debts on the ground that the debtors are non-residents unless they have disposed or are about to dispose fraudulently of their effects. Wingo v. Purdy, 87 Va. 472, 12 S. E. 970.

For monographic note on Attachments, see Lancaster v. Wilson, 27 Grat. 624, Va. Rep. Anno.

Sec. 6379. Grounds of attachment.—The following shall be sufficient grounds for an attachment. That the principal defendant or one of the principal defendants:

First. Is a foreign corporation, or is not a resident of this State, and has estate or debts owing to said defendant within the county or city in which the attachment is, or that said defendant being a non-resident of this State, is entitled to the benefit of any lien, legal or equitable, on property, real or personal, within the county or city in which the attachment is. The word "estate," as herein used, shall include all rights or interests of a pecuniary nature which can be protected, enforced, or proceeded against in courts of law or equity; or,

Second. Is removing or is about to remove out of this State with intent to change his domicile; or,

Third. That the said debtor intends to remove, or is removing,

---

fendant, or merely for the purpose of enabling some other creditor to get advantage over a creditor who had been more diligent, but has been inaccurate in some of the procedure in his case. As against the principal defendant himself and debts or liabilities existing when the attachment was sued out, the plaintiff ought to be allowed to amend his attachment to take effect as of the date of its levy, and not be thrown out of court as against the principal defendant, or as a favor to some other creditor. To meet this situation section 6409 was inserted.

When the statute on the subject of civil bail was enacted, it was customary to file interrogatories to debtors in executions in order to disclose property liable to the execution, and hence the civil bail law followed the same procedure. Now the procedure to make an execution debtor disclose effects liable to the execution has been changed by compelling him to undergo an examination before the commissioner without first providing him with the questions which he will be asked, which is a great improvement. (Section 6503.) The phraseology of the bail statutes (sections 6419-6425) has been changed to conform to this practice. The bond required of the plaintiff in civil bail is provided for in the present statute by section 6420. It seemed that this section ought to follow immediately after the section allowing the party to sue out the capias, and

Digitized by Google

or has removed the specific property sued for, or his own estate, or the proceeds of the sale of his property, or a material part of such estate or proceeds, out of this State, so that there will probably not be therein effects of such debtor sufficient to satisfy the claim when judgment is obtained therefor, should only the ordinary process of law be used to obtain the judgment.

Fourth. Is converting, or is about to convert, or has converted his property of whatever kind, or some part thereof, into money, securities, or evidences of debt, with intent to hinder, delay, or defraud his creditors; or,

Fifth. Has assigned or disposed of, or is about to assign or dispose of his estate, or some part thereof, with intent to hinder, delay, or defraud his creditors; or,

Sixth. Has absconded, or is about to abscond from the State, or has concealed himself therein to the injury of his creditors, or is a fugitive from justice.

The intent mentioned in clauses four and five above may be stated either in the alternative or conjunctive. (Code 1887 § 2959, 2961; 1889-90, p. 26; 1891-2, p. 520; 1895-6, p. 602; 1902-3-4, p. 592).

Revisors' Note.—This section is taken from sections 2959 and 2961 of the Code of 1887 without material change, except to add the sixth ground of attachment.

Foreign corporation.—A foreign corporation is one created by the law of another State or country. 4 Min. (3d Ed.) 407. The fact that it complies with the statutory provision in relation to foreign insurance companies doing business in Virginia does not make it a resident of this State, and the property of such company is liable to attachment as a foreign corporation. Cowardin v. Universal Life Ins. Co., 32 Grat. 445.

A Maryland corporation, by taking from Virginia corporation, with the assent of Virginia, the lease of a railroad in Virginia, did not make it a corporation of this State. B. & O. R. Co. v. Koontz, 104 U. S. 5, 26 L. Ed. 643; contra, B. & O. R. Co. v. Noell's Adm'r, 32 Grat. 394.

A corporation chartered and organized under the laws of another State and holding no charter from this State is a foreign corporation, even though it has a statutory agent upon whom process may be served. Cook Mining Co. v. Thompson, 110 Va. 369, 66 S. E. 79.

---

its position has been changed, though no change is made in its phraseology.

Section 6416 relates to attachments for rent. There has been added at the foot of this section a provision that the attachment shall also summon the defendant to answer the attachment, in order to conform to that extent to attachments in other cases, and to make a provision which seemed to be entirely proper.

A section has been added on procedure where the rent is for twenty dollars or more, adapted mainly from 2965 of the former Code (see section 6416), and an additional section has been added for procedure for rent for less than twenty dollars, which is an adaptation from section 2988 of that Code. (See section 6418.) As these sections relate wholly to rent it was thought best not to inject them as in the Code of 1887 among the sections relating to attachments for other purposes. So these sections have been put after the subject of attachments generally, and just before the subject of civil bail.

Digitized by Google

Non-resident.—There is a wide distinction between domicile and a residence. To constitute a domicile two things must concur: First, residence; second, intention to remain there for an unlimited time. Residence is therefore a permanent abode for the time being, as contradistinguished from a mere temporary locality of existence. Long v. Ryan, 30 Grat. 718; Pilson v. Bushong, 29 Grat. 229.

Residence, once established, is presumed to continue until proved to have been changed, and the burden of proving the change is on him who asserts it. Starke v. Scott, 78 Va. 180.

Applies to all non-residents, whether they had formerly been residents or not. Peter v. Butler, 1 Leigh 285; U. S. Bank v. Merchants' Bank, 1 Rob. 573 (2d Ed.) 605; Clark v. Ward, 12 Grat. 440.

Deals wholly with persons residing without the jurisdiction of the Commonweath, and does not apply to one who absconds or conceals himself. Kelso v. Blackburn, 3 Leigh 299, 308; Starke v. Scott, 78 Va. 180. But see present section, sixth ground of attachment.

A party who determines to remove to another State is a non-resident directly he commences his removal and before he gets beyond the limits of the State. Clark v. Ward, 12 Grat. 440.

Where a surety to a bond has removed from the country, leaving the principal within it, the obligee may proceed against the surety as an absent defendant, and attach any effects or debts he may have in the State. Loop v. Summers, 3 Rand. 512.

See Moore v. Holt, 10 Grat. 284, as to what circumstances are sufficient to show the debtor had gone beyond the limits of the State without an intention to return.

It is not essential that a party should come into the State with the intention to remain here permanently to constitute him a resident. Long v. Ryan, 30 Grat. 718.

R., domiciled in Washington, obtains work in Virginia. He rents out his house in Washington, removes his family to a place in Virginia, and keeps house. Held, he was a resident. Id.

One who has dwelt in the State for a year or more, and is still dwelling there, with no intention of leaving; who is engaged in constructing public improvements in a city of this State, under a contract that will occupy him for an indefinite period; who is a registered voter in said city, and has done other acts evincing his residence in said city—cannot be said to be a non-resident, although his family lives out of the State for the convenient education of his children at special schools. Didier v. Patterson, 93 Va. 534, 25 S. E. 661.

The residence of the committee and not that of the lunatic governs, in an attachment against the lunatic on the ground of non-residence. Sheltman v. Taylor, 116 Va. 762, 82 S. E. 698.

A person born and domiciled in another State who is an enlisted U. S. soldier stationed at Fortress Monroe, is not a resident of Virginia; nor is this conclusion affected by paragraph 2 of section 15a of Pollard's Code (1904), which provides that civil and criminal process of the courts of this State may be served within the limits of land ceded to the U. S. Bank v. Byrum, 110 Va. 708, 67 S. E. 349. See sections 17 and 19 of this Code.

Statement in the alternative or conjunctive.—When separate and distinct grounds for the attachment were stated in the affidavit formerly required, and all were relied on for the attachment, they had to be conjunctively stated. They could not be stated in the alternative. An affidavit which stated that either one or the other of three separate and distinct grounds existed did not allege the existence of any one of them, and is insufficient. Northern Neck Bank v. Gilbert P. Co., 114 Va. 658, 77 S. E. 451. Under the last paragraph of section 6379 "the intent mentioned in clauses four and five above may be stated either in the alternative or conjunctive."

Generally.—Shipment of goods out of the State in due course of trade, where the proceeds are brought back within the State, is not suf-

Digitized by Google

ficient ground for attachment. Clinch River Mineral Co. v. Harrison, 91 Va. 122, 21 S. E. 660, note 1 Va. Law Reg. 37, 45.

A landowner was indebted on a partnership account to his late partner. He promised to give him a deed of trust on his property, but failed to do so, and thereafter sold it, having made no secret of his trying to sell. He devoted the proceeds of sale to payment of other creditors. Held, that the facts did not authorize the issuance of an attachment. Breeden v. Peale, 106 Va. 39, 55 S. E. 2.

Declaration of defendant after suing out the attachment of his intention to leave State not admissible as evidence unless so closely connected with, or so soon thereafter made as to render it admissible. Wright v. Rambo, 21 Grat. 158.

The words "estate or debts" were held not to embrace a contingent remainder. Young v. Young, 89 Va. 675, 17 S. E. 470. But under section 6389 a contingent remainder may now be levied on if the principal defendant is a non-resident or an absconding debtor. It cannot be sold, however, until it becomes vested.

For note upon grounds of attachment, see 11 Va. Law Reg. 431.

Sec. 6380. Courts having jurisdiction of attachment; practice and procedure therein.—The jurisdiction of attachments under this chapter shall be in the circuit courts of the counties and in the circuit and such city courts of the cities as have civil jurisdiction in common law cases, and the practice and procedure, except as otherwise provided, shall be the same, as near as may be, as in personal actions.

Revisors' Note.—This section is new, and is intended to designate the courts which are to have jurisdiction of attachment cases, and at the same time make it plain that the proceeding is one at law and not in equity.

Sec. 6381. Venue of attachments.—The venue of attachments shall be determined with reference to the principal defendant and those jointly liable with him, as though they were the sole defendant, and as to them it shall be the same as in actions at law where the right of action has accrued, or the attachment may be issued in the county or city in which the principal defendant has estate or debts owing to him.

Revisors' Note.—This section is new. It leaves the jurisdiction as to parties jointly liable as is fixed by sections 6049 and 6050, but provides further for venue in the county or city where the principal defendant has estate or debts owing to him, in this respect following the provisions of section 2961 of the Code of 1887.

For cases under the former law, see Porter v. Young, 85 Va. 49, 6 S. E. 803; Williamson v. Bowie, 6 Munf. 176.

Sec. 6382. Pleadings in attachment.—No pleading on behalf of the plaintiff shall be necessary except the petition mentioned in the following section. The principal defendant, and any other defendant who seeks to defeat the petitioner's attachment, may demur to the petition, issue on which demurrer shall be deemed to be joined, but if the demurrer be overruled, he shall answer the same or state his grounds of defense in writing, to neither of which shall any replication be necessary, but the cause shall be deemed to be at issue on the answer or the grounds stated. The answer or grounds of defense shall be sworn to by such defend-

Digitized by Google

ant, or his agent. Any other defendant may answer or state the grounds of his defense to the petition, under oath, and the cause shall be deemed at issue as to him, if he denies any of the allegations of the petition, without any replication. Answers under this section shall not have the effect of evidence for the defendant.

Revisors' Note.—This section is new, and defines the pleadings. These are made as simple as possible. Defense is allowed to be made by the principal defendant or any other defendant who seeks to defeat the attachment. Mere garnishees who have no interest in the subject are allowed to answer or state their grounds of defense if they deny any of the allegations of the petition. Whether the defense be made by answer or statement of grounds it is intended that it should be in writing. The purpose is to make the pleadings as simple as possible. The term "principal defendant" is defined in section 6388.

Sec. 6383. Petition for attachment; what to state; must be sworn to; who may be made defendants.—Every attachment, except an attachment for rent, shall be commenced by a petition filed in the clerk's office, whether the court be in session or not, or before a justice of the county or city in which venue is given by section sixty-three hundred and eighty-one. If it is sought to recover specific personal property the petition shall state the nature and estimated value thereof, the character of estate therein claimed by the plaintiff, and what sum, if any, the plaintiff claims he is entitled to recover for its detention. If it is sought to recover a debt or damages for a breach of contract express or implied, or damages for a wrong, the petition shall set forth the plaintiff's claim with such certainty as will give the adverse party reasonable notice of the particulars thereof, and shall state a sum certain which, at the least, the plaintiff is entitled to, or ought to recover, and if the claim be for a debt not then due and payable, at what time or times the same will become due and payable. The certainty required of the notice under section six thousand and forty-six of this Code shall be sufficient for a petition under this section. The petition shall also set forth the existence of one or more of the grounds of attachment mentioned in section sixty-three hundred and seventy-nine, and shall ask for an attachment against the specific personal property mentioned in the petition, or against the estate, real and personal, of one or more of the principal defendants, or against both the specific personal property and the estate of such defendants, real or personal.

The person or persons against whom the plaintiff is asserting the claim shall be made defendant or defendants to said petition, and shall be known as the principal defendant. There shall also be made defendants any person indebted to or having in his possession property, real or personal, belonging to a principal defendant, which is sought to be attached. There may also be made defendants any person claiming title to, an interest in, or a lien upon

Digitized by Google

the property sought to be attached. The petition shall be sworn to by the plaintiff or his agent, or some person cognizant of the facts therein stated. The defendants, other than the principal defendant or defendants, shall be known as co-defendants. (Code 1887, § 2959.)

Revisors' Note.—This section is new. It provides that every attachment, except an attachment for rent, shall be begun by petition to be filed in the clerk's office, or before a justice. The section provides what shall be stated in the petition, and follows in large measure the language of the former law. The section also provides who shall be defendants, and who may be made defendants. It is based in part on section 2959 of the Code of 1887. It is further provided that the petition may be sworn to, not only by the plaintiff or his agent, but by any person cognizant of the facts therein stated, thus obviating the trouble that has heretofore arisen on the construction of the word "agent." Attention is also called to section 276. As to attachments for rent, see sections 6416, 6417, 6418.

The following cases relate to the formal affidavit required before the present revision: Taylor v. Sutherlin-Meade Tobacco Co., 107 Va. 787, 60 S. E. 132; Clinch River Mineral Co. v. Harrison, 91 Va. 122, 21 S. E. 660, note 1 Va. L. Reg. 37, 45; Benn v. Hatcher, 81 Va. 25, 59 Am. Rep. 645; Clowser v. Hall, 80 Va. 864; Anderson v. Johnson, 32 Grat. 558; Kyle v. Connelly, 3 Leigh 719; Darmon v. Citizens' Nat. Bank, 112 Va. 544, 72 S. E. 153; Bernard v. McClanahan, 115 Va. 453, 79 S. E. 1059; Northern Neck Bank v. Gilbert P. Co., 114 Va. 658, 77 S. E. 451; Water Front C. Co. v. Smithfield Co., 114 Va. 482, 76 S. E. 937, 18 Va. L. Reg. 939 and note; Sims v. Tyrer, 96 Va. 5, 26 S. E. 508.

Maliciously suing out an attachment, Ailstock v. Moore Lime Co., 104 Va. 565, 52 S. E. 213.

Sec. 6384. When plaintiff gives the required bond, officer to take possession of the property.—If the plaintiff shall, at the time of suing out an attachment, or afterwards, give bond with surety, approved by the clerk or justice issuing the attachment, in a penalty of at least double the amount of the claim sworn to or sued for, with condition to pay all costs and damages which may be awarded against him, or sustained by any person, by reason of his suing out the attachment, the said officer shall take possession of the property specified in the attachment, or, where no such property is specified, of any estate or effects of the defendant, or so much thereof as is sufficient to pay the plaintiff's claim. When such bond is given, the fact shall be endorsed on the attachment, or certified by the clerk or justice to the officer, who shall return the said certificate with the attachment; and the bond, when taken by a justice, shall be returned by him to, and filed in, the clerk's office of the court to which the attachment is returnable. (Code 1887, § 2968.)

Bond on behalf of firm.—Where partnership sued out an attachment, the bond of one partner, conditioned that the partner shall pay all costs in case he shall be cast in the suit, and all damages that shall be adjudged against him for suing out the attachment, is void. Jones v. Anderson, 7 Leigh 308. But if enough appears to show that the attachment was a partnership demand, it may be sufficient. Kyle v. Connelly, 3 Leigh 719. The bond should bind the obligor to be answerable for

Digitized by Google

the failure of the firm to prosecute their attachment with success. McCluny v. Jackson, 6 Grat. 96.

Action on bond—*Who may sue.*—The words "any person" include the defendant in the attachment. Offterdinger v. Ford, 92 Va. 636, 24 S. E. 246.

When the attachment is issued against specific property, only the defendant or owner of such specific property can sue upon the bond. Davis v. Com., 13 Grat. 139.

When the attachment is issued against the effects of the defendant generally, and is levied upon the property of a third person, such third person has no remedy upon the attachment bond. Davis v. Com., 13 Grat. 139.

Damages.—The defendant may maintain an action not only to recover damages against the plaintiff in the attachment, but also other damages sustained by him by reason of the attachment having been sued out without sufficient cause. Offterdinger v. Ford, 92 Va. 636, 24 S. E. 246.

The costs and damages which might accrue to the obligee in consequence of suing out the attachment need not be previously assessed in some other action to justify an action on the bond. Dickinson v. McCraw, 4 Rand. 158.

Pleadings.—In an action on bond it is not sufficient to allege that the defendant did not pay "all costs and damages as have accrued," etc., but it must be expressly averred that costs and damages had actually been sustained. Dickinson v. McCraw, 4 Rand. 158.

Defence to—Probable cause.—When defendant in an attachment sues for damages then probable cause is good defence. 1 Va. Law Reg. 232.

Justifiable probable cause for suing out an attachment is a belief by the attaching creditor in the existence of the facts essential to the prosecution of the attachment founded upon such circumstances as, supposing him to be a man of ordinary caution, prudence and judgment, were sufficient to produce such belief. Spengler v. Davy. 15 Grat. 381.

Plaintiff not liable on bond where the attachment was sued out with good cause, and afterwards quashed or abated for the failure of the officer to perform his duty. Offterdinger v. Ford, 92 Va. 636, 650, 24 S. E. 246.

When officer a trespasser.—The sureties of a sheriff who takes the property of A. under attachment against B. are liable upon his official bond. Sangster v. Com., 17 Grat. 124.

If officer takes goods of A. under attachment against B. he is a trespasser. Davis v. Com., 13 Grat. 142. So is plaintiff, if he directed it. Sangster v. Com., 17 Grat. 124. Sheriff is liable for acts of his deputy. Mosby's Adm'r v. Mosby's Adm'r, 9 Grat. 589.

Generally.—No bond necessary when no goods taken. Kenefick v. Caulfield, 88 Va. 122, 13 S. E. 348.

Goods should not be seized unless bond has been given. Dorrier v. Masters, 83 Va. 459, 2 S. E. 927.

Where interest was claimed in the affidavit formerly required, but was not mentioned in the bond, the variance was not material. Smith v. Pearce, 6 Munf. 585.

As to who may give bond, see sections 6414, 6375; to whom payable, see section 287.

Form of bond by plaintiff in attachment against a debtor who intends to remove, is removing, or has removed his effects, 4 Min. (3d Ed.) 1629; of declaration in debt on attachment bond, Id. 1657.

See Barton, L. Pr. (2d Ed.) 172, 944, 950; Sams, Attachment, 184; 4 Min. (3d Ed.) 156, 575, 659; Barton, C. Pr. (2d Ed.) 633; Burks' Pleading and Practice, pp. 708, 709, 728.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 106, sections 2, 6.

Sec. 6385. Bond required of plaintiff when defendant makes affi-

Digitized by Google

davit of substantial defense; effect of failure to give bond.—If a principal defendant shall file in the clerk's office of the court to which the attachment is returnable an affidavit of himself, his agent or attorney, that he has a substantial defense to the merits of the plaintiff's claim, it shall be the duty of the clerk forthwith to notify the plaintiff, his agent or attorney, of that fact, and the attachment shall stand dismissed ipso facto unless within ten days from the service of such notice the plaintiff, or someone for him, shall enter into bond with security approved by such clerk, in a penalty of at least double the amount of the claim sworn to or sued for, with condition that the plaintiff will prosecute his attachment with diligence, and that the obligors will pay all costs and damages which may be awarded against the plaintiff, or sustained by the said defendant, or any other person, by reason of suing out the attachment.

Revisors' Note.—This section is new, and is intended to cover the case where no bond was given under the preceding section, but the property of the defendant was levied on, though not taken possession of, and he has a substantial defense to the merits. In such case, it was thought that the plaintiff ought not to be allowed to tie up the property of the defendant without giving bond to cover the resulting damages.

Sec. 6386. Issuance of attachment; against what attachment to issue.—Upon the filing of the petition mentioned in section sixty-three hundred and eighty-three, the clerk or the justice before whom the petition is filed shall issue an attachment in accordance with the prayer of the petition. If the petitioner seeks the recovery of specific personal property, the attachment may be against such property and against the principal defendant's estate for so much as is sufficient to satisfy the probable damages for its detention; or, at the option of the plaintiff, against the principal defendant's estate for the value of such specific property and the damages for its detention. If the petitioner seeks to recover a debt or damages for the breach of a contract, express or implied, or damages for a wrong, the attachment shall be against the principal defendant's estate for the amount specified in the petition as that which the plaintiff at the least is entitled to or ought to recover.

If the attachment be sued out before a justice, it shall be returnable as prescribed by the following section. The justice shall promptly return to the clerk's office of the court to which the attachment is returnable the petition and the bond, if any, filed before him. The proceedings thereafter shall be the same as if the attachment had been issued by the clerk. (Code 1887, § 2960.)

Revisors' Note.—This section is new. Much of it, however, is taken from section 2960 of the Code of 1887. The justice is given no jurisdiction to try the case, but whether the attachment be issued by the clerk or the justice, it is required to be returned to the clerk's office and all the proceedings thereafter are to be in court.

Sec. 6387. To whom attachments may be directed; where re-

Digitized by Google

turned.—Any attachment issued under this chapter may be directed to the sheriff, sergeant, or constable of any county or city. Except where otherwise provided, it shall be returnable to some day of a current term or of the next succeeding term of the court not less than ten days from the date of service. When an attachment is so returned the plaintiff therein shall, within thirty days from the date on which said return is actually made, or if a trial be sooner had, then before such trial, pay to the clerk of the court to which the return is made the proper writ tax as fixed by law, if not already paid, and, in the event of his failure to do so, the attachment shall stand dismissed ipso facto at the cost of the plaintiff, and no further proceedings shall be had thereon. (Code 1887, § 2965; 1893-4, p. 97, 495; 1902-3-4, p. 593.)

Revisors' Note.—This section is taken mainly from section 2965 of the Code of 1887 as amended by Acts 1912, p. 498. It is intended that the attachment may be returnable to any day of a pending term of the court or of the next succeeding term, provided it be returnable not less than ten days from the date of service, the object being to assimilate it to other proceedings and to give the defendant at least ten days' notice. As the next term of court might by possibility be more than ninety days from the date of service, no maximum limit is put upon the return day, except that it must be returnable either to some current term or to the next succeeding term after service.

Sec. 6388. Issue of other attachments on the original petition.—Upon the written application of the plaintiff, his agent or attorney, other attachments founded on the original petition may be issued from time to time by the clerk of the court in which the original attachment is pending, and the same may be directed, executed, and returned in like manner as an original attachment. The court shall adjudge the costs of such attachments as to it may seem right and just.

The following, or its equivalent, shall be a sufficient form of application for an additional attachment:

To A. B., clerk of the ..... court of ..... county (or city): In the case of ..... v. ....., on an attachment, you are requested to issue an attachment and summons against .....

X. Y. (or X. Y. by H., attorney or agent, as the case may be).

If new or additional grounds of attachment are relied on, the petitioner may amend his petition according to the facts and swear to the same, and thereupon an attachment may issue, and the cause shall proceed, under the provisions of this chapter, upon the petition as amended. (Code 1887, § 2966.)

Revisors' Note.—This section is taken from section 2966 of the Code of 1887. It is changed so as to require the application to be written. The form of the application is also given, and a method of procedure prescribed where new or additional grounds of attachment are relied on.

Under section 2966 of the Code of 1887 it was held that the object and purpose of that section was to negative the idea that the right to

Digitized by Google

sue out attachments had been exhausted when a single attachment had been sued out under an affidavit, and so the section provided for additional attachments founded on the original affidavit. Kaylor v. Davy Pocahontas Co., 118 Va. 369, 87 S. E. 551. The same is true under the present section, except that now the petition is the foundation for the issuance of attachments, not the formal affidavit. See section 6383.

Sec. 6389. What attachment to be levied on and by whom; defendants to be summoned to answer.—Every attachment sued out against specific personal property shall command the sheriff or other officer to whom it may be directed to attach the specific property claimed in the petition, and so much more of the real and personal property of the principal defendant as shall be necessary to cover the damages for the detention of the specific property sued for and the costs of the attachment. Every other attachment shall command the sheriff or other officer to whom it may be directed to attach the property mentioned and sought to be attached in the petition, if any, and so much of the lands, tenements, goods, chattels, moneys and effects of the principal defendant not exempt from execution as will be sufficient to satisfy the plaintiff's demand, and, in case of tangible personal property, taken possession of under section sixty-three hundred and eighty-four, to safely keep the same in his possession to satisfy any judgment that may be recovered by the plaintiff in such attachment.

Every attachment sued out under this section shall also command the sheriff or other officer to summon the defendant or defendants, if he or they be found within his county or city, or any county or city wherein he may have seized property under and by virtue of such writ, to appear and answer said petition, or state his grounds of defense thereto.

If the attachment be against a principal defendant who is a non-resident or an absconding debtor, the attachment may also direct the sheriff or other officer to levy the same on any remainder, vested or contingent, of the principal defendant, or so much thereof as may be sufficient to pay the amount for which it issues, but said remainder shall not be sold until it becomes vested. A judgment, however, ascertaining the amount due the plaintiff may be docketed as other liens are docketed, but unless it be a personal judgment, it shall be a lien only on the property levied on.

An attachment may be levied upon any estate of the defendant, whether the same be in the county or city in which the attachment issued, or in any other, either by the officer of the county or city wherein the attachment issued, or by the officer of the county or city where the estate is.

The court, or the judge thereof in vacation, may interpose by a restraining order, or the appointment of a receiver, or otherwise, to secure the forthcoming of the specific property sued for, and so much other estate as will probably be required to satisfy any fur-

Digitized by Google

ther order that may be made in the cause. (Code 1887, § 2964, 2967; 1904, p. 62; 1908, p. 334.)

Revisors' Note.—This section is largely an adaptation from sections 2967 and 2964 of the Code of 1887. The provision with reference to summoning the defendant to appear and answer is new, and the effect of the judgment where the attachment is levied on a remainder is defined so as to negative the idea that the judgment when not personal would bind anything except the property levied on.

Property subject to attachment.—Attachment may be levied on any visible and tangible effects of non-resident debtor in his actual or constructive possession in the common-law mode, as in the case of an execution. If those effects, whether visible or tangible or not, are in a third person's possession, they may be sufficiently levied on by delivering a copy of the attachment to such person. Dorrier v. Masters, 83 Va. 459, 2 S. E. 927. See following section and revisors' note.

Money is left with one member of a firm on a special deposit, and in his absence it is entered on the books of the firm to the credit of the depositor; an attachment against the depositor is served on the other member of the firm; the attachment binds the money. Pulliam v. Aler, 15 Grat. 54.

Cars owned by a foreign railroad company which have come temporarily in the State in the course of interstate commerce, are subject to attachments under State laws. Davis v. Cleveland & R. R. Co., 30 Sup. Ct. Rep. 463.

It is unquestionably true that under this statute a private creditor of one member of a firm may ordinarily attach the interest of the debtor partner in the partnership. Griffith v. Wyatt, 89 Va. 891, 17 S. E. 549.

A contingent remainder, which is a mere possibility, was not formerly subject to attachment. Young v. Young, 89 Va. 675, 17 S. E. 470, 23 L. R. A. 642. See third paragraph of section 6389.

Open account.—Debts due non-resident debtor by open account may be attached in the hands of resident garnishee. Porter v. Young, 85 Va. 49, 6 S. E. 803.

Shares of stock.—The shares of a stockholder in a joint-stock company, incorporated by and conducting its operations, in whole or in part, in the State, may be attached. C. & O. R. Co. v. Paine, 29 Grat. 502; Shenandoah Val. R. Co. v. Griffith, 76 Va. 913. See note to section 6398, "Possession by Garnishee."

Legal title.—A vendee of a house and lot paid all the purchase money, and was put into possession. Vendor had no interest in the property which could be subjected by attachment. Hicks v. Riddick, 28 Grat. 418. See Floyd v. Harding, Id. 401.

Public officers.—A public officer of the State cannot be made liable by attachment in the suit of an individual for funds in his hands clothed with the trust under the authority of the public law. Rollo v. Andes Ins. Co., 23 Grat. 509, 14 Am. Rep. 147; Foley v. Shriver, 81 Va. 568; Buck v. Guarantors' Liability Indemnity Co., 97 Va. 719, 34 S. E. 950. As to salaries of public employees, see sections 6559, 6560, 6561.

Property of deceased debtor.—Creditors of a deceased debtor may proceed by foreign attachment against the heirs residing abroad to subject land or its proceeds in the State descended to them from the debtor. Carrington v. Didier, 8 Grat. 260.

Bailment.—A claim arising on contract for bailment made out of Virginia against a non-resident is a claim for debt for which attachment lies. Peter v. Butler, 1 Leigh 285.

Legacies and distributive shares.—Legatees' interest in the hands of an executor could be attached in equity (Vance v. McLaughlin's Adm'r, 8 Grat. 289; Anderson v. De Soer, 6 Grat. 363); but not at law (Whitehead's Adm'r v. Coleman's Ex'rs, 31 Grat. 784). So might the distributive shares in a decedent's estate. Moores v. White, 3 Grat. 139. Process may be served before executor's qualification. Sandidge's Ex'r v.

Digitized by Google

Graves' Ex'r, 1 Pat. & H. 101; Bickle v. Chrisman's Adm'x, 76 Va. 678. Under the present chapter, no distinction is made between law and equity, but the proceeding is an original proceeding in the nature of a proceeding at law, with equity powers given wherever necessary to attain the ends of justice.

Trust funds.—A attachment is served upon trustee in a deed of trust for the payment of debts, among which are the debts due the plaintiff. There could, therefore, be no surplus in the hands of the trustee until the plaintiff's debts were paid, and consequently there can be no surplus in his hands liable to the attachment. Clark v. Ward, 12 Grat. 440.

As to the situs of debt for the purpose of attachment, see 4 Va. Law Reg. 401.

Sec. 6390. How attachment levied.—An attachment may be levied as follows:

On tangible personal property in possession of a principal defendant, whether such possession be active or constructive, it may be levied as at common law or by delivering a copy of the attachment to him if the bond required by section sixty-three hundred and eighty-five has not been given, but if such bond has been given by taking possession thereof.

On choses in action or on tangible personal property in possession of any defendant other than the principal defendant, it may be levied by delivering a copy of the attachment to the person indebted to the principal defendant or having possession of the property belonging to him.

On real estate, it may be levied by such estate being mentioned and described in an endorsement on the attachment by the officer to whom it is delivered for service to the following effect:

"Levied on the following real estate of the defendant A. (or defendants A. and B.), to-wit: (here describe the real estate) this the ..... day of ..... at ..... o'clock. E. F., sheriff, (or other officer)," and by service of the attachment on the person, if any, in possession of such real estate.

Wherever a copy of an attachment is required or allowed to be served on any person, natural or artificial, it may be served as a notice is served under sections six thousand and forty-one, six thousand and sixty-three, or six thousand and sixty-four, as the case may be. (Id.)

Revisors' Note.—This section is taken substantially from section 2967 of the Code of 1887. The provision for a common law levy is new, but follows the holding in Dorrier v. Masters, 83 Va. 459, 2 S. E. 927.

Levy and return.—The levy of the attachment is the foundation of the suit. If the property attached be not the defendant's property, the court is without jurisdiction. Culbertson's Representative v. Stevens, 82 Va. 406, 4 S. E. 607; Craig v. Williams, 90 Va. 500, 18 S. E. 899, 44 Am. St. Rep. 934.

Return of officer must show sufficient levy of the attachment; otherwise the court has no jurisdiction. Robertson v. Hoge, 83 Va. 124, 1 S. E. 667.

Officer's return that he "served the summons on ..... by delivering a copy to him," and that "he resided on the premises within

Digitized by Google

described," does not show a valid levy, as it does not show that the property was levied upon as the property of the defendant. Id.

The levy on real estate must contain such general description of the real estate and describe it with such substantial accuracy that it may be easily identified when conveyed by looking alone to the levy without the aid of extrinsic evidence. Raub v. Otterback, 92 Va. 517, 23 S. E. 883.

A return "executed upon the tract of land within mentioned" is insufficient. Raub v. Otterback, 92 Va. 517, 23 S. E. 883.

A return that the attachment was levied on a tract of land of the defendant company containing about 360 acres and located in P. magisterial district of M. county, "being the same land conveyed to said company by L. C. Garnett * * * by deed recorded in deed book 15, pp. 58, 59," is good. Richardson v. Hoskins Lumber Co., 111 Va. 755, 69 S. E. 935.

Garnishment of corporations.—A corporation may be summoned and proceeded against as a garnishee upon proceedings under the Code. B. & O. R. Co. v. Gallahue's Adm'rs, 12 Grat. 655, 65 Am. Dec. 254. As to possession of shares of stock, see section 6398, note "Possession by Garnishee."

Municipal.—A municipal corporation may be garnisheed on attachment for a debt due one of its creditors, just as a natural person may be. Portsmouth Gas Co. v. Sanford, 97 Va. 125, 33 S. E. 516, 45 L. R. A. 246, 75 Am. St. Rep. 778, note 5 Va. Law Reg. 172, 176.

As to garnishment of a non-resident garnishee, see 4 Va. Law Reg. 727.

As to situs of debt for purpose of attachment or garnishment, 4 Va. Law Reg. 399, 471.

Sec. 6391. Return by officer.—The officer levying the attachment shall show in his return the time, date and manner of the service, or execution thereof, on each person and parcel of property, and also give a list and description of the property, if any, taken under the attachment. (Code 1887, § 2969.)

Revisors' Note.—This section is taken from section 2969 of the Code of 1887. No change is made in this section except to insert the word "time" before the word "date." This addition is deemed important to conform to section 6393.

The officer's return may be amended if defective. Pulliam v. Aler, 15 Grat. 62.

The return must show that the attachment was levied on the property of the defendant in order to make it valid. Robertson v. Hoge, 83 Va. 124, 1 S. E. 667; Offtendinger v. Ford, 86 Va. 917, 12 S. E. 1.

See 4 Min. (3d Ed.) 575; Barton, L. Pr. (2d Ed.) 173, 960, 965; Sams, Attachment, 152; Barton, C. Pr. (2d Ed.) 631, 632, notes to preceding section; section 2825 and notes.

Sec. 6392. Issue and execution of attachment on a Sunday.—Such attachment may be issued or executed on a Sunday, if oath be made that the defendant is actually removing his effects on that day, or is, on that day, removing or about to remove out of this State with intent to change his domicile. (Code 1887, § 2970.)

Revisors' Note.—This section is taken from section 2970 of the Code of 1887. The latter part of the section relating to change of domicile is new.

Sec. 6393. Lien of attachment.—The plaintiff shall have a lien from the time of the levying of such attachment, or serving a copy thereof as aforesaid, upon the personal property of the principal defendant, when the same is in his possession, actual or constructive, and upon the personal property, choses in action, and other se-

Digitized by Google

curities of such defendant in the hands of, or owing by a co-defendant on whom it is so served; and on any real estate mentioned in such an endorsement by the officer on the attachment or summons as is prescribed by section sixty-three hundred and ninety, from the suing out of the same, but a holder in due course of negotiable paper shall have priority over an attachment levied thereon. (Code 1887, § 2971.)

Revisors' Note.—This section is taken from section 2971 of the Code of 1887 with no substantial change except the express provision as to negotiable paper. See in connection with this section, section 6469.

Protection of subsequent bona fide purchasers of real and personal estate.—Section 6469 applies to every attachment and the memorandum required by that section must be recorded and indexed, otherwise subsequent bona fide purchasers of real and personal estate for valuable consideration and without actual notice of the attachment will be protected; but the express provision as to negotiable paper found in the above section (6393) qualifies section 6469 to this extent, and although the memorandum may be recorded in the case of negotiable paper, yet **a holder in due course** has priority over an attachment levied thereon. The recordation of the memorandum in this particular case does not operate as constructive notice.

Lien— *Nature.*—The plaintiff does not acquire a clear and full lien upon the property in the garnishee's possession, but only such a lien as gives him a right to hold the garnishee personally liable for it or its value. Bickle v. Chrisman's Adm'x, 76 Va. 678.

The levy creates an inchoate lien upon the property attached, and when final judgment is rendered for the plaintiff, relates back to the levy, but it cannot by relation render a transaction unlawful which was not unlawful at the time it took place. Trimble v. Covington Co., 112 Va. 826, 72 S. E. 724.

The service of attachment on a garnishee creates a lien upon the debt owed by him to the defendant, and nothing more. It does not set up the relationship of creditor and debtor within sections 5186 and 5187, nor give the creditor the right to avoid a sale as not conforming to section 5187. Trimble v. Covington Co., 112 Va. 826, 72 S. E. 724.

The lien of attachment is perfected by the levy thereof, and the subsequent judgment or decree is simply the enforcement of a valid pre-existing lien. It is the creation of the lien and not its enforcement which is denounced by the bankrupt act. Jackson v. Valley Tie Co., 108 Va. 714, 62 S. E. 964.

The service of the attachment inhibits a transfer of debtor's effects from any of the defendants to other persons. Williamson v. Bowie, 6 Munf. 176; McKim v. Fulton, 6 Call 106; Smith v. Jenny, 4 Hen. & M. 440.

Extent.—The attachment only operates as a lien upon the debts and effects of the absent debtor in the hands of the home defendants against whom and upon whom it is served. Farmers' Bank v. Day, 6 Grat. 360.

On legacy.—Service of process of foreign attachment, on an executor before qualification, creates a lien on a legacy to an absent debtor in favor of the attaching creditor. Sandidge's Ex'r v. Graves' Ex'r, 1 Pat. & H. 101.

On real estate.—The indorsement on the process not mentioning or describing real estate, the attachment does not operate upon any such estate. Clark v. Ward, 12 Grat. 440. But where a bill positively avers that the debtor is a non-resident of the State, and has real estate within it, and in the jurisdiction of the court, fully sets out the demand, particularly describes the estate sought to be subjected to the payment of the debt, and contains all other necessary and proper allegations, there is no necessity and no occasion for any indorsement on the subpoena,

Digitized by Google

or any process of attachment in the case to give to the plaintiff any lien upon the estate for the payment of the debt. Cirode v. Buchanan, 22 Grat. 205, 217. Under section 6390 the endorsement should be on the attachment.

On rents.—Service of the attachment upon the home defendant (a lessee) only binds the rents due to the absent defendant (the lessor) at the time the attachment was served. Haffey v. Miller, 6 Grat. 454. See notes to section 6416.

When defeated.—Although the service of the process upon the executor created a lien upon the wife's legacy in favor of the attaching creditor of the husband, when the husband died pending the proceedings leaving his wife surviving him, the lien of the creditor was defeated, and the property belonged to the wife. Vance v. McLaughlin's Adm'r, 8 Grat. 289.

Public trust funds.—No lien can be obtained upon funds charged with a trust in the hands of a public officer of the State. Rollo v. Andes Ins. Co., 23 Grat. 509, 14 Am. Rep. 147; Foley v. Shriver, 81 Va. 568; Buck v. Guarantors' Liability Indemnity Co., 97 Va. 719, 34 S. E. 950.

On funds subject to forfeiture.—Where the amount earned by a contractor may be forfeited on or before a certain date, the service of an attachment before that date will create no lien on the amount, though no forfeiture afterwards occurs. B. & O. R. Co. v. Gallahue's Adm'rs, 14 Grat. 563.

Priorities—*Between partnership creditors.*—One partnership creditor cannot attach the partnership effects so as to obtain preference over the other partnership creditors where the partnership is dissolved, and the individual partners have been declared bankrupts. Lindsey v. Corkery, 29 Grat. 650.

Between attachment and wife's claim.—An attachment against the effects of the husband as an absconding debtor, levied before the institution of the suit by the wife for divorce, entitles the attaching creditor to be satisfied out of the attached effects in preference to the claim of the wife. Jennings v. Montague, 2 Grat. 350.

Between attachments.—Attachments first served have priority over attachments or other process at law subsequently levied. Erskine v. Staley, 12 Leigh 406; Farmers' Bank v. Day, 6 Grat. 360.

If proceeds of sale of attached property are paid to second attaching creditor, pending an appeal by the first, an action for money had and received will lie in his favor against second attaching creditor if his attachment is sustained. Caperton v. McCorkle, 5 Grat. 177.

Between attachment and execution.—The lien of fieri facias of prior date has priority over an attachment of subsequent date. Puryear v. Taylor, 12 Grat. 401.

Between attachment and deeds for lands.—Where the date of the service is not stated in return, the attachment is to be postponed to a deed made after the issuing of the process, but before the return day, though the attachment is for unpaid purchase money. Richeson v. Richeson, 2 Grat. 497.

A purchaser of land, without notice of an attachment which had been previously levied upon it, but which had not been docketed, holds the land free from the lien of the attachment. Cammack v. Soran, 30 Grat. 292.

Between attachment and deed to chattels.—An attachment sued out in Virginia, and levied on goods of a foreign debtor, has preference over a deed executed by the debtor, and not recorded at the time of the attachment. Smith v. Smith, 19 Grat. 545.

Between attachment and assignment of chose.—An assignment of a chose in action, though not recorded, will be good against a subsequent attachment upon such chose. Kirkland v. Brune, 31 Grat. 126; Tazewell's Ex'r v. Barrett, 4 Hen. & M. 259; Wilson v. Davisson, 5 Munf. 178; Schofield v. Cox, 8 Grat. 533.

Digitized by Google

Debtors in North Carolina granted all their property, including choses in action, due from their debtors in Virginia, and secured on land here. Before recordation of the deed in Virginia, the creditors of the grantors living in Virginia attached the choses and the land securing them. Held, the deed prevails over the attachment. Gregg v. Sloan, 76 Va. 497.

A creditor, at whose suit process of foreign attachment against an absent debtor is served on one of two executors, is entitled to priority of satisfaction out of a legacy, to the absent debtor, over an assignee of the legacy who claims under an assignment dated the day after the service of the attachment on the executor. Sandidge's Ex'r v. Graves' Ex'r, 1 Pat. & H. 101. But not so as to creditor who attached subsequent to assignment, though it is not shown that the assignment had been delivered to the assignee prior to the service of the process of foreign attachment. Id.

An attaching creditor of shares of stock acquires a claim superior to that of a subsequent bona fide purchaser for value without notice of the attachment. C. & O. R. Co. v. Paine, 29 Grat. 502; Shenandoah Va. R. Co. v. Griffith, 76 Va. 913. See first paragraph of these notes.

Between attachment and rent.—Distress for rent could not be made off the demised premises, and therefore an attachment served upon property found off the premises was preferred to it. Mosby v. Leeds, 3 Call 445. For present law on subject of distress for rent, see chapter 227, especially section 5523. "Distress may be levied on any goods of the lessee, or his assignee, or under-tenant, found on the premises, or which may have been removed therefrom not more than thirty days." See, also, section 6416.

Generally.—See Sams, Attachment, 156 et seq.; Barton, L. Pr. (2d Ed.) 977, 979; 4 Min. (3d Ed.) 158, 577, 658; Barton, C. Pr. (2d Ed.) 637, 667; 2 Min. (4th Ed.) 318; 7 Va. Law Reg. 451; Burks' Pl. & Pr., p. 712.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 106, section 9.

Sec. 6394. How any property seized under attachment restored; how the whole released; what bond to be given.—Any property levied on or seized as aforesaid, under any attachment, may be retained by or returned to the defendant or other person in whose possession it was, on his giving bond, with condition to have the same forthcoming at such time and place as the court may require; or the principal defendant may, by giving bond with condition to perform the judgment of the court, release from any attachment the whole of the estate attached. The bond in either case shall be taken by the officer serving the attachment, with surety, payable to the plaintiff, and in a penalty, in the latter case, at least double the amount or value for which the attachment issued, and in the former, either double the same or double the value of the property retained or returned, at the option of the person giving it. (Code 1887, § 2972.)

Revisors' Note.—This section is taken from section 2972 of the Code of 1887 without substantial change.

It seems that when bond is given by defendant, the lien of the attachment on the property is released. Magill v. Sauer, 20 Grat. 540.

The giving of a bond under this section does not debar the plaintiff from suing out other attachments for the same debt and having the same levied on other property of the defendant. Kaylor v. Davy Pocahontas Co., 118 Va. 369, 87 S. E. 551.

See 4 Min. (3d Ed.) 578, 659; Sams, Attachment, 195; Barton, L.

Digitized by Google

Pr. (2d Ed.) 948, 1050; Barton, C. Pr. (2d Ed.) 643, 645; Burks' Pl. & Pr., p. 710.

Form of forthcoming or delivery bond by garnishee on attachment for rent upon making the levy, 4 Min. (3d Ed.) 1624;* of delivery or forthcoming bond by claimant or defendant, Id. 1627; of replevy bond by claimant or defendant, Id.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 106, section 10.

See Gregory's Forms Nos. 400, 404, 483.

Sec. 6395. Where bond returned and filed; exceptions to bond.—Every such bond shall be returned by the officer to and filed by the clerk of the court in which the attachment is pending, or to which the attachment is returnable, and the plaintiff may, within thirty days after the return thereof, file exceptions to the same, or to the sufficiency of the surety therein. If such exception be sustained, the court shall rule the said officer to file a good bond, with sufficient surety, to be approved by it, on or before a certain day to be fixed by the court. If he fail to do so, he and his sureties in his official bond shall be liable to the plaintiff as for a breach of such bond; but the officer shall have the same rights and remedies against the parties to any bonds so adjudged bad as if he were a surety for them. (Code 1887, § 2973.)

Revisors' Note.—This section is taken from section 2973 of the Code of 1887 without substantial change.

Cited but not construed in Kaylor v. Davy Pocahontas Co., 118 Va. 369, 87 S. E. 551.

See Sams, Attachment, 199; 4 Min. (3d Ed.) 578, 659; Barton, C. Pr. (2d Ed.) 643.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 106, section 11.

See Gregory's Forms No. 483.

Sec. 6396. How interest and profits of property applied in certain cases.—When any attachment is sued out, although the property or estate attached be not replevied as aforesaid, the interest and profits thereof pending the attachment and before judgment, may be paid to the defendant, if the court deem it proper. (Code 1887, § 2974.)

Revisors' Note.—This section is taken from section 2974 of the Code of 1887, though the latter part of that section is omitted because sufficiently covered by section 6394.

Sec. 6397. How property to be kept; how sold, when expensive to keep or perishable.—Any property seized under any attachment and not replevied or sold before judgment shall be kept in the same manner as similar property taken under execution; but such as is expensive to keep or perishable, may be sold by order of the court, or of the judge thereof in vacation; such sale to be made in the same manner as if it were a sale under execution, except that when the claim for which the attachment was sued out is not yet due and payable, or the court or judge sees other reason for directing a credit, the sale under this or any other section of this chapter shall be on a credit until the time it is due and payable, or such other time as the court or judge may direct; and for the proceeds of sale,

Digitized by Google

bond with sufficient surety shall be taken, payable to the officer, for the benefit of the party entitled, and shall be returned by the officer to the court. (Code 1887, § 2975.)

Revisors' Note.—This section is taken from the Code of 1887, section 2975, without substantial change.

See Sams, Attachment, 201; Barton, L. Pr. (2d Ed.) 968, 970; 4 Min. (3d Ed.) 157, 578; Barton, C. Pr. (2d Ed.) 644, 677.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 106, section 13.

See Gregory's Forms Nos. 274, 275, 322, 323, 324, 325, 326, 484.

Sec. 6398. Proceedings against defendant for debts, etc., admitted to be due; when debtor may claim exemption out of amount due.—A defendant, who, at the time of service of the attachment, was alleged to be indebted to a principal defendant, or had in his possession personal property belonging to such principal defendant, shall appear in person and submit to an examination on oath touching such debt or personal property, or he may, with the consent of the court, file an answer in writing under oath, stating whether or not he was so indebted, and if so, the amount thereof and the time of maturity, or whether he had in his possession any personal property belonging to said principal defendant and, if so, the nature and value thereof. If it appear on such examination or by his answer that at the time of the service of the attachment, he was indebted to the principal defendant, or had in his possession or control any goods, chattels, money, securities or other effects belonging to the said defendant, the court may order him to pay the amount so owing by him, or to deliver such effects to the sheriff, sergeant, or other person designated by the court to receive the same, or such defendant may, with the leave of the court, give bond with sufficient security, payable to such person and in such penalty as the court shall prescribe, with condition to pay the amount owing by him, and have such effects forthcoming, at such time and place as the court may thereafter require, but the principal defendant, if a householder or head of a family, may claim that the amount so found owing from his co-defendant, or the personal property in his possession, shall be exempt from liability for the plaintiff's claim; and if it shall appear that the principal defendant is entitled to such exemption, then the court shall render a judgment against the defendant answering only for the excess, if any, beyond the exemption to which the principal defendant is entitled. An answer under oath under this section shall be deemed prima facie to be true. (Code 1887, § 2976.)

Revisors' Note.—This section is taken substantially from section 2976 of the Code of 1887 with some modifications.

Nature of proceeding.—Garnishment is purely a statutory proceeding, and cannot be enforced beyond the statutory authority under which it is resorted to. It can have no aid from the volunteer acts of the garnishee. Bickle v. Chrisman's Adm'x, 76 Va. 678, 691.

Garnishee cannot, by his silence or direct confession, authorize a

Digitized by Google

judgment against property in his hands as trustee or held by him in a fiduciary character. Id.

This section contemplates only a personal judgment against garnishee based upon proof or the confession of the garnishee that he has effects in his hands belonging to the debtor. Id.

An attaching creditor can have no judgment against a garnishee until he has first established his claim against his debtor. Withers v. Fuller, 30 Grat. 547; Gibson v. White, 3 Munf. 94.

Court may decree between the debtor and the garnishee what may be due from the latter to the former, after satisfying the claim of the plaintiff, but the evidence must arise from the pleadings and the proof between plaintiff and defendant. Templeton v. Fauntleroy, 3 Rand. 434.

See Kyle v. Connelly, 3 Leigh 719, as to how judgment shall be rendered for the plaintiff upon an attachment for debt contracted, but not due, when the attachment has been laid on goods of the debtor, and on money due him in the hands of garnishee, where the value of the effects attached is uncertain, and may exceed the plaintiff's claim.

Garnishee may interplead third person. C. & O. R. Co. v. Paine, 29 Grat. 502.

The service of process under this section creates a lien on the debt due by the garnishee to the defendant, but does not create the relation of creditor and debtor under sections 5186 and 5187 nor confer upon the creditor the right to attack a sale by the garnishee which did not conform to section 5187. Trimble v. Covington Co., 112 Va. 826, 72 S. E. 724.

Corporation as garnishee.—A corporation may be summoned and proceeded against as a garnishee; its answer is to be received in the only mode in which a corporation can answer, under its corporate seal. B. & O. R. Co. v. Gallahue's Adm'rs, 12 Grat. 655, 65 Am. Dec. 254.

Possession by garnishee.—Shares of stock may be properly considered, for the purpose of attachment, as in the possession of the corporation in which the shares are held, and such corporation may be properly summoned as garnishee in the case. C. & O. R. Co. v. Paine, 29 Grat. 502.

The home defendant denies that he has any effects of the absent debtor in his hands. He says that a tract of land which had belonged to the absent debtor had been purchased by himself and paid for. As, however, he had not paid the amount in money, and the accounts which he had endeavored to establish were not proved to the satisfaction of the commissioners and the court, the land was held liable. Kelly v. Linkenhoger, 8 Grat. 104.

When garnishee is indebted.—It seems that this section refers to the debts due from the garnishee to the defendant at the time of the service of the process upon the garnishee. B. & O. R. Co. v. Gallahue's Adm'rs, 12 Grat. 655, 65 Am. Dec. 254.

Quaere, whether the statute operates upon debts which, though owing at the time of service of the attachment upon the garnishee, are not then payable. Id. This question seems now to be settled in the affirmative by the above statute. 13 Va. Law J. 155. See, also, 10 Va. Law J. 1.

Money is left with one member of a firm on a special deposit, and in his absence it is entered on the books of the firm to the credit of the depositor. An attachment against the depositor is served on the other member of the firm. The attachment binds the money. Pulliam v. Aler, 15 Grat. 54.

Contract provides that contractor cannot recover the amount of the final estimate of work done until he has executed a release under seal. His attaching creditor at law has no greater right against the company than he, and therefore cannot recover the amount unless the contractor has executed the release. B. & O. R. Co. v. McCullough, 12 Grat. 595.

Where the amount earned by the contractor may be forfeited on or

Digitized by Google

before a certain date, the service of an attachment before that date will create no lien on the amount, though no forfeiture afterwards occurs. B. & O. R. Co. v. Gallahue's Adm'rs, 14 Grat. 563.

To what extent garnishee is liable.—The attachment is a lien upon the debts and effects of the absent debtor in the hands of the home defendant at the time the attachment was served, but does not extend to debts and effects which thereafter come into the hands of such defendant. Farmers' Bank v. Day, 6 Gratt. 360; Haffey v. Miller, 6 Grat. 454.

Where garnishee holds effects belonging to the defendant, he should be considered personally responsible only for so much as he may have consumed or appropriated to his own use or for the profits he may have received. Gibson v. White, 3 Munf. 94.

Attaching creditor should be decreed only so much of the debt garnisheed as is equal to his demand. Watts' Ex'rs v. Robertson, 4 Hen. & M. 442.

In equity the garnishee may set up any equitable defence which shows that in equity he owes no debt to the absent defendant. Glassell v. Thomas, 3 Leigh 113. Under the present chapter, the proceeding is an original proceeding, in the nature of a proceeding at law, with equity powers given wherever necessary to attain the ends of justice.

Garnishee is entitled to have his claim for keeping the attached property first satisfied out of the proceeds as against the attaching creditor. Williamson v. Gayle, 7 Grat. 152.

Garnishee will be compelled to pay interest unless he makes a legal tender or brings the money into court. Ross v. Austin, 4 Hen. & M. 502; Templeton v. Fauntleroy, 3 Rand. 434.

Payment to receiver.—A payment by the garnishee to receiver appointed by the court is a valid payment, and a discharge of his indebtedness as to the attaching creditor. Withers v. Fuller, 30 Grat. 547.

In appellate court.—Though the service of an attachment upon the garnishees and the return thereon be irregular, yet, if they appear and defend without objecting to the irregularity, they cannot make the objection in the appellate court. Pulliam v. Aler, 15 Grat. 54.

Generally.—As to situs of debt for purpose of garnishment, see 4 Va. Law Reg. 399, 471.

As to garnishment of a non-resident garnishee, see 4 Va. Law Reg. 727.

See 4 Min. (3d Ed.) 581; Barton, L. Pr. (2d Ed.) 836, 953, 969, 992, 993; Sams, Attachment, 203, et seq.; Barton, C. Pr. (2d Ed.) 621, 624, 637, 645, 649; Burks' Pl. & Pr., p. 705.

Discussed, 13 Va. Law J. 155.

Form of forthcoming or delivery bond by garnishee on attachment, when levy is made, 4 Min. (3d Ed.) 1625, 1627; of forthcoming or delivery bond by garnishee on attachment, after his liability is ascertained, Id. 1625, 1627.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 106, section 14.

See Gregory's Forms Nos. 271, 327, 328, 329, 402.

Sec. 6399. If a defendant indebted to, or having effects of the principal defendant fail to appear what court may do.—If the attachment be served on a defendant who the petition alleges is indebted to, or has in his possession effects of, the principal defendant, and he fail to appear, the court may either compel him to appear, or hear proof of any debt owing by him, or of effects in his hands belonging to said defendant in such attachment, and make such orders in relation thereto as if what is so proved had appeared on his examination. (Code 1887, § 2977.)

Revisors' Note.—This section is taken from section 2977 of the Code of 1887 with slight modifications.

Digitized by Google

Barton, L. Pr. (2d Ed.) 993; 4 Min. (3d Ed.) 582; Sams, Attachment, 211; Burks' Pl. & Pr., pp. 661, 662, 705.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 106, section 15.

See Gregory's Forms No. 270.

Sec. 6400. When plaintiff suggests that a defendant has not fully disclosed the debts owing by him, etc., how court to ascertain same.—When it is suggested by the plaintiff in any attachment that a co-defendant has not fully disclosed the debts owing by him, or effects in his hands belonging to the principal defendant in such attachment, the court, without any formal pleading, shall inquire as to such debts and effects, or, if either party demand it, shall cause a jury to be impaneled for that purpose, and proceed in respect to any such found by the court or the jury, in the same manner as if they had been confessed by such co-defendant. If the judgment of the court or verdict of the jury be in favor of such co-defendant, he shall have judgment for his costs against the plaintiff. (Code 1887, § 2978.)

Revisors' Note.—This section is taken from section 2978 of the Code of 1887 with slight modifications.

See Sams, Attachment, 210; 4 Min. (3d Ed.) 581; Barton, L. Pr. (2d Ed.) 837.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 106, section 16.

See Gregory's Forms No. 328.

Sec. 6401. When attachment not served other attachments to issue; when order of publication to be made.—When an attachment is returned not served on a principal defendant (whether levied on property or not) further attachments and summons may be issued until service is obtained on him, if he be a resident of this State. If for any cause service cannot be had in this State, upon affidavit of that fact, an order of publication shall be made against him. (Code 1887, § 2979.)

Revisors' Note.—This section is taken from section 2979 of the Code of 1887, but is materially changed. The object is to have service on the defendant in all cases if it can be had, whether the property has been levied on or not.

Jurisdiction cannot be acquired of the fund attached by service of process on the garnishee only, no legal service being had on the non-resident. Dorr's Adm'r v. Rohr, 82 Va. 359, 3 Am. St. Rep. 106.

For other cases under the former section, see Petty v. Frick Co., 86 Va. 501, 10 S. E. 886; Water Front C. Co. v. Smithfield Co., 114 Va. 482, 76 S. E. 937, 18 Va. L. Reg. 939 and note.

Sec. 6402. Who may make defense to attachment.—Any of the defendants in any such attachment, or any party to any forthcoming bond given as aforesaid, or the officer who may be liable to the plaintiff by reason of such bond being adjudged bad, or any person authorized by section sixty-four hundred and seven to file a petition, may make defense to such attachment, but the attachment shall not thereby be discharged, or the property levied on released. (Code 1887, § 2980.)

Digitized by Google

Revisors' Note.—This section is taken from section 2980 of the Code of 1887 with no substantial change.

See 4 Min. (3d Ed.) 157, 579, 659; Barton, L. Pr. (2d Ed.) 983; Sams, Attachment, 224 et seq.; Barton, C. Pr. (2d Ed.) 655, 656.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 106, section 18.

See Gregory's Forms No. 330; following section and notes.

Sec. 6403. What defense may be made to attachments.—Any defendant may show that the court is without jurisdiction to hear and determine the controversy.

The principal defendant, if not served with process, may appear specially and show that the attachment was issued on false suggestion or without sufficient cause, in which event the attachment shall be quashed.

Any person claiming title to, an interest in, or a lien upon the property attached, or any part thereof, after being admitted as a party defendant, if not already a defendant, and the principal defendant, may contest the liability of the principal defendant for the petitioner's claim, in whole or in part, by proof of any matter which would constitute a good defense by the principal defendant to an action at law on such claim, and may also show that the attachment was issued on false suggestion, or without sufficient cause. The principal defendant may also file set-offs as in an action at law.

Other defendants shall be limited to defenses personal to themselves, or which may prevent a liability upon them or their property.

The court in which an attachment is pending, or the judge of such court in vacation may, either before, or at any time after, an attachment has been returned, on motion of the principal defendant, or any defendant claiming title to, an interest in, or a lien upon the property attached, or any part thereof, after reasonable notice to the attaching creditor, hear testimony and quash the attachment, if of opinion that the attachment is invalid on its face, or was issued on false suggestion, or without sufficient cause. When the attachment is properly sued out, and the case is heard upon its merits, if the court be of opinion that the claim of the plaintiff is not established, final judgment shall be given for the defendant. In either case, he shall recover his costs, and there shall be an order for the restoration of the attached effects. (Code 1887, § 2981.)

Revisors' Note.—This is taken from section 2981 of the Code of 1887, but there are some material changes. The principal defendant is allowed to file set-offs as in an action at law. Some doubt was formerly expressed on this subject. Defendants who are mere garnishees and have no interest in the subject-matter ought not to be allowed to defend the attachment. This right is limited to the principal defendant, and to parties who claim title to, an interest in, or lien upon, the property attached. Garnishees should not be allowed to dispute either the plaintiff's claim or the right to sue out the attachment, and especially they should not be allowed to show that the attachment was issued on false suggestion or without sufficient cause. They have no interest in these

Digitized by Google

matters. They are allowed to make any defense which is personal to themselves, or which will prevent a liability upon them or their property. This right is accorded them, but other defenses are denied to such defendants.

Jurisdiction.—The levy of the attachment is the foundation of the suit. If the property attached be not the defendant's property, the court is without jurisdiction. Culbertson's Representative v. Stevens, 82 Va. 406, 4 S. E. 607; Craig v. Williams, 90 Va. 500, 18 S. E. 899, 44 Am. St. Rep. 934. Officer's return must show sufficient levy. Robertson v. Hoge, 83 Va. 124, 1 S. E. 667.

Though the defendant has given a forthcoming bond, the court has jurisdiction to abate the attachment. Claflin v. Steenbock, 18 Grat. 845.

Appearance to move to quash an attachment on account of irregular service of process is not such appearance to the action as waives alleged defects. Petty v. The Frick Co., 86 Va. 501, 10 S. E. 886.

Sufficient cause.—As to sufficiency of attachment itself, the issue is not what the plaintiff may have believed or had probable cause to believe, but the actual existence of the facts in the affidavit (now petition. See section 6383). Sublett v. Wood, 76 Va. 318; 1 Va. Law Reg. 232.

The question is whether, upon all the evidence, there is reasonable ground or probable cause to believe the defendant was doing the act which authorized the attachment, and not whether the facts as they appear to the affiant, though only a small part of the facts of the case, afforded him reasonable ground for such belief. Claflin v. Steenbock, 18 Grat. 845.

For the difference between sufficient and probable cause, see 1 Va. Law Reg. 232.

Proceedings invalid upon their face.—The remedy by attachment against the estate of a non-resident is wholly statutory, harsh in its operation, and the proceeding must show upon its face that the requirements of the statute have been wholly complied with. McAllister v. Guggenheimer, 91 Va. 317, 21 S. E. 475.

The court should, of its own motion, dismiss an irregular attachment when there has been no appearance by the non-resident debtor; and no personal service upon him. McAllister v. Guggenheimer, 91 Va. 317, 21 S. E. 475; Mantz v. Hendley, 2 Hen. & M. 308.

The return must show that the attachment was levied on the property of the defendant in order to make it valid. Robertson v. Hoge, 83 Va. 124, 1 S. E. 667; Offtendinger v. Ford, 86 Va. 917, 12 S. E. 1.

If the affidavit was defective, the remedy was by motion to quash the attachment. Anderson v. Johnson, 32 Grat. 558. See section 6382, which provides that "The principal defendant and any other defendant who seeks to defeat the petitioner's attachment, may demur to the petition," etc. In Northern Neck Bank v. Gilbert P. Co., 114 Va. 658, 77 S. E. 451, it was held under the former law that the court was not precluded from abating the attachment because at a former stage of the proceeding a motion to abate was overruled, if upon further consideration it was satisfied that the writ had been issued upon an insufficient affidavit.

Subsequent attaching creditor.—The subsequent attaching creditor may contest the right of the first attaching creditor to recover. McCluny v. Jackson, 6 Grat. 96.

Vacation orders.—A judgment in vacation was not final, and did not supersede the defendant's right to make defence at the trial in term. Dunlap v. Dillard, 77 Va. 847.

The power given to the circuit judge in vacation to quash the attachment did not conflict with any other provision of this chapter. Dunlap v. Dillard, 77 Va. 847.

Burden of proof.—On motion to abate, the onus is on the plaintiff to show that the attachment was issued on sufficient cause, and he may therefore be required to introduce his evidence first. Wright v. Rambo,

Digitized by Google

21 Grat. 158; Sublett v. Wood, 76 Va. 318; Burruss v. Trant, 88 Va. 980, 14 S. E. 845.

Fraudulent intent.—Fraudulent intention must be proved. It is not sufficient that creditors believe and allege its existence. Wingo v. Purdy, 87 Va. 472, 12 S. E. 970; Burruss v. Trant, 88 Va. 980, 14 S. E. 845.

Mere failure to record a deed of trust is not evidence of such intent. Burruss v. Trant, 88 Va. 980, 14 S. E. 845.

Plea in abatement.—A plea in abatement to an attachment under the former law ought not to have concluded with praying judgment if the plaintiff ought to have and maintain his attachment and action, but only that the attachment be quashed. Mantz v. Hendley, 2 Hen. & M. 308. For pleadings in attachments under this chapter see section 6382. Motion to quash, see section 6403.

Final judgment.—The authority given the court to enter judgment abating the attachment may be exercised at any time before a final judgment has been entered disposing of the property attached. Northern Neck Bank v. Gilbert P. Co., 114 Va. 658, 77 S. E. 451.

Under the former law a final judgment in an action without making any disposition of the ancillary proceeding by attachment necessarily operated as a release of the attached effects. Kaylor v. Pocahontas Co., 118 Va. 369, 87 S. E. 551.

The case cited in the preceding paragraph could not arise under the present law, as the proceeding is not ancillary in any case. For attachments in connection with pending suits or actions see sections 6410 and revisors' note.

Appellate court.—If affidavit (now petition) be not objected to in lower court, it cannot be objected to in the appellate court. Anderson v. Johnson, 32 Grat. 558.

If the garnishees appear to the action and defend it without objecting to the irregularity in the service or return, they cannot afterwards make the objection in the appellate court. Pulliam v. Aler, 15 Grat. 54.

As it appears from the record that the trial court had no jurisdiction to issue an attachment, the objection may be raised in the appellate court for the first time. Furst v. Banks, 101 Va. 208, 8 Va. Law Reg. 821, 43 S. E. 360.

Objections to the irregularity of attachment proceedings may be taken advantage of in appellate court, although not raised in the trial court. McAllister v. Guggenheimer, 91 Va. 317, 21 S. E. 475.

Upon a foreign attachment in chancery, the home defendant could not in the appellate court contest the justice of a decree as against the absent debtor, but only so much of it as affected himself. Heffernan's Adm'r v. Grymes' Adm'r, 2 Leigh 512.

Generally.—As to tenant removing his effects from leased premises, see section 6416 and notes.

See Sams, Attachment, 224 et seq.; Barton, L. Pr. (2d Ed.) 983; 4 Min. (3d Ed.) 156, 579, 660; Barton, C. Pr. (2d Ed.) 657; Burks' Pleading and Practice, pp. 718, 721, 724; Littell v. Julius Lansburg Furniture & Carpet Co., 96 Va. 542, 32 S. E. 63.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 106, section 19.

See Gregory's Forms Nos. 272, 273, 363.

Sec. 6404. When attachment to be dismissed; when cause to be retained and proceeded to judgment.—If the principal defendant has not appeared generally, nor been served with process, and the sole ground of jurisdiction of the court is the right to sue out the attachment, and this right be decided against the petitioner, the petition shall be dismissed at the costs of the petitioner; but if the plaintiff's claim be due at the hearing, and the court would otherwise have jurisdiction of an action against such defendant for the

Digitized by Google

cause set forth in the petition, and said defendant has appeared generally, or been served with process, it shall retain the cause and proceed to final judgment in like manner as if it had been a motion matured for hearing under section six thousand and forty-six.

Revisors' Note.—This section is new, and allows the court to proceed to judgment against the defendant if he has appeared generally or been served with process, although the attachment may be quashed.

The attaching creditor proving his debt was entitled to a personal decree against his absent debtor, though the property attached might be adjudged to other persons. Schofield v. Cox, 8 Grat. 533.

If absent debtor appeared there could be both a personal decree and a decree subjecting the attached effects. O'Brien v. Stephens, 11 Grat. 610.

Sec. 6405. Judgment, etc., of court when claim of plaintiff established; real estate to be sold last; sale thereof under attachment at law.—If the claim of the plaintiff be established, judgment shall be rendered for him, and the court shall dispose of the specific property levied on, as may be right, and order the sale of any other effects or real estate which shall not have been previously released or sold under this chapter, and direct the proceeds of sale, and whatever else is subject to the attachment, including what is embraced by such forthcoming bond, to be applied in satisfaction of the judgment. But no real estate shall be sold until all other property and money subject to the attachment have been exhausted, and then only so much thereof as is necessary to pay the judgment. Upon a sale of real estate, under an attachment the court shall have the same powers and jurisdiction, and the like proceedings thereon may be had, as if it were a sale of real estate by a court of equity exercising general equity powers. (Code 1887, § 2982.)

Revisors' Note.—This section is taken from section 2982 of the Code of 1887 without substantial change.

Establishment of plaintiff's claim.—An attaching creditor can have no judgment against a garnishee until he has first established his claim against his debtor. Withers v. Fuller, 30 Grat. 547.

Judgment should be first entered against the debtor, and then the garnishee should be ordered to pay it. George v. Blue, 3 Call 455 (2d Ed.) 394; Gibson v. White, 3 Munf. 94.

Personal decree.—The attaching creditor, having established his debt, was entitled to a personal decree against the absent debtor, though the whole property attached was exhausted in paying the debt of the home defendant. Williamson v. Gayle, 7 Grat. 152; Schofield v. Cox, 8 Grat. 533. See Hairston v. Medley, 1 Grat. 96. See section 6404, as to when cause shall be retained and proceeded to judgment.

Priorities.—The fund arising from the sale should be applied according to the priorities of the liens upon the thing sold. Schofield v. Cox, 8 Grat. 533.

Security.—Decree (now judgment) should provide for the plaintiff's giving security as required by section 6406. Watts' Ex'rs v. Robertson, 4 Hen. & M. 442.

Interest.—If the attachment demands only principal sum and costs, the court cannot give judgment for interest. George v. Blue, 3 Call 455 (2d Ed.) 394.

Sale to satisfy instalments.—Where the debt of the attaching creditor is payable in instalments, some of which have and others have not fallen due at the time of the decree (now judgment), the court should

Digitized by Google

direct the sale of only so much of the subject as is necessary to satisfy the instalments already due. Watts v. Kinney, 3 Leigh 272, 23 Am. Dec. 266.

Delivery of property.—The court's order for the defendant's delivery of the attached and replevied property to the sheriff should be reasonable as to the time and place of delivery. Dunlap v. Dillard, 77 Va. 847.

Generally.—It was error to decree for plaintiff without affidavit of defendant's non-residence. Brien v. Pittman, 12 Leigh 379.

See Sams, Attachment, 247 et seq.; 4 Min. (3d Ed.) 580, 660; Barton, L. Pr. (2d Ed.) 975, 976; Barton, C. Pr. (2d Ed.) 646, 677.

The question noted by the reporter in Lancaster v. Wilson, 27 Grat. 624, as to the jurisdiction of the court in a common-law cause to make sale and conveyance of real property under an attachment, as an "important practical question," has been set at rest by the last clause of this section. 13 Va. Law J. 169.

Discussed, 1 Va. Law J. 587.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 106, section 20.

See Gregory's Forms Nos. 274, 322, 323, 324, 325, 326, 327. 328, 329.

Sec. 6406. When plaintiff not to have benefit of the preceding section until he gives bond.—If the principal defendant has not appeared or been served with a copy of the attachment ten days before such judgment, the plaintiff shall not have the benefit of the preceding section unless and until he shall have given bond with sufficient surety in such penalty as the court shall approve, with condition to perform such future order as may be made upon the appearance of said defendant and his making defense. If the plaintiff fail to give such bond in a reasonable time, the court shall dispose of the estate attached, or the proceeds thereof, as to it shall seem just. (Code 1887, § 2983.)

Revisors' Note.—This section is taken from section 2983 of the Code of 1887. The only change made in this section is to cut down the time for the service of the attachment from sixty days to ten days.

Bond required by this section need not be given after time mentioned in section 6411 has expired. Ross v. Austin, 4 Hen. & M. 502.

If a copy of the attachment was served on the defendant sixty (now ten) days before a decree (now judgment) for the sale of the land attached, sale may be made without requiring the bond required by the statute. Anderson v. Johnson, 32 Grat. 558.

See 4 Min. (3d Ed.) 580, 660; Barton, L. Pr. (2d Ed.) 976; Sams, Attachment, 254; Barton, C. Pr. (2d Ed.) 647, 678; Burks' Pl. & Pr., pp. 712, 726, 727.

Sec. 6407. How and when claims of other persons to the property tried.—Any person may file his petition, at any time before the property attached as the estate of a defendant is sold, or the proceeds of sale paid to the plaintiff under the judgment, disputing the validity of the plaintiff's attachment thereon, or stating a claim thereto, or an interest in or lien on the same, under any other attachment or otherwise, and its nature, and upon giving security for costs, the court, without any other pleading, shall inquire into such claim, or, if either party demand it, impanel a jury for that purpose, and if it be found that the petitioner has title to, or a lien on, or any interest in, such property, or its proceeds, the court shall make such order

Digitized by Google

as may be necessary to protect his rights, the costs of which inquiry shall be paid by either party, at the discretion of the court. (Code 1887, § 2984.)

Revisors' Note.—This is taken from section 2984 of the Code of 1887 without substantial change.

Object of section.—This section was intended for the protection of the rights of the third person, and not of the plaintiff in the attachment; therefore a plaintiff in attachment who has a deed of trust on the property attached cannot unite with the trustees in the deed, and come into the attachment suit by petition, and ask to have the trust property delivered to the trustee. Littell v. Julius Lansburg Furniture & Carpet Co., 96 Va. 542, 32 S. E. 63.

Who may appear.—A subsequent attaching creditor may appear to the first attachment, and either in his own name or in the name of the debtor contest the right of the first attaching creditor to recover. McCluny v. Jackson, 6 Grat. 96.

Plaintiff in one attachment may enjoin the sale of the attached effects under order in a subsequent attachment. Moore v. Holt, 10 Grat. 284.

Proper issue.—The proper issue to be tried is "whether or not petitioner has any title to, lien on, or interest in the attached property or its proceeds." Starke v. Scott, 78 Va. 180.

Garnishee may interplead third person.—Where garnishee files an affidavit with its answer alleging that some third person claims the property, the court should require such third person to appear and state the nature of his claim, and maintain or relinquish the same. If in such procedings the stock attached should appear to be liable to the lien of the attachment, it ought to be sold for the satisfaction of the same, under an order of the court made for that purpose, but there should be no judgment against the company unless the lien of the attaching creditor was lost by its action. C. & O. R. Co. v. Paine, 29 Grat. 502.

Hearing by consent.—Where, in attachment against property of nonresident debtors, who have not been served with process personally or by publication, complainants consent to the hearing of the motion, by claimant of the property, to abate the attachment, decree abating the attachment, and declaring the estate not to belong to the said debtors, was not premature or erroneous. Kern v. Wyatt, 89 Va. 885, 17 S. E. 549.

Jurisdiction.—When the attachment is quashed court has no jurisdiction to pass upon a petition. Littell v. Julius Lansburg Furniture & Carpet Co., 96 Va. 542, 32 S. E. 63.

Generally.—Error in deciding the ownership of attached property is one of fact, and could be corrected only by appeal, and not by bill of review. Kern v. Wyatt, 89 Va. 885, 17 S. E. 549.

See Sams, Attachment, 229; Barton, L. Pr. (2d Ed.) 983, 987; 4 Min. (3d Ed.) 158, 578, 661; Barton, C. Pr. (2d Ed.) 652; Burks' Pl. & Pr., pp. 710, 717, 718, 725.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 106, section 23.

See Gregory's Forms Nos. 224, 330.

Sec. 6408. Levy of attachment on effects, etc., of defendant in hands of officer under process; lien thereof.—Where an officer has in his possession or custody money or effects of the defendant held under an attachment executed, or other legal process, a delivery to such officer of an attachment under this chapter shall be deemed a levy thereof as to such money or effects, and constitute a lien thereon from the time of such delivery. (Code 1887, § 2985.)

Digitized by Google

See Sams, Attachment, 139; Barton, L. Pr. (2d Ed.) 830, 957, 965, 993.

Discussed, 9 Va. Law J. 1.

Sec. 6409. Amendments.—Such amendments shall be allowed of the petition, answer, grounds of defense, and of any of the other proceedings in the attachment as shall be conducive to the attainment of the ends of substantial justice, and upon such terms as to continuance and costs as may seem proper. The amendment when made, shall, as against the principal defendant, and as to claims against him existing at the time the attachment was issued, relate back to the time of the levy of the attachment, unless otherwise directed. No attachment shall be quashed or dismissed for mere formal defects.

Revisors' Note.—This is a new section. There seems to be no good reason why a creditor who is proceeding by way of attachment should not be allowed to amend his pleadings as against his debtor and other creditors as well as any other litigant. If he has substantially complied with the law he should not be put out of court for merely formal defects. Nor is any good reason perceived why one creditor should not, as against another creditor, or against his debtor, be allowed to amend his pleadings, and when he does not make a new case, why the amendment should not, as against those parties, relate back to the levy of the attachment. The object of this section is to secure these rights to the attaching creditor.

Sec. 6410. Attachments in connection with pending suits or actions.—If an attachment be desired in connection with a pending suit or action, a petition for an attachment may be filed in the same court in which such suit or action is pending, and the procedure thereon shall be the same as if no suit or action were pending; but the attachment may be heard along with any suit in equity relating to the same subject so far as may be necessary for the convenient administration of justice. The suing out of an attachment in connection with a pending suit or action shall not be deemed the prosecution of a second action for the same cause.

Revisors' Note.—This section is new, and provides for proceedings on attachments sued out in connection with pending suits or actions. While the attachment is a separate and independent statutory proceeding, provision is made for it to be heard along with the pending suit, and it is declared that it shall not be deemed the prosecution of a second action for the same cause. It simply provides the means of issuing an attachment in a pending suit or action.

Sec. 6411. When and how debtor may have case reheard; protection of purchaser.—If a defendant, against whom, on publication, judgment is rendered under any such attachment, or his personal representative, shall return to or appear openly in this State, he may, within one year after a copy of such judgment shall be served on him at the instance of the plaintiff, or within five years from the date of the judgment, if he be not so served, petition to have the proceedings reheard. On giving security for costs, he shall be admitted to make defense against such judgment, as if he had appeared in the case before the same was rendered, except that the title of

Digitized by Google

any bona fide purchaser to any property, real or personal, sold under such attachment, shall not be brought in question or impeached. But this section shall not apply to any case in which the petitioner, or his decedent, was served with a copy of the attachment more than ten days before the date of the judgment, or to any case in which he appeared and made defense. (Code 1887, § 2986.)

Revisors' Note.—This section is taken from section 2986 of the Code of 1887, with no substantial change, except to change sixty days to ten days in the last sentence.

Absent defendant cannot appeal.—An absent defendant against whom a decree (now judgment) has been made cannot appeal from the decree; his only remedy is that provided by the statute. Barbee v. Pannill, 6 Grat. 442; Platt v. Howland, 10 Leigh 507 (2d Ed.) 531. But if the decree (now judgment) is a joint decree against two, and is erroneous, the appellate court will upon the appeal of the absent defendant, who did appear and answer, reverse the decree as to both. Lenow v. Lenow, 8 Grat. 349.

When defendant may appear—Procedure upon appearance.—A defendant in a foreign attachment suit may appear at any time pending the suit, and have the cause reheard, tendering security for the costs. Anderson v. Johnson, 32 Grat. 558. But the court will not set aside the decree (now judgment) so soon as the answer is filed, but will proceed to a hearing. Platt v. Howland, 10 Leigh 507 (2d Ed.) 531.

Failure to give security.—If plaintiff, a non-resident, fail to give security within the time limited, his bill should be dismissed, and it is error to proceed with the case. Anderson v. Johnson, 32 Grat. 558.

On reversing the decree (now judgment) and remanding the cause, the appellate court will direct that the plaintiff be allowed a reasonable time to comply with the order requiring security. Anderson v. Johnson, 32 Grat. 558.

Service of process on attachment.—The last clause of this section refers to such service in the proceedings in the suit, and not to a service out of the suit and out of the State, and a service out of the suit and out of the State can have no greater effect than an order of publication. Anderson v. Johnson, 32 Grat. 558; Smith v. Chilton, 77 Va. 535.

Generally.—This section only applies to so much of the decree (now judgment) as operates upon the estate or effects of the absent debtor subject to the jurisdiction of the court, and has no application to so much of the decree as acts in personam. Rootes' Ex'r v. Tompkins' Trustees, 3 Grat. 98.

A decree in personam against an absent debtor cannot be collaterally assailed. Rootes' Ex'r v. Tompkins' Trustees, 3 Grat. 98.

Non-resident defendant may, under proper circumstanes, reopen the case, and remove the same to the United States court. Smith v. Life Asso., 76 Va. 380.

See Barton, L. Pr. (2d Ed.) 1000; Sams, Attachment, 261 et seq.; 4 Min. (3d Ed.) 661; Barton, C. Pr. (2d Ed.) 654; Burks' Pleading and Practice, pp. 727, 731.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 106, section 25.

Sec. 6412. Order of court on rehearing or new trial; restitution to defendant.—On any rehearing or new trial had under the preceding section, the court may order the plaintiff in the original attachment to restore any money paid to him under such judgment to the said defendant, if living, or if dead, to the heir or personal representative of such defendant, as the same may be, the proceeds of real or personal estate, and enter a judgment therefor against him,

Digitized by Google

or it may confirm the former judgment; and in either case adjudge the costs to the prevailing party. (Code 1887, § 2987.)

Revisors' Note.—This section is taken from section 2987 of the Code of 1887 without substantial change.

See 4 Min. (3d Ed.) 661; Barton, L. Pr. (2d Ed.) 1001; Sams, Attachment, 265; Bartón, C. Pr. (2d Ed.) 654.

Sec. 6413. When appeal-bond given, property to be delivered to owner.—Where judgment in favor of the plaintiff is rendered in any case in which an attachment is sued out, and on appeal therefrom an appeal-bond is given, with condition to prosecute the appeal with effect or pay the debt, interest, costs, and damages, as well as the costs of the appeal, the officer, in whose custody any attached property is, shall deliver the same to the owner thereof. (Code 1887, § 2989.)

Revisors' Note.—This section is taken from section 2989 of the Code of 1887 without substantial change.

The attachment lien is in no manner affected or impaired by the execution of the bond. It can only be released by giving the bond required by section 6394. Magill v. Sauer, 20 Grat. 540.

See Sams, Attachment, 266; Barton, L. Pr. (2d Ed.) 174, 969; Barton, C. Pr. 644.

Sec. 6414. Bonds may be given by any person.—Any bond authorized or required by any section of this chapter may be given either by the party himself or by any other person. (Code 1887, § 2990.)

See notes to section 6384; Sams, Attachment, 185; 4 Min. (3d Ed.) 576; Barton, C. Pr. (2d Ed.) 635, 642; Offterdinger v. Ford, 92 Va. 646, 24 S. E. 246.

Sec. 6415. How attachment for claim not exceeding twenty dollars obtained from and proceeded in before a justice; the proceeding when levied on real estate.—Any person having a claim not exceeding twenty dollars (exclusive of interest) which is cognizable by a justice under section six thousand and fifteen, may, if such claim is due and payable, and there exists any one or more of the first three grounds of attachment specified in section sixty-three hundred and seventy-nine, obtain an attachment therefor. Such attachment shall be issued by a justice upon the petition on oath by such person, his agent or attorney, conforming as near as may be to the petition prescribed by section sixty-three hundred and eighty-three, stating the nature of his claim and the ground of attachment relied on. The attachment shall be against the specific property, if any, claimed, and against the estate of the principal defendant, if the claim be not for specific property, directed to the sheriff, sergeant, or constable of any county or city, and shall be made returnable before the justice issuing the attachment, or some other justice of the same county or city, and thereupon such proceedings may be had before the justice as would, if the claim exceeded twenty dollars (exclusive of interest) be had before a court, except that the proceedings shall in all cases be without formal pleadings, and no order of publication shall be published in any newspaper, but if the defendant cannot

Digitized by Google

be served with process, the attachment shall be posted at two or more public places in the county or city in which the attachment is sued out at least ten days before a judgment is entered or order of sale made of the attached effects. The justice shall try and decide the case without a jury. The attachment may be served on a corporation as process and notice may be served under sections six thousand and sixty-three and six thousand and sixty-four. All bonds taken under such attachment shall be filed with the clerk of the circuit court of the county or corporation court of the city in which the justice qualified. If such attachment be levied on real estate, the justice shall take no further cognizance of it, but it shall be removed by him, together with all papers and proceedings in the case, into any court to which an attachment issued by a justice for a claim exceeding twenty dollars (exclusive of interest) might have been returnable, to be further proceeded with in said court as if it had been originally cognizable therein. (Code 1887, § 2988.)

Revisors' Note.—This section is taken from section 2988 of the Code of 1887 without substantial change.

The petition for an attachment under this section should conform as near as may be to the petition prescribed by section 6383.

Sec. 6416. Against tenant removing his effects from leased premises.—On complaint by any lessor, his agent or attorney, to a justice of the county or city, or the clerk of the circuit court of the county or the clerk of the circuit or of any city court of the city, in which the leased premises or a part thereof may be, that any person liable to him for rent intends to remove, or is removing, or has, within thirty days, removed his effects from such premises otherwise than in the usual course of trade, if such lessor, his agent or attorney, make oath to the truth of such complaint to the best of his belief and to the rent which is reserved (whether in money or other thing), and will be payable within one year, and the time or times when it will be so payable, and also make oath either that there is not, or he believes, unless an attachment issues, that there will not be left on such premises property liable to distress sufficient to satisfy the rent so to become payable, such justice or clerk, as the case may be, shall issue an attachment for the said rent against such goods as might be distrained for the same if it had become payable, and against any other estate of the person so liable therefor. The attachment shall also summon the defendant to answer the attachment. (Code 1887, § 2962.)

Revisors' Note.—This section is taken from section 2962 of the Code of 1887. The last sentence is new.

Under-tenant.—The goods of an under-tenant are liable to a writ of attachment under this section. (See section 5523 and revisors' note.) Bernard v. McClanahan, 115 Va. 453, 79 S. E. 1059.

Term must have commenced.—Lessor is not entitled to attachment under this section before the commencement of the term for which the rent is to be paid. Johnson v. Garland, 9 Leigh 149.

In such case, notwithstanding the lessee has entered into a recogni-

Digitized by Google

zance to pay the rent, the court should, on his motion, quash the attachment and the recognizance also. Johnson v. Garland, 9 Leigh 149.

Removals.—This section formerly applied as well to removals in the regular course of business as to other removals. Offterdinger v. Ford, 92 Va. 636, 24 S. E. 246; Clinch River Mineral Co. v. Harrison, 91 Va. 122, 21 S. E. 660, note 1 Va. Law Reg. 37, 45; 7 Va. Law Reg. 77. Now the removal must be "otherwise than in the usual course of trade."

Intention to remove.—The intention of a trustee in a deed of trust given by the lessee to remove property on the leased premises without securing a year's rent, or without leaving sufficient property liable to levy for a year's rent, is of itself sufficient cause for suing out an attachment. Offterdinger v. Ford, 92 Va. 636, 24 S. E. 246.

Goods removed more than thirty days.—There is no authority for levying either a distress warrant or an attachment for rent upon property which has been removed from the leased premises more than thirty days. Dime Deposit Bank v. Wescott, 113 Va. 567, 75 S. E. 179.

Action at law—Effect on attachment.—The fact that the action at law referred to in a clerk's certificate in an attachment under this section was never matured for hearing does not render the attachment void, for the attachment was good as a remedy for the collection of rent to become due under a contract, whether there was an action at law to recover it or not. Bernard v. McClanahan, 115 Va. 453, 79 S. E. 1059.

Defenses.—See note, 10 Va. L. Reg. 664.

Generally.—Cited but not construed in Pickens v. Daniel, 52 S. E. 213; Ailstock v. Moore, 104 Va. 565, 52 S. E. 213.

See Sams, Attachment, 21 et seq.; Barton, L. Pr. (2d Ed.) 925, 933, 950, 968; 4 Min. (3d Ed.) 155, 573, et seq.; Burks' Pleading and Practice, pp. 39, 43, 678, 685, 689, 695.

Form of affidavit for attachment for rent, 4 Min. (3d Ed.) 1621; of attachment for rent, Id.

Distress for rent, see chapter 227.

See Gregory's Forms Nos. 274, 420, 421, 422, 423, 468, 469, 470, 471, 627, 628, 629, 630.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 106, section 3.

Sec. 6417. Where an attachment for rent for twenty dollars or more returnable.—If an attachment issued under the preceding section be for the sum of twenty dollars or more, it shall be returnable to the first day of the next term of the circuit court of the county, or of the circuit or any city court having jurisdiction of the subject matter, of the city, in which such justice or clerk resides, and the proceedings thereafter shall conform to the provisions of this chapter applicable to attachments in court. (Code 1887, § 2965.)

Revisors' Note.—This section is taken from section 2965 of the Code of 1887, though the provision as to proceedings after the return of the attachment is new.

For case under former statute, see Kyle v. Connelly, 3 Leigh 719.

Sec. 6418. Where attachments for rent for less than twenty dollars returnable, and how proceeded in.—If an attachment issued under section sixty-four hundred and sixteen be for a sum less than twenty dollars, it shall be returnable before some justice of the county or city in which it was issued on a day to be specified in the attachment, not more than ninety days from the date of the issue thereof, and such proceedings may be had before the justice as would, if the claim exceeded twenty dollars, be had before a court,

Digitized by Google

except that the proceedings shall in all cases be without formal pleadings, and the justice shall try and decide the case without a jury. If such attachment be levied on real estate, the justice shall take no further cognizance of it, but shall remove the same, together with all the papers and proceedings in the case, into such court as would have had jurisdiction of the same if the amount had exceeded twenty dollars, and be there further proceeded with as if it had been originally cognizable therein. No order of publication shall be published in any newspaper in an attachment heard by a justice, but if the defendant cannot be served with process the attachment shall be posted at two or more public places in the neighborhood of the leased premises, at least ten days before judgment is entered, or an order of sale made of the attached effects. (Code 1887, § 2988.)

Revisors' Note.—This section is taken from section 2988 of the Code of 1887 with some changes and omissions to adapt it to the new procedure herein. The last sentence with reference to the order of publication is new.

Sec. 6419. When and how bail required of defendant leaving the State; form of writ.—If, in any action or suit, the plaintiff, his agent or attorney, shall make affidavit before the court in which it is pending, or the judge thereof in vacation, or the clerk thereof, stating that the plaintiff has cause of action or suit against a defendant, the amount and justice of his claim, and that there is probable cause for believing that the defendant is about to quit this State, unless he be forthwith apprehended, and shall file in the office of said clerk the bond required by the following section, it shall be the duty of said clerk to issue a writ of capias ad respondendum against the defendant, the form of which shall, in a suit in equity as well as in an action at law, be, as nearly as may be, assimilated to the form of such writ as it was used at law before July 1, 1850. (Code 1887, § 2991.)

Revisors' Note.—This section is taken in the main from section 2991 of the Code of 1887, but very material changes are made in it. The form of procedure is simplified by making it the duty of the clerk, when the affidavit is filed, at once to issue the capias. The provision with reference to the bond is put in this section instead of the following section, and the amount for which the defendant is to be held to bail is fixed by section 6421.

For history of this statute, see Claflin v. Steenbock, 18 Grat. 849.

To justify the holding of parties to bail, plaintiff must believe when he makes the affidavit that the facts sworn to therein are true, and he must have been justified in so believing from the circumstances then known to him. Forbes v. Hagman, 75 Va. 168; Spengler v. Davy, 15 Grat. 381; see Scott v. Shelor, 28 Grat. 891.

When defendant has been held to bail, the relation of principal and bail between the defendant and his surety is established, and the surety may surrender his principal. Levy v. Arnsthall, 10 Grat. 641.

See Sams, Attachment, 275 et seq.; 4 Min. (3d Ed.) 632; Barton, L. Pr. (2d Ed.) 1007; Burks' Pleading and Practice, pp. 43, 730; 7 Va. Law Reg. 529, 530.

Form of capias ad respondendum, 4 Min. (3d Ed.) 1634. See 11 Va. L. Reg. 1050; Gregory's Forms Nos. 267, 473, 632.

Digitized by Google

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 106, section 30.

Sec. 6420. Plaintiff to give bond before suing out capias.—Before a capias is sued out of the clerk's office in any action or suit, the plaintiff in such action or suit, or some other person, shall file in the clerk's office bond, with surety approved by the clerk, in a penalty equal to the sum in which the defendant is directed to be held to bail, payable to said defendant, with condition to pay all costs and damages which may be awarded against the plaintiff or sustained by the defendant by reason of the arrest of the defendant under said capias. (Code 1887, § 2997.)

See 4 Min. (3d Ed.) 633; Barton, L. Pr. (2d Ed.) 1009; Gregory's Forms No. 425.

Sec. 6421. His arrest and commitment unless bond given; its condition.—Under such capias, the defendant against whom it issues shall be arrested and committed to jail, unless bond be given in a sum equal to the amount of the plaintiff's claim sworn to, as aforesaid, with sufficient surety with condition that in case there shall in the action or suit be any judgment, decree, or order on which a writ of fieri facias may issue, and within four months after such judgment, decree, or order, a summons shall be issued under section sixty-five hundred and three by a commissioner of the court wherein such judgment, decree, or order is, the said defendant will appear before such commissioner at the time and place designated in said summons and answer under oath such interrogatories as shall be propounded to him by counsel for plaintiff, or by the said commissioner, and make such conveyance and delivery as is required by chapter two hundred and seventy-two, or in case of failure to appear and answer such interrogatories and make such conveyance and delivery, that the defendant will perform and satisfy the said judgment, decree, or order. The commissioner shall give twenty days' notice of the time and place fixed by him for answering such interrogatories, to the resident counsel for the defendant, if any such be known to him, and, if none such be known to him, he shall mail such notice to the defendant at such address, if any, as may be furnished by the defendant, and prepay the postage thereon, at least twenty days before the date fixed for his examination. (Code 1887, § 2992; 1916, p. 362.)

Revisors' Note.—This section is taken from section 2992 of the Code of 1887, as amended by Acts 1916, p. 362, with a material change. It is provided that the commissioner shall give twenty days' notice of the time and place fixed by him for answering the interrogatories, and that this notice shall be given to resident counsel if any be known to him, and if none, shall be mailed to the defendant at such address, if any, as may be furnished by the defendant, at least twenty days before the date fixed for the examination. It seems only right and proper that the defendant should have this notice. The defendant is required to appear at the time and place designated in the summons, and to answer under oath such interrogatories as shall be propounded to him by the plaintiff

Digitized by Google

or the commissioner, etc. These interrogatories are not required to be furnished to the defendant before the time specified, in this respect conforming to section 6503.

Former section critcized, 11 Va. L. Reg. 1050.

See Burks' Pleading and Practice, pp. 43, 669, 730; Gregory's Forms No. 426.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 106, section 33.

Sec. 6422. Who may take it; where filed.—The bond authorized by the preceding section may be taken by the officer making the arrest, by the court from which the capias issued, the judge thereof in vacation, or by the clerk of such court. The bond shall be returned to and filed in the clerk's office of such court. (Code 1887, § 2993.)

See Barton, L. Pr. (2d Ed.) 1008; 4 Min. (3d Ed.) 656.

Sec. 6423. When and how capias quashed, and defendant discharged.—If the defendant give such bond, or be committed to jail for the want of it, the court in which the case is pending, or the judge thereof in vacation, may, after reasonable notice to the plaintiff, or his attorney, quash the capias and the bond, and discharge the defendant from custody, on being satisfied that there was not probable cause for believing that the defendant was about to quit the State, and whether there was such cause or not, may discharge him from custody when the plaintiff is cast in the action or suit. (Code 1887, § 2994.)

Revisors' Note.—This section is taken from section 2994 of the Code of 1887 without material change.

See 4 Min. (3d Ed.) 656; Barton, L. Pr. (2d Ed.) 1008; Sams, Attachment, 286.

Sec. 6424. When plaintiff may file interrogatories; if not filed court may discharge defendant.—While a defendant is in custody, whether under an arrest made heretofore or hereafter, the plaintiff, without having a judgment against the defendant, may cause him to be examined before a commissioner in chancery in like manner as might be done under section sixty-five hundred and three, if such judgment had been obtained and a fieri facias thereon delivered to an officer. And the court wherein the case is pending, or the judge thereof in vacation, may, after reasonable notice to the plaintiff, or his attorney, discharge a defendant from custody, unless the plaintiff cause him to be so examined within such time as the said court or judge may deem reasonable; or, though so examined, may discharge him when proper answers have been given and proper conveyance and delivery made. (Code 1887, § 2995.)

Revisors' Note.—This section is taken from section 2995 of the Code of 1887, and the only changes made in it are to conform to the present method by which a debtor is examined under section 6503.

This section applies to a defendant in custody of his bail as well as a defendant in jail. Levy v. Arnsthall, 10 Grat. 641.

See Barton, L. Pr. (2d Ed.) 1009; 4 Min. (3d Ed.) 656; Sams, Attachment, 288; Burks' Pl. & Pr., p. 731.

Sec. 6425. To whom conveyance to be made; what to be returned to court; disposition of the property.—The conveyance required by

Digitized by Google

the preceding section shall be made to the officer making the arrest, or if for any reason it cannot be made to him, then to such other officer as the court or judge may direct. The interrogatories, answers, and report of the commissioner shall be returned to the court in which the case is pending, and filed with the papers of such case. And the said court may make such order as it may deem right as to the sale and proper application of the estate conveyed and delivered under the preceding section. (Code 1887, § 2996.)

See Sams, Attachment, 291; Barton, L. Pr. (2d Ed.) 1007.

CHAPTER 270.

Mechanics' and Other Liens.

Sec.
6426. Lien for work done and materials furnished by artisans, mechanics, lumber dealers, and others.
6427. Perfection of lien by general contractor; Miscellaneous Lien Book; notice of lien.
6428. Perfection of lien by sub-contractor; extent of lien.
6429. Perfection of lien by any person performing labor or furnishing materials for a sub-contractor; extent of lien.
6430. Sheriffs, sergeants, and constables to serve process.
6431. What inaccuracies not to affect lien.
6432. What owner may do when contractor fails or refuses to complete building, etc.
6433. Limitation of lien.
6434. Lien of general contractor to inure to benefit of sub-contractor.
6435. Validity and priority of lien not affected by assignments.
6436. Extent of lien where owner has less than a fee in the land; in enforcement of liens, what preference is given to the mechanic's lien.
6437. How liens are enforced; no priority except, etc.

Sec.
6438. Lien of employees, etc., of transportation companies, etc., on franchises and property of company.
6439. How perfected; how enforced.
6440. Assignee's rights.
6441. Satisfaction of lien.
6442. In case of bankruptcy, death or absconding, how notices to be served, acts done, etc.
6443. Lien of mechanics for repairs.
6444. Lien of inn-keepers, etc.
6445. Lien of keeper of livery stable, etc.
6446. Lien of stock breeders and owners of licensed stallions.
6447. Special license tax on bulls; lien on the offspring thereof.
6448. Payment of debts due by commission merchants; remedies.
6449. Enforcement of liens acquired under sections sixty-four hundred and forty-three, sixty-four hundred and forty-four, and sixty-four hundred and forty-five, and of the lien of bailees.
6450. How and when validity of the lien, or claim of other person to the property, is tried.

Digitized by Google

Sec.
6451. Appeals, how taken and tried.
6452. Lien on crops for advances to farmers; nature of agreement thereof; where recorded.
6453. Protection of lien by injunction; who may grant it; where tried.
6454. Lien of landlords and farmers for advances to tenants and laborers; how enforced; priority of lien.
6455. Lien of landlords and other recorded liens not affected by lien given under section sixty-four hundred and fifty-two; nor exemption to poor debtors.
6456. Satisfaction of lien to be entered by creditor; how signed; how owner, etc., of the real estate may have lien released; former releases validated; releases to person dead enure to successors.
6457. Protection of assignees, transferees, or indorsees of debts secured on real estate by mortgage, deed of trust, vendor's or mechanic's lien.
6458. Purchaser for valuable consideration without notice not affected by liens of the Mutual Assurance Society against fire on buildings until such liens are filed in the clerk's office.

Sec. 6426. Lien for work done and materials furnished by artisans, mechanics, lumber dealers, and others.—All persons performing labor, or furnishing materials, of the value of ten dollars or more, for the construction, removal, repair, or improvement of any building or structure permanently annexed to the freehold, and all persons performing any labor or furnishing materials of like value for the construction of any railroad, shall have a lien, if perfected as hereinafter provided, upon such building or structure, and so much land therewith as shall be necessary for the convenient use and enjoyment thereof, and upon such railroad and franchise for the work done and materials furnished. But when the claim is for repairs or improvements only, no lien shall attach to the property repaired or improved unless such repairs or improvements were ordered by the owner, or his agent. As used in this chapter, the term "general contractor" shall include contractors, laborers, mechanics, and persons furnishing materials, who contract directly with the owner, and the term "sub-contractor" shall include all such contractors, laborers, mechanics, and persons furnishing materials, who do not contract with the owner but with the general contractor. (Code 1887, § 2475; 1895-6, p. 71.)

Revisors' Note.—By this section the lien is given to all persons performing labor or furnishing materials, whether they be contractors, sub-contractors, or parties dealing with sub-contractors. The provision concerning IMPROVEMENTS is new, but is no doubt simply declaratory of pre-existing law. The last sentence is new, and defines the terms "general contractor" and "sub-contractor."

Historical.—Mechanics' liens in Virginia were first created by Acts 1842-43, p. 52.

Formerly (Code 1860, chapter 119, section 2) no lien was given upon property unless situated within a city or town. The change giving lien upon property situated in the country (Acts 1866-67, p. 805) was declared to operate prospectively only. Hendricks v. Fields, 26 Grat. 447.

Digitized by Google

Principles of construction.—The remedy being unknown to the common law, in order to entitle one to its benefits he must follow the statutes strictly. Shackleford v. Beck, 80 Va. 573; Boston v. C. & O. R. R. Co., 76 Va. 180; Trustees v. Davis, 85 Va. 193, 7 S. E. 245.

The remedial portions of the mechanics' lien law, which provides for enforcing the lien after it is perfected, should be liberally construed, but the other portions, upon which the existence of the lien depends, should be strictly construed. Clement v. Adams Bros.-Paynes Co., 113 Va. 547, 75 S. E. 294.

Actual notice of a claim of mechanics' lien will not affect a purchaser if the statute has not been complied with. Shackleford v. Beck, 80 Va. 573.

Property subject to lien.—In Virginia a mechanics' lien cannot be asserted against public property. Phillips v. Univ. of Va., 97 Va. 472, 34 S. E. 66, 47 L. R. A. 284, 5 Va. Law Reg. 466, and note; Hicks v. Roanoke Brick Co., 94 Va. 741, 27 S. E. 596; Manly Mfg. Co. v. Broaddus, 94 Va. 547, 27 S. E. 438. See, also, 5 Va. Law Reg. 408; 3 Va. Law Reg. 151.

Furnishing materials to be used by a contractor in the erection of a public improvement for a city, which materials are so used, does not give any lien on the funds due by the city to the contractor. Hicks v. Roanoke Brick Co., 94 Va. 741, 27 S. E. 596.

Unless there is proof to the contrary, a small lot in a town in which a building has been erected will be presumed to be "necessary for the convenient use and enjoyment" thereof. Pairo v. Bethell, 75 Va. 832.

Where machinery is so fixed to realty as to constitute a part of the building, the manufacturer who furnished it can perfect a mechanics' lien against same. Haskin Co. v. Cleveland Co., 94 Va. 439, 26 S. E. 878.

Leased premises.—A lessor's interest in land is not subject to a mechanics' lien for repairs ordered by the tenant unless the tenant was the agent of the lessor or the lessor caused the repairs to be made or unless he ratified what the tenant had done. This rule is not changed by any relationship of the parties. Carter v. Keeton, 112 Va. 307, 71 S. E. 554.

A lease requiring certain buildings to be erected on the leased premises by the lessee, does not constitute the lessee an agent of the lessor, nor give him the implied authority to create a lien upon the land for improvements made thereon. Atlas Cement Co. v. Main Line Co., 112 Va. 7, 70 S. E. 536; note in 17 Va. Law Reg. 217.

Waiver of lien.—Taking a note which extends the credit beyond the six (now twelve) months prescribed by section 6433 for bringing suit to enforce the lien operates as a virtual waiver of the lien, but otherwise as to a note falling due within the six (now twelve) months. 2 Va. Law Reg. 510, and cases cited. For conflicting authorities, see Kilpatrick v. Kansas City & B. R. Co., 38 Neb. 620, 57 N. W. 664, 41 Am. St. Rep. 761.

Assignment of lien.—A contract and lien may be assigned and the assignee may enforce his rights in the manner the mechanic could do. Laege v. Bossieux, 15 Grat. 83, 76 Am. Dec. 189, and note Va. Rep. Ann.

Where an inchoate right to a mechanic's lien exists in favor of a contractor, the same passes with an assignment of the contract made for the benefit of his creditors, and the assignee upon completion of the contract may perfect and enforce the lien. Bristol Co. v. Thomas, 93 Va. 396, 25 S. E. 110.

"General contractor" and "sub-contractor."—The last sentence of the present section defines these terms. For cases prior to the insertion of these definitions, see M. & M. Bank v. Dashiell, 25 Grat. 616; Boston v. C. & O. R. Co., 76 Va. 180; Sands, etc. v. Stagg, 105 Va. 445, 54 S. E. 21, 52 S. E. 633.

Generally.—Sections 2475 to 2484, both inclusive (of the Code of 1887—sections 6426 to 6437 of this Code), relate to the execution and

Digitized by Google

enforcement of liens for work done and materials furnished in the construction, repair, or improvement of any building or structure permanently annexed to the freehold, whether performed by general contractors or sub-contractors. Boston, &c., Co. v. Carman Lumber Co., 94 Va. 98, 26 S. E. 390.

Claim of lien under this section defeats lien under section 6438. Newgass v. Atlantic (C. C.) 56 Fed. 676.

Cited but not construed in American Woodworking Machinery Co. v. Agelesto, 136 Fed. 401.

Can the lien be claimed for the building or repair of a bridge on private property? 6 Va. Law Reg. 120.

For monograph on Mechanics' Liens in Virginia, see 2 Va. Law Reg. 489; see, also, 2 Min. (4th Ed.) 322; 2 Barton, Ch. Pr. (2d Ed.) 1077; Burks' Pl. & Pr., pp. 813, 816, 817, 824.

See 2 Va. L. Reg. 493; notes to sections 6427 to 6437.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 75, section 2.

Sec. 6427. Perfection of lien by general contractor; miscellaneous lien book; notice of lien.—A general contractor, in order to perfect the lien given by the preceding section, shall at any time after the work is done and the materials furnished by him and before the expiration of sixty days from the time such building, structure, or railroad is completed, or the work thereon otherwise terminated, file in the clerk's office in the county or city in which the building, structure, or railroad, or any part thereof is, or in the clerk's office of the Chancery Court of the city of Richmond, if the said building, structure, or railroad, or any part thereof, is within the corporate limits of said city, a memorandum showing the names of the owner of the property sought to be charged, and of the claimant of the lien, the amount and consideration of his claim, and the time or times when the same is or will be due and payable, verified by the oath of the claimant, or his agent, including a statement declaring his intention to claim the benefit of the lien, and giving a brief description of the property on which he claims a lien. It shall be the duty of the clerk in whose office such memorandum shall be filed as hereinbefore provided to record the same in the Miscellaneous Lien Book, and to index the same not only in the Miscellaneous Lien Book, but also in the general index of deeds, in the name as well of the claimant of the lien as of the owner of the property, and from the time of such recording and indexing all persons shall be deemed to have notice thereof. The cost of recording such memorandum shall be taxed against the person found liable in any judgment or decree enforcing such lien.

The memorandum and affidavit required by this section shall be sufficient if substantially in form and effect as follows:

MEMORANDUM FOR MECHANIC'S LIEN CLAIMED BY GENERAL CONTRACTOR.

..... (contractor) claims that ..... (owner) is

Digitized by Google

indebted to him in the sum of ..... dollars ($.....) for work done (or materials furnished, or both, as the case may be,) in and about the construction (or removal, repair, or improvement, as the case may be,) of a ..... (describe nature of structure, whether dwelling, store, or, etc.,) in the county (or city) of ..... with interest thereon from the ..... day of ..... until payment, which sum is now due and payable (or will be due and payable, as follows, to-wit: .....), and for which sum of ..... dollars the said ..... (contractor) claims a lien on the following described property of the said .... (owner) to-wit: ..... (insert description of property).

.....(Date).

..... (Name of contractor).

AFFIDAVIT.

State of Virginia,

County (or City) of ....., to-wit:

I, ... (notary or other officer) for the county (or city) aforesaid, do certify that ..... (contractor, or ..... agent for ....., as the case may be,) this day made oath before me in my county (or city) aforesaid that .....: (the owner) is justly indebted to him (or to ..... contractor, as the case may be) in the sum of ..... dollars, for the consideration stated in the foregoing memorandum, and that the same is payable as therein stated.

Given under my hand this the ..... day of ....., 19.....

..... (N. P. or J. P., etc.)

(Code 1887, § 2476; 1895-6, pp. 71, 903; 1897-8, p. 487.)

Revisors' Note.—This section substitutes the memorandum for the account required by the former law. It is no longer necessary for the itemized account to be recorded, but the plaintiff, when he files his bill to enforce the lien, is required to file an itemized statement of his account. (See section 6437.) Under the former law the itemized account had to be recorded. In many instances the account consisted of a large number of items, such as a bill of hardware used in the erection of a building. The cost of recording the itemized account was large, and it served no useful purpose in this connection. Now what is to be recorded is to this extent similar to what is required in the case of a supply lien. The memorandum is to be recorded in the book of Miscellaneous Liens instead of the Mechanics' Lien Record, the latter book being discontinued. (See section 3393.) The memorandum is to be indexed not only in the Miscellaneous Lien book, but in the general index of deeds as well. All persons are deemed to have notice from the time of such recording and indexing. The former law read "such filing," and the meaning was not altogether clear.

The section provides that the cost of recording the memorandum shall be taxed against the person found liable in any judgment or decree

Digitized by Google

enforcing the lien. It prescribes what should be recited in the memorandum and affidavit, the forms being given. The memorandum is required to state the time or times when the claim will become payable, so that any person examining the record will be able to tell when the time limit for suing expires.

Attention is called to section 276 on the subject of affidavits.

Account required by section 2476 of the Code of 1887, as amended.—Under the present law the account is not recorded under the above section, but simply the memorandum described therein. When the plaintiff files his bill under section 6437 to enforce his lien, however, he is required to file with it "an itemized statement of his account," etc. See revisors' notes to above section and section 6437. The following cases relate to the sufficiency of the account required by section 2476 of the Code of 1887: Gilman v. Ryan, 95 Va. 494, 28 S. E. 875; Shackleford v. Beck, 80 Va. 573; Taylor v. Netherwood, 91 Va. 88, 20 S. E. 888; Withrow Lumber Co. v. Glasgow Inv. Co., 101 Fed. 863, 42 C. C. A. 61; Furst-Kerber Co. v. Wells, 116 Va. 95, 81 S. E. 22; Brown v. Cornwell, 108 Va. 129, 60 S. E. 623; Rison v. Moon, 91 Va. 384, 22 S. E. 165; 11 Va. L. Reg. 61.

Verification of account formerly required.—The following cases relate to sufficiency of the affidavit under the former section: Taylor v. Netherwood, 91 Va. 88, 20 S. E. 888; Clement v. Adams Bros.-Paynes Co., 113 Va. 547, 75 S. E. 294, 18 Va. L. Reg. 437, and note; Diebold v. Tatterson, 115 Va. 766, 80 S. E. 585. The present section gives the form of the affidavit. On the subject of affidavits by corporations and agents, see section 276.

Time of filing memorandum.—Where the completion of the work was prevented by the owner, a contractor was relieved of the necessity of filing his account (now memorandum). M. & M. Bank v. Dashiell, 25 Grat. 616. But it would seem otherwise now that the statute has been so amended as to require the filing of the memorandum within sixty days after completion of structure, or "the work thereon otherwise terminated."

Where the parties to a contract for the erection of a building agree that it shall be considered as complete before the finishing touches are actually put on, the time within which a mechanic's lien must be filed commences to run from that time, and not from the time of the actual completion of the building. Trustees v. Davis, 85 Va. 193, 7 S. E. 245.

Where a bill distinctly averred that the mechanic's lien was filed as provided in sections 2475 and 2476 of the Code of 1887, and it appeared from the copy of the record of the lien filed with the bill as an exhibit that the last charge in the account was for work done within sixty days of recordation of lien, it was held that the lien was properly perfected, and that the demurrer to the bill should be overruled. Richlands Flint-Glass Co. v. Hiltebeitel, 92 Va. 91, 22 S. E. 806. As the law now stands, the account is not recorded under section 6427 (corresponding to section 2476 of the Code of 1887)), but simply a memorandum. See revisors' notes to section 6427 and 6437.

A running account, where nothing to the contrary appears, is to be considered as falling due at the date of the last item. Richlands Flint-Glass Co. v. Hiltebeitel, 92 Va. 91, 22 S. E. 806; Osborne v. Big Stone Co., 96 Va. 58, 30 S. E. 446.

The filing of the claim within the time prescribed by the statute is one of the essential requisites in perfecting the lien. If not so filed no lien is acquired. Furst-Kerber Co. v. Wells, 116 Va. 95, 81 S. E. 22.

Where filed.—In order to perfect a lien against a railroad in its entirety, the proper account (now memorandum) must have formerly been filed in the clerk's office of each county through which it passes. Otherwise now by above amendment. A lien filed in the Chancery Court of Richmond does not attach to wharves lying within one mile of the corporate limits of said city. While they are within its juris-

Digitized by Google

diction, they are not within the limits of the city. Boston v. C. & O. R. Co., 76 Va. 180.

Description of property.—All that the law requires in describing the property on which the lien is asserted is to set forth a sufficient description to enable the owners to tell upon which piece of his property the lien is claimed, and to give notice to purchasers and creditors so that they may identify the property and protect themselves against the lien. Taylor v. Netherwood, 91 Va. 88, 20 S. E. 888. See section 6431.

Disconnected pieces of property.—Where a contract has been made which estimates or fixes the price of materials furnished and work done, upon each of two or more buildings on disconnected lots, an account which claims the aggregate price as a lien upon all lots is not a substantial compliance with the statute. Gilman v. Ryan, 95 Va. 494, 28 S. E. 875. But in Sergeant v. Denby, 87 Va. 206, 12 S. E. 402, it was decided that a sub-contractor who furnished materials for the construction of two houses on opposite sides of the street, but under a single contract for the entire work, and for a sum in gross, had a joint lien on both houses and lots for the entire amount of materials furnished for both houses.

Generally.—If a material man fails to acquire a mechanic's lien on the building into which his materials are placed, and the sub-contractor to whom they were furnished by him is adjudged a bankrupt, the amount due the sub-contractor by the general contractor passes to the sub-contractor's trustee as assets of the bankrupt. Furst-Kerber Co. v. Wells, 116 Va. 95, 81 S. E. 22. See section 6434.

See 10 Va. L. Reg. 431, and note. Former section commented upon in note to Com. v. Wampler, 11 Va. Law Reg. 668.

See Burks' Pleading and Practice, pp. 816, 817, 826.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 75, section 4.

Sec. 6428. Perfection of lien by sub-contractor; extent of lien.—Any sub-contractor, in order to perfect the lien given him by section sixty-four hundred and twenty-six shall comply with the preceding section, and in addition give notice in writing to the owner of the property or his agent of the amount and character of his claim. But the amount for which a sub-contractor may perfect a lien under this section shall not exceed the amount in which the owner is indebted to the general contractor at the time the notice is given, or shall thereafetr become indebted to said general contractor upon his contract with said general contractor for said structure or building or railroad.

The memorandum, affidavit and notice required by this section shall be sufficient if substantially in form and effect as follows:

MEMORANDUM OF MECHANIC'S LIEN CLAIMED BY SUB-CONTRACTOR.

..... (sub-contractor) claims that ..... (general contractor) is indebted to him in the sum of ..... dollars ($.....) for work done (or materials furnished, or both, as the case may be) for him, in and about the construction (or removal, repair or improvement, as the case may be,) of a ..... (describe nature of structure, whether dwelling, store, or, etc.,) which he has contracted to construct (or remove, etc.,) for .....

Digitized by Google

(owner), which sum bears interest from the .....day of ....., 19....., and is now due and payable (or will be due and payable as follows, to-wit: .....). For the foregoing sum due to the said ..... (sub-contractor) as aforesaid, he claims a lien on the following described property of the said ..... (owner), to-wit: ..... (insert description of property).

.....(Date).

.....(Sub-contractor).

AFFIDAVIT.

State of Virginia,

County (or city) of ....., to-wit:

I, ... (notary or other officer) for the county (or city) aforesaid do certify that ..... (sub-contractor, or his agent, as the case may be,) this day made oath before me in my county (or city) aforesaid that ..... (general contractor) is justly indebted to him (or to ....., sub-contractor, as the case may be,) in the sum of ..... dollars for the consideration stated in the foregoing memorandum, and that the same is payable as therein stated.

Given under my hand this the ..... day of ....., 19....

.....(N. P. or J. P., etc.)

NOTICE.

To ..... (owner).

You are hereby notified that ..... (general contractor) is indebted to me in the sum of ..... dollars ($.....) with interest thereon from the ..... day of ....., 19....., for work done (or materials furnished, as the case may be,) in and about the construction (or removal, etc.,) of a ..... (describe structure, whether dwelling, store, or, etc.,) which he has contracted to construct (or remove, etc.,) for you, in the county (or city) of ....., and that I have duly recorded a mechanic's lien for the same.

Given under my hand this the ..... day of ....., 19....

..... (Sub-contractor).

(Code 1887, § 2477; 1893-4, p. 523; 1895-6, p. 903; 1897-8, p. 488.)

Revisors' Note.—This section is taken from the first part of section 2477 of the Code of 1887, as amended. The forms of the memorandum, affidavit, and notice are new. No other material change.

Notice.—Where it was shown that on the day the lien was perfected an exact copy of the account as filed in the clerk's office, and statement of the lien attached to the account was served on the owner, it was held sufficient notice to the owner. Taylor v. Netherwood, 91 Va. 88, 20 S. E. 888. The present law substitutes a memorandum for the account formerly required, as to which see section 6427. The form of the memorandum is therein given.

Premature filing.—A sub-contractor who prematurely files a mechanic's lien is liable in an action on the case for libel for the injury

Digitized by Google

occasioned thereby to the contractor. Moore v. Rolin, 89 Va. 107, 15 S. E. 520, 16 L. R. A. 625.

Owner retaining percentage.—A provision in a building contract by which the owner retains a percentage of the cost until the completion of the building, and stipulates that he may supply any deficiency and deduct the cost from any money due or to become due under the contract, is intended for the benefit of the owner alone, and not for sub-contractors who may be thereafter employed. Schrieber v. Citizens' Bank, 99 Va. 257, 38 S. E. 134.

Extra work not covered or contemplated by the original contract, and paid for by the owner as soon as completed, constitutes a transaction separate from the original contract, and cannot be considered in a contest between owner and sub-contractor. Id.

Generally.—As to who are sub-contractors, see section 6426.

Former section discussed, 13 Va. Law J. 133.

See Burks' Pl. & Pr., 822, 824; notes to preceding sections.

Sec. 6429. Perfection of lien by any person performing labor or furnishing materials for a sub-contractor; extent of lien.—Any person performing labor or furnishing materials for a sub-contractor, in order to perfect the lien given him by section sixty-four hundred and twenty-six, shall comply with the provisions of section sixty-four hundred and twenty-seven, and in addition thereto give notice in writing to the owner of the property, or his agent, and to the general contractor, or his agent, of the amount and character of his claim. But the amount for which a lien may be perfected by such person shall not exceed the amount for which said sub-contractor could himself claim a lien under the preceding section.

The memorandum, affidavit and notice required by this section shall be sufficient if substantially in form and effect as follows:

MEMORANDUM OF MECHANIC'S LIEN CLAIMED BY SUB-CONTRACTOR.

..... (sub-subcontractor) claims that ..... (sub-contractor) is indebted to him in the sum of ..... dollars ($.....) for work done (or materials, etc.,) for him as sub-contractor under ..... contractor to construct (or remove, etc.,) a ..... (describe structure, whether dwelling, store, or etc.,) for ..... (owner) which sum bears interest from the ..... day of ....., 19...., and is now due and payable (or will be due and payable as follows, to-wit: .....). For the foregoing sum of $....., due to the said ..... (sub-subcontractor) he claims a lien on the following described property of the said ..... (owner), to-wit: ..... (insert description of property).

.....(Date).

.....(Sub-subcontractor).

AFFIDAVIT.

State of Virginia,

County (or city) of ....., to-wit:

I, ... (notary or other officer) for the county

Digitized by Google

(or city) aforesaid do certify that ..... (sub-subcontractor, or his agent, as the case may be,) this day made oath before me in my county (or city) aforesaid that ..... (sub-contractor) is justly indebted to him (or to ....., sub-contractor, as the case may be,) in the sum of ..... dollars for the consideration stated in the foregoing memorandum, and that the same is payable as therein stated.

Given under my hand this the ..... day of ....., 19....

..... (N. P., or J. P., etc.)

NOTICE.

To ..... (owner) and ..... (general contractor):

You are hereby notified that ....., a sub-contractor under you, said ..... (general contractor) for the construction (or removal, etc.,) of a ..... (describe structure) for you, said ..... (owner) is indebted to me in the sum of ..... dollars ($.....) with interest thereon from the ..... day of ....., 19...., for work done (or materials furnished) in and about the construction (or removal, et.,) of said ..... (naming structure), situate in the county (or city) of ....., Virginia, and that I have duly recorded a mechanic's lien for the same.

Given under my hand, this the ..... day of ....., 19....

.....(Sub-subcontractor).

Revisors' Note.—This section is taken from the latter part of section 2477 of the Code of 1887, as amended. The provision that the notice shall also be given to the general contractor or his agent is new. The forms are new.

See notes to preceding section.

Sec. 6430. Sheriffs, sergeants, and constables to serve notices.—Any sheriff, sergeant, or constable thereto required shall serve any notice authorized or required by this chapter, in his county or corporation, and make return of the time and manner of service, and for a failure so to do he shall forfeit twenty dollars.

Revisors' Note.—This section is new, and makes it the duty of the officers named to serve the notices authorized or required by the chapter, in this respect supplying an omission in the former law.

Sec. 6431. What inaccuracies not to affect lien.—No inaccuracy in the memorandum filed, or in the description of the property to be covered by the lien, shall invalidate the lien, if the property can be reasonably identified by the description given and the memorandum conform substantially to the requirements of sections sixty-four hundred and twenty-seven, sixty-four hundred and twenty-eight and sixty-four hundred and twenty-nine, respectively, and is not wilfully false. (Code 1887, § 2478.)

Revisors' Note.—"Memorandum" is substituted for "account" to make the section conform to section 6427. No other material change. Section 2479 of the Code of 1887, as amended, dealing with per-

Digitized by Google

sonal liability of owner, has been omitted, thereby taking out of the statute the whole subject of personal liability of the owner. So long as the personal liability of the owner is retained in the chapter, it is practically impossible to administer the mechanics' lien law in such a way as will give information to everybody of the state of the liens, and not do injustice to someone. In practice this section caused much confusion, and, in some cases, injustice. If any person desires to secure the personal liability of the owner, it should be a matter of contract, and there is no necessity for injecting it into the mechanics' lien law.

The personal liability feature is chiefly desired by material-men who are unwilling to trust contractors or sub-contractors, and are at the same time unwilling to refuse them credit for fear it may affect their business. This should properly be a matter of contract, and the owner ought not to have to bear the onus of responsibility of contractors or sub-contractors whom material-men are unwilling to credit.

Section 2480 of the Code of 1887, being dependent upon the provisions of section 2479 of that Code, is also omitted.

The Legislature having designated but two defects that could be disregarded, it would seem that, under the doctrine of inclusio unius exclusio alterius, it intended that defects not mentioned were to be regarded. Clement v. Adams Bros.-Paynes Co., 113 Va. 547, 75 S. E. 294. As to affidavits, see section 6427 and notes.

In order to obtain the benefit of this section, the provisions of sections 6427, 6428 and 6429 must be substantially complied with. Gilman v. Ryan, 95 Va. 494, 28 S. E. 875. Compare Sergeant v. Denby, 87 Va. 206, 12 S. E. 402.

The rule of construction, that those portions of the mechanic's lien law, upon which the right to the existence of the lien depends, should be strictly construed, is not abrogated by this section. Clement v. Adams Bros.-Paynes Co., 113 Va. 547, 75 S. E. 294, 18 Va. L. Reg. 437 and note.

The omission of the "prices charged" (see section 2476 of the Code of 1887) was held to be not a mere "inaccuracy in the account," but an entire failure to state what the statute required. Brown v. Cornwell, 108 Va. 129, 60 S. E. 623. Under section 6427 of this Code (corresponding to section 2476 of the Code of 1887) the account is not recorded, but simply the memorandum therein described. See that section and notes.

This section somewhat modifies the rule in Shackleford v. Beck, 80 Va. 573, and Shenandoah Val. R. Co. v. Miller, Id. 821.

Cited in Taylor v. Netherwood, 91 Va. 88, 20 S. E. 888.

See Burks' Pleading and Practice, p. 819.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 75, section 3.

Sec. 6432. What owner may do when contractor fails or refuses to complete building, etc.—If the owner is compelled to complete his building, structure, or railroad, or any part thereof undertaken by a general contractor in consequence of the failure or refusal of the general contractor to do so, the amount expended by the owner for such completion shall have priority over all mechanics' liens which have been or may be placed on such building, structure, or railroad by such general contractor, a sub-contractor under him, or any person furnishing labor or materials to either of them.

Revisors' Note.—This section is new. It is intended that if the owner is compelled to complete his building or structure, the amount

Digitized by Google

necessary to be expended for that purpose shall be preferred over all mechanics' liens. See Schrieber v. Bank, 99 Va. 257, 38 S. E. 134. "Compelled" is used in the sense of "obliged" and is not limited to legal compulsion.

Sec. 6433. Limitation of lien.—No suit to enforce any lien perfected under sections sixty-four hundred and twenty-seven, sixty-four hundred and twenty-eight and sixty-four hundred and twenty-nine shall be brought after twelve months from the time when the whole amount covered by such lien has become payable: provided, however, that the filing of a petition to enforce any such lien in any suit wherein such petition may be properly filed shall be regarded as the institution of a suit under this section. (Code 1887, § 2481; 1889-90, p. 36; 1893-4, p. 576.)

Revisors' Note.—A material change is made in this section in that the limitation is increased from six months to twelve months. No other material change.

This limitation is suspended as to the lien of all parties to, and those who are directly interested in, the suit from the institution of the same. Spiller v. Wells, 96 Va. 598, 32 S. E. 46, 70 Am. St. Rep. 878.

If a suit to enforce a mechanic's lien is brought within due time against the debtor upon whose property the lien rests, the failure to implead subsequent lienors within six (now twelve) months does not defeat the lien as to such encumbrances. They are proper parties, but not necessary parties, and may be brought in at a subsequent time. Monk v. Exposition Corp., 111 Va. 121, 68 S. E. 280.

Creditor may plead statute.—Where a court of equity has taken possession of a debtor's estate for the purpose of distribution, and proceeds to ascertain the debts and encumbrances so as to enable it to properly administer and distribute the assets, an exception to the general rule that the defense of a statute of limitations is personal to the debtor, and may be asserted or waived by him as he may elect, is allowed, and a creditor may interpose the defense of the statute as against the claim of another creditor. McCartney v. Tyrer, 94 Va. 198, 26 S. E. 419. But the creditor must show that the co-creditor's debt is barred as between himself and his debtor. Monk v. Exposition Corp., 111 Va. 121, 68 S. E. 280.

Instalment contract.—Where the contract is payable in instalments, a mechanic has a right to assert his lien for all the instalments whenever due, provided he commence his suit before the expiration of six (now twelve) months after the last instalment became due. But it is not necessary for him to wait until all the instalments become payable. Iaege v. Bossieux, 15 Grat. 83, 76 Am. Dec. 189, and note Va. Rep. Ann. Compare Trustees v. Davis, 85 Va. 197, 7 S. E. 245, where it was held that suit was prematurely brought before any of the instalments had become due.

Pleading.—Where bills do not allege when the suits were instituted, but allege when the amounts asserted as liens upon the property became due and payable, and the date of the process shows that the suits were brought within the time required by the statute, and the record showed at the time the bill was demurred to that the suit was instituted within the period fixed by statute, there is no good reason for requiring the bill to allege that fact, since the court will take judicial notice of when the suit was instituted, as well as all other proceedings in the cause. Sands v. Stagg, 105 Va. 444, 52 S. E. 633, 54 S. E. 21.

A bill to enforce a mechanic's lien which does not show on its face that the suit was brought within the time prescribed by statute is bad on demurrer. Savings Bank v. Powhatan Clay Mfg. Co., 102 Va. 274,

Digitized by Google

9 Va. Law Reg. 898, 901 and note, 46 S. E. 294. See, also, 2 Va. L. Reg. 509; 3 Va. L. Reg. 64.

Nature of suit.—A suit to enforce a mechanic's lien is in no sense a suit against other lien creditors, even when convened as parties defendant. The suit is analagous to a lien creditors' suit, and is controlled by the same considerations, and is subject to similar rules of equitable practice. Monk v. Exposition Corp., 111 Va. 121, 68 S. E. 280.

Generally.—See Burks' Pleading and Practice, p. 831.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 75, section 11.

Sec. 6434. Lien of general contractor to inure to benefit of sub-contractor.—The perfected lien of a general contractor on any building or structure shall inure to the benefit of any sub-contractor, and of any person performing labor or furnishing materials to a sub-contractor who has not perfected a lien on such building or structure, provided such sub-contractor, or person performing labor or furnishing materials shall give written notice of his claim against the general contractor, or sub-contractor, as the case may be, to the owner or his agent before the amount of such lien is actually paid off or discharged. (Code 1887, § 2482.)

Revisors' Note.—This section is enlarged so as expressly to allow persons dealing with sub-contractors the benefit of the lien taken out by the general contractor.

The object and effect of this section is to give the benefit of the lien of the general contractor to a sub-contractor, provided he gives notice to the owner before the general contractor's lien has been discharged. Shenandoah V. R. Co. v. Miller, 80 Va. 821.

Where the lien of a general contractor is protected in a suit brought by a sub-contractor, all sub-contractors are protected, as the lien of the general contractor inures to the benefit of all the sub-contractors. Spiller v. Wells, 96 Va. 598, 32 S. E. 46, 70 Am. St. Rep. 878.

See notes to section 6433; Burks Pleading and Practice, p. 824.

Sec. 6435. Validity and priority of lien not affected by assignments.—Every assignment or transfer by a general contractor, in whole or in part, of his contract with the owner or of any money or consideration coming to him under such contract, or by a sub-contractor of his contract with the general contractor, in whole or in part, or of any money or consideration coming to him under his contract with the general contractor, and every writ of fieri facias, attachment or other process against the general contractor or sub-contractor to subject or encumber his interest arising under such contract, shall be subject to the liens given by this chapter to laborers, mechanics, and material-men. No such assignment or transfer shall in any way affect the validity or the priority of satisfaction of liens given by this chapter.

Revisors' Note.—This is a new section dealing with the effect of assignments. It is taken in part from section 3844 of the West Virginia Code (Hogg 1913). Assignments are not prohibited, but are made subordinate to the mechanics' lien. It is intended that no assignment made by a general or sub-contractor shall in any way affect the rights of other parties arising under the mechanics' lien law.

Acts 1895-6, p. 379, is omitted, because the subject is dealt with in this section.

Digitized by Google

As against sub-contractors, it was not error to allow the owner credit for notes discounted by him, which were given by the contractor to other sub-contractors for work done or materials furnished, nor for similar notes held by banks and taken by the owner, nor for orders drawn on the owner by the general contractor in favor of the sub-contractors. Each of such credits represented money paid by the owner for work done or materials furnished for the erection of the building. They were not such assignments or transfers as were prohibited by section 2482a of Pollard's Code (1904) (Acts 1895-6, p. 379). Schrieber v. Bank, 99 Va. 257, 38 S. E. 134.

For criticism of Acts 1895-6, p. 379, just cited, see 2 Va. L. Reg. 502; 3 Va. L. Reg. 401.

Sec. 6436. Extent of lien where owner has less than a fee in the land; in enforcement of liens, what preference is given to the mechanic's lien.—If the person who shall cause such building or structure to be erected or repaired owns less than a fee simple estate in such land, then only his interest therein shall be subject to said liens. No lien or encumbrance upon the land created before the work was commenced or materials furnished shall operate upon the building or structure erected thereon, or materials furnished for and used in the same, until the lien in favor of the person doing the work or furnishing the materials shall have been satisfied; nor shall any lien or encumbrance upon the land created after the work was commenced or materials furnished operate on the land, or such building or structure, until the lien in favor of the person doing the work or furnishing the materials shall have been satisfied. And in the enforcement of the liens acquired under the previous sections of this chapter, any lien or encumbrance created on the land before the work was commenced or materials furnished shall be preferred in the distribution of the proceeds of sale only to the extent of the value of the land estimated, exclusive of the buildings or structures, at the time of sale, and the residue of the proceeds of sale shall be applied to the satisfaction of the liens provided for in the previous sections of this chapter. (Code 1887, § 2483.)

Leased premises.—A lessor's interest in land is not subject to a mechanic's lien for repairs ordered by the tenant unless the tenant was the agent of the lessor by section 6426 or the lessor caused the repairs to be made or unless he ratified what the tenant had done. This rule is not changed by any relationship of the parties. Carter v. Keeton, 112 Va. 307, 71 S. E. 554; Atlas Cement Co. v. Main Line Co., 112 Va. 7, 70 S. E. 536, and note 17 Va. Law Reg. 217.

A lease required certain outbuildings to be erected on the leased premises. The lessor did not, by the execution of the lease, cause said buildings to be erected within the meaning of this section. Atlas Cement Co. v. Main Line Co., 112 Va. 7, 70 S. E. 536; note 17 Va. Law Reg. 217.

Priorities.—Where an owner borrowed money on land and house to be erected thereon, and gave a deed of trust to secure advances of said money made and to be made, and a contract is then entered into by the owner with a third party to erect the house on the said land, said person having notice of the deed of trust and receiving part of the money obtained thereunder, and afterwards, in order to raise money faster, the contract is assigned and recorded so as to create a mechanic's lien (under the statute then existing), and the party holding the deed of trust then

Digitized by Google

pays the balance of the money to the assignee, who had notice that the beneficiary under the deed of trust claimed priority over the mechanic's lien, it was held that the deed of trust had priority both as to money advanced before and after the mechanic's lien was recorded. Iaege v. Bossieux, 15 Grat. 83, 76 Am. Dec. 189, and note Va. Rep. Ann.

In Wroten's Assignee v. Armat, 31 Grat. 228, it was decided that a contractor who knowingly received money raised under deed of trust on the property is equitably estopped from claiming against such deed of trust. See, also, Wright v. Vaughan, 2 Va. Dec. 662, 33 S. E. 595.

Certain mortgages were given for purpose of raising money to construct Chamberlin Hotel at Old Point, and were duly recorded in clerk's office of Elizabeth City county court. Certain liens of mechanics and material-men for work and labor performed on such hotel were also filed according to law. Under this section mechanics' liens have priority. Crook v. Old Point (C. C.) 54 Fed. 604.

The owner of a prior incumbrance on land on which a mechanic asserts his lien, is entitled to the value of the land exclusive of the improvements as estimated at the time the liens are enforced, and the value must be estimated by the court before the property is sold. As to the estimated value of the land, the prior encumbrance is to be preferred to the exclusion of the mechanics' lien, and as to the buildings, the mechanics' lien is to be preferred to the exclusion of the prior encumbrance. Fidelity Co. v. Dennis, 93 Va. 504, 25 S. E. 546; Hudson v. Barham, 8 Va. Law Reg. 736, 43 S. E. 189.

Where the owner of land under an unrecorded deed causes buildings to be erected thereon for the cost of which a mechanic records a lien, such lien has priority over a judgment afterwards docketed against the owner's grantor. The effect of this section is to modify the registry law as contained in section 5194 so far as to give priority to a mechanic's lien on the lands of the grantee who has failed to record his deed over judgments subsequently obtained against his grantor. Pace v. Moorman, 99 Va. 246, 37 S. E. 911, 6 Va. Law Reg. 829, and note.

Where lienor had prior claims to a portion of debtor's property and a lien with other creditors on the balance, it is proper to sell the property in two parcels. Haskin Wood Vulcanizing Co. v. Cleveland Ship-Building Co., 94 Va. 439, 26 S. E. 878.

Generally.—Cited but not construed. Monk v. Exposition Corp., 111 Va. 121, 68 S. E. 280.

See Burks' Pleading and Practice, pp. 817, 826; see, also, notes to section 6437.

Sec. 6437. How liens are enforced; no priority except, etc.—The liens created and perfected under the preceding sections of this chapter may be enforced in a court of equity by a bill filed in the county or city wherein the building, structure, or railroad, or some part thereof is situated, or wherein the owner, or if there be more than one, any of them, resides. The plaintiff shall file with his bill an itemized statement of his account, showing the amount and character of the work done, or materials furnished, the prices charged therefor, the payments made, if any, the balance due, and the time from which interest is claimed thereon; the correctness of which account shall be verified by the affidavit of himself, or his agent. When a suit is brought for the enforcement of any such lien against the property bound thereby, all parties entitled to such liens upon the said property or any portion thereof may file petitions in such suit asking for the enforcement of their respective liens to have the same effect as if an independent suit were

Digitized by Google

brought by each claimant. There shall be no priority among them, except that the lien of a sub-contractor shall be preferred to that of his general contractor; and the lien of persons performing labor or furnishing materials for a sub-contractor, shall be preferred to that of such sub-contractor. (Code 1887, § 2484; 1893-4, p. 576.)

Revisors' Note.—This section is changed so as to make plain the venue of the suit to enforce the lien.

The plaintiff is required, when he files his bill, to file an itemized statement of his account. The account itself not being recorded by section 6427, but only a memorandum, the defendant is entitled at some stage of the proceedings to know the items and correctness of the account in every respect.

The words, "and the lien of persons performing labor or furnishing material for a sub-contractor shall be preferred to that of such sub-contractor," are new.

Demurrer.—A bill to enforce a mechanic's lien which does not show on its face that the suit was brought within the time prescribed by statute is bad on demurrer. Savings Bank v. Powhatan Clay Mfg. Co., 102 Va. 274, 9 Va. Law Reg. 898, 901 and note, 46 S. E. 294. See, also, 2 Va. L. Reg. 509; 3 Va. L. Reg. 64. See section 6433 and notes.

Bill alleged that lien was filed as provided for in sections 6426 and 6427 (as they then stood), and the copy of the record of the lien exhibited therewith showed that part of the work was done within thirty days (now sixty) of the recordation of lien. Held, this was sufficient, and demurrer would not lie. Richlands v. Hiltebeitel, 92 Va. 91, 22 S. E. 806.

Sufficient description of property in bill.—Where an exhibit with the bill particularly describes the property on which the lien is claimed, the quantity of land "necessary to the convenient use" of the buildings is sufficiently described. Richlands Flint-Glass Co. v. Hiltebeitel, 92 Va. 91, 22 S. E. 806. See, also, note of Pairo v. Bethell, 75 Va. 832, under section 6426, "Property subject to lien."

Architect's certificate.—Bill will not lie to enforce mechanic's lien where contract required architect's certificate, until such certificate is produced or good reason given why it is not. Belmont v. Hotel, 109 Va. 269, 63 S. E. 1068.

Equity will give complete relief.—Where a court of equity has taken jurisdiction of a suit to enforce a mechanic's lien, it should proceed to determine all the questions between the parties. Rison v. Moon, 91 Va. 384, 22 S. E. 165; Bailey Const. Co. v. Purcell, 88 Va. 300, 13 S. E. 456.

Terms of sale.—A sale in a suit to enforce the lien should be on reasonable credit, unless under the peculiar circumstances, which must be shown by the record, a sale upon other terms is desirable. Pairo v. Bethell, 75 Va. 825.

Where the debt secured by the mechanic's lien is only a small proportion of the value of the property, it is not error to decree a sale for cash sufficient to satisfy the lien. Lester v. Pedigo, 84 Va. 309, 4 S. E. 703.

The purchaser in a suit to enforce a mechanic's lien stands in the place of the lienor, and is invested with all the rights that he had under the law by virtue of his lien. Pace v. Moorman, 99 Va. 246, 37 S. E. 911, 6 Va. Law Reg. 829, and note.

Personal decree.—Even when mechanic's lien is not established, personal decree may be given against defendants. Johnson & G. Bros. v. Bunn & Co., 108 Va. 490, 62 S. E. 341, 19 L. R. A. (N. S.) 1064.

Parties.—In a suit to enforce a mechanic's lien, other lien creditors are proper, but not necessary parties, and a failure to make them parties to the suit does not disturb the priorities of the respective liens. Monk v. Exposition Corp., 111 Va. 121, 68 S. E. 280.

Digitized by Google

Supplies furnished manufacturing company.—Where supplies necessary for the conduct of the business of a manufacturing company have been furnished to such company, it was not necessary to show that they were so used by the company. It is immaterial that such company, as a mere incident of its business, buys and sells such supplies. In re West Norfolk Lumber Co. (D. C.), 112 Fed. 760, 7 Va. Law Reg. 836.

Generally.—Priorities among sub-contractors, see above section and note, 12 Va. Law Reg. 501.

Cited in Bailey Const. Co. v. Purcell, 88 Va. 300, 13 S. E. 456.

For decisions under former procedure (Code 1873, chapter 115) to enforce mechanics' liens, see Lester v. Pedigo, 84 Va. 309, 4 S. E. 703, and Pairo v. Bethell, 75 Va. 829.

See notes to preceding sections; Burks' Pleading and Practice 836.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 75, section 10.

Sec. 6438. Lien of employees, etc., of transportation companies, etc., on franchises and property of company.—All conductors, brakemen, engine drivers, firemen, captains, stewards, pilots, clerks, depot or office agents, storekeepers, mechanics, traveling representatives or laborers, and all persons furnishing railroad iron, engines, cars, fuel, and all other supplies necessary to the operation of any railway, canal, or other transportation company, and all clerks, mechanics, traveling representatives, and other persons who furnish their services, labor or supplies to any mining or manufacturing company, whether such railway, canal, or other transportation or mining or manufacturing company be chartered under or by the laws of this State, or be chartered elsewhere, and be doing business within the limits of this State, shall have a prior lien on the franchises, gross earnings, and on all the real and personal property of said company which is used in operating the same to the extent of the moneys due them by said company for such wages or supplies, and no mortgage, deed of trust, sale, hypothecation, or conveyance executed since the first day of May, eighteen hundred and eighty-eight, shall defeat or take precedence over said lien. There shall be no priority among liens created by this section except that the lien secured by this section to parties furnishing supplies shall be subsequent to that due to clerks, mechanics, laborers, or other persons, for services furnished as aforesaid: and provided, that if any person entitled to a lien as well under section sixty-four hundred and twenty-six, as under this section, shall perfect his lien given by either section, he shall not be entitled to the benefit of the other; and provided, also, that no right to or remedy upon a lien which has already accrued to any person shall be extended, abridged, or otherwise affected hereby. (Code 1887, § 2485; 1891-2, p. 362; 1902-3-4, p. 624.)

Revisors' Note.—**This section is changed so as to give the lien to persons who furnish their services, labor OR SUPPLIES. Under the Code of 1887 a lien was given for supplies furnished to mining and manufacturing companies. By the Acts of 1891-2, pp. 362-363, material alteration was made in the matter of supplies furnished mining and manufacturing companies, and they were given a prior lien only upon**

Digitized by Google

"personal property of such company other than that forming part of its plant," etc., and a general lien on all its real and personal property to a limited extent. By the Acts of 1902-3-4, p. 624, the lien for supplies was entirely taken away as to mining and manufacturing companies. It is now restored.

The date in the provision concerning mortgages, deeds of trust, etc., is changed from March 21, 1877, to May 1, 1888, the latter being the date the Code of 1887 went into effect.

No other material change.

Constitutionality.—This section is not in conflict with the Fourteenth amendment to United States Constitution, as being unequal or class legislation. Virginia Development Co. v. Crozer Iron Co., 90 Va. 126, 17 S. E. 806, 44 Am. St. Rep. 893.

That portion of section 2485 of the Code of 1887 which provided that "no mortgage, deed of trust, sale, hypothecation, or conveyance executed since the twenty-first day of March, 1877, shall defeat or take precedence over said lien," was retroactive in its effect, and impaired the obligation of contracts, and was declared void as to bonds issued and secured by mortgage in 1881. Crowther v. Fidelity Ins., Trust & Safe-Deposit Co., 85 Fed. 41, 29 C. C. A. 1, 3 Va. Law Reg. 867. It was true that the act (1876-7, p. 188, amended 1878-9, p. 352), upon which this section was founded, was passed before the mortgage referred to was given; but the title of the act was defective, and therefore repugnant to section 15, article 5, Const. 1869. Fidelity Ins., Trust & Safe-Deposit Co. v. Shenandoah Val. R. Co., 86 Va. 1, 9 S. E. 759, 19 Am. St. Rep. 858; Id. (C. C.) 42 Fed. 372. But where the charter of a corporation, organized before that Code went into effect, was taken subject to the general law of the State in force at the time, and such changes as might afterwards be made in that law, and where one of the rights granted in the charter was to issue bonds and to secure the same by deed of trust or mortgage, bondholders who took the bonds of the company after the Code went into effect were presumed to be cognizant of the law then in force, giving a prior lien as set forth, and to have taken the security subject to the rights of other parties thereunder. Virginia Development Co. v. Crozer Iron Co., 90 Va. 126, 17 S. E. 806, 44 Am. St. Rep. 893.

This section not contrary to Fourteenth Amendment to Constitution of the United States and makes no discrimination against any company brought under its influence. First Nat. Bank v. Trigg Co., 106 Va. 327, 56 S. E. 158.

Supplies—Mining and manufacturing companies.—The following cases were decided under a different reading of this section: American Woodworking Machinery Co. v. Agelasto, 136 Fed. 399; note 11 Va. L. Reg. 236; Virginia Development Co. v. Crozer Iron Co., 90 Va. 126, 17 S. E. 806, 44 Am. St. Rep. 893; Boston Blower Co. v. Carman Lumber Co., 94 Va. 94, 26 S. E. 390; Seventh Nat. Bank v. Shenandoah Iron Co. (C. C.), 35 Fed. 436.

Railway companies.—Engines for the purpose of generating electricity for propelling cars are "engines necessary to the operation of an electric road," within the meaning of this section. Frick Co. v. Norfolk & O. V. R. Co., 86 Fed. 726, 32 C. C. A. 31.

Materials and labor furnished in erection of car barns, trainsheds, power and boiler houses, depots, workshops and rebuilding hotel belonging to railroad are not supplies necessary to operation of road. Frick Co. v. Norfolk & O. V. R. Co., 86 Fed. 726, 32 C. C. A. 31.

Medical supplies rendered and board furnished by hospital to railroad employe injured in service are not supplies under this section. Newgass v. Atlantic & D. R. Co. (C. C.), 56 Fed. 676.

Conditional sales.—The contract under which cars were furnished to a railroad styled itself a lease, and provided for the payment of purchase money in monthly instalments, with right in vendor, on default, to

Digitized by Google

take possession of cars and sell, returning any surplus to vendee. The vendor put his name on cars as owner, and recorded contract as required in case of conditional sales. The cars were furnished to "vendee," within meaning of this statute, and such action of vendor did not waive his lien. Newgass v. Atlantic & D. R. Co. (C. C.), 56 Fed. 676.

Labor and services.—Persons contracting to log, mill out and rack certain lumber at a certain price per thousand are not "laborers" within the meaning of this section. Tucker v. Bryan, 217 Fed. 576.

One who lays track and strings wire for an electric railroad at ar agreed price per mile is not a laborer, within meaning of this sectior Frick Co. v. Norfolk, &c., Co., 86 Fed. 726, 32 C. C. A. 31.

Claim of telegraph company for services rendered a railroad is a labor claim, within the meaning of this statute. Newgass v. Atlantic & D. R. Co. (C. C.), 72 Fed. 712.

The president, manager, secretary and treasurer of manufacturing companies are not entitled to a lien for their salaries. Seventh Nat. Bank v. Shenandoah Iron Co. (C. C.), 35 Fed. 436; Fidelity Ins. Trust & Safe-Deposit Co. v. Roanoke Iron Co. (C. C.), 81 Fed. 440, 3 Va. Law Reg. 375.

When lien attaches.—The lien provided for by this section attaches at the time the supplies are furnished, and not at the time the claim is filed under section 6439, and in an adjudication in bankruptcy against the debtor between the date of maturity of the last item of the account for supplies and the filing and recording of the claim does not destroy the claimant's right to priority in the distribution of the bankrupt's estate. Mott v. Wissler Min. Co., 135 Fed. 697.

Priorities.—One furnishing supplies to a manufacturing company was entitled to a lien superior to the right of a pledge of the products of said company. Fidelity Ins., Trust & Safe-Deposit Co. v. Roanoke Iron Co. (C. C.), 81 Fed. 439.

Where iron company made a contract with brokers for sale of iron produced at its mills, under which iron was shipped to brokers on bills of lading in their name, was stored by them, and sold at their discretion, they advancing a certain proportion of market price to company, who exercised no control over sales, and accounted to it for proceeds of iron when sold, such iron delivered to brokers is not liable to supply lien hereunder. Id.

A lien on the real and personal property of a manufacturing company for supplies furnished was prior to any deed of trust, etc., recorded after such supplies are furnished. In re West Norfolk Lumber Co. (D. C.), 112 Fed. 760, 7 Va. L. Reg. 836.

Supply liens take precedence among themselves in the order of their recordation in the proper clerk's office. Id.

Liens for supplies furnished to a manufacturing company which were perfected under this section as amended February 15, 1892, although within four months prior to adjudication of debtor as bankrupt, are not dissolved by such adjudication, but will be given priority in accordance with decisions of Supreme Court of Virginia. Id.

The prior lien given by this section attaches only to the interest in its property acquired by the company which employed claimants, and takes precedence only of mortgages made by it; and where such company purchases property already subject to encumbrance made by former owner, or has given purchase-money mortgage, such encumbrances are not displaced by employer's liens. Furbush & Son Mach. Co. v. Liberty Woolen Mills (C. C.), 81 Fed. 425.

A mortgagor who has assigned policies of insurance taken on his property to a mortgagee for the protection of the debt has only a right to the surplus after the payment of the debt, and if there is no surplus there is no estate to which a supply lien could attach. In re West Norfolk Lumber Co. (D. C.), 112 Fed. 760, 7 Va. L. Reg. 836.

Bona fide holders of warehouse receipts issued by a manufacturing company had priority over one furnishing supplies after transfer and

Digitized by Google

delivery of such receipts. Millhiser Mfg. Co. v. Gallego Mills Co., 101 Va. 581, 44 S. E. 760.

A lien under this section for labor and supplies furnished is inferior to a valid assignment of a chose in action by a manufacturing company, made more than two years prior to the said lien. Hawes v. Trigg, 110 Va. 165, 65 S. E. 538.

Liens by supply creditors under this section upon an uncompleted vessel are superior to the claims of the U. S. government under a contract for the construction of the vessel providing for inspection by the government, payment by instalments, as the work progressed and that all parts paid for under the system of partial payments should become the sole property of the U. S. Hawes v. Trigg, 110 Va. 165, 65 S. E. 538. Sed quaere, May not such vessel be a public work and not subject to lien?

It seems that a deed of trust given to secure the purchase price of property bought by a manufacturing and mining company takes priority over the labor liens asserted by the employees of the company. See article in 19 Va. L. Reg. 721, commenting upon a ruling of the Supreme Court upon a request for an injunction.

As to the rights of material-men as against mortgage creditors of a railroad, see 6 Va. Law Reg. 124. See, also, 8 Va. Law Reg. 205; 2 Va. Law Reg. 871, and notes to section 6439.

Generally.—Where supplies necessary for the conduct of the business of a manufacturing company have been furnished to such company, it is not necessary to show that they were so used by the company. It is immaterial that such company, as a mere incident of its business, buys and sells such supplies. In re West Norfolk Lumber Co. (D. C.), 112 Fed. 760, 7 Va. Law Reg. 836.

A carrier is not entitled to a lien for charges for freight on supplies. Seventh Nat. Bank v. Shenandoah Iron Co. (C. C.), 35 Fed. 436; Fidelity, &c., Co. v. Roanoke Iron Co. (C. C.), 81 Fed. 440, 3 Va. L. Reg. 375.

A general shipbuilding company is a manufacturing company within the meaning of this section. First Nat. Bank v. Trigg Co., 106 Va. 327, 56 S. E. 158.

For comments on this section, see 15 Va. Law Reg. 355, 392, 492, 559.

See Gregory's Forms Nos. 342, 343, 344.

Cited but not construed, Loyd v. Lynchburg, 113 Va. 627, 75 S. E. 233.

As to sections 6438 and 6439, before Code 1887, see Crowther v. Fidelity Ins., Trust & Safe-Deposit Co., 85 Fed. 41, 29 C. C. A. 1.

See notes to next section.

Sec. 6439. How perfected; how enforced.—No person shall be entitled to the lien given by the preceding section unless he shall, within ninety days after the last item of his bill becomes due and payable for which such supplies are furnished or service rendered, file in the clerk's office of the circuit court of the county or corporation court of the city in which is located the chief office in this State of the company against which the claim is, or in the clerk's office of the Chancery Court of the city of Richmond when such office is in said city, a memorandum of the amount and consideration of his claim, and the time or times when the same is, or will become due and payable, verified by affidavit, which memorandum the said clerk shall forthwith record in the Miscellaneous Lien Book and index the same in the name of the said claimant and also in the name of the company against which the claim is, as required by section sixty-four hundred and twenty-seven. Any such lien

Digitized by Google

may be enforced in a court of equity. (Code 1887, § 2486; 1891-2, p. 363; 1895-6, p. 340.)

Revisors' Note.—The memorandum is required to state the time or times when the claim is or will become due and payable in addition to the matters required by the former law. Under the former law the memorandum was required to be recorded in the deed book. Now it is to be recorded in the Miscellaneous Lien book. No other change.

Memorandum must show upon its face: (1) The amount of the claim; (2) the consideration of it (i. e., whether for supplies or for labor); (3) verified by affidavit. All else, however essential to the existence of the lien, can be supplied aliunde. Memorandum need not show on its face that the claim was filed within the ninety days, but this may be proved aliunde. Overholt v. O. D. Mfg. Co., 98 Va. 654, 37 S. E. 307; but see contra, Liberty Perpetual Bldg. & Loan Co. v. M. A. Furbush & Son Mach. Co., 3 Va. Law Reg. 86, 80 Fed. 631, 26 C. C. A. 38. The memorandum must now show also what part of the account is due and what part is to become due. See the statute as amended. This was formerly held unnecessary. See In re West Norfolk Lumber Co. (D. C.), 7 Va. Law Reg. 836, 112 Fed. 760.

A lien claimed under this section is not insufficient because it does not show on its face that it was filed within ninety days after the last item of supplies was furnished, where such fact is stated in affidavit of verification required by statute, which forms part of claim. In re West Norfolk Lumber Co., supra.

To acquire a laborer's lien, under section 2485 of the Code of 1887, as amended (1891-2) (corresponding to the above section), requirement that claim must be filed in clerk's office within prescribed time must be strictly complied with and record must show such compliance. The mere recording of labor tickets within ninety days from their date, with nothing to show that wages were due on the day tickets were given, gives no lien, nor can record be supplemented by parol evidence on this point after suit brought to enforce lien. Liberty Perpetual Bldg. & Loan Co. v. M. A. Furbush & Son Mach. Co., 80 Fed. 631, 26 C. C. A. 38.

Better practice, however, required that the memorandum should show (1) that the lien was claimed against transportation, mining, or manufacturing company; (2) that the laborers were employed as laborers (or that supplies were necessary to operation); and (3) should give a description of the property on which the lien was claimed (Liberty Perpetual Bldg. & Loan Co. v. M. A. Furbush & Son Mach. Co., 3 Va. Law Reg. 86, 80 Fed. 631, 26 C. C. A. 38); and also (4) that last item of bill became due and payable within ninety days; and (5) also what part of the account was due and what part to become due. In re West Norfolk Lumber Co., supra. See revisors' note above and revisors' note to preceding section for changes made in these sections by the present revision.

Description of property.—In Liberty Perpetual Bldg. & Loan Co. v. M. A. Furbush & Son Mach. Co., supra, there is obiter to the effect that the property on which the lien is claimed should be described, but this in many cases would be impracticable and unsafe. It would often be impossible to describe the "franchises, gross earnings, real and personal property" of a railroad, etc., or to be able to designate what property is used "in operating the same," and should any such property be left out of the description it would seem that the claimant would not be entitled to a lien thereon.

When memorandum must be filed—Single contract.—Lien dates from the time the supplies are furnished, and may be claimed any time thereafter, provided the claim be filed not later than ninety days after the last item of the account becomes due and payable. If the claim be filed within that time, it relates back to the time the supplies were furnished, subject to be defeated by prior or intervening supply liens. In re West Norfolk Lumber Co. (D. C.), 7 Va. Law Reg. 836, 112 Fed. 760.

If materials are furnished a manufacturing company under a single

Digitized by Google

contract, the items of the account are continuous, and the ninety days given the material man in which to file his account under this section is counted from the last item of the account, but if furnished under separate contracts the account must be filed within ninety days from the last item under each independent contract. First Nat. Bank v. Trigg Co., 106 Va. 327, 56 S. E. 158.

Notice of claim of lien for labor under contract to be performed for so much per day may be filed within statutory period after contract, and such claim will not be severed, and only so much allowed as falls within said statutory period. Fidelity Ins., Trust & Safe-Deposit Co. v. Roanoke Iron Co. (C. C.), 81 Fed. 439.

Running account.—The time within which notice must be filed under this section for supplies furnished to manufacturing or mining company begins to run in case of supplies furnished under contract from date of last delivery, and lien applies to whole series of connected items forming a running account, and not only to deliveries within statutory period. Fidelity Ins., Trust & Safe-Deposit Co. v. Roanoke Iron Co. (C. C.), 81 Fed. 439.

A running account, where nothing to the contrary appears, is to be construed as falling due at the date of its last item. Osborne v. Big Stone Co., 96 Va. 58, 30 S. E. 446; Richlands Flint-Glass Co. v. Hiltebeitel, 92 Va. 91, 22 S. E. 806.

Separate orders.—Where contract for furnishing engines provides for placing them in position and a thirty-days' test the limitation within which a lien therefor may be perfected does not begin to run until they are placed in position, adjusted, and put in operation; but where material and labor are furnished to railroad as they are from time to time ordered, and not in fulfillment of a single contract, the limitation begins to run against each item from the date it is furnished. Frick Co. v. Norfolk & O. V. R. Co., 86 Fed. 726, 32 C. C. A. 31.

Instalments.—Under this section, the time within which supplies are furnished is immaterial so far as concerns the claim, and where they are to be paid for in instalments the claim must be filed and recorded within statutory period after last instalment is due. Newgass v. Atlantic & D. R. Co. (C. C.), 56 Fed. 676.

Terms of credit.—The provision that no person shall be entitled to the lien given by the preceding section unless he shall, within ninety days after last item of his bill becomes payable, file his claim for record, merely fixes limit of time after which a lien claim cannot be filed, and does not preclude lien claimant who has given a term of credit for supplies furnished from filing his claim before such term of credit has expired. In re West Norfolk Lumber Co. (D. C.), 112 Fed. 760, 7 Va. L. R. 836.

The affidavit.—Affidavit made and filed for purpose of securing lien under this section which is verified in another State, but lacks authentication of magistrate's signature, required by section 275, is not a nullity; but claimant of lien may show that oath was properly administered, and omission of authentication may be supplied. Fidelity Ins., Trust & Safe-Deposit Co. v. Roanoke Iron Co. (C. C.), 81 Fed. 439.

On the subject of affidavits by corporations and agents, see section 276.

Suspension of running of limitation.—The filing of a creditors' bill suspends the running of limitation for recording labor claims, and that account due before filing of bill, but not recorded until after period of limitation, is a valid lien. Newgass v. Atlantic & D. R. Co. (C. C.), 56 Fed. 676, 72 Fed. 712.

The limitation herein is not suspended by pendency of suit in which receivers have been appointed, but is suspended by a decree of reference to master to take an account of company's debts and their priorities. Seventh Nat. Bank v. Shenandoah Iron Co. (C. C.), 35 Fed. 436; Fidelity, Ins., Trust & Safe-Deposit Co. v. Roanoke Iron Co. (C. C.), 81 Fed. 439.

Bankruptcy.—Such liens are recognized in courts of bankruptcy.

Digitized by Google

In re West Norfolk Lumber Co. (D. C.), 7 Va. Law Reg. 836, 112 Fed. 759.

In appellate court.—While for errors apparent on the face of commissioner's report allowing an account, which is the basis of a lien for supplies, objections may be taken for the first time in this court, yet the objection cannot avail, if it could have been made and the objection cured by the introduction of evidence in the court below. It is too late after the lien has been presented to the lower court, accepted by the commissioner duly reported, and the report confirmed without objection. Osborne v. Big Stone Co., 96 Va. 58, 30 S. E. 446.

Generally.—For articles upon statutory supply and labor liens, see 9 Va. Law Reg. 177 and 685.

Cited but not construed, Loyd v. Lynchburg, 113 Va. 627, 75 S. E. 233.

For comment on this section, see 15 Va. Law Reg. 355, 392, 492, 559.

See note of Mott v. Wissler, 135 Fed. 697, under section 6438.

See notes to section 6438; see Gregory's Forms Nos. 342, 343, 344.

Sec. 6440. Assignee's rights.—Any assignee of such a claim as is mentioned in the preceding sections may file the memorandum and make the oath required by said sections, and shall have the same rights as his assignor. (Code 1887, § 2487.)

Without reference to Code 1887, section 2487, it was decided that an assignee can ordinarily file the lien. Liberty Perpetual Bldg. & Loan Co. v. M. A. Furbush & Son Mach. Co., 3 Va. Law Reg. 86, 80 Fed. 631, 26 C. C. A. 38; In re West Norfolk Lumber Co. (D. C.), 7 Va. Law Reg. 836, 112 Fed. 760.

Cited in dissenting opinion of Buchanan, J., in Clement v. Adams Bros.-Paynes Co., 113 Va. 547, 75 S. E. 294, 18 Va. L. Reg. 437 and note.

For articles upon statutory supply and labor liens, see 9 Va. Law Reg. 177 and 685.

Sec. 6441. Satisfaction of lien.—When a debt secured by a mechanic's lien has been fully paid, the creditor filing the lien shall enter satisfaction thereof on the margin of the book in which it is recorded within thirty days after same has been satisfied. Such entry of satisfaction shall be attested by the clerk, who shall receive therefor a fee of twenty-five cents, to be paid by the creditor. Any creditor who shall fail for a period of ten days after written request of the owner to enter such satisfaction shall forfeit to the owner the sum of twenty dollars.

Revisors' Note.—This is a new section, the purpose of which is manifest; but since the enactment of the Code it has been discovered that the new section is covered by and in conflict with section 6456. The revisors will therefore recommend the repeal of section 6441.

Sec. 6442. In case of bankruptcy, death or absconding, how notices to be served, acts done, etc.—Whenever any act is required to be done by, or notice is to be given to, a person mentioned in any of the preceding sections of this chapter, if such person become bankrupt, the act may be done by, or the notice given to, either the bankrupt or his trustee; or if such person die, the act may be done by, or the notice given to, his personal representative; or if he abscond, the notice may be given to any person over the age of sixteen years found at his last known place of business or resi-

Digitized by Google

dence, or if no such person be found there, by posting the same at the front door of such place of business or residence, or at some other conspicuous part of the building, or he may be proceeded against by order of publication as a non-resident of the State.

Revisors' Note.—This section is new, and fills a gap in the former law. See section 6069 and following as to order of publication. Provision is there made for a uniform order of publication in all cases in which an order of publication is desired.

Sec. 6443. Lien of mechanics for repairs.—Every mechanic, who shall alter or repair any article of personal property at the request of the owner of such property, shall have a lien thereon for his just and reasonable charges therefor, and may retain possession of such property until such charges are paid. (Code 1887, § 2488.)

The lien here given does not seem to be co-extensive with the common-law doctrine which gives one whose labor or skill has enhanced the value of a chattel a lien on the same.

For conflicting authorities as to whether lien is waived by accepting negotiable note or other security, see Kilpatrick v. Kansas City & B. R. Co., 38 Neb. 620, 57 N. W. 664, 41 Am. St. Rep. 761.

See, also, 3 Min. 336.

Sec. 6444. Lien of inn-keepers, etc.—Every inn-keeper, keeper of a boarding house, or house of private entertainment, shall have a lien upon and may retain possession of, the baggage and other property of his guest or boarder brought upon his premises, and also upon the property of the employer of such guest or boarder, controlled and brought upon said premises by such guest or boarder in the course of his employment, for the proper charges due from such guest for his board and lodging. (1906, p. 250.)

See 6 Va. Law J. 316; 11 Va. Law J. 123; 4 Va. L. Reg. 121.

Sec. 6445. Lien of keeper of livery stable, etc.—Every keeper of a livery stable or garage, and every person pasturing or keeping any horses or other animals, vehicles, or harness, shall have a lien upon such horses and other animals, vehicles, and harness, for the amount which may be due him for the keeping, supporting and care thereof, until such amount is paid. (Code 1887, § 2490.)

Revisors' Note.—The words "or garage" appearing in line two of the text are new.

Sec. 6446. Lien of stock breeders and owners of licensed stallions.—Any person who owns a mare or jennet and breeds the same to any stallion or jackass that is duly licensed under the license laws of the State of Virginia, and where such mare shall be bred to and become in foal by any such stallion or jackass, and the same is delivered of a live colt, the owner of any such stallion or jackass shall have a lien upon said colt for a period of twelve months, or until the price agreed upon for the season or service by the owner of the stallion or jackass and the owner of the mare or jennet be paid. Said lien shall not extend for a longer period than twelve months, and after judgment has been taken for the amount of said fee, then unless the same is paid, the officer in whose hands the fieri facias is placed for collection may proceed to levy on and sell said colt for

Digitized by Google

the aforesaid fieri facias and costs, and he shall be entitled to the same fees for his services as is provided for by the existing law, and this lien if reduced to writing shall be recorded in the Miscellaneous Lien Book and shall be operative from the recordation thereof, and if not reduced to writing, shall, upon application of the owner of the stallion or jackass, be recorded by the clerk of the circuit court of the county in which the foal is foaled in the said book in the following form:

..... (giving the name of the owner of the stallion or jackass) versus ..... (giving the name of the owner of the colt). The owner of the stallion or jackass claims a lien on a colt less than twelve months old for $....., for the get thereof.

The clerk shall be entitled to a fee of thirty cents for the recordation of each of such last-described liens. (1891-2, p. 920; 1910, p. 323.)

Revisors' Note.—Some slight changes have been made in this section. The lien is to be recorded in the Miscellaneous Lien Book, as to which see section 3393.

Sec. 6447. Special license tax on bulls; lien on the offspring thereof.—Persons owning a bull or bulls in this State may apply to the commissioner of the revenue of the district of the county, city or town in which he resides, and receive from the treasurer of said county a special license tax for the privilege of letting such bull or bulls to cows other than his own, which tax shall be for the sum of two and one-half dollars on each bull so licensed. Any person so obtaining said license shall have a lien on the get of such bull so licensed for the period of six months from the date of the birth of such get, for price agreed upon between him and the owner of any such cow or cows served by such bull: provided, however, that this lien shall not hold good as against an innocent purchaser for value and without notice, except where said lien has been admitted to record, which may be done in the following form:

..... (giving the name of the owner of the bull) versus ..... (giving the name of the owner of the calf). The owner of the bull claims a lien on a calf less than six months old for $..... for the get thereof.

On receipt of a fee of twenty-five cents it shall be the duty of the clerk of the county in which the calf is calved to place the same on record in the Miscellaneous Lien Book. (1901, p. 284.)

Revisors' Note.—The lien is to be recorded in the Miscellaneous Lien Book, as to which see section 3393.

Sec. 6448. Payment of debts due by commission merchants; remedies.—Whenever any farm product shall have been consigned by any commission merchant for sale, and he shall have made sale thereof and become insolvent or die before paying over the proceeds of the sale thereof to, or on account of, the consignor or own-

Digitized by Google

er of said farm product, the claim of such consignor or owner, when legally proved, shall be a lien on the estate of said commission merchant subject only to such liens as were created on said estate and recorded prior to said insolvency or death: provided, however, that the benefit of this section shall not accrue to any consignor or owner who, without requesting payment, shall allow such proceeds to remain with such commission merchant at interest, nor to any consignor or owner who, without requesting payment, shall allow such proceeds to remain in the hands of such commission merchant more than thirty days after becoming informed of such sale. Jurisdiction is hereby given to courts exercising circuit court powers in chancery to enforce the provisions of this section. (1893-4, p. 491; 1895-6, p. 676.)

Revisors' Note.—The act from which this section is taken provided that the lien referred to therein should be "subject only to such liens as were created on said estate and recorded prior to said SALE." The revised section reads "insolvency or death" in lieu of "sale." Liens may have been acquired in good faith by creditors after the sale of which they had no notice, and it was thought that the consignor's lien should be subject to all liens created prior to the insolvency or death of the commission merchant.

Sec. 6449. Enforcement of liens acquired under sections sixty-four hundred and forty-three, sixty-four hundred and forty-four and sixty-four hundred and forty-five and of the lien of bailees.—Any person having a lien under sections sixty-four hundred and forty-three, sixty-four hundred and forty-four and sixty-four hundred and forty-five of this Code and any bailee, except where otherwise provided, having a lien as such at common law on personal property in his possession which he has no power to sell for the satisfaction of the lien, if the debt for which the lien exists be not paid within ten days after it is due and the value of the property affected by the lien does not exceed twenty dollars, may sell such property or so much thereof as may be necessary, by public auction, for cash, and apply the proceeds to the satisfaction of the debt and expenses of sale, and the surplus, if any, he shall pay to the owner of the property. Before making such sale, he shall advertise the time, place and terms thereof, in such manner as to give publicity thereto, and also give to the owner, if he be in the county or corporation, ten days' written notice of the same and of the amount claimed to be due. If the owner cannot be found in such county or corporation, posting the notice at three public places therein shall be sufficient service thereof. If the value of the property be more than twenty dollars but does not exceed three hundred dollars, the party having such lien, after giving notice as hereinbefore provided, may apply by petition to any justice of the county or corporation wherein the property is, or, if the value of the property exceed three hundred dollars, to the circuit or corporation court of such county or corporation, for the sale of the property; and if, on the hearing of the

Digitized by Google

case on the petition, the defense, if any made thereto, and such evidence as may be adduced by the parties respectively, the court or justice shall be satisfied that the debt and lien are established and the property should be sold to pay the debt, such court or justice shall order the sale to be made by the sheriff or sergeant of the said county or corporation or any constable thereof, who shall make the same and apply and dispose of the proceeds in the same manner as if the sale were made under a writ of fieri facias. If the owner of the property be a resident of this State, the notice required by this section may be served in the mode prescribed by section six thousand and forty-one. If he be a non-resident, it may be served by posting a copy thereof in three public places in the county or corporation wherein the property is. (Code 1887, § 2491.)

As to common-law right of pledgees, Alexandria, L. & H. R. Co. v. Burke, 22 Grat. 254.

Sec. 6450. How and when validity of the lien, or claim of other person to the property, is tried.—Any person may file his petition, at any time before the property is sold or the proceeds of sale are paid to the plaintiff under the judgment of the justice or court, disputing the validity of the plaintiff's lien thereon, or stating a claim thereto, or an interest in or lien on the same, and its nature; and the justice or the court, as the case may be, shall inquire into such claim, and if it be found that the petitioner has title to, or a lien on, or any interest in, such property or proceeds of sale, the justice or court shall make such order as is necessary to protect his rights. (Code 1887, § 2492.)

Sec. 6451. Appeals, how taken and tried.—Any party may appeal from the judgment of the justice, as in case of warrants for small claims under chapter two hundred and fifty, and such appeal shall be heard and determined in like manner, as appeals under said chapter. (Code 1887, § 2493.)

Sec. 6452. Lien on crops for advances to farmers; nature of agreement thereof; where recorded.—If any person, other than a landlord, make advances, either in money or supplies, or other thing of value, to anyone who is engaged in, or is about to engage in, the cultivation of the soil, the person so making such advances shall have a lien on the crops which may be made or seeded during the year upon the lands in or about the cultivation of which the advances so made have been, or were intended to be, expended to the extent of such advances: but the person making such advances shall not have the benefit of the lien given by this section unless there is an agreement in writing, signed by both parties, in which there is specified the amount advanced or a limit be fixed beyond which any advances made from time to time during the year shall not go, and the said agreement be docketed or recorded in the office of the clerk of the county in which the land lies, in the miscellaneous lien book; such agreement shall be docketed by said clerk in the same

Digitized by Google

manner that judgments are now required by law to be docketed, and from the time they are so docketed shall have the same force and effect as if they were recorded in the deed book, and for such service said clerk shall receive a fee of twenty-five cents, which lien shall be valid as to purchasers without notice from and creditors of the party or parties obtaining such advance or advances only from the time when the said agreement shall have been delivered to the said clerk to be docketed as hereinbefore provided. (Code 1887, § 2494; 1891-92, p. 782; 1906, p. 35; 1910, p. 562.)

Revisors' Note.—The lien is to be recorded in the Miscellaneous Lien Book, as to which see section 3393.

Fraudulent failure to deliver crop is punished criminally by section 4454.

Are bulbs crops? See 20 Va. L. Reg. 387.

Sec. 6453. Protection of lien by injunction; who may grant it; where tried.—If any person to whom advances have been made, for which a lien on his crops has been obtained, under the preceding section, shall be about to sell, or otherwise dispose of his crops, without having paid for the advances or secured the payment thereof, or in any way attempt to defeat the said lien, he may be restrained from so doing by injunction awarded on bill, and thereupon such decrees and orders may be made as shall be necessary to secure payment and satisfaction for said advances. Such injunction may be awarded by any judge having general jurisdiction, under section sixty-three hundred and nineteen, to award injunctions; but when awarded by any other court or judge than the circuit court having jurisdiction of the bill, under section sixty-three hundred and eighteen, or the judge thereof, it shall be directed to the clerk of the said circuit court, and the proceedings thereupon shall be as if the order had been made by the said circuit court, or the judge thereof. (Code 1887, § 2495.)

Sec. 6454. Lien of landlords and farmers for advances to tenants and laborers; how enforced; priority of lien.—If any owner or occupier of land contract with any person to cultivate such land as his tenant for rent either in money or a share of the crop; or if any person engaged in the cultivation of land contract with any laborer thereon for a share of the crop as his wages; and such owner or occupier of the land, or such person engaged in the cultivation of land, shall make any advances in money, supplies, or other thing to such tenant or laborer, he shall have a lien to the extent of such advances on all the crops, or the share of such laborer in the crops, that are made or seeded on the said land during the year in which the advances are made, which shall be prior to all other liens on such crops or such portion thereof, or share therein; and he shall have the same remedy for the enforcement of such lien by distress when the claim is due, or by attachment when the claim is not yet payable, as is given a landlord for the recovery of rent under sections

Digitized by Google

fifty-five hundred and twenty-two and sixty-four hundred and sixteen: Provided, that he or his agent, shall, before suing out the distress warrant, make affidavit before the justice issuing the same to the amount of his claim, that it is then due and is for advances made under contract to a tenant cultivating his land, or a laborer working the same; and before suing out the attachment, make the like affidavit, and also at what time the claim will become payable, and that the debtor intends to remove, or is removing from such land the said crops, or his portion thereof, or share therein, so that there will not be left enough to satisfy the claim. The person, whose crops are so distrained or attached, shall have all the rights and be entitled to all the remedies allowed a tenant against a distress or attachment for rent. (Code 1887, § 2496.)

Sec. 6455. Lien of landlords and other recorded liens not affected by lien given under section sixty-four hundred and fifty-two; nor exemption to poor debtors.—The lien provided for in section sixty-four hundred and fifty-two, shall not affect in any manner the rights of the landlord to his proper share of rents, or his lien for rent or advances, or his right of distress or attachment for the same, nor any lien existing at the time of making the agreement mentioned in said section, which is required by law to be recorded and shall have been admitted to record. Nor shall it affect the right of the party to whom the advances have been made, to claim such part of his crops as is exempt from levy or distress for rent. (Code 1887, § 2497.)

Sec. 6456. Satisfaction of lien to be entered by creditor; how signed; how owner, etc., of the real estate may have lien released; former releases validated; releases to person dead enure to successors.—When payment or satisfaction is made of a debt secured by mortgage, deed of trust, vendor's or mechanic's lien, it shall be the duty of such lien creditor, unless he shall have delivered a proper release deed, to cause such payment or satisfaction to be entered on the margin of the page of the book where such incumbrance is recorded; and for any failure to do so, after five days' notice, if the note, bond, or other evidence of debt secured by said lien shall be left with the lien creditor, or with the clerk, in whose office such incumbrance is recorded, until the lien is released as provided by this section, shall forfeit twenty dollars. Such entry of payment or satisfaction shall be signed by the creditor or his duly authorized agent, attorney or attorney in fact, and the note, bond or other evidence of debt secured by such lien duly cancelled, shall be produced before the clerk in whose office such incumbrance is recorded, or an affidavit shall be filed by the said creditor, or his duly authorized agent or attorney, or attorney in fact, with such clerk, to the effect that the debt therein secured and intended to be released or discharged has been paid to such creditor, his agent,

Digitized by Google

attorney, or attorney in fact, who was, when the said debt was so satisfied, entitled and authorized to receive the same, and that such note, bond or other evidence of debt has been cancelled and delivered to the person by whom it was paid, or has been lost or destroyed and cannot be produced as herein required; and when so signed and the signature thereto attested by such clerk, with a certificate that said note, bond or other evidence of debt duly cancelled was produced before such clerk, or that the affidavit hereinbefore required has been duly filed with such clerk, the same shall operate as a release of the incumbrance as to which such payment or satisfaction is entered, and if the incumbrance be by deed of trust or mortgage, as a reconveyance of the legal title, as fully and effectually as if the said marginal entry were a formal deed of release duly executed and recorded.

Any person who owns or has any interest in real estate or personal property on which such incumbrance exists may, after twenty days' notice thereof to the person entitled to such incumbrance, apply to the circuit or corporation court of the county or corporation in whose clerk's office such incumbrance is recorded, or to the Chancery Court of the city of Richmond, if it be in the clerk's office of the said court, to have the same released or discharged, and upon proof that it has been paid or discharged, or upon its appearing to the court that more than twenty years have elapsed since the maturity of the lien or incumbrance, raising a presumption of payment, and which is not rebutted at the hearing, such court shall order the same to be entered by the clerk on the margin of the page in the book wherein the incumbrance is recorded, which entry, when so made, shall operate as a release of such incumbrance, and the clerk's fee for so releasing on the margin of the page of the book wherein the incumbrance or lien is recorded shall be fifty cents, which shall be paid by the person or persons applying for the release, unless otherwise provided in the said mortgage, deed of trust, vendor's or mechanic's lien.

All releases heretofore made by any court under this section upon such presumption of payment so arising and not rebutted, shall be validated. A release of a deed of trust or a reconveyance of the property embraced therein, may in all cases be made to the original grantor, whether living or dead, and any release or reconveyance heretofore or hereafter so made shall enure both in law and in equity to the successors in title of such grantor. (Code 1887, § 2498; 1893-4, p. 483; 1895-6, p. 574; 1897-8, pp. 595, 935; 1899-00, pp. 80, 839; 1901, p. 348; 1916, p. 703.)

Revisors' Note.—The words "and if the encumbrance be by deed of trust or mortgage, as a reconveyance of the legal title," appearing near the end of the first paragraph are new.

The object of this section, before amendment of 1897-8 (page 935), was declared to be to give a summary remedy for having the liens therein marked "Satisfied," upon proof that the debt secured had been actually

Digitized by Google

paid or discharged, and not to enable persons to have such liens marked "Satisfied" because liable to be defeated by presumption of payment or statute of limitation. Turnbull v. Mann, 94 Va. 182, 26 S. E. 510.

After the decision in this case the legislature so amended section 2498 of the Code of 1887 as to provide that the county and corporation courts could, on motion of one who owns, or has an interest in, real estate, direct the release or discharge of a lien or encumbrance thereon, "upon proof that it has been paid or discharged, or upon its appearing to the court that more than twenty years have elapsed since the maturity of the lien or encumbrance, raising a presumption of payment, and which is not rebutted at the hearing." Phlegar, J., in Turnbull v. Mann, 99 Va. 41, 37 S. E. 288.

The right to enforce a trust deed is barred by the presumption of payment which arises from the lapse of twenty years from the time the debt became due, unless that presumption is rebutted (Booker v. Booker's Adm'r, 29 Grat. 605; Bowie v. Poor School Soc., 75 Va. 300), and the bar of this presumption is not affected by the fact that the legislature, by act of February 24, 1898 (Acts 1897-8, p. 516) (see section 5827 of this Code), provided a statute of limitations for trust deeds. Brewis v. Lawson, 76 Va. 36; Turnbull v. Mann, 99 Va. 41, 37 S. E. 288.

Fraudulent marking.—The beneficiary under a second deed of trust has priority over the bona fide holder of negotiable notes secured in the first deed, where it appears that the original beneficiary under the first deed, after transferring notes, had fraudulently marked lien satisfied on the margin before the execution of the second deed, and that the beneficiary in the second deed had no notice that the notes secured by the first deed had been transferred or were still unpaid, or of any fraud in the transaction. Evans v. Roanoke Bank, 95 Va. 294, 28 S. E. 323, 3 Va. Law Reg. 705, and note. This case brought forth the amendment of February 28, 1898 (Acts 1897-8, p. 594), the purpose of which was to provide against fraudulent marking.

Brokers.—A broker, who negotiated a loan secured by deed of trust and who received payment in full of the note evidencing the same, but paid only part to his principal, and who was not in possession of the note secured, is not such an agent as can bind his principal by a marginal release under this section, and such a release cannot affect the lien of the creditor whose money he loaned. Brooking v. Nolde (Chancery Court of the City of Richmond), 11 Va. Law Reg. 217. A petition for writ of error was refused in this case.

For comment upon the question of marginal release raised in Brooking v. Nolde, see 11 Va. Law Reg. 226.

Generally.—As to penalty for failure to release, 8 Va. Law Reg. 216.

Cited in Land v. Shipp, 100 Va. 337, 41 S. E. 742; Osburn v. Thockmorton, 90 Va. 317, 18 S. E. 285; Watkins v. West, &c., 92 Va. 1, 8, 22 S. E. 554.

As to marking judgments satisfied, see sections 6465, 6466, 6467.

Sec. 6457. Protection of assignees, transferees, or indorsees of debts secured on real estate by mortgage, deed of trust, vendor's or mechanic's lien.—Whenever any debt secured on real estate by mortgage, deed of trust, vendor's or mechanic's lien has been assigned, transferred, or endorsed to another, in whole or in part, by the original payee thereof, such payee, assignee, transferee or endorsee, may cause a memorandum or statement of the assignment to such assignee, transferee, or endorsee to be entered on the margin of the page in the book where such encumbrance securing the same is recorded, which memornadum or statement shall be signed by the assignor, transferrer, or endorser, his duly authorized agent or

Digitized by Google

attorney, and when so signed and the signature thereto attested by the clerk in whose office such encumbrance is recorded the same shall operate as a notice of such assignment and transfer. And where such transfer by the payee is so entered on the margin of the deed book subsequent transfers thereof may likewise be entered in the same manner and with like effect. (1897-8, p. 258.)

Revisors' Note. The act from which this section is taken provided (near the beginning) that "such PAYEE may cause a memorandum or statement of the assignment BY HIM to such assignee, transferee or endorsee to be entered," etc. The present section provides that "such PAYEE, ASSIGNEE, TRANSFEREE OR ENDORSEE may cause a memorandum or statement of the assignment to such assignee, transferee or endorsee to be entered," etc.

Sec. 6458. Purchaser for valuable consideration without notice not affected by liens of the Mutual Assurance Society against fire on buildings until such liens are filed in the clerk's office.—The lien of the Mutual Assurance Society against fire on buildings in the State of Virginia upon property insured therein for quotas assessed against the policies of such property owners shall not be valid against purchasers of such property for valuable consideration without notice of the existence of such insurance, except from the time the said society shall have complied with the provisions of this section. The said society shall have prepared and kept in the clerk's office of the Chancery Court of the city of Richmond, and of the circuit court of each county and the corporation court of each city in which said society insures property, a book to be called the "Mutual Assurance Society's Lien Book;" said book when left with the clerk shall become a public record and shall be kept open to the inspection of the public. The said society shall have entered in said book a brief description of the property insured by it upon which it claims a lien, the date and amount of the policy and the name of the parties to whom the policy was issued, and the date of the entry shall be made in said book. (1899-00, p. 446.)

Digitized by Google

CHAPTER 271.

Enforcing Decrees and Orders; Docketing Judgments and Other Liens of the Like Nature; the Effect of Such Liens; and the Limitation of Proceedings on Judgments.

Sec.
6459. Decrees and orders for property or money have effect of judgment; are embraced by word "judgment," where used under this title.
6460. Who deemed judgment creditors; how execution issues on decrees for money to be paid into court, or a bank, etc.
6461. Clerks of circuit, corporation, or hustings courts and clerk of Chancery Court of Richmond to keep judgment dockets; what judgments to docket therein; clerks of circuit courts in cities to deliver abstracts of judgments rendered in their courts or offices; abstracts of judgments against fiduciaries, receivers, etc., not to be docketed unless required.
6462. Judgments and decrees of the Circuit Court of Appeals and district courts of the United States may be docketed and indexed in the clerks' offices of the courts of Virginia.
6463. How judgments are docketed; executions issued thereon.
6464. How indexed.
6465. When and how payment thereof entered on judgment docket; when clerks to certify satisfaction of judgments.
6466. Judgment, when paid, to be so noted by creditor; where and how noted, signed and attested.
6467. When and how court, on motion of defendant, etc., may have payment of judgment entered.
6468. Attorney-General, etc., to have judgments in favor of State docketed, and where.
6469. Lis pendens and attachment, when and how to be docketed and indexed.
6470. Judgment to be a lien on all real estate of defendant; from what time; judgments in vacation; extracts to be granted.
6471. Judgment not a lien against purchaser for valuable consideration without notice, unless docketed.
6472. Jurisdiction of equity to enforce lien of judgment; when it may decree a sale.
6473. Enforcement of lien, where judgment does not exceed twenty dollars, exclusive of interest and costs.
6474. When suit to enforce lien of judgment barred in equity.
6475. When right of subrogation enforced; lien of judgment not impaired by another judgment thereon, or by forthcoming bond.
6476. Order of liability between alienees of different parts of estate.
6477. Limitation of proceedings to enforce judgment. The return by officer on an execution.
6478. Provision construing and qualifying the preceding section.
6479. Chapter embraces recognizances and bonds having force of a judgment.

Sec. 6459. Decrees and orders for property or money have effect of judgment; are embraced by word "judgment," where used un-

Digitized by Google

der this title.—A decree for land or specific personal property, and a decree or order requiring the payment of money, shall have the effect of a judgment for such land, property, or money, and be embraced by the word "judgment," where used in any chapter under this title; but a party may proceed to carry into execution a decree or order in chancery other than for the payment of money, as he might have done if this and the following section had not been enacted. (Code 1887, § 3557.)

Independently of statute.—The courts of equity, independently of statute, have only the process of contempt (summons, attachment, sequestration, etc.) to compel parties to submit to their decrees. And they use that process still, and can use none other for the classes of decrees for which the statute has created no new remedy, e. g., decrees not to pay money nor to deliver property, but to do some collateral thing. 4 Min. (3d Ed.) 984.

The statute.—This section substitutes a more simple and direct means of enforcing decrees than the original remedy by sequestration. Tate v. Liggat, 2 Leigh 84, 101.

Statute fixing lien of a judgment applies equally to decrees for payment of money. Hockman v. Hockman, 93 Va. 455, 25 S. E. 534.

A decree is placed by the statutes of this State on the same plane with a judgment, and a scire facias to revive a decree, if regular in other respects, is not invalidated because sued out on the law instead of the chancery side of the court. White v. Palmer, 110 Va. 490, 66 S. E. 44.

Executions.—This section gives the courts of chancery the power to superintend the execution of its own process, and to correct abuses therein. Windrum v. Parker, 2 Leigh 361; Snavely v. Harkrader, 30 Grat. 487, 492; Barton, C. Pr. (2d Ed.) 885.

Courts of chancery are bound, in deciding upon all questions in respect to executions, to abide by the common law and statutes respecting executions at law. Windrum v. Parker, 2 Leigh 369.

Any execution which may be taken upon a judgment may be taken on a decree. Tate v. Liggat, 2 Leigh 84, 101; Tyler v. Toms, 75 Va. 116, 127.

Notice to purchasers.—A decree for the payment of money, if docketed in the manner prescribed by law, will constitute a valid notice to purchasers and all persons dealing with the property in question. Lee v. Swepson, 76 Va. 173, 176; Hutcheson v. Grubbs, 80 Va. 251, 253; Barton, C. Pr. (2d Ed.) 1060, 1061.

Decree collaterally assailed.—A decree, like a judgment, cannot be collaterally assailed, but is conclusive of the rights and liabilities of the parties until reversed by the appellate court, or impeached for fraud in obtaining it, or set aside on bill of review. Allan v. Hoffman, 83 Va. 129, 2 S. E. 602; Seamster v. Blackstock, 83 Va. 232, 2 S. E. 36, 5 Am. St. Rep. 262. Barton, C. Pr. (2d Ed.) 844.

Generally.—This section is followed in Cheatham v. Cheatham's Ex'r, 81 Va. 395.

See Barton, C. Pr. (2d Ed.) 884; 4 Min. (3d Ed.) 80, 984; note on decrees, Evans v. Spurgin, 11 Grat. 615, Va. Rep. Anno.; note on judgments, Smith's Adm'r v. Charlton's Adm'r, 7 Grat. 425, Va. Rep. Anno.

Sec. 6460. Who deemed judgment creditors; how execution issues on decrees, for money to be paid into court, or a bank, etc.—The persons, entitled to the benefit of any decree or order requiring the payment of money, shall be deemed judgment creditors, although the money be required to be paid into a court, or a bank,

Digitized by Google

or other place of deposit. In such case, an execution on the decree or order shall make such recital thereof, and of the parties to it, as may be necessary to designate the case; and if a time be specified in the decree or order within which the payment is to be made, the execution shall not issue until the expiration of that time. (Code 1887, § 3558.)

See Barton, C. Pr. (2d Ed.) 884; note on judgments, Smith's Adm'r v. Charlton's Adm'r, 7 Grat. 425, Va. Rep. Anno.; note on decrees, Evans v. Spurgin, 11 Grat. 615, Va. Rep. Anno.; note on exceptions, Paine v. Tutwiler, 27 Grat. 440, Va. Rep. Anno.

Sec. 6461. Clerks of circuit, corporation, or hustings courts and clerk of Chancery Court of Richmond to keep judgment dockets; what judgments to docket therein; clerks of circuit courts in cities to deliver abstracts of judgments rendered in their courts or offices; abstracts of judgments against fiduciaries, receivers, etc., not to be docketed unless required.—The clerk of the Chancery Court of the city of Richmond, and of every circuit and corporation court except the Hustings Court of the city of Richmond, and circuit courts of cities, shall keep in his office, in a well-bound book, a judgment docket, in which he shall docket, without delay, any judgment for money rendered in this State by any State or Federal court, when he shall be required so to do by any person interested, on such person delivering to him an authenticated abstract of it; and shall also docket every judgment for money rendered in his court or office, and every such judgment, the abstract of which is delivered to him by the clerk of the circuit or other court of his city, and also upon the request of any person interested therein, any such judgment rendered by a justice whose book has been filed in his office under the provisions of section six thousand and twenty-four, or of which an abstract is delivered to him certified by the justice who rendered it. The clerk of the circuit or other court of each city, except the clerk of the Circuit or of a city court of the city of Richmond, shall, without delay, deliver to the clerk of the corporation court of his city, and the clerk of the Circuit or of a city court of the city of Richmond shall deliver to the clerk of the Chancery Court of said city, an authenticated abstract of every judgment for money rendered in his court or office, except that judgments, decrees, or orders against fiduciaries for which they are not personally liable, and against commissioners and receivers of any court, and against any bank or incorporated company doing a banking business for money deposited under or subject to the order of any court, or by a commissioner or receiver thereof, shall not be docketed, nor abstracts thereof delivered by the clerks of the circuit courts to the clerks of the corporation court, or by the clerks of the Circuit or city courts of Richmond to the clerk of the Chancery Court of the said city, unless required by the plaintiff in such judgment, decree, or order, or some person interested therein,

Digitized by Google

to be so certified and docketed, and then only at the cost of such plaintiff or person so interested. (Code 1887, § 3559; 1902-3-4, p. 777.)

See Barton, C. Pr. (2d Ed.) 1060; note on judgments, Smith's Adm'r v. Charlton's Adm'r, 7 Grat. 425, Va. Rep. Anno.; Burks' Pleading and Practice, p. 618.

Sec. 6462. Judgments and decrees of the Circuit Court of Appeals and district courts of the United States may be docketed and indexed in the clerks' offices of the courts of Virginia.—Judgments and decrees rendered in the Circuit Court of Appeals or a district court of the United States within this State may be docketed and indexed in the clerks' offices of courts of this State in the same manner and under the same rules and requirements of law as judgments and decrees of courts of this State. (1899-90, p. 22.)

Revisors' Note.—This section now covers judgments of the Circuit Court of Appeals of the United States as well as judgments of the district courts. Circuit courts of the United States no longer exist.

A federal court judgment in favor of plaintiff in ejectment having been rendered in June, 1900, one of the defendants conveyed the surface of a part of the land sued for in October, 1901, after which the grantee conveyed the land to a lumber company which was not in existence at the time of the judgment, and the lumber company thereupon filed a petition to set aside the judgment, and for leave to defend; alleging that its grantor had no knowledge or notice of the judgment "until long after it was rendered." Held, that though such judgment not docketed in the county where the land lay, may not be notice to an innocent purchaser, as provided by U. S. Comp. St. 1901, p. 701, and this section, the petition is insufficient, for failure to show that the corporation's vendor was a bona fide purchaser without notice, and when he became a complete purchaser. King v. Davis, 137 Fed. 467, 11 Va. Law Reg. 463.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 139, section 4.

As to federal judgment liens see 14 Va. Law Reg. 332.

Sec. 6463. How judgments are docketed; executions issued thereon.—In such docket there shall be stated in separate columns the date and amount of the judgment, the time from which it bears interest, the costs, the name of all the parties thereto, the alternative value of any specific property recovered by it, the date and the time of docketing it, the amount and date of any credits thereon, the court in which or the justice by whom it was rendered, and when paid off or discharged in whole or in part, the time thereof, and by whom such payment or discharge was made, where there is more than one defendant, and in case of a judgment or decree by confession or in vacation, the clerk shall also enter in such docket the time of day at which the same was confessed, or at which the same was received in his office to be entered of record. There shall also be shown on said book the name of plaintiff's attorney, if any, the date of each execution in the order made, the nature thereof, when returnable, and the officer's return thereon, and it shall be the duty of the clerk of any circuit or city court of a city in which a judgment is confessed or entered in vacation, to certify to the clerk of the corporation court thereof the time of

Digitized by Google

day of such confession, or the time at which the vacation decree was received in his office to be entered, except that in the city of Richmond he shall certify the same to the clerk of the Chancery Court of said city. (Code 1887, § 3560; 1897-8, p. 507; 1902-3-4, p. 777; 1916, p. 122.)

Revisors' Note.—Section 3182 of the Code of 1887 relating to the execution book was last amended by Acts 1916, p. 765. Section 3560 of the Code of 1887 was last amended by Acts 1916, p. 122. This latter act required what was formerly put in the execution book to be entered in the judgment lien book. The act, however, did not become effective until January 1, 1917, and it provided that after that date no other record of executions should be kept, consequently the Act of 1916, p. 765, amending section 3182 of the Code of 1887 as theretofore amended, was repealed when the Act of 1916, p. 122, amending section 3560 of the Code of 1887, became effective. The present Code omits section 3182 of the Code of 1887, as amended, and retains section 3560 of that Code, as amended, with several changes. Under the revised section above the docket is required to show the date AND THE TIME of docketing the judgment. This change was made because under section 6471 the judgment is a lien on real estate as against a subsequent purchaser for value without notice only from the TIME that it is duly docketed, and of course the docket should show the TIME as well as the date. The provision appearing in the revised section requiring the name of the plaintiff's attorney, if any, to be shown on the book, is new.

See Barton, C. Pr. (2d Ed.) 1060; note on judgments, Smith's Adm'r v. Charlton's Adm'r, 7 Grat. 425, Va. Rep. Anno.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 139, section 4.

Sec. 6464. How indexed.—Every judgment shall, as soon as it is docketed, be indexed by the clerk in the name of each defendant, as required by section thirty-three hundred and ninety-four, and shall not be regarded as docketed as to any defendant in whose name it is not so indexed. (Code 1887, § 3561; 1916, p. 65.)

Revisors' Note.—Section 3561 of the Code of 1887 was amended by Acts 1916, p. 65. This amendment required the clerk to index the judgment in the name of the plaintiff as well as in the name of the defendant. The revised section omits this amendment and is the same as section 3561 of the Code of 1887, except that it provides that the indexing shall be "as required by section 3394."

Docketing and indexing judgment in name of "Mrs. T. Frank Simmons" is no notice of the judgment to a purchaser of real estate from "Mrs. May M. Simmons," though the two names represent the same person, Mrs. May M. Simmons being the wife of T. Frank Simmons. Bankers' Loan & Investment Co. v. Blair, 99 Va. 606, 611, 39 S. E. 231, 86 Am. St. Rep. 914.

The word "same," written immediately below the name of the judgment debtor on the index, constitutes a sufficient indexing of the judgment next listed against him. Fulkerson v. Taylor, 102 Va. 314, 46 S. E. 309.

Evidence.—Where a bill alleges that a judgment was "duly docketed," and the answer calls for full and complete proof of same, the calling for proof of docketing puts the averment of the bill in issue and it must be proved; and if in proving that the judgment was "duly docketed," by enumerating the particulars that go to make up such docketing, all mention of the indexing be omitted, the proof is not as

Digitized by Google

broad as the allegation. Fulkerson v. Taylor, 100 Va. 426, 436, 437, 41 S. E. 863.

The latter clause of this section overrules Old Dominion Granite Co. v. Clarke, 28 Grat. 617, where it was held that the index was not a necessary part of the docketing. To same effect was Shadrack's Adm'r v. Woolfolk, 32 Grat. 712.

See Barton, C. Pr. (2d Ed.) 1050, 1051; 2 Va. Law Reg. 620; 7 Va. Law Reg. 258.

Discussed, 15 Va. Law J. 445.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 139, section 4.

Sec. 6465. When and how payment thereof entered on judgment docket; when clerks to certify satisfaction of judgments.—The fact of payment or discharge, either in whole or in part, of any judgment so docketed, and if there be more than one defendant, by which defendant it was paid or discharged, shall be entered by the clerk in whose office the same is so docketed whenever it shall appear from the return of an execution issued from his office, or from a certificate of the clerk from whose office such execution is issued, that the same has been satisfied, in whole or in part, or upon the direction of the judgment creditor or his attorney; and, where a judgment rendered by a court held in a city is docketed in the clerk's office of some other court of such city, it shall be the duty of the clerk of said court from which the execution issued, whenever it appears from the return thereof, that the same has been satisfied, in whole or in part, to certify the fact of such satisfaction without delay to the clerk of the court in whose office such judgment was docketed, and if there be more than one defendant, by which defendant it was so satisfied. (Code 1887, § 3562; 1902-3-4, p. 778.)

As to release of other incumbrances, see section 6456.

Sec. 6466. Judgment, when paid, to be so noted by creditor; where and how noted, signed and attested.—In all cases where payment or satisfaction of any judgment so docketed is made which does not appear by the return of an execution to the office of the clerk where the judgment is docketed or which is not required to be certified to him under the preceding section, it shall be the duty of the judgment creditor, himself, or by his agent or attorney, to cause such payment, or satisfaction, whether in whole or in part, and if there be more than one defendant, by which defendant it was paid or discharged, to be entered within ninety days after the same is made, on said judgment docket; or, if the judgment has not been docketed, then on the execution book in the office of the clerk from which the execution issued. And for any failure to do so, such judgment creditor shall be liable to a fine of twenty dollars. Such entry of payment or satisfaction shall be signed by the creditor, his duly authorized agent or attorney, and be attested by the clerk in whose office the judgment is docketed, or,

Digitized by Google

when not docketed, by the clerk from whose office the execution issued. (Code 1887, § 3563; 1902-3-4, p. 778.)

As to when and how payment or satisfaction of a debt secured by mortgage, deed of trust, vendor's or mechanic's lien, must be entered by the lien creditor on the margin of the page of the book where such incumbrance is recorded, and effect of same, see section 6456 and notes.

Sec. 6467. When and how court, on motion of defendant, etc., may have payment of judgment entered.—A defendant in any judgment, his heirs or personal representatives, may, on motion, after ten days' notice thereof to the plaintiff in said judgment, or his assignee, or if he be dead, to his personal representative, or if he be a non-resident, to his attorney, if he have one, apply to the court in which the judgment was rendered, to have the same marked satisfied, and upon proof that the judgment has been paid off or discharged, such court shall order such satisfaction to be entered on the margin of the page in the book wherein the said judgment was entered, and a certificate of such order to be made to the clerk of the court in which such judgment is required by section sixty-four hundred and sixty-one to be docketed, and the clerk of such court shall immediately, upon the receipt of such certificate, enter the same in the proper column of the judgment docket opposite the place where the said judgment is docketed. If the plaintiff be a non-resident and have no attorney resident in this State, the notice may be published and posted as an order of publication is required to be published and posted under sections six thousand and sixty-nine and six thousand and seventy. Upon a like motion and similar proceeding, the court may order to be marked "discharged in bankruptcy," any judgment which may be shown to have been so discharged. (Code 1887, § 3564; 1910, p. 532.)

Revisors' Note.—The last two sentences of this section are new. The last sentence, however, was suggested by Acts 1910, p. 532.

As to marking "satisfied" mortgages, deeds of trust, vendors' and mechanics' liens, see section 6456.

Sec. 6468. Attorney-General, etc., to have judgments in favor of State docketed, and where.—Whenever a judgment is recovered in favor of the Commonwealth, it shall be the duty of the Attorney-General or other attorney representing the Commonwealth, to cause the said judgment to be docketed in all counties and corporations wherein there is any real estate owned by any person against whom the judgment is recovered. (Code 1887, § 3565.)

Sec. 6469. Lis pendens and attachment, when and how to be docketed and indexed.—No lis pendens, or attachment, shall bind or affect a subsequent bona fide purchaser of real or personal estate for valuable consideration and without actual notice of such lis pendens or attachment, until and except from the time a memorandum setting forth the title of the cause or attachment, the general object thereof, the court wherein it is pending, the amount of

Digitized by Google

the claim asserted by the plaintiff, a description of the property, and the name of the person whose estate is intended to be affected thereby, shall be admitted to record in the clerk's office of the circuit court of the county or the corporation court of the city wherein the property is, or if it be in the city of Richmond, in the clerk's office of the Chancery Court of such city. The memorandum required by this section shall be authenticated by the clerk of the court in which such suit, action or attachment is pending. Such memorandum shall not be deemed to have been recorded unless and until indexed as required by law. (Code 1887, § 3566.)

Revisors' Note.—Some of the language of this section is taken from section 2460 of the Code of 1887.

As the law stood before the revision, subsequent purchasers for value without notice of personal property took subject to a prior attachment, whether a lis pendens was recorded or not. This has been changed so as to make it a lien as to purchasers without actual notice only where a lis pendens has been recorded and indexed. No change in this respect has been made as to real estate. Until the decision in Vicars v. Sayler, 111 Va. 307, 68 S. E. 988 (annotated, 16 Va. Law Reg. 672), doubt was entertained as to whether or not it was necessary to record and index a lis pendens, but it was held in that case that the section was not complied with unless a lis pendens was both recorded and indexed. The language of the section has been changed simply to conform to that opinion. Under the former law there was doubt and uncertainty as to how the memorandum should be authenticated. The present section settles this question.

The substantial changes made by this section are: That it is made to apply to EVERY lis pendens and attachment; that it protects subsequent bona fide purchasers of real OR PERSONAL estate; that the memorandum must be admitted to record and indexed before it can operate as constructive notice, and that the book in which it is to be recorded is the miscellaneous lien book. The memorandum must also be authenticated by the clerk.

See revisors' note to section 5186.

What estate affected by.—Where a bill is filed to subject real estate, all rights acquired from or under the defendant to the subject in controversy, pending the suit, are subject to any decree which may be made in the suit, except a purchaser without actual notice is protected when the memorandum of lis pendens is not properly filed. Cirode v. Buchanan, 22 Grat. 205, 220.

Under chapter 186, section 5, Code 1860 (corresponding to the above section), lis pendens affects only the real estate that is embraced in "the general object" of the suit, i. e., real estate that is the corpus or subject of controversy. Briscoe v. Ashby, 24 Grat. 454, 470.

In the absence of statute, the settled law is that the doctrine of lis pendens applies to all who deal with a party to a suit touching the real estate that is the subject-matter of litigation. Hurn v. Keller. 79 Va. 415, 418, 419.

Bona fide purchaser.—A purchaser having purchased and received a conveyance of land without notice of an attachment, which had been previously levied upon it, but which had not been docketed, is entitled to hold the land free from the lien of the attachment. Cammack v. Soran, 30 Grat. 292, 297.

A creditors' bill is filed against the administrator and heirs of an intestate to subject the intestate's estate, which has been divided amongst

Digitized by Google

his heirs, to the payment of intestate's debts. Pending the suit one of the heirs sells and conveys the land received from the estate to a bona fide purchaser for value having no actual notice of the pendency of the suit. Held, no memorandum of lis pendens having been filed, the land is not liable to satisfy the grantor's proportion of the intestate's debts. Easley v. Barksdale, 75 Va. 274, 280.

If a purchaser buy land knowing that there is a suit pending touching same, he will take subject to the rights of judgment creditors, though no lis pendens was docketed. Hurn v. Keller, 79 Va. 415, 420.

A purchaser of land is conclusively affected with notice of a judgment duly docketed against the grantor, and no lis pendens or other notice of a suit to subject the land to such judgment is needed to affect them. Sharitz v. Moyers, 99 Va. 519, 525, 39 S. E. 166.

If, pending an action to subject land by attachment, the defendant convey his land without consideration, the purchaser takes subject to the rights of the plaintiff in the action, though no memorandum was recorded as required by this section. Davis v. Anderson, 99 Va. 620, 624, 39 S. E. 588.

Where land was sold by verbal contract, and the vendee sold it and a deed was made from the original vendor to the purchaser from the vendee, but the same was not recorded until two days after there was left with the clerk a lis pendens in an attachment suit against the land as that of the original vendor, the one purchasing from his vendee had constructive notice. Breeden v. Peale, 106 Va. 39, 55 S. E. 2. As to indexing, see Vicars v. Sayler, 111 Va. 307, 68 S. E. 988; present section and revisors' note.

Section 5, chapter 182, and section 5, chapter 127, of the Code of 1873 (corresponding to sections 5397 and 6469) must be construed together. Easley v. Barksdale, 75 Va. 274, 279, 281.

Federal courts.—This section has no application to Federal courts sitting in Virginia; such courts having no power to enforce the registration of such memoranda. King v. Davis, 137 Fed. 222, 11 Va. Law Reg. 463.

See 14 Va. L. Reg. 332.

Generally.—For monographic note on lis pendens, see Stout v. Vause, 1 Rob. 169, Va. Rep. Ann.

See Barton, C. Pr. (2d Ed.) 219, 667; Barton, L. Pr. (2d Ed.) 978; 4 Min. (3d Ed.) 997; 1 Va. Law Reg 295; 7 Va. Law Reg. 340; note on lis pendens, Stout v. Vause, 1 Rob. 169, Va. Rep. Anno.; note on attachments, Lancaster v. Wilson, 27 Grat. 624, Va. Rep. Anno.; notes to sections 5186, 6393.

For W. Va. decisions on similar statute, see Justis' Annotations chapter 139, section 13.

See Gregory's Forms No. 348.

Sec. 6470. Judgment to be a lien on all real estate of defendant; from what time; judgments in vacation; extracts to be granted.—Every judgment for money rendered in this State, other than by confession in vacation, shall be a lien on all the real estate of or to which the defendant in such judgment is or becomes possessed or entitled, at or after the date of such judgment, or if it was rendered in court, at or after the commencement of the term at which it was so rendered, if the cause was in such condition that a judgment might have been rendered on the first day of the term, but if from the nature of the case judgment could not have been rendered at the commencement of the term, such judgment shall be a lien only on or after the date on which such judgment or decree is rendered and not from the commencement of the term; but this section shall not prevent the lien of a judgment or decree from

Digitized by Google

relating back to the first day of the term merely because the case shall be set for trial or hearing on a later day of the term, if such case was matured and ready for hearing at the commencement of the term, nor merely because an office judgment in a case matured and docketed at the commencement of the term does not become final until a later day of the term. A judgment by confession in vacation shall also be a lien upon such real estate, but only from the time of day at which such judgment is confessed. If more than one judgment is confessed in vacation by the same defendant, such judgments shall have priority as among themselves in the order with respect to the time when they are respectively confessed, unless otherwise directed by the defendant, which time shall be the time that the first was confessed, and the clerk shall enter such time on the margin of his order book. Judgments against the same person shall, as among themselves, attach to his real estate, and be payable thereout in the order of the priority of such judgments, respectively. An extract from any judgment shall, upon motion, be granted to any person interested immediately upon its rendition, subject to the future action of the court rendering the same. This section is qualified by section sixty-five hundred and fifty of this Code. (Code 1887, § 3567, 3576; 1897-8, p. 507; 1901-2, p. 427.)

Revisors' Note.—This section is based on sections 3567, 3568 and 3576 of the former Code. Section 3568 was repealed by Acts 1901-2, p. 427, but some of its provisions appear in the above section. Section 3567 was amended by Acts 1897-8, p. 507, and again by Acts 1901-2, p. 427. Section 3576 was amended by Acts 1901-2, p. 427.

Under the law as it stood before the revision, difficulties existed as to the priorities of judgment creditors as among themselves, which difficulties grew out of the fact that under that law, while all the judgments of the same term against the same defendant were placed on the same footing, yet no date was attached to those judgments, and when any one came to compare the priority of the judgments of one court with judgments rendered in another, it could not be done where the two courts overlapped part of the same time, due to the failure to fix a date for the judgments. In order to obviate these and other difficulties some of the provisions of the Code of 1887 are restored, and the principle of relation back to the first day of the term is reinstated. Purchasers for value without notice are protected by section 6471, and creditors by deeds of trust are also protected by the same section, it having been held repeatedly that a creditor secured by a deed of trust and the trustee are purchasers. Rhea v. Preston, 75 Va. 757; Hill v. Rixey, 26 Grat. 72; Ex. Bank v. Knox, 19 Grat. 739; Wickham v. Lewis, 18 Grat. 427.

Meaning of word "judgment."—The word "judgment," as used in this section, embraces decrees for land, or specific personal property, or for payment of money. See 6459; Hockman v Hockman, 93 Va. 455, 25 S. E. 534, 57 Am. St. Rep. 816.

Equitable interest.—A creditor, by judgment or decree, may, in equity, subject his debtor's equitable interest in land arising out of a

Digitized by Google

deed of trust on the land sold for the balance of the purchase money due. Withers v. Carter, 4 Grat. 407, 417, 50 Am. Dec. 78.

Equity of redemption.—A judgment is a lien upon an equity of redemption, and if the trustee under the deed of trust sell the land the balance of the purchase money in the hands of the purchaser, after discharging the previous incumbrances, will represent and stand in the place of the equity of redemption. Michaux's Adm'r v. Brown, 10 Grat. 612, 619.

Equitable title.—A good equitable title acquired by a purchaser is paramount in equity to subsequent judgments of the vendor's creditors recovered before the vendee has obtained a conveyance of the legal title. Withers v. Carter, 4 Grat. 407, 412, 50 Am. Dec. 78; Floyd v. Harding, 28 Grat. 401. See, also, Hart v. Haynes, 1 Va. Dec. 201, and note.

Extent of lien—Resulting trusts—Decrees for alimony—Improvements.—Where a debtor against whom a decree for money has been entered buys lands, the decree creditor may subject it, not merely to the extent of money invested in the land, but to the full extent of the value of the land. The lien is on real estate, not money. Burbridge v. Higgins' Adm'r, 6 Grat. 119, 125.

Where statutory enactments do not interfere, the creditor can never get by his judgment more than his debtor really owns. Floyd v. Harding, 28 Grat. 401-407; Borst v. Nalle, Id. 423, 433, and cases cited; Sinclair v. Sinclair, 79 Va. 40, 41; Coldiron v. Asheville Shoe Co., 93 Va. 364, 373, 25 S. E. 238.

A judgment is not a lien on land held solely as resulting trustee by one for the benefit of another who has paid the purchase money. Straley v. Esser, 117 Va. 135, 83 S. E. 1075.

A decree for alimony and suit money constitutes, under this section a lien upon all of the real estate of the debtor, from the date of the decree though the alimony be payable in instalments during the wife's lifetime. Isaacs v. Isaacs, 117 Va. 728, 86 S. E. 105; editorial comment, 1 Va. L. R. N. S. 625.

A judgment is a lien upon improvements made by a subsequent grantee of land who has actual and constructive notice of the judgment. Nixdorf v. Blount, 111 Va. 127, 68 S. E. 258.

Contingent remainders.—Judgment rendered against a debtor at the time when he was a contingent remainderman binds his interest when it thereafter vests. Wilson v. Langhorne, 102 Va. 631, 47 S. E. 871.

Division of State into Virginia and West Virginia.—A judgment constitutes a lien on all the real estate in Virginia belonging to the judgment debtor; and the lien is neither lost nor impaired by reason of the division of the State of Virginia into two States, and the falling of the county where the judgment was obtained into the State of West Virginia. Gatewood's Adm'r v. Goode, 23 Grat. 880, 890, 891.

Bona fide purchaser.—A judgment is a lien upon land in the hands of a purchaser, though at the time of the conveyance execution upon the judgment was suspended by an injunction. Craig v. Sebrell, 9 Grat. 131; Michaux's Adm'r v. Brown, 10 Grat. 612.

The lien of a judgment may be enforced against land in the hands of bona fide purchasers for value. Taylor's Adm'r v. Spindle, 2 Grat. 44; Leake v. Ferguson, 2 Grat. 419, 431; Rodgers v. McCluer's Adm'rs, 4 Grat. 81, 82, 47 Am. Dec. 715. Docketing is necessary under section 6471.

A purchaser of land, who enters under a parol contract and pays the purchase money before a judgment is obtained against his vendor, takes free from the lien of the judgment, though the legal title is not conveyed to him until after the judgment. Floyd v. Harding, 28 Grat. 401; Long v. Hagerstown Agricultural Implement Mfg. Co., 30 Grat. 665; Young v. Devries, 31 Grat. 304.

In this connection consider sections 5194, 5195 and notes.

But a purchaser who pays the purchase money and enters upon the land under a deed or written contract which is not recorded until after a judgment is obtained against his vendor takes subject to the lien of

Digitized by Google

the judgment. Eidson v. Huff, 29 Grat. 338; March v. Chambers, 30 Grat. 299; Young v. Devries, 31 Grat. 304; Hart v. Haynes, 1 Va. Dec. 201, 206.

Void process.—A judgment rendered on a void process is itself void, and does not constitute a lien on real estate. Lavell v. McCurdy's Ex'rs, 77 Va. 763, 771, 772.

Conveyance for purchase money.—If land be conveyed to a judgment debtor, and he instantly reconveys it to a trustee to secure the purchase money, he will not have acquired such an interest in the land as will subject it to the lien of the judgment against him. Straus v. Bodeker's Ex'x, 86 Va. 543, 548, 10 S. E. 570.

Where a purchaser, contemporaneously with the execution and delivery of the deed to the land sold, executes and delivers to the vendor a deed of trust thereon to secure the purchase money, he acquires temporary seisin only, and not such a beneficial interest in the land as may be subjected to the lien of a judgment until the deed of trust is satisfied. Moomaw v. Jordan, 118 Va. 414, 87 S. E. 569.

If land be conveyed to a purchaser and contemporaneously therewith, and as a part of the same transaction, the purchaser reconveys the land to a trustee to secure the purchase money, a judgment against the purchaser is subordinate to the lien of the deed of trust. Charlottesville Hdw. Co. v. Perkins, 118 Va. 34, 86 S. E. 869.

When lien attaches.—Prior to the amendments of 1897-8, p. 507, and 1901-2, p. 427, a judgment confessed in vacation operated as a lien from the first moment of the day on which the judgment was confessed regardless of the time of the day at which it was actually confessed (Hockman v. Hockman, 93 Va. 455, 457, 25 S. E. 534, 57 Am. St. Rep. 816); and the lien of the judgment related back to the first day of the term (Mutual Assur. Soc. v. Stanard, 4 Munf. 539; Coutts v. Walker, 2 Leigh 268; Skipwith's Ex'r v. Cunningham, 8 Leigh 271, 31 Am. Dec. 642; Jones v. Myrick's Ex'rs, 8 Grat. 179; Brockenbrough's Ex'x. v. Brockenbrough's Adm'r, 31 Grat. 580; Building & Loan Ass'n v. Reed, 96 Va. 345, 31 S. E. 514), if the judgment might have been rendered on that day (Coutts v. Walker, 2 Leigh 268, 277; Withers v. Carter, 4 Grat. 407, 418, 50 Am. Dec. 78; Brown v. Hume, 16 Grat. 456, 465; Yates v. Robertson, 80 Va. 475, 477).

Observe present reading of section and see revisors' note above.

Generally.—A judgment on which an execution has issued may be kept alive by other executions within the statutory period. Akiss' Ex'rs v. Satchel, 104 Va. 700, 52 S. E. 378, 11 Va. Law Reg. 886.

Where a judgment was not rendered until a homestead was set apart, and it was barred by limitations before the exemption ceased, a suit to enforce the lien after the householder's death, leaving neither widow nor minor child, instituted more than twenty years after the issue of execution, was barred. Id.

Mother held judgment against her son, which she assigned for certain purposes, reserving the power to revoke the trust for which assignment was made. She did revoke it, and then assigned the judgment to her son. The judgment being absolutely the son's cannot be interposed as against his creditors and mortgagees. Carter v. Hough, &c., 86 Va. 669, 10 S. E. 1063.

See Barton, C. Pr. (2d Ed.) 913, 920, 928, 3 Va. Law Reg. 471, 744; 7 Va. Law Reg. 830; note on judgments, Smith's Adm'r v. Charlton's Adm'r, 7 Grat. 425, Va. Rep. Anno.; and the following cases: Coutts v. Walker, 2 Leigh 268; Skipwith's Ex'r v. Cunningham, 8 Leigh 271, 31 Am. Dec. 642; Taylor's Adm'r v. Spindle, 2 Grat. 44; Rodgers v. McCluer's Adm'rs, 4 Grat. 81, 47 Am. Dec. 715; Withers v. Carter, 4 Grat. 407; Michaux's Adm'r v. Brown, 10 Grat. 612.

Discussed, 14 Va. Law J. 401.

See Burks' Pleading and Practice, pp. 606, 607, 608, 610, 615, 616.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 139, section 5

Digitized by Google

Sec. 6471. Judgment not a lien against purchaser for valuable consideration without notice, unless docketed.—No judgment shall be a lien on real estate as against a subsequent purchaser thereof for valuable consideration without notice until and except from the time that it is duly docketed in the proper clerk's office of the county or city wherein such real estate may be. (Code 1887, § 3570; 1901-2, p. 427.)

Where docketed.—A judgment creditor cannot, by filing his petition and proving his judgment in a partition suit in one county preserve his lien on land in another county as against a purchaser thereof for value and without notice. This section tells a prospective purchaser that judgments, not docketed in the county or corporation wherein the real estate is situated, shall not affect his rights. Murphy's Hotel Co. v. Benet, 119 Va. 157, 89 S. E. 104.

If judgment is docketed in the county where the real estate of the debtor is situated more than twenty days after its rendition, and such real estate is included within the limits of a subsequently incorporated city, the judgment must be docketed in the city fifteen days before conveyance, in order to be a lien against purchaser for value. Wicks v. Scull, 102 Va. 290, 46 S. E. 297. This case arose before the amendment of 1901-2.

Between the parties.—A judgment need not be docketed as between the parties thereto. Gatewood's Adm'r v. Goode, 23 Grat. 880, 890; Rhea v. Preston, 75 Va. 757, 767, 768

Purchasers with notice.—A judgment need not be docketed as to purchasers with notice, though they be purchasers for value. Craig v. Sebrell, 9 Grat. 131, 135; Rhea v. Preston, 75 Va. 757, 768.

Future judgments.—A judgment need not be docketed as to future judgments. Gurnee v. Johnson's Ex'r, 77 Va. 712, 725; Hart v. Haynes 1 Va. Dec. 201, and note.

Purchaser for value.—A trustee in a deed of trust given to secure a debt and the creditor secured are purchasers for value. Rhea v. Preston, 75 Va. 757, 768; Hill v. Rixey, 26 Grat. 72, 80; Exchange Bank v. Knox, 19 Grat. 739; Wickham v. Lewis, Martin & Co., 13 Grat. 427.

If a grantor who has reserved a lien for purchase money assigns the purchase-money bonds, though for value and without notice of judgment, his assignee will not be a purchaser for value. Gordon v. Rixey, 76 Va. 694, 698-701.

Where an innocent purchaser for value gets good title he can pass equally good title, ordinarily, to a non-innocent vendee. King v. Davis, 137 Fed. 222, 11 Va. Law Reg. 498.

Pleading.—The purchaser must aver and prove that he gave a valuable consideration. Gordon v. Rixey, 76 Va. 694, 697.

Generally.—See note to Floyd v. Harding, 28 Grat. 401. Va. Rep. Anno.; 5 Va. Law Reg. 864; 7 Va. Law Reg. 817, 830; note on judgments. Smith's Adm'r v. Charlton's Adm'r, 7 Grat. 425, Va. Rep. Anno.

Discussed, 3 Va. Law J. 581.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 139, section 6.

Sec. 6472. Jurisdiction of equity to enforce lien of judgment; when it may decree a sale.—Jurisdiction to enforce the lien of a judgment shall be in equity. If it appear to the court that the rents and profits of the real estate subject to the lien will not satisfy the judgment in five years, the court may decree the said estate, or any part thereof, to be sold, and the proceeds applied to the discharge of the judgment. (Code 1887, § 3571.)

Rents and profits.—It must be made to appear, even against fraudulent alienees, that the rents and profits will not discharge the judg-

Digitized by Google

ment. Horton v. Bond, 28 Grat. 815, 820; Cronie v. Hart, 18 Grat. 739, 744, 745.

"The statute prescribes no particular mode by which it shall be made to appear that the rents and profits will not pay the judgment in five years. When there is a doubt about the fact, or an inquiry is demanded by either of the parties, the court will generally direct one of its commissioners to ascertain and report the annual rents and profits of the land. If none of the parties ask such an inquiry, there may, in a proper case, be a decree for the sale of the property without it." Ewart v. Saunders, 25 Grat. 203, 207, 208; Muse v. Friedenwald, 77 Va. 57, 61; Brengle v. Richardson's Adm'r, 78 Va. 406, 411; Dillard v. Krise, 86 Va. 410, 414, 10 S. E. 430.

"The insufficiency of the rents and profits to satisfy the judgment within the statutory period may be shown by the pleadings, by the admission of the parties, by evidence taken, or by the report of a commissioner on inquiry ordered." Horton v. Bond, 28 Grat. 815, 821; Neff v. Wooding, 83 Va. 432, 435, 2 S. E. 731.

In order to ascertain whether the rents of the land will pay the debts in five years, the court should direct the commissioner to offer it first for one year, and if that will not pay the debt then for two, and so on up to five years if necessary, closing the contract whenever the rents will pay the debt. Compton v. Tabor, 32 Grat. 121, 123, 124; Daingerfield v. Smith, 83 Va. 81, 90, 1 S. E. 599.

The value of rents and profits of land is not material in suits to enforce liens which arise out of contracts, but only in suits to enforce the lien of a judgment. As to vendor's lien, Neff v. Wooding, 83 Va. 432, 435, 2 S. E. 731; Kane v. Mann, 93 Va. 239, 24 S. E. 938, 2 Va. Law Reg. 426, and notes. As to deed of trust, Kyger v. Sipe, 89 Va. 507, 511, 16 S. E. 627.

Upon a bill to subject lands of a debtor to the payment of a judgment lien, the debtor cannot by an agreement with his wife, who is not bound by the judgment nor a party to the suit, have the rents and profits of her lands considered in estimating whether the rents and profits of his lands will satisfy the judgment in five years. Kane v. Mann, 93 Va. 239, 246, 247, 24 S. E. 938.

Equity jurisdiction.—A judgment creditor may resort to a court of equity to enforce the lien of his judgment against the real estate of his debtor, without first proceeding by execution at law to subject the personal estate, or assigning any reason for not doing so (Price v. Thrash, 30 Grat. 515, 526; Moore v. Bruce, 85 Va. 139, 142, 7 S. E. 195), or "alleging or proving want of personal assets" (Moore v. Bruce, 85 Va. 139, 142, 7 S. E. 195).

A bill in equity may be maintained against the personal representative of a decedent, and his devisees or heirs at law, to subject the real estate of the decedent to the payment of a judgment recovered against him in his lifetime, without first reviving such judgment at law. James' Ex'r v. Life, 92 Va. 702, 705, 24 S. E. 275.

Judgment debtor should have day to redeem, at least this is the better practice. Crawford, &c., v. Weller, &c., 23 Grat. 836.

The doctrine of laches has no application to a suit to subject land to the lien of a judgment. The right to resort to a court of equity to enforce it is a legal right, without terms and conditions, and continues during the life of the judgment. McClanahan v. Norfolk & W. R. Co., 118 Va. 388, 87 S. E. 731.

A judgment which is a lien on lands in the hands of an alienee of the judgment debtor, may be enforced against the lands in the hands of such alienee, although he has in no way obstructed the prosecution of the plaintiff's rights. McClanahan v. Norfolk & W. R. Co., 118 Va. 388, 87 S. E. 731.

Liens and incumbrances.—It is error to decree a sale of land before the incumbrances and liens thereon and their priorities are ascertained. Cole's Adm'r v. McRae, 6 Rand. 644; Smith v. Flint, 6 Grat. 40, 42;

Digitized by Google

Buchanan v. Clark, 10 Grat. 164, 179; Iaege v. Bossieux, 15 Grat. 83, 103, 76 Am. Dec. 189; Washington, A. & G. R. Co. v. Alexandria & W. R. Co., 19 Grat. 592, 617, 100 Am. Dec. 710; Lipscombe v. Rogers, 20 Grat. 658, 660; White v. Association, 22 Grat. 233, 250; Moran v. Brent, 25 Grat. 104, 106; Simmons v. Lyles, 27 Grat. 922, 932, 933; Horton v. Bond, 28 Grat. 815, 822; Kendrick v. Whitney, Id. 646, 655; Alexander v. Howe, 85 Va. 198, 200, 7 S. E. 248; Daingerfield v. Smith, 83 Va. 81, 89, 90, 1 S. E. 599; Dillard v. Krise, 86 Va. 410, 413, 10 S. E. 430.

Where the judgment debtor owns land which is and land which is not covered by a deed of trust, the land not covered by the deed of trust should be sold first. Buchanan v. Clark, 10 Grat. 164, 179.

Decree interlocutory.—A decree directing the sale of land is interlocutory, and may be amended upon proper showing so as to secure an inquiry before sale. Manns v. Flinn's Adm'r, 10 Leigh 93, 109, 110; Ewart v. Saunders, 25 Grat. 203, 209, 210; Muse v. Friedenwald, 77 Va. 57, 61; Brengle v. Richardson's Adm'r, 78 Va. 406, 412.

Generally.—This section is followed in Seamster v. Blackstock, 83 Va. 232, 2 S. E. 36, 5 Am. St. Rep. 262.

See Barton, C. Pr. (2d Ed.) 289, 913; 2 Min. (4th Ed.) 316; Burks' Pl. & Pr., p. 622; note on judgments, Smith's Adm'r v. Charlton's Adm'r, 7 Grat. 425, Va. Rep. Anno.; note on decrees, Evans v. Spurgin, 11 Grat. 615, Va. Rep. Anno.

Cited in Hay v. Alexandria & W. R. Co. (C. C.), 20 Fed. 15; Va. Iron Co. v. Roberts, 103 Va. 685, 49 S. E. 984.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 139, section 7.

See Gregory's Forms Nos. 141, 142.

Sec. 6473. Enforcement of lien, where judgment does not exceed twenty dollars, exclusive of interest and costs.—If the amount of the judgment does not exceed twenty dollars, exclusive of interest and costs, no bill to enforce the lien thereof shall be entertained, unless it appear that thirty days before the institution of the suit, the judgment debtor or his personal representative, and the owner of the real estate on which the judgment is a lien, or, in case of a non-resident, his agent or attorney (if he have one in this State), had notice that the suit would be instituted, if the judgment was not paid within that time. (Code 1887, § 3572.)

Revisors' Note.—The present section reduces the notice from sixty days to thirty days.

See section 5399 as to suits in equity to enforce claims of less than twenty dollars.

Where a suit by a surety to be subrogated to the rights of a judgment creditor whose demand against the defendant he had paid is consolidated with a general creditors' suit against the same defendant, the fact that the amount of the judgment on which the surety's suit was based was less than $20, and the bill did not allege that sixty days' notice (now thirty days) was given defendant, as required by this section, is immaterial on appeal, because the general creditors' suit being still pending, was sufficient to sustain all proceedings in the case subsequent to consolidation. Hawpe v. Bumgardner, 103 Va. 95, 10 Va. Law Reg. 638, 48 S. E. 554.

Sec. 6474. When suit to enforce lien of judgment barred in equity.—No suit shall be brought to enforce the lien of a judgment upon which the right to issue an exeeution, or bring a scire facias, or an action, is barred by sections sixty-four hundred and seventy-seven and sixty-four hundred and seventy-eight, nor shall any suit be brought to enforce the lien of a judgment against lands which

Digitized by Google

have been conveyed by the judgment debtor to a grantee for value, unless the same be brought within ten years from the due recordation of the deed from such judgment debtor to such grantee. This section so far as it affects such grantees for value or those claiming under them, shall apply as well to judgments in favor of the Commonwealth as to other judgments. (Code 1887, § 3573.)

Revisors' Note.—The latter part of the first sentence prescribing a limitation of ten years, where the lands of the judgment debtor have been conveyed to a grantee for value, is new. The last sentence is also new. Where land has been aliened by a judgment debtor it was thought that the judgment creditor should not have an unlimited time within which to enforce his judgment, but that he should be required to proceed to enforce his judgment within a reasonable time.

Section 3573 of the Code of 1887 was held not to affect the validity of a decree of sale of lands by a court of equity in a proceeding brought within the time for the issuance of execution or bringing a scire facias or action. Flanary v. Kane, 102 Va. 547, 46 S. E. 312, 681.

Where a judgment was not rendered until a homestead was set apart, and it was barred by limitation before the exemption ceased, a suit to enforce the lien after the householder's death, leaving neither widow nor minor child, instituted more than twenty years after the issue of execution, was barred. Akiss' Ex'rs v. Satchell, 104 Va. 700, 52 S. E. 378, 11 Va. Law Reg. 886.

A judgment on which an execution has issued may be kept alive by other executions within the statutory period. Id.

Judgment upon note may be barred, but if note is secured by deed of trust the debt can be enforced until the common law presumption of payment arises. Paxton v. Rich, 885 Va. 381, 7 S. E. 531.

Quaere: In view of this section, does the pendency of a general creditors' suit suspend the act of limitations as to a judgment sought to be enforced in another suit? Gunnell's Adm'rs v. Dixon's Adm'r, 101 Va. 174, 43 S. E. 340.

Section followed in the following cases: Rowe v. Bentley, 29 Grat. 756, 759; Cole's Adm'r v. Ballard, 78 Va. 139, 149; Hutcheson v. Grubbs, 80 Va. 251, 256-258; McCarty v. Ball, 82 Va. 872, 874, 1 S. E. 189; Sutton v. McKenney, 82 Va. 46, 47; Brown v. Butler, 87 Va. 621, 623, 13 S. E. 71; James' Ex'r v. Life, 92 Va. 702, 706, 707, 24 S. E. 275; Callaway's Adm'r v. Saunders, 99 Va. 350, 351, 38 S. E. 182.

See note on limitation of actions, Herrington v. Harkins' Adm'rs, 1 Rob. 591, Va. Rep. Anno.

See sections 6470, 6550, 6477, 6478, and notes.

Discussed, 13 Va. Law J. 171.

Sec. 6475. When right of subrogation enforced; lien of judgment not impaired by another judgment thereon, or by forthcoming bond.—The preceding section shall not be construed to impair the right of subrogation to which any person may become entitled while the lien is in force, provided he institute proceedings to enforce such right within five years after the same accrued; nor shall the lien of a judgment be impaired by the recovery of another judgment thereon, or by a forthcoming bond taken on an execution thereon, such bond having the force of a judgment. (Code 1887, § 3574.)

In several cases in the Court of Appeals before the revision of 1887, a question had been raised, but not decided, whether the lien of a judgment is merged in a subsequent judgment thereon or in a forthcoming

Digitized by Google

bond having the force of a judgment. This section was intended to settle that question. Burks' Address, 2 Barton, L. Pr. (2d Ed.) 1397.

Failure to ask for subrogation is not ground for demurrer to a bill by a surety against principal to subject his lands to the lien of a judgment which he has paid as surety, where bill alleges a state of facts which shows that the complainant is entitled to subrogation, and contains a prayer for general relief. Hawpe v. Bumgardner, 103 Va. 91, 48 S. E. 554.

A forthcoming bond, after its forfeiture, operates as a discharge of the original judgment; but if it prove abortive the court will, on motion of the creditor, quash it, and remit the creditor to the benefit of his original judgment. Jones v. Myrick's Ex'rs, 8 Grat. 179, 211, 212; Rhea v. Preston, 75 Va. 757, 774.

This section settles the questions raised, but not decided, in Barksdale v. Fitzgerald, 76 Va. 892, 895, 896. See, also, cases there cited.

This section is followed in Callaway's Adm'rs v. Saunders, 99 Va. 350, 351, 38 S. E. 182.

See note on subrogation, Janney's Ex'r v. Stephen's Adm'r, 2 Pat. & H. 11, Va. Rep. Anno.; note on statutory bonds, Goolsby v. Strother, 21 Grat. 107, Va. Rep. Anno.; Burks' Pl. & Pr., pp. 616, 620.

Discussed, 13 Va. Law J. 172.

Sec. 6476. Order of liability between alienees of different parts of estate.—Where the real estate liable to the lien of a judgment is more than sufficient to satisfy the same, and it, or any part of it, has been aliened, as among the alienees for value, that which was aliened last, shall, in equity, be first liable, and so on with other successive alienations, until the whole judgment is satisfied. And as among alienees who are volunteers under such judgment debtor, the same rule as to the order of liability shall prevail; but as among alienees for value and volunteers, the lands aliened to the latter shall be subjected before the lands aliened to the former are resorted to; and, in either case, any part of such real estate retained by the debtor shall be first liable to the satisfaction of the judgment. An alienee for value, however, from a volunteer shall occupy the same position that he would have occupied had he purchased from the debtor at the time he purchased from the voluntary donee. (Code 1887, § 3575.)

Revisors' Note.—The last sentence is new. As the law was when Whitten v. Saunders, 75 Va. 568, was decided, voluntary alienees stood on the same footing as alienees for value, but the revisors of 1887 inserted in this section the language, "but as among alienees for value and volunteers, the lands aliened to the latter shall be subjected before the lands aliened to the former are resorted to." This language seemed to indicate that an alienee for value of a volunteer would stand in the shoes of the volunteer and his land be subjected before that of the alienee for value from the judgment debtor. The present revisors were of opinion that this should not be true, and that alienees for value ought to cover alienees from the volunteer as well as alienees from the judgment debtor.

Sold at same time.—Where several lots are sold at the same time, or on the same day, the several holders stand on an equality, and the lots held by them should bear the burden of incumbrance ratably. The fact that the lots were conveyed at different times makes no difference. Alley v. Rogers, 19 Grat. 366, 388, 389.

Date of delivery.—Without evidence of any preceding executory

Digitized by Google

agreement between the parties, or any evidence of the delivery of the deeds, the dates of the deeds will be presumed to be the dates of their delivery, and the last dated will be the first liable to satisfy the judgment. Harman v. Oberdorfer, 33 Grat. 497, 501, 502.

Pleading.—One wishing to have land subjected in the inverse order of alienation must allege by answer, or establish by proof, that the real estate liable to the lien of the judgment is more than sufficient to satisfy the same. Preston v. Bank, 97 Va. 222, 226, 33 S. E. 546.

Generally.—Quaere, does this section apply to a case where the several alienations are to the same person? Preston v. Bank, 97 Va. 222, 226, 33 S. E. 546.

The following cases follow, but do not construe, this section: Alley v. Rogers, 19 Grat. 366; Harman v. Oberdorfer, 33 Grat. 497; Whitten v. Saunders, 75 Va. 563; Brengle v. Richardson's Adm'r, 78 Va. 406; Dickinson v. Clement, 87 Va. 41, 12 S. E. 105.

See 3 Va. Law Reg. 826; Barton, C. Pr. (2d Ed.) 974; 2 Min. (4th Ed.) 307; note on marshalling assets, Carrington v. Didier, 8 Grat. 260, Va. Rep. Anno.; Burks' Pl. & Pr., p. 620.

Discussed, 13 Va. Law J. 172.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 139, section 8.

Sec. 6477. Limitation of proceedings to enforce judgment; the return by officer on an execution.—On a judgment, execution may be issued within a year, and a scire facias or an action may be brought within ten years after the date of the judgment, and where execution issues within the year, other executions may be issued, or a scire facias or an action may be brought within ten years from the return day of an execution on which there is no return by an officer, or within twenty years from the return day of an execution on which there is such return; except that where the scire facias or action is against the personal representative of a decedent, it shall be brought within five years from the qualification of such representative; and in computing time under this section, there shall, as to writs of fieri facias, be omitted from such computation the time elapsed between the first day of January, eighteen hundred and sixty-nine, and the twenty-ninth day of March, eighteen hundred and seventy-one. If, however, a return be made on an execution more than ten years after the return day thereof, it shall not extend the lien of the judgment beyond ten years from such return day as against a purchaser for value of real estate from the judgment debtor who acquired title prior to the time such return was actually made. Any return by an officer on an execution showing that the same has not been satisfied, shall be a sufficient return within the meaning of this section. (Code 1887, § 3577.)

Revisors' Note.—The next to the last sentence of this section is new, and the last four words of section 6491 ("giving the date thereof") are also new. Without these changes there might appear on the docket judgments rendered more than ten years upon which executions had issued, but no return made, but if a return was subsequently made it would extend the lien of the judgment for a period of twenty years from the return day of the execution. This might seriously affect innocent purchasers of land the title to which appeared clear when it was examined,

Digitized by Google

but which subsequently was found to be encumbered. The changes mentioned above were made to meet this situation.

Forthcoming bonds.—The statute of limitations respecting a judgment "does not apply to a forthcoming bond before the award of the execution." Lipscomb's Adm'r v. Davis' Adm'r, 4 Leigh 303, 306, 307.

When statute begins to run.—Where administration is granted to A. upon the supposition of intestacy of decedent, and afterwards, upon the finding of a will, the same is revoked, and administration is granted to B., the five-years limitation begins to run, not from the void grant of administration to A., but from the qualification of B., the rightful administrator. Manns v. Flinn's Adm'r, 10 Leigh 93, 112.

Where a grant of administration on the estate of a decedent who left a will has been subsequently annulled and set aside, and the executor declining to qualify, administration with the will annexed is granted to another, and a scire facias is then sued out against the latter to revive a judgment recovered against the decedent in his lifetime, the statute of limitations, under this section, begins to run from the time of the qualification of the administrator with the will annexed. Cox v. Caskie, 116 Va. 388, 82 S. E. 118.

Suspension of the running of statute.—The removal of a judgment debtor from the State is of itself an obstruction to a suit to enforce the judgment, and the statute of limitations does not run against the judgment while the debtor remains out of the State. McClanahan v. Norfolk & W. R. Co., 118 Va. 388, 87 S. E. 731.

See section 5825 and note as to suspension of the running of the statute when the prosecution of a suit is prevented by the judgment debtor.

When judgments barred.—Under this section and section 5810, a suit to enforce a judgment against a decedent, brought eleven years after the qualification of his representative, was barred. Spencer v. Flanary, 104 Va. 395, 51 S. E. 849.

Where a judgment was not rendered until a homestead was set apart, and it was barred by the limitations before the exemption ceased, a suit to enforce the lien after the householder's death, leaving neither widow nor minor child, instituted more than twenty years after the issue of execution, was barred. Akiss v. Satchel, 104 Va. 700, 52 S. E. 378, 11 Va. Law Reg. 886.

A judgment on which an execution has issued may be kept alive by other executions within the statutory period. Id

Where there is a judgment against A., principal, and B., surety, jointly, and A. dies, even though the judgment may be barred against his estate, it is not thereby barred against B. or his estate. The liability of B. or his estate rests directly on the time elapsed as to him. Section 6263 is considered in reaching this result. Manson v. Rawlings, 112 Va. 384, 71 S. E. 564.

A judgment quando acciderint does not come within the operation of the statute of limitations in relation to judgments. Smith's Adm'r v. Charlton's Adm'r, 7 Grat. 425, 444, 456, overruling Braxton v. Wood's Adm'r, 4 Grat. 25, on this point.

An execution, though irregularly and unlawfully issued after the expiration of the time prescribed, is not void, but voidable, and cannot be avoided by plea or proof in a collateral suit. Beale's Adm'r v. Botetourt Justices, 10 Grat. 278, 281-283.

An execution regular in all respects, duly attested by the clerk, and marked "to lie," though never delivered to an officer, was issued within the statute. Davis v. Roller, 106 Va. 46, 55 S. E. 4.

Revival of judgment.—An enjoined judgment may be revived, upon the death of the defendant, against his personal representative. Richardson's Adm'r v. Prince George Justices, 11 Grat. 190, 198.

Though a judgment debtor has no right under this section to revive a judgment in the name of the personal representative of the judgment creditor for the purpose of obtaining an appeal, such a course is harm-

Digitized by Google

less error. City of Charlottesville v. Stratton's Adm'r, 102 Va. 95, 45 S. E. 737.

Where a judgment in favor of plaintiff in ejectment was not enforced by a writ of possession within a year and a day after it was entered, it is insufficient to support a writ subsequently issued without being revived, both as provided by this section and at common law. King v. Davis, 11 Va. Law Reg. 177, and note, 137 Fed. 198.

Fieri facias and scire facias.—The time omitted in this section from computation applies to a fieri facias, but not to a scire facias. Fadeley's Adm'r v. Williams' Adm'r, 96 Va. 397, 400-402, 31 S. E. 515.

The extent of the jurisdiction of the court upon a proper writ of scire facias to revive a judgment is to render judgment that the plaintiffs in the writ may have execution of the judgment set forth in the writ. If the judgment goes further and awards the payment of money the latter is void for want of jurisdiction and may be assailed collaterally. A judgment of revival merely is not a lien on land, though the judgment revived will constitute such lien. White v. Palmer, 110 Va. 490, 66 S. E. 44.

The statute gives the same effect to a decree as to a judgment and while the decree is the result of a suit in chancery, the scire facias to revive a judgment or decree is a strictly legal process, and if regular in other respects is not invalidated by reason of its having been brought on the law side of the court in order to have an award of execution upon a decree in chancery. White v. Palmer, 110 Va. 490, 66 S. E. 44.

The proceeding by scire facias is not a new suit but a continuation of the old suit. It is essential that the writ shall state all the facts necessary to authorize the relief sought. It should follow the judgment to be revived as to the amount, date and parties. White v. Palmer, 110 Va. 490, 66 S. E. 44.

A scire facias upon a scire facias which neither recites nor makes any reference to the judgment to be revived is not sufficient to revive the judgment. It fails to aver facts essential to the jurisdiction of the court, and the judgment of revival is a mere nullity which may be treated as if it never existed. White v. Palmer, 110 Va. 490, 66 S. E. 44.

The return.—Whether a return is true or false, sufficient or insufficient, is not a question which can arise under this section. The statute does not prescribe concerning a true or sufficient return, but concerning a "return of an officer." Hamilton v. McConkey's Adm'r, 83 Va. 533, 537, 538, 2 S. E. 724.

A return is sufficient under this section though it bears no date, and the execution on which the return was made was not filed in the clerk's office until after the return day. Rowe's Adm'r v. Hardy's Adm'r, 97 Va. 674, 678, 679, 34 S. E. 625, 75 Am. St. Rep. 811. See revisors' note above.

Signature is not a part of the officer's return. He may be allowed to amend by signing it. Slingluff v. Collins, 109 Va. 717, 64 S. E. 1055.

A return which shows that levy has been prevented by an injunction or supersedeas, or by the order of the plaintiff or his attorney, is a sufficient return, under this section. Rowe's Adm'r v. Hardy's Adm'r, 97 Va. 674, 676, 34 S. E. 625, 75 Am. St. Rep. 811. So is a return of "no property." Kennerly v. Swartz, 83 Va. 704, 3 S. E. 348.

Generally.—Exceptions to the operation of the statute must be found in the statute itself. Clark v. Nave, 116 Va. 838, 83 S. E. 547.

As to changes in this section made by the revision of 1887, see Burks' Address, 2 Barton, L. Pr. (2d Ed.) 1399.

The following cases apply, but do not construe this statute: Dickenson v. Gray, 100 Va. 526-528, 42 S. E. 298; Callaway's Adm'r v. Saunders, 99 Va. 350, 351, 38 S. E. 182; Rush's Ex'r v. Steele, 93 Va. 526, 529, 25 S. E. 604; James' Ex'r v. Life, 92 Va. 702-707, 24 S. E. 275; Houck's Adm'r v. Dunham, 92 Va. 211, 214, 23 S. E. 238; Serles v. Cromer, 88 Va. 426-428, 13 S. E. 859; Brown v. Butler, 87 Va. 621, 623, 13 S. E. 71; Straus v. Bodeker's Ex'x, 86 Va. 543, 547, 10 S. E. 570; McCarty v.

Digitized by Google

Ball, 82 Va. 872, 874, 1 S. E. 189; Sutton v. McKenney, 82 Va. 46; Dabney v. Shelton, 82 Va. 349, 350, 4 S. E. 605; Hutcheson v. Grubbs, 80 Va. 251, 256; Brown v. Campbell, 33 Grat. 402, 409; Tunstall v. Pollard's Adm'r, 11 Leigh 1; Peyton's Adm'r v. Carr's Ex'r, 1 Rand. 436.

For an interesting historical review of this subject, see Fleming's Ex'r v. Dunlop, 4 Leigh 338.

See 4 Va. Law Reg. 512, 631; Cardwell v. Talbott, 5 Va. Law Reg. 182; 5 Va. Law Reg. 672; 7 Va. Law Reg. 529; Barton, L. Pr. (2d Ed.) 789, 1018; note on limitation of actions, Herrington v. Harkins' Adm'rs, 1 Rob. 591, Va. Rep. Anno.; note on executions, Paine v. Tutwiler, 27 Grat. 440; Va. Rep. Anno.

Under this section, on judgments obtained in 1860, on which executions had been issued and returned within the year, actions were brought in 1875, and new judgments obtained, and it was contended that the old judgments were merged in the new; that the liens of the old were lost, and that the liens of the new dated only from the date of new judgments, and took priority only as of the latter dates. Held, that whatever may be the law of merger in other jurisdictions, yet if method prescribed by statute law of a state for preserving judgments and their liens are pursued the doctrines of merger must not be applied in that state in such manner as to defeat the purpose of the law and to destroy priorities expressly intended to be preserved. Hay v. Alexandria & W. R. Co. (C. C.), 20 Fed. 15.

For provision for other executions after first has issued, see sections 6497.

Cited in Gunnell's Adm'rs v. Dixon's Adm'r, 101 Va. 174, 43 S. E. 340; Lowenbach v. Kelly, 111 Va. 439, 69 S. E. 352.

Discussed, 5 Va. Law J. 210; 8 Va. Law J. 193, 321, 456, 577; 9 Va. Law J. 191, 577; 10 Va. Law J. 572, 641; 15 Va. Law J. 273, 445.

Quaere: Can judgments be perpetually kept alive, see 10 Va. Law Reg. 468.

See sections 6474, 6478.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 139, section 10.

See Gregory's Forms Nos. 442, 443, 444, 445; Burks' Pleading and Practice, pp. 405, 612, 627, 648, 659.

Sec. 6478. Provision construing and qualifying the preceding section.—No execution shall issue, nor any scire facias or action be brought, on a judgment in this State, other than for the Commonwealth, after the time prescribed by the preceding section, except that, in computing the time, any time during which the right to sue out execution on the judgment is suspended by the terms thereof, or by legal process, shall be omitted; and sections fifty-eight hundred and twenty-three to fifty-eight hundred and twenty-six, inclusive, and section fifty-eight hundred and thirty shall apply to the right to bring such action or scire facias in like manner as to any right, action, or scire facias mentioned in those sections; and except that when the judgment is for the penalty of a bond, but to be discharged by the payment of what is then ascertained, and such sums as may be afterwards assessed or found due upon a scire facias on the judgment, assigning a further breach of the bond, such scire facias may be brought within ten years after such breach. (Code 1887, § 3578.)

Suspension—*By legal process.*—The time for which execution is stayed by injunction is to be excluded from the computation of time under section 6477. Hutsonpiller's Adm'r v. Stover's Adm'r, 12 Grat. 579, 583.

Digitized by Google

The filing of a petition in a creditors' suit, upon which no other order of court is ever made except an order of dismissal, is not "legal process," which will suspend the right to sue out execution on a judgment. Dabney v. Shelton, 82 Va. 349-351, 4 S. E. 605. Nor is a suit to enforce a contract for the sale of the judgment debtor's land, where no order is made to suspend the issuing of execution. Straus v. Bodeker's Ex'x, 86 Va. 543, 547, 548, 10 S. E. 570.

By act of defendant.—The prevention of action by defendant, unless a right is obstructed under section 5825, does not bring the case within the exception contained in this section. Brown v. Butler, 87 Va. 621, 13 S. E. 71.

By agreement.—An agreement that no execution on a judgment shall be placed in the hands of the sheriff for a stated period, not made a part of the judgment, does not prevent the running of the statute. Clark v. Nave, 116 Va. 838, 83 S. E. 547.

By terms of decree.—A decree in favor of a receiver, who is not authorized to collect any money under the decree until he executes a bond as such in a prescribed penalty, is not suspended by its terms. Serles v. Cromer, 88 Va. 426, 428. 429, 13 S. E. 859.

Generally.—Cited in Gunnell's Adm'rs v. Dixon's Adm'r, 101 Va. 174, 43 S. E. 340; McClanahan v. N. & W. R. Co., 118 Va. 388, 87 S. E. 731.

See Barton, L. Pr. (2d Ed.) 792, 793; note on limitation of actions, Herrington v. Harkins' Adm'rs, 1 Rob. 591, Va. Rep. Anno.

See note of Akiss' Ex'rs v. Satchel, to section 6477.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 139, section 11.

See Gregory's Forms Nos. 442, 443, 444, 445.

Sec. 6479. Chapter embraces recognizances and bonds having force of a judgment.—The foregoing sections of this chapter, so far as they relate to the docketing of judgments, the entering of satisfaction thereof, and the liens of judgments and enforcement of such liens, shall be construed as embracing recognizances, and bonds having the force of a judgment. (Code 1887, § 3580.)

CHAPTER 272.

Executions, and the Means of Enforcing Recoveries of Money Otherwise Than by Such Writ.

Sec.
6480. Clerks to issue fieri facias on judgment for money; what writs may not issue.
6481. Executions against corporations; how issued on joint judgments.
6482. How, where judgment for benefit of other person than plaintiff; remedies of such person.
6483. When writ of possession may issue; how executed; fieri facias for damages or profits and costs; how writ in unlawful detainer executed, and when returnable.
6484. What writs may issue on judgment for personal property.
6485. What a writ of fieri facias may be levied on; from what time it binds; when lien thereof ceases.
6486. Personal property subject to prior lien, or in which the owner has only an equitable interest, liable to levy; how sold.

Digitized by Google

Sec.
6487. If levy be on coin or bank notes, how accounted for.
6488. Officer's duty to endorse on fieri facias time of receiving it; remedy against him for failure.
6489. Where several writs of fieri facias, how satisfied.
6490. Right of officer to break open dwelling-house and also to levy on property in the personal possession of debtor.
6491. What return officer to make on fieri facias; what statement file therewith; clerk to enter return on execution book.
6492. Re-sale of property, if purchaser at officer's sale fails to comply; remedy against such purchaser.
6493. When venditioni exponas may issue; proceedings thereon.
6494. Where officer taking property under execution dies before sale, and there are no deputies, venditioni exponas may issue to new officer; proceedings in such case.
6495. When money received by officer under execution to be repaid to debtor.
6496. Officer not required to go out of his county or corporation to pay money received by him.
6497. After an execution has issued, provision for others.
6498. When property sold under execution, or its value, is recovered from obligor in indemnifying bond, or, etc., how new execution obtained.
6499. When and by whom executions may be quashed; how proceedings thereon stayed until motion to quash is heard.
6500. Issue of executions on judgments and decrees during term of court at which they are rendered.
6501. Lien of fieri facias on estate of debtor not capable of being levied on.
6502. When lien acquired under the preceding section ceases.
6503. Proceedings by interrogatories to ascertain estate of debtor on which fieri facias is a lien, and any real estate to which he is entitled.
6504. Real estate out of this State of debtor to be conveyed and his personal estate delivered to officer.
6505. Interrogatories, answers, etc., to be returned to court.
6506. How debtor may be arrested and held to answer.
6507. Court, in which judgment is, or, etc., may make order for sale and application of debtor's estate.
6508. Officer's duty as to sale, collection, and disposition of debtor's estate; when to return evidences of debt to clerk's office.
6509. When by lien of fieri facias there is a claim on any person other than judgment debtor, summons may be sued out against him; how issued, served, and returned.
6510. How he is examined; court's order on such examination; execution thereon.
6511. The proceedings, if he fail to appear, or to disclose his liability.
6512. Payment, etc., by garnishee to officer before return of summons.
6513. Judgment as to costs.
6514. By whom and how suit brought to recover estate on which fieri facias, or judgment on which it issues, is a lien, or to enforce any liability in respect thereto.

Digitized by Google

Sec.
6515. How and when officer receiving money under this chapter to make return thereof and pay net proceeds; how liable for failure.
6516. Creditor may issue other executions without impairing lien.
6517. Territorial extent of the lien of an execution.

Sec. 6480. Clerk to issue fieri facias on judgment for money; what writs may not issue.—On a judgment for money it shall be the duty of the clerk of the court in which such judgment was rendered to issue a writ of fieri facias as soon as practicable after the adjournment for the term of the court at which such judgment was rendered and place the same in the hands of the proper officer of such court to be executed and take his receipt therefor unless he be otherwise directed by writing by the beneficiary of such judgment, his agent or attorney. No writ of levari facias, writ of elegit, writ of capias ad satisfaciendum, or writ of distringas shall be issued hereafter. (Code 1887, § 3581; 1897-8, p. 586.)

Revisors' Note.—The words, "except that a writ of distringas may be issued on a judgment for specific property," formerly appearing at the end of this section, have been omitted, and the words, "or he may have a writ of distringas," formerly appearing at the end of section 6484 have also been omitted, together with section 3586 of the Code of 1887. The effect of these omissions and repeals is to abolish altogether the writ of distringas. Under a writ of distringas the officer could not distrain the very property for which the execution issued, nor could he seize and sell it to pay damages. Jordon v. Williams, 3 Rand. 501. At a time when no writ of possession was provided for, the writ of distringas was no doubt a valuable writ; but now under a writ of possession the officer may take the specific property itself, and under a fieri facias he may sell any other personal property, so that the usefulness of the writ of distringas has passed away. It has not been in use for many years.

See 2 Va. Law Reg. 704; Barton, L. Pr. (2d Ed.) 779; 4 Min. (3d Ed.) 993, 1010, 1782; Gregory's Forms No. 441.

Executions on judgments or decrees rendered on instruments waiving homestead or on claims against which homestead cannot be claimed should recite the fact, see section 6551.

Sec. 6481. Executions against corporations; how issued on joint judgments.—Such executions as may issue against a natural person may issue against a corporation; and where a judgment is against several persons jointly, executions thereon shall be joint against them all. (Code 1887, § 3582.)

See Barton, L. Pr. (2d Ed.) 784, 794; note on Corporations, Slaughter v. Com., 13 Grat. 767, Va. Rep. Anno.; note on Executions, Paine v. Tutwiler, 27 Grat. 440, Va. Rep. Anno.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 140, section 1.

Sec. 6482. How, where judgment for benefit of other person than plaintiff; remedies of such person.—Where an execution issues on a judgment, for the benefit, in whole or in part, of any person other than the plaintiff, if the fact appear by the record, the clerk shall, in the execution, or by an endorsement thereon, state the extent of

Digitized by Google

the interest therein of such person; and he (either in his own name or that of the plaintiff) may, as a party injured, prosecute a suit or motion against the officer. (Code 1887, § 3583.)

The debtor, though the party injured, cannot maintain a motion in the name of the creditor against the sheriff for a fine for failing to return the execution. Fletcher v. Chapman, 2 Leigh 560, 565-567.

This section overrules the principle laid down in the following cases: Tolson v. Elwes, 1 Leigh 436; Meze v. Howver, Id. 442; Burnett v. Harwell, 3 Leigh 89; Governor ex rel. Leighton v. Hinchman, 1 Grat. 156.

See Barton, L. Pr. (2d Ed.) 155, 782, 794; note on Assignments, Ragsdale v. Hagy, 9 Grat. 409, Va. Rep. Anno.; note on Executions, Paine v. Tutwiler, 27 Grat. 440, Va. Rep. Anno.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 140, section 3.

Sec. 6483. When writ of possession may issue; how executed; fieri facias for damages or profits and costs; how writ in unlawful detainer executed, and when returnable.—On a judgment for the recovery of specific property, real or personal, a writ of possession may issue for the specific property, which shall conform to the judgment as to the description of the property and the estate, title and interest recovered, and there may also be issued a writ of fieri facias for the damages or profits and costs. In cases of unlawful entry and detainer and of ejectment, whenever the officer to whom a writ of possession has been delivered to be executed finds the premises locked, he may, after declaring at the door the cause of his coming and demanding to have the door opened, employ reasonable and necessary force to break and enter the door and put the plaintiff in possession. And an officer having a writ of possession for specific personal property, if he find locked or fastened the building or place wherein he has reasonable cause to believe the property specified in the writ is located, may in the day time, after notice to the defendant, his agent or bailee, break and enter such building or place for the purpose of executing such writ.

Writs of possession, in case of unlawful entry and detainer, where the premises are located in cities or towns or in suburban or other lands which are subdivided into building lots for residential purposes, shall be made returnable within thirty days from the date of issuing the writ. (Code 1887, § 3584; 1902-3-4, p. 837; 1910, p. 340; 1916, p. 717.)

See Barton, L. Pr. (2d Ed.) 780, 895; 4 Min. (3d Ed.) 993, 994; note on Executions, Paine v. Tutwiler, 27 Grat. 440, Va. Rep. Anno.; Gregory's Forms No. 440.

Sec. 6484. What writs may issue on judgment for personal property.—When the judgment is for personal property, the plaintiff may, at his option, have a fieri facias for the alternative value (instead of a writ of possession), and the damages and costs. (Code 1887, § 3585.)

Revisors' Note.—See revisors' note to section 6480.

See Barton, L. Pr. (2d Ed.) 780, 895; 4 Min. (3d Ed.) 993-997, 1010; note on Executions, Paine v. Tutwiler, 27 Grat. 440, Va. Rep. Anno.; Gregory's Forms No. 440.

Digitized by Google

Sec. 6485. What a writ of fieri facias may be levied on; from what time it binds; when lien thereof ceases.—By a writ of fieri facias, the officer shall be commanded to make the money therein mentioned out of the goods and chattels of the person against whom the judgment is. The writ may be levied as well on the current money and bank notes, as on the goods and chattels of such person, except such as are exempt from levy under chapter two hundred and seventy-four, and shall bind what is capable of being levied on only from the time it is delivered to the officer to be executed. The lien of a writ of fieri facias under this section, on what is capable of being levied on but is not levied on under the writ on or before the return day thereof, shall cease on that day: provided, however, that property levied on, on or before the return day may be advertised and sold within a reasonable time thereafter, and the lien given by this section may also be enforced after the return day of the writ by proceedings under section sixty-five hundred and three and following of this chapter, if such proceedings be commenced before that day. (Code 1887, § 3587.)

Revisors' Note.—Formerly, this section provided, as to the lien of the execution, that "AS AGAINST PURCHASERS FOR VALUABLE CONSIDERATION WITHOUT NOTICE AND CREDITORS," it should bind what is capable of being levied on only from the time it was delivered to the officer to be executed. The capitalized words have been omitted, the effect of which omission is to make the language general so that in all cases, not only as against purchasers for valuable consideration without notice and creditors, but as against all others, the execution will bind what is capable of being levied on only from the time that it is delivered to the officer to be executed.

The proviso of the present section makes provision for the sale of property within a reasonable time after the return day, which was levied on, on or before the return day. Formerly, no provision of this sort was made except by writ of venditioni exponas, and yet it was the uniform practice, if the officer had levied a fieri facias on or before the return day, to hold on to the property, and advertise and sell it after the return day. This is now expressly provided for. The writ of venditioni exponas is retained (section 6493), but it will be unnecessary to resort to it except in those cases to which this section would not be applicable, namely, where more than a reasonable time had elapsed.

Lien— *On what.*—This section gives a lien on chattels corporeal as distinguished from incorporeal personalty or choses in action. Graves' Notes on Pleading, 49, 50; 2 Va. Law Reg. 705.

On what it depends.—The lien "depends on a levy being made before the return day of the writ is past; but when this levy is made, then, by relation, the lien takes effect as of the time when the writ was delivered to the sheriff." Graves' Notes on Pleading, 50; 2 Va. Law Reg. 706.

To what it extends.—The lien extends to the property of the execution debtor acquired after the delivery of the writ to the sheriff, but before the return day is past. Graves' Notes on Pleading, 50; 2 Va. Law Reg. 706.

From what time.—The fieri facias is a lien "from the time it is delivered to the officer to be executed," though the officer is instructed not to levy until the happening of a certain event. Pegram v. May, 9 Leigh 176. But see dissenting opinion of Brooke, J., p. 180.

Digitized by Google

When it expires.—A lien acquired by levy of execution will expire, if not enforced by a sale, with the authority to sell under an execution. Carr's Adm'rs v. Glasscock's Adm'r, 3 Grat. 343, 354.

Until the revision of 1887 it was a debated question whether the lien of a writ of fieri facias on property, capable of being levied on but which is not levied on before the return day of the writ, expires on that day. It was thought by the revisors that a fair inference from the decisions of the Court of Appeals is that they considered the lien, in such case, as ceasing on the return day of the writ, and this section was made to explicitly so declare, subject, however, to a proviso. Burks' Address, 2 Barton, L. Pr. (2d Ed.) 1399.

Levy—*How made.*—Fieri facias may be levied without touching the property, provided it be in the immediate power of the sheriff. Bullitt's Ex'rs v. Winston, 1 Munf. 269, 278, 279. Parol evidence is admissible to prove that a fieri facias was levied, though no return was made upon it. Bullitt's Ex'rs v. Winston, 1 Munf. 269, 272.

In executing the writ the sheriff is the agent of the beneficiary and plaintiff, and he and his attorney have the right to say whether the sheriff shall levy it or return it without doing so. Rowe's Adm'r v. Hardy's Adm'r, 97 Va. 674, 34 S. E. 625, 75 Am. St. Rep. 811.

Property left with third person.—Though a sheriff acts at his peril in leaving property in the hands of third persons on their promise to produce it on the day of sale, it does not prevent the fieri facias from having been levied in contemplation of law. Bullitt's Ex'rs v. Winston, 1 Munf. 269, 279-281.

Title after levy.—Levy does not divest the defendant of the property and transfer the title to the plaintiff, or even to the sheriff. The property still remains in the defendant notwithstanding the levy, and only a special interest is vested in the sheriff, as a mere bailee, to enable him to keep the property safely and defend it against wrongdoers. While subject to the levy it is in the custody of the law, and the sheriff has a naked power to sell it, and pass the title from the owner to the purchaser." Walker v. Com., 18 Grat. 13, 43-45, 98 Am. Dec. 631.

New execution after abandoning levy.—A plaintiff "may always, with the consent of the defendants, abandon a levy upon the property of all or any of them, and sue out a new execution. If the defendants be a principal and his sureties, and the property levied on be that of the sureties, the plaintiff may, with the consent of the sureties only, abandon the levy, and sue out a new execution against all the defendants. * * * * If the levy be abandoned by the sheriff with the consent of the defendant, without the concurrence or authority of the plaintiff, or if the property be by the defendant eloigned or removed out of the reach of the sheriff, without the consent either of him or the plaintiff, the latter may sue out a new execution. But if the property levied on be lost to the defendant by the misconduct or neglect of the sheriff, the execution is thereby satisfied to the extent of the value of the property, and the plaintiff can then look only to the sheriff for indemnity." Walker v. Com., 18 Grat. 13, 43-45, 98 Am. Dec. 631.

Real estate.—This section does not authorize a levy on real estate. Clark v. Allen (D. C.), 117 Fed. 699.

Satisfaction.—"A mere levy upon sufficient personal property, without anything more, never amounts to a satisfaction of the judgment. But until the debt is paid, or the debtor has lost his property in consequence of his levy, the judgment remains in force." Walker v. Com., 18 Grat. 13, 43, 47, 98 Am. Dec. 631, and cases cited; Rhea v. Preston, 75 Va. 758, 772.

Sale—*Irregularity in.*—A sale under an execution will be valid, though irregular, if made by the sheriff bona fide, and is acquiesced in by both plaintiff and defendant. Carr's Adm'rs v. Glasscock's Adm'r, 3 Grat. 343, 354.

Postponing sale.—Direction to postpone the sale of goods held under a fieri facias does not authorize the sheriff to return the goods to the debtor, and the return of them will render the sheriff liable on his

Digitized by Google

official bond (Governor v. Vanmeter, 9 Leigh 18, 27-29, 33 Am. Dec. 221; Walker v. Com., 18 Grat. 13, 98 Am. Dec. 631); nor does direction to postpone discharge the lien of the execution (Governor v. Vanmeter, 9 Leigh 18, 27-29, 33 Am. Dec. 221); but if the sheriff puts off the sale until after the return day, at the instance of the plaintiff, but without the consent or privity of the sureties, to indulge the principal debtor, the sureties will be released (Bullitt's Ex'rs v. Winston, 1 Munf. 269, 280-284; Baird v. Rice, 1 Call. 18, 1 Am. Dec. 497).

Authority of officer.—The authority of an officer to collect money in discharge of the execution does not result from the lien, but as a consequence of the right to sell the debtor's property under the execution. So long as the right to sell continues, the right to receive payment remains, but no longer. If the officer levies before the return day of the writ, he may, notwithstanding the return day has passed, sell (Grandstaff v. Ridgely, 30 Grat. 1, 15, 16); receive payment (O'Bannon v. Saunders, 24 Grat. 138, 142; Grandstaff v. Ridgely, 30 Grat. 1, 15, 16; Ballard v. Thomas, 19 Grat. 14; Paine v. Tutwiler, 27 Grat. 440); or receive a forthcoming bond (Dix v. Evans, 3 Munf. 308). And he may receive payment at any time before the return day without a levy. Grandstaff v. Ridgely, 30 Grat. 1, 16.

Duty of officer.—"The presumption, in the absence of evidence to the contrary, is that the sheriff did his duty in levying the execution before the return day." O'Bannon v. Saunders, 24 Grat. 138, 142; Paine v. Tutwiler, 27 Grat. 440.

Levy after death.—A sheriff may levy, after the plaintiff's death, an execution which had issued before. Turnbull v. Claibornes, 3 Leigh 392, 393.

Property of wrong person.—A sheriff who takes the property of the wrong person under an attachment commits a trespass, and violates the duty of his office, thereby rendering himself liable on his official bond. Sangster v. Com., 17 Grat. 124, 129, 130.

Homestead exemption.—If the debtor claims the benefit of homestead exemption in property levied on, the sheriff cannot surrender the property, but must inform the creditor of the fact, and require him to give an indemnifying bond. Sage v. Dickinson, 33 Grat. 361, 364, 365.

Burden of proof.—An officer who surrenders property held under execution does so at his peril, and the burden is on him to show that the goods were not justly liable to levy. Sage v. Dickinson, 33 Grat. 361, 365.

Pleading.—In an action against a sheriff for failure to pay over money, the declaration should aver that the execution was levied, or that the money was paid, before the return day of the writ. Grandstaff v. Ridgely, 30 Grat. 1, 16.

Money in sheriff's hands.—A court may direct money which is made under a fieri facias, and is in the hands of the sheriff, or in court, to be paid over in satisfaction of another fieri facias in the hands of the same sheriff against the plaintiff in the first execution. Steele v. Brown, 2 Va. Cas. 246, 250-254.

Return.—A failure to mention in a return one of the items levied on is no ground for reversing a judgment on a forfeited forthcoming bond in which that item is mentioned as one of those on which such execution was levied. Dix v. Evans, 3 Munf. 308.

Generally.—Cited but not construed in Shields v. Mahoney, 94 Va. 488, 27 S. E. 23, and Hicks v. Roanoke Brick Co., 94 Va. 749, 27 S. E. 596.

This section is followed in Spence v. Repass, 94 Va. 716, 720-722, 27 S. E. 583.

See 2 Va. Law Reg. 704-706; Barton, L. Pr. (2d Ed.) 794. 800. 825, 839; 3 Min. (2d Ed.) 128, 251; 4 Min. (3d Ed.) 1018, 1025, 1026; Burks' Pleading and Practice, pp. 626, 627, 655, 656; note on Executions, Paine v. Tutwiler, 27 Grat. 440, Va. Rep. Anno; Gregory's Forms No. 441.

Digitized by Google

For definition of "goods and chattels" and of "choses in action," see note to section 5188.

For a special provision for taking and selling real estate under a writ of fieri facias "upon a judgment or decree against any person indebted or liable to the Commonwealth, or against any security of his," see section 2517; also sections 6503-4.

Discussed, 5 Va. Law J. 471.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 140, section 5.

Sec. 6486. Personal property subject to prior lien, or in which the owner has only an equitable interest, liable to levy; how sold.—Tangible personal property subject to a prior lien, or in which the execution debtor has only an equitable interest, may nevertheless be levied on for the satisfaction of a fieri facias. If such prior lien be due and payable, the officer levying the fieri facias shall sell the property free of such lien, and apply the proceeds first to the payment of such lien, and the residue, so far as necessary, to the satisfaction of the fieri facias. If such prior lien be not due and payable at the time of sale, such officer shall sell the property levied on subject to such lien.

Revisors' Note.—This section is new, and its purpose is to settle the law of Virginia on this subject. See Claytor v. Anthony, 6 Rand. 285; Coutts v. Walker, 2 Leigh 268; Spence v. Repass, 94 Va. 716, 27 S. E. 583, and discussion in Burks' Pl. & Pr., pp. 642-644, where other authorities are cited.

Sec. 6487. If levy be on coin or bank notes, how accounted for.—If the levy be upon gold or silver coin, or on notes made a legal tender for the payment of debts, the same shall be accounted for at its par value as so much money made under the execution. If it be upon bank notes or gold or silver certificates or other currency not a legal tender for the payment of debts, and the creditor will not take them at their nominal value, they shall be sold and accounted for as any other property taken under execution. (Code 1887, § 3588.)

Revisors' Note.—The words, "or on notes made a legal tender for the payment of debts," found in lines one and two of the text, and the words, "or gold or silver certificates or other currency not a legal tender for the payment of debts," appearing in lines four and five of the text, are new.

See Barton. L. Pr. (2d Ed.) 829; 4 Min. (3d Ed.) 1018; note on Executions, Paine v. Tutwiler, 27 Grat. 440, Va. Rep. Anno.; see Burks' Pleading and Practice, p. 641.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 140, section 6.

Sec. 6488. Officer's duty to endorse on fieri facias time of receiving it; remedy against him for failure.—Every officer shall endorse on each writ of fieri facias the year, month, day, and time of day, he receives the same. If he fail to do so, the judgment creditor may, by motion, recover against him and his sureties, jointly and severally, in the court in which the judgment was rendered, a sum not

Digitized by Google

exceeding fifteen per cent. upon the amount of the execution. (Code 1887, § 3589.)

This section is followed in Hockman v. Hockman, 93 Va. 455, 458, 25 S. E. 534, 57 Am. St. Rep. 816.

See 2 Va. Law Reg. 706; note on Executions, Paine v. Tutwiler, 27 Grat. 440, Va. Rep. Anno.; note on Official Bonds, Sangster v. Com., 17 Grat. 124, Va. Rep. Anno.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 140, section 7.

See Gregory's Forms No. 476.

Sec. 6489. Where several writs of fieri facias, how satisfied.—Of writs of fieri facias, that which was first delivered to the officer, though two or more be delivered on the same day, shall be first levied and satisfied, and where several such executions are delivered to the officer at the same time, they shall be satisfied ratably. But if an indemnifying bond be required by the officer as a prerequisite to a sale, and the same be given by some of the creditors and not by others, and the officer sells under the protection of such bond, the proceeds of the sale shall be paid to the creditors giving the bond in the order in which their liens attached. (Code 1887, § 3590.)

Revisors' Note.—The last sentence of this section is new, but is believed to be simply declaratory of the law as it existed before the revision. (See Burks' Pl. & Pr., p. 645.)

Where two executions are levied on a stock of goods, fluctuating from sales and purchases, the senior execution has preference on all of the goods in the stock before its return day, and the burden of proof is on the junior execution creditor to show that any special articles came into the stock after the return day. Carr v. Meade's Ex'x, 77 Va. 142.

This section is followed in Hockman v. Hockman, 93 Va. 455, 458, 25 S. E. 534, 57 Am. St. Rep. 816.

See Barton, L. Pr. (2d Ed.) 828; note on Executions, Paine v. Tutwiler, 27 Grat. 440, Va. Rep. Anno.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 140, section 8.

Sec. 6490. Right of officer to break open dwelling-house and also to levy on property in the personal possession of debtor.—An officer into whose hands an execution is placed to be levied, may, if need be, break open the outer doors of a dwelling-house in the day-time, after having first demanded admittance of the occupant, in order to make a levy, and may also levy on property in the personal possession of the debtor if the same be open to observation.

Revisors' Note.—This section is new. Under the law as it stood before the revision, an officer having an execution in his hands could not break open the outer doors of a dwelling in order to make the levy, but he was allowed to break open the inner doors of the dwelling or the outer doors of a building other than a dwelling for that purpose, and AFTER LEVY it was probable that the outer doors of a dwelling might be broken open in order to obtain the property for the purpose of removal and sale. 4 Min. Inst. 1024; 11 Am. & Eng. Ency. Law (2d Ed.) 655. It will be observed that the new section limits the right of the

Digitized by Google

officer in breaking the outer doors of a dwelling to the day time, after having first demanded admittance of the occupant.

Formerly, it was somewhat doubtful whether or not an officer had the right to levy on property in the personal possession of the debtor. The new section settles this doubt, but the property must be open to observation. The officer is not permitted to search the debtor to see if he has money or other valuables on his person.

Sec. 6491. What return officer to make on fieri facias; what statement file therewith; clerk to enter return on execution book.—Upon a writ of fieri facias, the officer shall return whether the money therein mentioned is or cannot be made; or if there be only part thereof which is or cannot be made, he shall return the amount of such part. With every execution under which money is recovered, he shall return a statement of the amount received, including his fees and other charges, and such amount, except said fees and charges, he shall pay to the person entitled. In his return upon every execution, the officer shall also state whether or not he made a levy of the same, the date of such levy, and the date when he received such payment or obtained such satisfaction upon the said execution; and if there be more than one defendant, from which defendant he received the same. Upon the return of said writ of fieri facias by the officer to the clerk's office or to the court to which it is returnable, it shall be the duty of the clerk thereof to enter the return of said officer on the execution book or judgment docket wherein said execution is entered, as the case may be, giving the date thereof. (Code 1887, § 3591; 1916, p. 765.)

Revisors' Note.—The last four words of this section are new. See revisors' note to section 6477. The date referred to is the date the officer brings his return to the office and not the date that he annexes to his return.

Sufficiency of return.—A return of "not levied by reason of the stay law" is a return substantially that the money "cannot be made." Hamilton v. McConkey's Adm'r, 83 Va. 533, 537, 2 S. E. 724.

Amending return.—A sheriff cannot amend his return upon an execution after it has been filed, except by motion to the court, upon notice to the creditor (Hammen v. Minnick, 32 Grat. 249, 251, 252; Carr v. Meade's Ex'x, 77 Va. 142, 159); but he will be permitted to amend after an action has been commenced founded on the original return (Smith v. Triplett, 4 Leigh 590; Wardsworth v. Miller, 4 Grat. 99; Stone v. Wilson, 10 Grat. 529, 533; Bullitt's Ex'rs v. Winston, 1 Munf. 269, 283; Baird v. Rice, 1 Call 18, 1 Am. Dec. 497; Rucker v. Harrison, 6 Munf. 181); and this even though the proposed amendment be inconsistent with the original return, and takes away the foundation of the suit or motion (Stone v. Wilson, 10 Grat. 529, 533). But see Carr v. Meade's Ex'x, 77 Va. 142, 159, where it is said that an amendment will not be permitted in a collateral proceeding after a decree has been entered, founded upon such return.

Evidence.—A return of "levied," etc., properly dated and signed, is a complete return, and by it the sheriff becomes bound for the full amount of the execution. And a subsequent return (indorsement) on the execution that it was held up, and the property not sold, by order of the creditor, being unauthorized by law, cannot be used as evidence in the sheriff's favor. Shannon v. McMullin, 25 Grat. 211, 216-219. But the sheriff may prove that at the time the execution came into his hands

Digitized by Google

he had other and older executions in his hands, and that he had taxes due the county and state, which were levied upon the same property named in the return, and that the proceeds from the sale of said property were applied to the payment of said older executions and taxes. Hammen v. Minnick, 32 Grat. 249, 252.

Liability of sheriff.—A sheriff, though liable to a fine for failing to make due return, is also liable to an action on his official bond. Grandstaff v. Ridgely, 30 Grat. 1, 16.

Generally.—See 4 Min. (3d Ed.) 1040; note on Executions, Paine v. Tutwiler, 27 Grat. 440, Va. Rep. Anno.; Burks' Pleading and Practice, pp. 636, 637, 648; Gregory's Forms Nos. 500, 501, 502, 503, 504, 505, 506.

See section 2825, for how, where, and within what time an order, warrant, or process may be returned, and penalty for failure.

See section 2829, as to what the officer's receipt to the person who pays him must show.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 140, section 9.

Sec. 6492. Re-sale of property, if purchaser at officer's sale fails to comply; remedy against such purchaser.—If, at any sale by an officer, the purchaser does not comply with the terms of sale, the officer may sell the property, either forthwith or under a new advertisement, or return that the property was not sold for want of bidders. If, on a resale, the property be sold for less than it sold for before, the first purchaser shall be liable for the difference to the creditor, so far as is required to satisfy him, and to the debtor for the balance. This section shall not prevent the creditor from proceeding as he might have done if it had not been enacted. (Code 1887, § 3592.)

See 4 Min. (3d Ed.) 1038; note on Executions, Paine v. Tutwiler, 27 Grat. 440, Va. Rep. Anno.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 140, section 10.

Sec. 6493. When venditioni exponas may issue; proceedings thereon.—When it appears, by the return on an execution, that property taken to satisfy it remains unsold, a writ of venditioni exponas may issue, whereupon the like proceedings shall be had as might have been had on the first execution; except, that if it issue upon a return of no sale for want of bidders, or of a sufficient bid, the advertisement shall state the fact, and that the sale will be made peremptorily. (Code 1887, § 3593.)

See 4 Min. (3d Ed.) 1039; note on Executions, Paine v. Tutwiler, 27 Grat. 440, Va. Rep. Anno.; Burks' Pleading and Practice. p. 672.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 140, section 11.

Sec. 6494. Where officer taking property under execution dies before sale, and there are no deputies, venditioni exponas may issue to new officer; proceedings in such case.—If an officer taking property under execution die before the sale thereof, and there be no deputies (of such officer) acting in the case, upon a suggestion of the fact, a writ of venditioni exponas may be directed to such sheriff or other officer of the county or corporation wherein the property was taken, as may be in office at the time the writ issues.

Digitized by Google

Whereupon the officer to whom the writ is directed shall take possession of the property previously levied upon, whether the same be in possession of the representatives of the deceased officer or the execution debtor, and proceed to advertise and sell it and account for the proceeds thereof in like manner as if the levy had been made by himself. (Code 1887, § 3594.)

Revisors' Note.—The latter part of this section differs from the latter part of section 3594 of the Code of 1887, from which it is taken. Under the present section the procedure is simpler, and the section conforms to what are usually the facts in such cases. If the property has in fact been levied on, it is in legal custody, and it is immaterial whether the possession be in the representative of the deceased officer or the execution debtor. Under the revised section, the new officer simply takes possession of the property, advertises and sells it.

See Barton, L. Pr. (2d Ed.) 892; 4 Min. (3d Ed.) 1039; note on Executions, Paine v. Tutwiler, 27 Grat. 440, Va. Rep. Anno.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 140, section 12.

Sec. 6495. When money received by officer under execution to be repaid to debtor.—When an officer has received money under execution, if any surplus remain in his hands after satisfying the execution, such surplus shall be repaid to the debtor; and if the debtor, or his personal representative, obtain an injunction or supersedeas to an execution, in whole or in part, before money received under it, or any part of it, is paid over to the creditor, the officer shall repay such debtor the money so received and not so paid over, or so much thereof as the injunction or supersedeas may extend to, unless the said process otherwise direct. (Code 1887, § 3595.)

See Barton, L. Pr. (2d Ed.) 846; 4 Min. (3d Ed.) 1043; note on Executions, Paine v. Tutwiler, 27 Grat. 440, Va. Rep. Anno.

Form of notice of motion against officer and sureties for surplus arising from sale under execution, 4 Min. (3d Ed.) 1773.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 140, section 13.

Sec. 6496. Officer not required to go out of his county or corporation to pay money received by him.—No officer receiving money under execution, when the person to whom it is payable resides in a different county or corporation from that in which the officer resides, shall be liable to have any judgment rendered against him or his sureties for the non-payment thereof, until a demand of payment be made of such officer in his county or corporation, by such creditor or his attorney-at-law, or some person having a written order from the creditor. (Code 1887, § 3596.)

A declaration which does not aver that the plaintiff and sheriff reside in different counties need not aver a demand of payment. But if the non-residency appear on the trial it will devolve on the plaintiff to prove demand in accordance with this section. Grandstaff v. Ridgely, 30 Grat. 1, 14.

This section is declaratory of the law as laid down in Wilson v. Stokes, 4 Munf. 455, 456, and Chapman v. Chevis, 9 Leigh 297, 306, 307, and is followed in O'Bannon v. Saunders, 24 Grat. 138, 144, 145.

This section "is confined to the case of money made under execution." Ballard v. Thomas, 19 Grat. 14, 25.

Digitized by Google

See Barton, L. Pr. (2d Ed.) 857, 1090; 4 Min. (3d Ed.) 1043; note on Executions, Paine v. Tutwiler, 27 Grat. 440, Va. Rep. Anno.

Form of notice of motion against officer where the execution was delivered to the officer of a county, etc., wherein creditor does not reside, 4 Min. (3d Ed.) 1773.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 140, section 14.

Sec. 6497. After an execution has issued, provision for others.—Subject to the limitations prescribed by chapter two hundred and seventy-one, a party obtaining an execution may sue out other executions at his own costs, though the return day of a former execution has not arrived; and may sue out other executions at the defendant's costs, where on a former execution there is a return by which it appears that the writ has not been executed, or that it or any part of the amount thereof is not levied, or that property levied on has been discharged by legal process which does not prevent a new execution on the judgment. In no case shall there be more than one satisfaction for the same money or thing. (Code 1887, § 3597.)

Issuing numerous executions for the purpose of unnecessarily oppressing or injuring the debtor will not be permitted, "and in such case a motion to quash will prevail, or a court of equity will interfere by injunction. So, also, will a second execution be quashed when issued after a former one which had been satisfied, or levied on property sufficient to satisfy it." Sutton v. Marye, 81 Va. 329, 334.

The cases of Eckhols v. Graham, 1 Call 492, 494, 495, and Garland v. Bugg, 5 Munf. 166, 172, holding that the suing out of a second execution, before the property taken under the first is disposed of, waives the lien given under the first seem to be overruled by this section.

See note on Executions, Paine v. Tutwiler, 27 Grat. 440, Va. Rep. Anno.

See notes to section 6499.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 140, section 15.

Sec. 6498. When property sold under execution, or its value, is recovered from obligor in indemnifying bond, or, etc., how new execution obtained.—When property sold under an execution, or its value, is recovered from an obligor in an indemnifying bond given before such sale, or from a purchaser having a right of action on such bond, the person having such execution, or his personal representative, may, by motion, after reasonable notice to the person, or the personal representative of the person, against whom the execution was, obtain a new execution against him, without credit for the amount for which the property was sold under the former execution. Such motion shall be made within five years after the right to make the same has accrued. (Code 1887, § 3598.)

See 4 Min. (3d Ed.) 1033; note on Executions, Paine v. Tutwiler, 27 Grat. 440, Va. Rep. Anno.

For form of scire facias to have a new execution, where the sale of property is indemnified, and the value is recovered from the execution creditor, 4 Min. (3d Ed.) 1780.

Sec. 6499. When and by whom executions may be quashed; how proceedings thereon stayed until motion to quash is heard.—The mo-

Digitized by Google

tion to quash an execution may, after reasonable notice to the adverse party, be heard and decided by the justice who issued the execution, or the circuit court of the county or the corporation court of the city in which such justice resides, and in other cases by the court whose clerk issued the execution, or by the judge thereof in vacation; and such court or judge, on the application of the plaintiff in the motion, may make an order staying the proceedings on the execution until the motion be heard and determined, the order not to be effectual until bond be given in such penalty and with such condition, and either with or without surety, as the court or judge may prescribe. The clerk from whose office the execution is sued, or the justice rendering the judgment, as the case may be, shall take the bond and make as many copies of the order as may be necessary and endorse thereon that the bond required has been given; and a copy shall be served on the plaintiff in the execution and on the officer in whose hands the execution is. (Code 1887, § 3599; 1902-3-4, p. 837.)

Revisors' Note.—The words, "if it was from a circuit or corporation court," formerly appearing after "or" in line six of the text, have been omitted. It is intended by the change to allow the judge of ANY court to hear the motion in vacation wherever it might be heard by the court in term.

Jurisdiction of equity.—Courts of equity have jurisdiction to give relief by injunction to inhibit further proceedings on executions in cases involving equitable rights, and when courts of law cannot give full and adequate relief (Crawford v. Thurmond, 3 Leigh 85, 88; Snavely v. Harkrader, 30 Grat. 487, 492-494, last case decided before the amendment allowing stay of proceedings on executions); but not in cases where courts of law can give full and adequate relief (Morrison v. Speer, 10 Grat. 228, 230; Beckley v. Palmer, 11 Grat. 625, 634; Coleman's Adm'x v. Anderson, 29 Grat. 425, 427-430; Shumaker v. Nichols, 6 Grat. 592).

A tender of money in payment of a judgment will not authorize the quashing of an execution issued thereon, unless the tender is followed by the payment of the money into court, and a motion to enter satisfaction on the record. Shumaker v. Nichols, 6 Grat. 592.

A second execution will be quashed if issued after a former one has been satisfied or levied on property sufficient to satisfy it. Sutton v. Marye, 81 Va. 329, 334.

Irregular executions.—Every court has the power to watch over the execution of its process, and where it has been irregularly or fraudulently executed to quash it. Hendricks v. Dundass, 2 Wash. 50, 53; Burwell v. Anderson, Id. 194, 195; Moss v. Moss' Adm'r, 4 Hen. & M. 293; Hamilton v. Shrewsbury, 4 Rand. 427, 431, 15 Am. Dec. 779; Enders' Ex'rs v. Burch, 15 Grat. 64, 72; Snavely v. Harkrader, 30 Grat. 487.

Matters of fact.—If, on a motion to quash an execution, the relief of the party depends on matters of fact, the court has a discretion to direct a jury to try the facts. Smock v. Dade, 5 Rand. 639, 16 Am. Dec. 780.

Limitation.—There is no limitation on the time within which a motion must be made to quash a fieri facias; and such motion may be made though the fieri facias be not alive. Lowenbach v. Kelly, 111 Va. 439, 69 S. E. 352.

Generally.—This section overrules Com. v. Hewitt, 2 Hen. & M. 181, 185, 186; Hendricks v. Dundass, 2 Wash. 50, on the point that no notice to quash is necessary.

Digitized by Google

This section embraces executions on decrees as well as judgments. Shackelford v. Apperson, 6 Grat. 451, 453. See, also, section 6459.

See Barton, L. Pr. (2d Ed.) 794, 845; note on Executions, Paine v. Tutwiler, 27 Grat. 440, Va. Rep. Anno.; 18 Va. L. Reg. 352; Burks' Address, 2 Barton, L. Pr. (2d Ed.) 1400.

Discussed, 13 Va. Law J. 172.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 140, section 17.

Sec. 6500. Issue of executions on judgments and decrees during term of court at which they are rendered.—Any court after the fifteenth day of its term, may make a general order allowing executions to issue on judgments and decrees after ten days from their date, although the term at which they are rendered be not ended. For special cause, it may, in any particular case, except the same from such order, or allow an execution thereon at an earlier period. (Code 1887, § 3600.)

"We are of the opinion that section 3600 of the Code (of 1887) was designed by the Legislature for the purpose, and has the effect, of conferring upon courts authority to direct executions to issue upon judgments under the condition therein set forth, but that it was not intended and does not impart to such judgments the quality of finality so as to deprive the court during the term of the power to correct, or, if need be, annul, an erroneous judgment." Keith, P., in Baker v. Swineford, 97 Va. 112, 117, 33 S. E. 542. This case overrules the dictum in Enders' Ex'rs v. Burch, 15 Grat. 64, 71, the correctness of which had been doubted in James River Co. v. Lee, 16 Grat. 424, 433.

While this section confers on courts authority to direct executions to issue on judgments under the conditions therein set forth during the term but such judgments do not thereby become final so as to deprive the court during the term of the power to correct or if need be, annul them if erroneous. Allison's Ex'r v. Wood, 104 Va. 765, 52 S. E. 559.

See 5 Va. Law Reg. 181; note on Executions, Paine v. Tutwiler, 27 Grat. 440, Va. Rep. Anno.

See section 6134, as to when office judgments become final.

Sec. 6501. Lien of fieri facias on estate of debtor not capable of being levied on.—Every writ of fieri facias shall, in addition to the lien it has under section sixty-four hundred and eighty-five, on what is capable of being levied on under that section, be a lien, from the time it is delivered to a sheriff or other officer to be executed, on all the personal estate of or to which the judgment debtor is, or may afterwards and on or before the return day of the said writ become, possessed or entitled, and which, from its nature, is not capable of being levied on under the said section, except such as is exempt under the provisions of chapter two hundred and seventy-four, and except that as against an assignee of any such estate for valuable consideration, or a person making a payment to the judgment debtor, the lien by virtue of this section shall not affect him, unless he had notice thereof at the time of the assignment, or payment, as the case may be. (Code 1887, § 3601.)

Revisors' Note.—Under section 3587 of the Code of 1887 (section 6485 of this Code), an execution may be levied on tangible personal property ON OR BEFORE the return day and the lien is not lost unless the levy is not made within that time, but under section 3601 of the

Digitized by Google

former Code, from which the above section is taken, relating to intangible personal property, the lien did not attach to property acquired ON THE RETURN DAY, but was limited to property acquired BEFORE THE RETURN DAY. It was thought the lien as to the two classes of property should be made uniform, and with this object in view, the words "on or" appearing in line six of the text of the above section have been inserted.

In Davis v. Bonney, 89 Va. 755, 17 S. E. 229, it was held that tangible personal property in the hands of a receiver could not be levied on, but that a writ of fieri facias created a lien thereon under section 3601 of the former Code, from which this section is taken. The opinion of the court in that case, while unanimous, yet seems not to have met with the approval of the profession, the general view being that the section referred to INTANGIBLE property and not to INACCESSIBLE property. In order to make statutory this general view, which the revisors approved, the words "from its nature" appearing in line seven of the text have been inserted.

Substitute for imprisonment.—This section gives a remedy in lieu of imprisonment for debt, which was abolished at the time this section was originally enacted. (Code 1849.) Charron v. Boswell, 18 Grat. 216, 230.

On what a lien.—This section gives a lien on debts due to the judgment debtor (Puryear v. Taylor, 12 Grat. 401; Charron v. Boswell, 18 Grat. 216, 227); property to which a beneficiary is entitled under a will (Baer v. Ingram, 99 Va. 200, 203, 204, 37 S. E. 905); the amount due a debtor for work done between the date the writ was placed in the hands of the officer and the return day, although such amount be only a per cent. of the contract price of the work, and is not payable until the work is completed (Hicks v. Roanoke Brick Co., 94 Va. 741, 749, 750, 27 S. E. 596); but not a policy of life insurance, for here the debt rests upon a contingency that may or may not happen, and over which the court has no control; and it is immaterial that the policy had a surrender value for which a paid-up policy would be given, for the debtor could not be compelled to change his contract (Boisseau v. Bass' Am'r, 100 Va. 207, 209, 214, 215, 40 S. E. 647, 57 L. R. A. 380, 93 Am. St. Rep. 956).

Continuance of lien.—The lien, though not enforced in the debtor's lifetime, continues after his death. Trevillian's Ex'rs v. Guerrant's Ex'rs, 31 Grat. 525, 527, 531, 532.

The lien continues after the return day of the execution (Puryear v. Taylor, 12 Grat. 401, 408; Evans v. Greenhow, 15 Grat. 153; Charron v. Boswell, 18 Grat. 216; Trevillian's Ex'rs v. Guerrant's Ex'rs, 31 Grat. 525, 527; Hicks v. Roanoke Brick Co., 94 Va. 741, 27 S. E. 596); and "it has priority over a subsequent execution lien under the same law, even though there has been a proceeding by a suggestion under the junior sooner than under the senior execution" (Charron v. Boswell, 18 Grat. 216, 229).

A lien cannot be enforced by suit against the personal representative brought eleven years after his qualification; sections 5810 and 6477, barring the right of scire facias or action for a longer period than five years from qualification of the representative. Spencer v. Flanary, 104 Va. 395, 51 S. E. 849.

Assignees for value.—The trustee and beneficiaries in a deed to secure creditors are assignees for value. Evans v. Greenhow, 15 Grat. 153, 156, 157, and cases cited.

To an assignee for value it is immaterial whether the debtor was insolvent, or intended to commit a fraud in making an assignment to him, if he had no notice of such intent, or of the existence of a fi. fa. against such debtor. Shields v. Mahoney, 94 Va. 487, 491, 492, 27 S. E. 23.

Generally.—This section is followed in Frayser's Adm'r v. Railroad, 81 Va. 388, 392.

See 2 Va. Law Reg. 704; 3 Va. Law Reg. 23, 379; Barton, L. Pr. (2d Ed.) 843; 4 Min. (3d Ed.) 1027; note on Executions, Paine v. Tut-

Digitized by Google

wiler, 27 Grat. 440, Va. Rep. Anno.; Burks' Pleading and Practice, pp. 428, 638, 656, 660, 699; Gregory's Forms Nos. 367, 441; note to Trevillian's Ex'rs v. Guerrant's Ex'rs, 3 Va. Law J. 90; 10 Va. Law J. 1.

See section 2433 for lien of judgment and execution against a treasurer and his sureties.

Cited in Mack Mfg. Co. v. Smoot, 102 Va. 724, 47 S. E. 859.

Discussed, 1 Va. Law J. 705; 2 Va. Law J. 1.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 141, section 2.

Sec. 6502. When lien acquired under the preceding section ceases.—The lien acquired under the preceding section shall cease whenever the right of the judgment creditor to enforce the judgment by execution, scire facias, or action ceases, or is suspended by a forthcoming bond being given and forfeited, by supersedeas, or by other legal process. (Code 1887, § 3602.)

An order quashing an execution on a judgment, because issued in violation of a contract between plaintiff and defendant not to issue execution for a given time, is not such "legal process" as will suspend the right to enforce a prior execution issued on the same judgment, though issued in contravention of the same agreement. Baer v. Ingram, 99 Va. 200, 206, 37 S. E. 905.

This section is applied, but not construed in the following cases: Puryear v. Taylor, 12 Grat. 401; Evans v. Greenhow, 15 Grat. 153; Charron v. Boswell, 18 Grat. 216; Trevillian's Ex'rs v. Guerrant's Ex'rs, 31 Grat. 525; Frayser's Adm'r v. Ry. Co., 81 Va. 388; Hicks v. Roanoke Brick Co., 94 Va. 741, 27 S. E. 596; Boisseau v. Bass' Adm'r, 100 Va. 207, 40 S. E. 647, 57 L. R. A. 380, 93 Am. St. Rep. 956.

Cited but not construed in Spencer v. Flanary, 104 Va. 395, 51 S. E. 849.

See Burks' Pleading and Practice, p. 659.

Discussed, 1 Va. Law J. 705; 2 Va. Law J. 1.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 141, section 3.

Sec. 6503. Proceedings by interrogatories to ascertain estate of debtor on which fieri facias is a lien, and any real estate to which he is entitled.—To ascertain the estate on which a writ of fieri facias is a lien, and to ascertain any real estate, in or out of this State, to which a debtor named in such fieri facias is entitled, upon the application of the execution creditor, the clerk of the court from which the execution issued, or if it was issued by a justice other than a civil justice or a civil and police justice, the clerk of the circuit court of the county or the corporation court of the city in which such justice resides, shall issue a summons against the execution debtor, or any officer of a corporation debtor having an office in this State, or any debtor or bailee of his or its, requiring him or them to appear before such commissioner in chancery to be named in the summons, at a time and place to be designated in said summons, to answer such interrogatories as shall be propounded to him or them by counsel of the execution creditor or the commissioner, but such summons shall not be served out of the county or city in which such commissioner resides. The debtor or other person served with such summons shall appear at the time and place mentioned and make answer to such interrogatories. The

Digitized by Google

commissioner shall enter in his proceedings and report to the court mentioned in section sixty-five hundred and five, any and all objections taken by such debtor against answering such intetrrogatories, or any or either of them, and if the court afterwards sustain any one or more of said objections, the answers given to such interrogatories as to which objections are sustained, shall be held for naught in that or any other cause. (Code 1887, § 3603; 1897-8, p. 503; 1916, p. 705.)

Revisors' Note.—Before the amendment of 1916 (Acts 1916, p. 705) the summons could only be issued by the judge of the court from which the execution issued, in term time or vacation. This being particularly inconvenient in country districts, the amendment of 1916 extended this authority to a commissioner in chancery. The revised section above simply provides that the summons may be issued by the clerk of the court from which the execution issued, or if it was issued by a justice, by the clerk of the circuit court of the county or corporation court of the city in which the justice resides. As to that part of the act relating to a person in default, see section 6506 and revisors' note. As to proceedings upon interrogatories before civil justices, see section 3116.

See note of Spencer v. Flanary, under section 6501.

This section is applied in Shields v. Mahoney, 94 Va. 487, 488, 27 S. E. 23.

See 2 Va. Law Reg. 704; 6 Va. Law Reg. 804; 7 Va. Law Reg. 529; 8 Va. Law Reg. 52; 4 Min. (3d Ed.) 1044, 1046; Gregory's Forms No. 439.

For note on "Proceeding by Interrogatories against Execution Debtor," see 12 Va. Law Reg. 332.

As to when and how interrogatories to adverse party or claimant are filed, how answers thereto enforced, and how used as evidence, see section 6236.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 141, section 4.

Sec. 6504. Real estate out of this State of debtor to be conveyed and his personal estate delivered to officer.—Any real estate out of this State to which it may appear by such answers that the debtor is entitled shall be forthwith conveyed by him to the officer to whom was delivered such fieri facias, and any money, bank-notes, securities, evidences of debt, or other personal estate, tangible or intangible, which it may appear by such answers are in possession of or under the control of the debtor or his debtor or bailee, shall be delivered by him or them, as far as practicable, to the said officer, or to some other, or in such manner as may be ordered by the said commissioner. (Code 1887, § 3604; 1897-8, p. 503.)

Revisors' Note.—This section is taken from the first part of section 3604 of the Code of 1887, as amended.

See 2 Va. Law Reg. 704; 7 Va. Law Reg. 529; 4 Min. (3d Ed.) 992, 1046, 1049; note on Executions, Paine v. Tutwiler, 27 Grat. 440, Va. Rep. Anno.; Burks' Pleading and Practice, pp. 662, 667.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 141, section 5.

Sec. 6505. Interrogatories, answers, etc., to be returned to court.—The commissioner shall return the interrogatories and answers

Digitized by Google

filed with him, and a report of the proceedings under the two preceding sections, to the court in which the judgment is, or if the judgment be of a justice, to the circuit court of the county or corporation court of the city in which such justice resides. (Code 1887, § 3605; 1902-3-4, p. 836.)

See 4 Min. (3d Ed.) 992.

Sec. 6506. How debtor may be arrested and held to answer.—If any person summoned under section sixty-five hundred and three shall fail to appear and answer, or shall make any answers which are deemed by the commissioner to be evasive, or if having answered shall fail to make such conveyance and delivery as is required by section sixty-five hundred and four, the said commissioner shall issue a writ directed to the sheriff of any county or the sergeant of any city, requiring such sheriff or sergeant to take the person so in default and keep him safely until he shall make proper answers, or such conveyance or delivery, as the case may be, and upon making such answers, or such conveyance and delivery, he shall be discharged by said commissioner. He may also be discharged by the court from whose clerk's office the fieri facias issued, or by the judge thereof in vacation, in any case if the court or judge shall be of opinion that he was improperly committed, or is improperly or unlawfully detained in custody. (Code 1887, § 3606.)

Revisors' Note.—This section takes the place of a part of Acts 1916, p. 705, last amending section 3603 of the Code of 1887, and also the latter part of section 3604 of that Code as amended by Acts 1897-8, p. 503, and section 3606 of that Code. It will be observed that no rule is now necessary in any case before the commissioner is required to issue an attachment directing the officer to take the person in default in custody. The writ issued at once. Formerly, a rule was necessary where there was a failure to answer the interrogatories, but not where the interrogatories were answered, and there was a failure to convey the property.

See 7 Va. Law Reg. 529.

Sec. 6507. Court, in which judgment is, or, etc., may make order for sale and application of debtor's estate.—The court to which the commissioner returns his report, as required by section sixty-five hundred and five, may make any order it may deem right, as to the sale and proper application of the estate conveyed and delivered under sections sixty-five hundred and three and sixty-five hundred and four. (Code 1887, § 3607.)

Sec. 6508. Officer's duty as to sale, collection, and disposition of debtor's estate; when to return evidences of debt to clerk's office.—Real estate, conveyed to an officer under this chapter, shall, unless the court or judge in vacation otherwise direct, be sold as mules, work-oxen, and horses levied on are required to be sold under sections twenty-eight hundred and thirty-two and twenty-eight hundred and thirty-three, and be conveyed to the purchaser by the officer or his deputy. An officer to whom there is delivery under

Digitized by Google

this chapter, when the delivery is of money, bank notes, or any goods or chattels, shall dispose of the same as if levied on by him under a fieri facias; and when the delivery is of evidences of debts (other than such bank notes), may receive payment of such debts within sixty days after such delivery. Any evidence of debt or other security, remaining in his hands at the end of said sixty days, shall be returned by him to the clerk's office of such court, and collection thereof may be enforced as prescribed by section sixty-five hundred and fourteen. For a failure to make such return, he may be proceeded against as if an express order of said court for such return had been disobeyed. (Code 1887, § 3608.)

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 141, section 9.

Sec. 6509. When by lien of fieri facias there is a claim on any person other than judgment debtor, summons may be sued out against him; how issued, served, and returned.—On a suggestion by the judgment creditor that, by reason of the lien of his writ of fieri facias, there is a liability on any person other than the judgment debtor, a summons may be sued out of the clerk's office of the court in which the judgment is, or, if rendered by a justice, may be issued by a justice, or sued out of the clerk's office to which an execution issued thereon has been returned as provided in section six thousand and thirty, against said person; and a copy thereof shall be served on the judgment debtor as well as on said person, or, if he be a non-resident, he shall be proceeded against by publication, according to the provisions of section six thousand and sixty-nine, unless the summons was sued out from a justice, in which case, there shall be no order of publication. The return day of such summons, when sued out from the clerk's office, may be to the next term of the court, although more than ninety days after the date thereof, but if there be publication against a non-resident judgment debtor who does not appear in the proceedings, there shall be no judgment against a garnishee prior to the term of the court after the completion of the order of publication, and when issued by a justice, such summons may be made returnable before any justice of the county or corporation in which the same issued, and shall be made returnable within sixty days at some certain place within such county or corporation to be named in such summons, and within the magisterial district wherein such judgment debtor resides at the time of the service of such summons. (Code 1887, § 3609.)

Where a judgment debtor has transferred to another person personal property in fraud of his creditors, the proper method to attack conveyance is not by garnishment proceedings, but either by suit in equity or action at law under section 6514, or by levying execution on the property and letting the issue be tried on proceedings on a forthcoming bond. Freitas v. Griffith, 112 Va. 343, 71 S. E. 531; discussion of this case, 17 Va. Law Reg. 321, 645.

Money in the hands of a personal representative is not subject to garnishment. Bickle, &c., v. Chrisman's Admx., 76 Va. 678.

Digitized by Google

An attachment served on a garnishee does not make said garnishee a debtor of the plaintiff until judgment is had in attachment proceedings. Trimble v. Covington Co., 112 Va. 826, 72 S. E. 724.

Cited but not construed in Barker-Bond L. Co. v. Whaley, 117 Va. 642, 86 S. E. 160.

See 2 Va. Law Reg. 704; 3 Va. Law Reg. 235, 320, 322, 379; 4 Va. Law Reg. 401, 727; Burks' Pleading and Practice, pp. 44, 297, 661, 662, 664; Gregory's Forms No. 438.

Discussed, 1 Va. Law J. 705; 10 Va. Law J. 1.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 141, section 10.

Sec. 6510. How he is examined; court's order on such examination; execution thereon.—The person summoned shall be examined on oath. If it appear on such examination that there is any such liability on him, the court or justice may give judgment against him for any amount found due the execution debtor, and order him to deliver any estate for which there is such liability, or pay the value of such estate, to any officer whom it may designate; and the levy of an execution on such order shall be valid, although levied by such officer. (Code 1887, § 3610.)

Revisors' Note.—As this section stood before the revision, the second sentence provided that, "If it appear on such examination that there is any such liability on him, the court or justice may ORDER HIM TO PAY ANY DEBTS, or deliver any estate," etc. The present section contains, in lieu of the capitalized words, the provision authorizing the court or justice to give judgment against the garnishee for any amount found due the execution debtor, etc. This change simply conforms to existing practice.

"It is well settled that process of garnishment at law will not lie against executors and administrators." Bickle v. Chrisman's Adm'x, 76 Va. 678, 692.

A corporation, being unable to answer under oath, answers under its corporate seal. But, "where a discovery is wanted, a practice has prevailed of making some of the officers defendants." B. & O. Ry. Co. v. Gallahue's Adm'rs, 12 Grat. 655, 664, 65 Am. Dec. 254.

The court has no power, in a summons on suggestion by an execution creditor of a husband, against his wife, to set aside an alleged fraudulent transfer of personal property from the debtor to his wife. The statute does not contemplate or operate upon estate in the possession of the garnishee to which he has title, but only estate of the execution debtor for the recovery of which he might maintain an action in his own name. Freitas v. Griffith, 112 Va. 343, 71 S. E. 531. For method of reaching fraudulently transferred personal property, see this case and see editorial on the case in 17 Va. Law Reg. 321 and 645.

Discussed, 1 Va. Law J. 705; 10 Va. Law J. 1.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 141, section 11.

Sec. 6511. The proceedings, if he fail to appear, or to disclose his liability.—If such person, after being served with the summons, fail to appear, or if it be suggested that he has not fully disclosed his liability, the proceedings shall be according to sections sixty-three hundred and ninety-nine and sixty-four hundred, mutatis mutandis, except that when the summons is before a justice, he shall proceed without a jury. (Code 1887, § 3611.)

See notes to sections 6509 and 6510.

See Barton, L. Pr. (2d Ed.) 837.

Digitized by Google

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 141, section 12.

Sec. 6512. Payment, etc., by garnishee before return of summons.—Any person, summoned under section sixty-five hundred and nine, may, before the return day of the summons, deliver and pay to the officer serving it, what he is liable for; and the officer shall give a receipt for, and make return of, what is so paid and delivered. (Code 1887, § 3612.)

See notes to sections 6509 and 6510.
See Barton, L. Pr. (2d Ed.) 839.

Sec. 6513. Judgment as to costs.—Unless such person appear to be liable for more than is so delivered and paid, there shall be no judgment against him for costs. In other cases, judgment under sections sixty-five hundred and ten and sixty-five hundred and eleven may be for such costs, and against such party, as the court may deem just. (Code 1887, § 3613.)

See notes to sections 6509 and 6510
For W. Va. decisions on similar statute, see Justis' Annotations, chapter 141, section 14.

Sec. 6514. By whom and how suit brought to recover estate on which fieri facias, or judgment on which it issues, is a lien, or to enforce any liability in respect thereto.—For the recovery of any estate on which a writ of fieri facias is a lien under this chapter, or on which the judgment on which such writ issues is a lien under chapter two hundred and seventy-one, or for the enforcement of any liability in respect to any such estate a suit may be maintained, at law or in equity, as the case may require, in the name of the officer to whom such writ was delivered, or in the name of any other officer who may be designated for the purpose by an order of the court in which the judgment is, or if the judgment be of a justice, by an order of the circuit court of the county or of the corporation court of the city in which such justice resides. No officer shall be bound to bring such suit unless bond, with sufficient surety, be given him to indemnify him against all expenses and costs which he may incur or become liable for by reason thereof. But any person interested may bring such suit at his own costs in the officer's name. (Code 1887, § 3614; 1902-3-4, p. 836.)

See Barton, L. Pr. (2d Ed.) 839.
Cited but not construed, Freitas v. Griffith, 112 Va. 343, 71 S. E. 531; discussion of this case, 17 Va. Law Reg. 321, 645.
For W. Va. decisions on similar statute, see Justis' Annotations, chapter 141, section 15.

Sec. 6515. How and when officer receiving money under this chapter to make return thereof and pay net proceeds; how liable for failure.—An officer receiving money under this chapter shall, within thirty days thereafter, make return thereof to the court or the clerk's office of the court in which the judgment is, or, if it was rendered by a justice, to the circuit court of the county or to the

Digitized by Google

corporation court of the city, or to the clerk's office of either in which such justice resides; and for failing so to do shall be liable as if he had acted under an order of said court. After deducting from said money a commission of five per centum and his necessary expenses and costs, including reasonable fees to counsel, he shall pay the net proceeds, and he and his sureties and their representatives shall be liable therefor, in like manner as if the same had been made under a writ of fieri facias on the judgment, returnable at the end of said thirty days. (Code 1887, § 3615; 1902-3-4, p. 837.)

Cited but not construed in Tisdale's Case, 114 Va. 866, 77 S. E. 482.

Sec. 6516. Creditor may issue other executions without impairing lien.—Although a judgment creditor avail himself of the benefit of this chapter, he may nevertheless (without impairing his lien under it) from time to time, issue other executions upon his judgment until the same is satisfied. (Code 1887, § 3616.)

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 141, section 17.

Sec. 6517. Territorial extent of the lien of an execution.—The lien given by this chapter on personal property by placing an execution in the hands of an officer to be executed shall, as to property capable of being levied on, be restricted to the bailiwick of the officer into whose hands the execution is placed to be executed, but as to property not capable of being levied on the lien shall extend throughout the limits of the Commonwealth.

Revisors' Note.—This section is new, but is believed to be simply declaratory of existing law.

CHAPTER 273.

Forthcoming Bonds.

Sec.
6518. When and how forthcoming bond may be taken; property then remains in debtor's possession.
6519. How tenant unable to give forthcoming bond may have distress warrant returned to court and make defense thereto; when officer, in such case, to take possession of property levied on; its sale, when perishable or expensive to keep.
6520. If bond forfeited, where returned; its effect; clerk to endorse time of return.
6521. Liability of obligors; how recovery on the bond is had.
6522. When taken under distress warrant, what defense may be made.
6523. Remedy of creditor, if bond quashed.
6524. In what cases forthcoming bond not to be taken.
6525. Endorsement on execution in such cases.
6526. When justice may give judgment on forthcoming bond; how case moved to court when amount, exclusive of interest, exceeds twenty dollars.

Digitized by Google

Sec.
6527. When bond returned, how endorsed and recorded by clerk; lien thereof, clerk's fee.
6528. How bond withdrawn from clerk's office.
6529. Costs to be included by justice.
6530. Justice to keep record of judgment; how endorse execution.

Sec. 6518. When and how forthcoming bond may be taken; property then remains in debtor's possession.—The sheriff or other officer levying a writ of fieri facias, or distress warrant, may take from the debtor a bond, with sufficient surety, payable to the creditor, reciting the service of such writ or warrant, and the amount due thereon (including his fee for taking the bond, commissions, and other lawful charges, if any), with condition that the property shall be forthcoming at the day and place of sale; whereupon, such property may be permitted to remain in the possession and at the risk of the debtor. (Code 1887, § 3617.)

A forthcoming bond taken under this section and made payable to the sheriff, instead of to the execution creditor, as required, does not have the force of a judgment against obligors therein, under section 6520. The lien given by that section being statutory, the steps which lead up to it must be substantially in accordance with the provisions of the statute. The bond is inoperative as a statutory bond and creates no lien, though it may be a good common law bond and the sheriff may sue upon it. Lynchburg Trust, &c., Bank v. Elliott, 94 Va. 700, 27 S. E. 467.

Form of delivery or forthcoming bond, 4 Min. (3d Ed.) 1582.
Form of forthcoming or delivery bond in case of distress, Id. 1620.
See Gregory's Forms Nos. 399, 505.

Sec. 6519. How tenant unable to give forthcoming bond may have distress warrant returned to court and make defense thereto; when officer, in such case, to take possession of property levied on; its sale, when perishable or expensive to keep.—On affidavit by a tenant, whose property has been levied on under a warrant of distress, that he is unable to give the bond required in the preceding section, and that he has a valid defense under section sixty-five hundred and twenty-two, the officer levying the warrant shall permit the property to remain in the possession and at the risk of the tenant, and shall return the warrant, together with the affidavit, to the first day of the next term of the circuit court of his county or corporation court of his corporation, and thereupon the landlord after ten days' notice in writing to the tenant, may make a motion before such court for a judgment for the amount of the rent and for a sale of the property levied on, as aforesaid, to which motion the tenant may make such defense as he is authorized to make, under section sixty-five hundred and twenty-two, to an action or motion on the bond where one is given. If, however, after such affidavit is made, the claimant of the rent, or some one for him, shall give bond with sufficient surety, in a penalty double the value of the property levied on, with condition to pay all costs and damages which may accrue

Digitized by Google

to any one by reason of his suing out said warrant, the officer shall take possession of the property and hold the same subject to the order of the court. If the property be perishable, or expensive to keep, the court, or the judge thereof in vacation, may order it to be sold, and on the final trial of the cause, the court shall dispose of the property, or proceeds of sale, according to the rights of the parties. (Code 1887, § 3618; 1902-3-4, p. 839.)

Revisors' Note.—As this section stood before the revision, no method of procedure was marked out by which the landlord was to secure his rent, or have the property sold. Provision was made for the tenant to retain the property and for defenses which might be made by him, but when or how those defenses were to arise was not made to appear. The revised section, in the latter part of the first sentence, supplies these omissions.

Cited but not construed, Clement v. Adams Bros.-Paynes Co., 113 Va. 547, 75 S. E. 294, 18 Va. L. Reg. 437, and note.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 142, section 3.

See Givens v. Clem, cited under section 6305.

Sec. 6520. If bond forfeited, where returned; its effect; clerk to endorse time of return.—If the condition of such forthcoming bond be not performed, the officer, unless payment be made of the amount due on the execution or warrant (including his fee, commission, and charges as aforesaid), shall, within thirty days after the bond is forfeited, return it, with the execution or warrant, to such court, or the clerk's office of such court as is prescribed by section twenty-eight hundred and twenty-five. The clerk shall endorse on the bond the date of its return; and against such of the obligors therein as may be alive when it is forfeited and so returned, it shall have the force of a judgment. But no execution shall issue thereon under this section. (Code 1887, § 3619.)

If bond is forfeited and the execution issued thereon is returned "no effects" equity will treat the bond as a nullity and will restore the lien of the original judgment in favor of the creditor. Cooper, &c., v. Daugherty, Adm'r, 85 Va. 343, 7 S. E. 387.

See Lynchburg Trust, &c., Bank v. Elliott, cited herein under section 6518.

For note upon the question of whether on a forthcoming bond the motion should be for a judgment or for an execution, see 11 Va. Law Reg. 58.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 142, section 4.

See Gregory's Forms No. 505; Burks' Pl. & Pr., pp. 9, 47, 652.

Sec. 6521. Liability of obligors; how recovery on the bond is had.—The obligors in such forfeited bond shall be liable for the money therein mentioned, with interest thereon from the date of the bond till paid, and the costs. The obligee or his personal representative shall be entitled to recover the same by action or motion. (Code 1887, § 3620.)

If notice of plaintiff's motion hereunder is sufficiently explicit to render mistake impossible, it will be sustained, although the whole of the defendants in the original execution may not be named in the notice. Nice and technical objections to the notice, where every purpose of

Digitized by Google

substantial justice is effected, ought not to be favored. Alexander v. Brown, 1 Pet. 685, 7 L. Ed. 314.

For note upon the question of whether on a forthcoming bond the motion should be for a judgment or for an execution, see 11 Va. Law Reg. 58.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 142, section 5.

Sec. 6522. When taken under distress warrant, what defense may be made.—In an action or motion on such bond, when it is taken under a distress warrant, the defendants may make defense on the ground that the distress was for rent not due in whole or in part, or was otherwise illegal. (Code 1887, § 3621.)

Sec. 6523. Remedy of creditor, if bond quashed.—If any such bond be at any time quashed, the obligee, besides his remedy against the officer, may have such execution on his judgment, or issue such distress warrant, as would have been lawful if such bond had not been taken. (Code 1887, § 3622.)

Sec. 6524. In what cases forthcoming bond not to be taken.—No bond for the forthcoming of property shall be taken on an execution on a forthcoming bond, nor on an execution on a judgment against a treasurer, sheriff, sergeant, coroner, or constable, or a deputy of any of them, or a surety or personal representative of any such officer or deputy, for money received by any such officer or deputy, by virtue of his office, or against any such officer or his personal representative, in favor of a surety of such officer, or against a deputy of any such officer, or his surety or personal representative, in favor of his principal or the personal representative of such principal, for money paid or a judgment rendered for a default in office; nor on an execution against an overseer of the poor, or his personal representative, for money received by him as such; nor on any other execution on which the clerk is required by law to endorse that "no security is to be taken." (Code 1887, § 3623.)

Sec. 6525. Endorsement on execution in such cases.—On every execution, on which a forthcoming bond is prohibited from being given, the endorsement that "no security is to be taken" shall be made by the clerk. (Code 1887, § 3624.)

See Gregory's Forms No. 505.

Sec. 6526. When justice may give judgment on forthcoming bond; how case moved to court when amount, exclusive of interest, exceeds twenty dollars.—A justice may, on motion, after ten days' notice of the time and place thereof, give judgment on any forthcoming bond taken by a constable or other officer upon a fieri facias issued by a justice. But in every case, when the amount actually due upon such bond, exclusive of interest, exceeds twenty dollars, the justice shall, upon the application of the defendant, and affidavit filed that he has a substantial defense to the bond, at any time before trial, remove the cause to the circuit court of the county or corporation court of the city wherein the writ of fieri facias was

Digitized by Google

issued, and the clerk of the said court shall docket the same; and it shall be proceeded in as if it was a motion originally made in said court; and it shall not be discontinued by reason of no order being entered of its continuance from one day to another, or from one term to another. (Code 1887, § 3625; 1902-3-4, p. 839.)

Sec. 6527. When bond returned, how endorsed and recorded by clerk; lien thereof; clerk's fee.—Upon the return of such bond to the clerk's office in the manner prescribed by section sixty-five hundred and twenty, it shall be the duty of the clerk to endorse thereon the date of such return, and to record in a book to be by him kept for the purpose, the date of such bond and of the return endorsed thereon, the amount of the penalty thereof, the amount, the payment whereof will discharge such penalty, and the names of the obligee and obligor to such bond. For which service the clerk shall be entitled to a fee of thirty cents; and such bond, when so returned to the clerk's office aforesaid, shall constitute a lien on the real estate of the obligor. (Code 1887, § 3626.)

Sec. 6528. How bond withdrawn from clerk's office.—Such clerk shall endorse upon such bond the amount of the fee aforesaid; and the obligee in such bond, or his agent, may, at any time after the record of such bond is made by the clerk, required by the preceding section, withdraw the same from the clerk's office, leaving a copy thereof attested by the clerk. (Code 1887, § 3627.)

Sec. 6529. Costs to be included by justice.—The justice, on giving judgment on such bond, shall include in the costs of the judgment the clerk's fee aforesaid; and the clerk shall not receive any fee or reward for any service he is required to perform by the provisions of section sixty-five hundred and twenty-seven, except that herein specified. (Code 1887, § 3628.)

Sec. 6530. Justice to keep record of judgment; how endorse execution.—The justice, rendering a judgment under the provisions of this chapter, shall keep a record thereof in the same manner as he is required by law in other cases. He shall not stay execution upon such judgment, and shall endorse on any fieri facias issued thereon "no security is to be taken." (Code 1887, § 3629.)

Digitized by Google

TITLE 62.

Exemption of Property of Householder.

CHAPTER 274.

Exemption of Property of a Householder or Head of a Family from Levy, Seizure, Garnishment, or Sale, for Debt or Liability on Contract.

Sec.

6531. Exemption to householder from liability for his debts of property of the value of two thousand dollars; in what cases not allowed.

6532. How exemption of real estate secured.

6533. Real estate, subject to encumbrances, may be set apart as exempt. If sold to satisfy same, how surplus of proceeds invested or disposed of.

6534. Partition or sale of real estate held as exempt by joint tenant, tenant in common, or coparcener.

6535. How real estate set apart as exempt may be encumbered or aliened.

6536. How real estate, so set apart, held after death of householder.

6537. If not set apart by householder in his lifetime, how widow and minor children may have it done.

6538. If widow receives dower or jointure, she cannot have the exemption.

6539. Householder may, in lieu of real estate, set apart the exemption in personal estate.

6540. How set apart in personal estate.

6541. If householder has not set it apart in his lifetime, how his widow and minor children may do so; how they shall hold it.

Sec.

6542. When and how exemption in real or personal estate, held by widow and minor children, may be sold and proceeds of sale invested.

6543. When the exemption may be set apart.

6544. When it is not affected by increase of value of estate set apart.

6545. When estate set apart exceeds in value the amount of exemption allowed, or is made so by improvements, equity may subject excess to debts.

6546. How estate held, in which proceeds of sale of exempted property are invested, or which was acquired in exchange; how such new estate, when acquired otherwise than under order of court, to be set apart; when acquired through court, what to be recorded, and where.

6547. When householder's right to exemption is exhausted.

6548. Waiver of exemption; its effect; form of waiver.

6549. How claim enforced, as to which exemption is waived, or which is otherwise paramount to the exemption.

6550. When the exemption ceases; how estate then passes; when and on what exempted estate the lien of a judgment or decree against householder attaches.

Digitized by Google

Sec.
6551. Judgments or decrees on instruments waiving the homestead or on demands against which the homestead cannot be claimed to embody the fact; the same on the executions issued thereon.
6552. The articles which a householder, in addition to the foregoing exemption, may hold exempt from levy or distress.
6553. Additional articles which are exempted to householder, while engaged in agriculture.
6554. Family may use such dead victuals and live stock as are necessary.
6555. What wages of a laboring man, who is a householder, are exempt.
6556. Proceedings by execution debtor to have wages declared exempt.
6557. Protection of laboring men who are householders against being deprived of the exemption under section sixty-five hundred and fifty-five.
Sec.
6558. Exemption of the wages of minors from garnishment process.
6559. Garnishment of and levy of execution on wages and salaries of the State employees.
6560. Garnishment of and levy of execution on wages and salaries of all city, town, and county officials, clerks, and employees.
6561. Who are officers and employees of cities, towns, and counties.
6562. What articles, on death of householder, vest absolutely in his widow, minor children, and unmarried daughters.
6563. Articles are not exempt from taxes or levies or for their purchase price.
6564. Deed of trust, etc., on what property, void.
6565. Injunction awarded to restrain sale of exempted property, or garnishment of wages.
6566. Word "householder" construed.

Sec. 6531. Exemption to householder from liability for his debts of property of the value of two thousand dollars; in what cases not allowed.—Every householder or head of a family residing in this State shall be entitled, in addition to the property or estate which he is entitled to hold exempt from levy, distress, or garnishment under sections sixty-five hundred and fifty-two, sixty-five hundred and fifty-three and sixty-five hundred and fifty-five, to hold exempt from levy, seizure, garnishment, or sale under any execution, order, or process issued on any demand for a debt or liability on contract hereafter contracted, his real and personal property, or either, to be selected by him, including money and debts due him, to the value of not exceeding two thousand dollars; provided, that such exemption shall not extend to any execution, order or other process issued on any demand in the following cases:

First. For the purchase price of said property or any part thereof. If the property purchased and not paid for be exchanged for or converted into other property by the debtor, such last named property shall not be exempted from the payment of such unpaid purchase money under the provisions of this section.

Digitized by Google

Second. For services rendered by a laboring person or mechanic.

Third. For liabilities incurred by any public officer or officer of a court, or any fiduciary, or any attorney-at-law for money collected.

Fourth. For a lawful claim for any taxes, levies, or assessments accruing after the first day of June, eighteen hundred and sixty-six.

Fifth. For rent.

Sixth. For the legal or taxable fees of any public officer or officer of a court.

Seventh. Said exemption shall not be claimed or held in a shifting stock of merchandise, or in any property the conveyance of which by the homestead claimant has been set aside on the ground of fraud or want of consideration.

Eighth. For any debt or liability on contract as to which the debtor or party to the contract has waived, as hereinafter provided, the exemption which he is entitled to claim under this section.

But this section shall not invalidate any homestead exemption heretofore claimed under the provisions of the former Constitution, or impair in any manner the right of any householder or head of a family existing at the time that the present Constitution went into effect, to select the exemption, or any part thereof, to which he was entitled under the former Constitution: provided, that such right, if hereafter exercised, be not in conflict with the exemption set forth in sections one hundred and ninety and one hundred and ninety-one of the present Constitution.

But no person who has selected and received the full exemption allowed by the former Constitution shall be entitled to select an additional exemption under the present Constitution; and no person who has selected and received part of the exemption allowed by the former Constitution shall be entitled to select an additional exemption beyond the difference between the value of such part and a total valuation of two thousand dollars. (Code 1887, § 3630; 1902-3-4, p. 868.)

Revisors' Note.—This section is amended by Acts 1918, p. 487.

Constitutional provisions.—The seventh sub-division of the above section is taken from section 191 of the Constitution. The first clause in the seventh sub-division settles the question raised in Rose v. Sharpless, 33 Grat. 153; and the latter clause reverses the decisions of Shipe v. Repass, 28 Grat. 716; Boynton v. McNeal, 31 Grat. 456; Marshall v. Sears' Ex'r, 79 Va. 49; Hatcher v. Crews' Adm'r, 83 Va. 371, 5 S. E. 221; Mahoney v. James, 94 Va. 176, 26 S. E. 384; Oppenheim v. Myers, 99 Va. 582, 39 S. E. 218.

The homestead provisions of the Constitution must be liberally construed. Section 193, Const. 1902. They are not self-executing. Oppenheim v. Myers, supra.

For constitutional provisions concerning homestead exemptions, see sections 190-194, inclusive, Const. 1902. The difference between these provisions and those of the Constitution of 1869 seem unimportant, except as herein noted.

Digitized by Google

In the Homestead Cases, 22 Grat. 266, 12 Am. Rep. 507, it was decided that the provisions of the former Constitution (1869) and act of assembly in pursuance thereof, so far as they provided for exemption against contracts made before the adoption of the Constitution and the passage of such act, were repugnant to the contract clause of the United States Constitution.

Bankruptcy.—The national bankruptcy act (chapter 3, section 6 [U. S. Comp. St. 1901, p. 3424]) provides that that statute "shall not affect the allowance to bankrupts of the exemptions which are prescribed by State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months or the greater portion thereof immediately preceding the filing of the petition."

Bankrupt should be permitted to amend schedule at any time to make bona fide claim of homestead, but he will not be allowed to do so after property has vested in trustee, where only purpose and effect is to prefer homestead waiver notes. In re Moran (D. C.), 105 Fed. 901.

Title to exempted property does not pass to trustee. Bankrupt court can merely set it aside, and thus exclude it from bankrupt estate. Waiver creditors must seek relief in State court. Lockwood v. Bank, 190 U. S. 294, 47 L. Ed. 1061, 23 Sup. Ct. 751.

During time between petition in bankruptcy and an adjudication, bankrupt disposed of goods for which he had paid, and also for goods for which he had not paid. Proceeds of sales of goods paid for may be claimed as exempt. In re Wilson (D. C.), 108 Fed. 197.

In setting apart the property claimed by a bankrupt as exempt, after its appraisal, the trustee acts ministerially; and no issue as to the bankrupt's right to the exemption arises until the trustee's report is filed, when issue may be taken by exceptions thereto which cast the burden of proving all facts essential to the right upon the bankrupt, including, where the exemption is claimed under the Virginia statute, the fact that such property was paid for. In re Campbell (D. C.), 124 Fed. 417.

Under the bankruptcy law, by which the proceeds of non-exempt property are divided pro rata among all creditors, objection to the allowance of a bankrupt's exemption under such statute on the ground that the property claimed has not been paid for may be made by any creditor, without showing that his claim is for the purchase price of any of such property. Id.

While an exception to the report of a trustee setting apart the bankrupt's exemptions is in some sense a pleading, in that it makes an issue, it is doubtful if it was intended to be embraced within Bankr. Act July 1, 1898, chapter 541, section 18c, 30 Stat. 551 [U. S. Comp. St. 1901, p. 3429], which requires all pleadings setting up matters of fact to be verified; and in any event the lack of verification is not jurisdictional, and, where not objected to on the hearing before the referee, objection cannot be made on a review of his decision by the court. Id.

In applying in bankruptcy proceedings the Virginia exemption statute, which provides for the exemption of certain property of a debtor "from levy, seizure, garnishment or sale under any execution, order or process," a creditor is not precluded from objecting to the allowance of exemption to a bankrupt because he is not armed with any process; the bankruptcy proceedings themselves being in effect a seizure of all the debtor's property, for the purposes of the State statute. Id.

Where, on the hearing before the referee of exceptions to the report of a trustee setting apart the bankrupt's exemptions under the Virginia statute in merchandise, neither the bankrupt nor any creditors holding notes in which the right to the exemption was waived made any proof that the property claimed and set apart was paid for, and the referee decided against the right to the exemption, the cause will not be remanded for the taking of proof on such issue after the merchandise has been sold by agreement of the parties in interest, and delivered to the purchasers. Id.

The words "fiduciary capacity" as used in the Bankruptcy Act in-

Digitized by Google

cludes only technical trusts. Chapman v. Forsyth, 2 How. 202 (1844). It is probable that the word fiduciary as used in third sub-division of this section has same meaning. See, also, 6 Va. Law Reg. 196.

When a bankrupt dedicates property as a homestead, all the bankruptcy court can do is to set it aside for him. The homestead can only be subjected in the State courts. Newberry v. Collier, 111 Va. 288, 68 S. E. 974, citing the Lockwood Case, 190 U. S. 294, 47 L. Ed. 1061, 23 Sup. Ct. 751.

For discussion of the effect of bankruptcy on exemptions, see Brandenburg on Bankruptcy (3d Ed.) and McAllister v. Bodkin, 76 Va. 809; Hatcher v. Crews' Adm'r, 83 Va. 371, 5 S. E. 221.

Who is a householder?—The terms "householder" and "head of a family" are convertible (section 6566). They involve the idea of dependence and support, coupled with a legal or moral obligation to support the dependent. Oppenheim v. Myers, 99 Va. 586, 39 S. E. 218; Calhoun v. Williams, 32 Grat. 18, 34 Am. Rep. 759; 2 Min. (4th Ed.) 909, 910; 2 Barton, L. Pr. (2d Ed.) 813, 814; 2 Va. Law Reg. 169; 6 Va. Law Reg. 533.

But an unmarried man who has no children or other persons dependent upon him living with him, though he keeps house and has hired servants living with him, is not a householder. Calhoun v. Williams, 32 Grat. 18, 34 Am. Rep. 759; 2 Barton, L. Pr. (2d Ed.) 814; 6 Va. Law Reg. 533.

May a married woman be a "householder"?—In Oppenheim v. Myers, 99 Va. 582, 39 S. E. 218, the court "without pretending to decide that a married woman can under no circumstances claim a homestead exemption," decided that a married woman whose husband lived out of the State, but visited her at intervals of two or three years and occasionally made her small remittances, and who has no children dependent upon her for support, is not a "householder or head of a family." On the other hand, the United States Circuit Court of Appeals held that in Virginia a married woman may claim the exemption, though living with her husband, and though he contributes to the support of the family, provided she is the owner of the property, manages the business of the family, and is regarded by the family as the head (Richardson v. Woodward, 104 Fed. 873, 44 C. C. A. 235, 6 Va. Law Reg. 526); and the circumstance that the husband has already claimed his exemption as head of the family under the "Poor Debtors' Law" (section 6552) does not affect the question. Id.

See 16 Va. L. Reg. 113.

Becoming householder after judgment lien.—A lien acquired by judgment, execution, or in any other manner than by voluntary act of the debtor himself gives away to debtor's claim to homestead exemption, even where a lien attaches prior to the debtor's becoming a householder. Oppenheim v. Myers, 99 Va. 588, 39 S. E. 218, overruling Kennerly v. Swartz, 83 Va. 704, 3 S. E. 348, and approving suggestion in White v. Owen, 30 Grat. 43. For comments on Oppenheim v. Myers, see 7 Va. Law Reg. 275. The decision in the last-mentioned case seems to rest on section 3, article 11, of the Constitution of 1869, which section does not appear in the Constitution of 1902.

"Residing in this State"—A citizen.—This limitation of the statute does not appear in either Constitution of 1869 or 1902. A change of domicile from the State puts an end to the homestead privilege. See section 6550. Lindsay v. Murphy, 76 Va. 428; Blose v. Bear, 87 Va. 177, 12 S. E. 294, 11 L. R. A. 705; 2 Va. Law Reg. 170. In Clendenning v. Conrad, 91 Va. 410, 21 S. E. 818, where infants entitled to homestead claimed by their father in his lifetime removed after his death to West Virginia, the court, without deciding that such removal of the children forfeited their claim to exemption, held that the corpus of the homestead itself was not removable from the State, thus apparently recognizing the rights of the children after their removal. In Lindsay v. Murphy, supra, it was decided that only a "citizen" of Virginia could claim the exemption. The word "citizen," however, was perhaps not used in its

Digitized by Google

restricted legal significance. If so, women and men disfranchised under Constitution 1902 could not claim exemption. Examine fourteenth amendment United States Constitution.

"Debt or liability on contract"—*Torts and Fines.*—The exemption cannot be claimed against torts, nor against a fine due the Commonwealth for a violation of the criminal laws (Whiteacre v. Rector, 29 Grat. 714, 26 Am. Rep. 420); nor against a demand for damages for breach of promise to marry (Burton v. Mill, 78 Va. 468). See, also, Frazier v. Baker, 5 Va. Law J. 565; 4 Min. (3d Ed.) 1004; 2 Va. Law Reg. 172.

The homestead laws of the State of Virginia apply to a fine imposed for a violation of the criminal laws of the United States, and the exemption allowed thereunder can be claimed as against a judgment for a fine in favor of the government. Allen, Marshall v. Clark (U. S. Circuit Court of Appeals), 9 Va. Law Reg. 694, and note.

Homestead can be claimed against judgment in an action where the right of recovery rested solely upon the ground that the plaintiff had been damaged by breach of contract and not by reason of a tort, and the mere use of violent terms in characterizing the alleged fraud in the procurement of the contract, and its breach, will not suffice to convert the breach of contract into a tort. Jewett v. Ware, 107 Va. 802, 60 S. E. 131.

The amount householder may hold exempt.—He may supplement original homestead by a new one, so as to make the aggregate equal (not exceed) the maximum of $2,000. Oppenheimer v. Howell, 76 Va. 218. See section 6547.

Under what circumstances homestead cannot be claimed— *"First"*—*"Purchase price of said estate."*—Where a merchant has intermingled with his stock of merchandise, goods which he has not paid for, as against creditors holding claims for the merchandise the burden is on the debtor to identify the particular articles which have been paid for and are subject to be claimed as exempt, and goods not so identified cannot be included in the exemption as against merchandise creditors. In re Tobias (D. C.), 103 Fed. 68, 6 Va. Law Reg. 297, and note 301; In re Wilson, supra; Rose v. Sharpless, 33 Grat. 158. See supra for the addition made to this sub-division by Constitution. The burden is likewise on claimant to show that goods claimed are paid for. In re Campbell (D. C.), 124 Fed. 417.

A vendor of goods who is allowed the value of those of the goods sold which were undisopsed of at vendor's death, cannot invoke the doctrine of "confusion of goods" to secure payment of his entire claim as against a homestead claimed in a stock of goods claimed by vendee's children. Edgewood Dis. Co. v. Rosser, 116 Va. 624, 82 S. E. 716.

"Second." "Services rendered by a laboring person."—A mail carrier is a laboring person. Farinholt v. Luckhard, 90 Va. 936, 21 S. E. 817, 44 Am. St. Rep. 953. Since this decision what is now section 6566 has been amended so as to provide that the term "laboring man" shall include all householders who receive wages for their services.

"Third." "Liabilities incurred by a public officer," etc.—See 2 Va. Law Reg. 173. The third exception embraces the liabilities of a collector of taxes and also of his sureties in his official bond. Com. v. Ford, 29 Grat. 683. See, also, 4 Min. (3d Ed.) 1004.

"Seventh." Shifting stocks of merchandise and fraudulent conveyances.—See notes above under "Constitutional Provisions."

"Where the debtor has surrendered to the trustee in bankruptcy his stock of goods in bulk, the shifting character of such property will not prevent the bankrupt from claiming his exemption therein, since by the surrender to the trustee the property loses its shifting character, and the exemption claimed may be ascertained and defined with certainty." In re Tobias (D. C.), 103 Fed. 68, 6 Va. Law Reg. 297, 301; In re Wilson (D. C.), 108 Fed. 197; Rose v. Sharpless, 33 Grat. 158.

Two days before an adjudication in contemplation of bankruptcy

Digitized by Google

the debtor separated from his stock numerous articles of merchandise and placed them in boxes, with a view of setting up the claim that they had ceased to be a part of a shifting stock of merchandise and could be claimed as exempt. Held, that such property was a part of a shifting stock of merchandise and that a homestead could not be claimed therein. Laderburg v. Miller, 210 Fed. 614.

The term "shifting stock of merchandise" means a stock of merchandise subject to change from time to time in the course of trade, by purchases, sales or other transactions. Laderburg v. Miller, 210 Fed. 614.

The debtor cannot by his act of closing his store or separating a part of his shifting stock of merchandise with the view of defeating the rights of the creditor, have a homestead in such property. Laderburg v. Miller, 210 Fed. 614.

A shifting stock of merchandise ceases to be shifting upon the death of the owner thereof and becomes fixed and stable. Edgewood Dis. Co. v. Rosser, 116 Va. 624, 82 S. E. 716.

Where property has been conveyed, directly or indirectly, by a husband to his wife and the conveyance has been set aside at the instance of his creditors on the ground of fraud or want of consideration, he cannot claim a homestead in the property conveyed; but if the wife has been guilty of no actual fraud, and has, out of her own means, discharged a purchase money lien on the property, the lien will be treated as in force for her protection, and she will be subrogated to the rights of the lienor. Dickenson v. Patton, 110 Va. 5, 65 S. E. 529.

Partnership property.—In those States where the policy of the homestead law is to protect homes, partners have been denied the right to claim exemption in partnership assets (Waples on Homestead, 143); but under statutes like ours it would seem otherwise, especially since the Constitution of 1902 (section 193) enjoins liberality of construction. See Id. 907. In Wisconsin a partner, with consent of co-partners, may claim exemption. O'Gorman v. Fink, 57 Wis. 649, 15 N. W. 771, 46 Am. Rep. 58.

Generally.—Crops raised on land previously set apart as a homestead are exempt. Neblett v. Shackleton, 111 Va. 707, 69 S. E. 946; see comment, 16 Va. Law Reg. 853 and 933.

The homestead exemption in Virginia, unlike that in most of the States, is not so much an estate in land as a right of occupancy which cannot be disturbed while the homestead character exists. Blose v. Bear, 87 Va. 177, 12 S. E. 294; 11 L. R. A. 704; cited in Murphy v. Richmond, 111 Va. 459, 69 S. E. 442.

Quaere: Can a householder waive homestead exemption under new Constitution? See 10 Va. Law Reg. 363, 469, 472, 565.

Can a derelict husband defeat the collection of alimony by remarrying and claiming the benefit of the exemption? See 1 Va. L. R. N. S. 234.

On the subject of homestead generally, see note to Hatorff v. Wellford, 27 Grat. 356, Va. Rep. Anno.; Darling v. Berry (C. C.), 13 Fed. 659; 4 Min. (3d Ed.) 998-1009; 2 Min. (4th Ed.) 905-913; 2 Barton, L. Pr. (2d Ed.) 813; Article by M. P. Burks, 2 Va. Law Reg. 167; 5 Va. Law Reg. 129. Homestead in mineral lands, see note 8 Va. Law Reg. 139.

See Burks' Pl. & Pr., pp. 786 to 807; Gregory's Forms No. 527, and notes to succeeding sections of this chapter.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 41, section 30.

Sec. 6532. How exemption of real estate secured.—In order to secure the benefit of the exemption of real estate under the preceding section, the householder shall, by a writing signed by him and duly admitted to record, to be recorded as deeds are recorded, in the county or corporation wherein such real estate, or any part there-

Digitized by Google

of, is, declare his intention to claim such benefit, and select and set apart the real estate to be held by him as exempt, and describe the same with reasonable certainty, affixing to the description his cash valuation of the estate so selected and set apart. Equitable as well as legal estates may be so selected and set apart. (Code 1887, § 3631.)

To avail himself of the homestead exemption, householder must actually claim the exemption and set it apart as prescribed. It is a personal privilege, and the householder must exercise it. He cannot be compelled to claim it or to have it set apart. Wray v. Davenport, 79 Va. 19; Reed v. Union Bank, 29 Grat.-719, 724; White v. Owen, 30 Grat. 47; Scott v. Cheatham, 78 Va. 82; 2 Va. Law Reg. 171. But widow may claim it after his death.

The mere act of a bankrupt, in claiming a homestead exemption in the schedule filed by him, is not a compliance with this section. In re Garner (D. C.), 115 Fed. 200; section 6537 and notes.

Deed may be valid as to property sufficiently described, though invalid as to other property. Williams v. Watkins, 92 Va. 680, 24 S. E. 223.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 41, section 31.

See Gregory's Forms No. 527; Burks' Pl. & Pr., pp. 793, 794.

Sec. 6533. Real estate, subject to encumbrances, may be set apart as exempt; if sold to satisfy same, how surplus of proceeds invested or disposed of.—Such real estate may be selected and set apart as aforesaid, subject to any paramount encumbrances thereon. If a sale be had to satisfy the encumbrances, the surplus of the proceeds, if any, not exceeding the amount which the householder is entitled under section sixty-five hundred and thirty-one, shall be paid to said householder, and invested by him in such other property as he may select. (Code 1887, § 3632.)

Revisors' Note.—Formerly, this section provided that if a sale be had by order of court to satisfy the encumbrance, the surplus of the proceeds, not exceeding the amount to which the householder was entitled to hold as exempt, should be invested by the court wherein the order of sale was made in such other property as the householder might direct, but if the sale was not made under order of court, then the surplus should be paid to the householder and invested by him. Under the present section in either case the surplus is to be paid to the householder who may make his own investments.

It is also legal and valid in a deed of trust to secure debts, for the grantor to reserve for himself and family all exemptions allowed by law. Brockenbrough's Ex'x v. Brockenbrough's Adm'r, 31 Grat. 580-596.

Sec. 6534. Partition or sale of real estate held as exempt by joint tenant, tenant in common, or coparcener.—If the estate so set apart be held by the householder as joint tenant, coparcener, or tenant in common, partition or sale may be had as provided by chapter two hundred and fourteen, and in case of sale, the share of the proceeds to which the householder is entitled, shall be paid to said householder and invested by him in such other property as he may select. (Code 1887, § 3633.)

Revisors' Note.—The latter part of this section has been made to conform to the preceding section.

Digitized by Google

Sec. 6535. How real estate set apart as exempt may be encumbered or aliened.—Real estate set apart as aforesaid may be sold and conveyed as other real estate held by the householder, and the proceeds invested in other property, or it may in like manner be exchanged for other property, but in no case shall the purchaser be bound to see to the application of the purchase money. (Code 1887, § 3634.)

Revisors' Note.—Under section 3634 of the Code of 1887, the real estate set apart could not be mortgaged, encumbered or aliened by the householder, if a married man, except by the joint deed of himself and wife, but the householder was allowed, without the consent of his wife, to mortgage or encumber it for the purchase money, or for the erection or repair of buildings. The section further provided that the real estate might be sold and conveyed by the joint act of the householder and his wife, or by the householder alone, if unmarried, and the proceeds invested in or exchanged for other property. Notwithstanding the provisions of this section, under section 3647 of the Code of 1887 (section 6548 of this Code), a householder could waive the exemption by his sole note, bond or other instrument, even by a simple due bill, and it was immaterial whether the property had been previously set apart or not. This being true, it appeared unreasonable to say that the waiver could not be by deed, and that the very fact of giving a deed did not constitute a waiver, hence the provisions of the revised section above; but, of course, the householder cannot by his sole deed deprive his wife of dower.

Under this section in its former state it was held that a homestead in real estate which had been set apart by a married man could not be aliened by his sole deed, and that such deed was void. Va.-Tenn. Co. v. McClelland, 98 Va. 424, 36 S. E. 479, 6 Va. Law Reg. 171. See, also, 6 Va. Law Reg. 534.

The primary object of this section is to authorize sale of homestead and investment of proceeds in a new one, to be held on like terms as the original. In it there is nothing to authorize debtor who has squandered one homestead to appropriate another against subsequent creditors. Oppenheimer v. Howell, 76 Va. 218.

Former statute applied in White v. Owen, 30 Grat. 43.

Cited in Davis v. Davis, 101 Va. 230, 43 S. E. 358.

See Burks' Pleading and Practice, p. 803.

Discussed in 1 Va. Law J. 261.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 41, section 32.

Sec. 6536. How real estate, so set apart, held after death of householder.—The real estate set apart by any householder in his lifetime shall, after his death, be held by his widow and minor children, or such of them as there may be, exempt as before and also from the debts and obligations of such widow and children or any of them, until her death or marriage, and, after her death or marriage, by such minor children until they respectively attain the age of twenty-one years, or marry, if they marry before attaining that age. (Code 1887, § 3635.)

This section is not unconstitutional, as being an unwarranted exercise of legislative power under the homestead provision of the Constitution of 1869. Hanby's Adm'r v. Henritze's Adm'r, 85 Va. 177, 7 S. E. 204.

If the householder dies intestate, and there are no other debts as against which the homestead can be held exempt, the exemption ceases altogether. The widow can only assert a claim of homestead against

Digitized by Google

the creditors of the husband, and not against his heirs. Barker v. Jenkins, 84 Va. 895, 897, 6 S. E. 459; Helm v. Helm's Adm'r, 30 Grat. 404. But as against the creditors of her husband the widow remaining unmarried is entitled to claim the homestead exemption, although it was not set aside in his lifetime. Hatorff v. Wellford, 27 Grat. 356; Helm v. Helm's Adm'r, 30 Grat. 404; Scott v. Cheatham, 78 Va. 85; section 3636.

Where a husband has set aside a homestead, and died owing debts, his surviving widow, there being no infants, is entitled to hold the homestead during her life or widowhood, and cannot be deprived thereof by the payment of her husband's debts by heirs. State's purchase of land for taxes does not deprive the widow of her right. Davis v. Davis, 101 Va. 230, 43 S. E. 358.

See, also, note 8 Va. Law Reg. 909.

Upon the death of a householder who has set apart a homestead in land, his widow does not take a life estate in the land, but she and the minor children simply hold it, exempt as before from certain debts. Taxes should be assessed against it in the name of the householder or his estate, and the land is liable for such taxes. Tabb v. Com., 98 Va. 47, 34 S. E. 946, distinguished. Murphy v. Richmond, 111 Va. 459, 69 S. E. 442.

See notes to section 6537; Burks' Pl. & Pr., p. 802.

Sec. 6537. If not set apart by householder in his lifetime, how widow and minor children may have it done.—If no real estate or not so much as the householder may have been entitled to set apart has been so set apart by him in his lifetime, upon his death his widow and minor children, or such of them as there may be, on petition to the circuit court of the county or to any city court of the city wherein his real estate or the greater part thereof is, may have so much thereof set apart by commissioners appointed by the court as the said householder might have set apart in his lifetime, to be held by them as it would have been under the preceding section if it had been so set apart. (Code 1887, § 3636; 1902-3-4, p. 869.)

See notes to section 6536.

Where property has been conveyed, directly or indirectly, by a husband to his wife, and the conveyance has been set aside at the instance of his creditors on the ground of fraud or want of consideration, he cannot claim a homestead in the property nor can his widow and children after his death; but if the wife has been guilty of no actual fraud and has out of her own means, discharged a purchase money lien on the property, the lien will be treated as in force for her protection, and she will be subrogated to the right of the lienor. Dickenson v. Patton, 110 Va. 5, 65 S. E. 529.

Infants residing with their father in this State become entitled to claim a homestead in his estate immediately upon the death of their father. This estate cannot be divested by any act on the part of the infants, and is not lost by the fact that they are thereafter removed from the State by their mother and guardian who has absolute control over their movements. Edgewood Dis. Co. v. Rosser, 116 Va. 624, 82 S. E. 716.

Where a homestead is claimed by infants in money in the hands of an administrator, their mother having married again, the estate should be administered by a receiver appointed for the purpose. Edgewood Dis. Co. v. Rosser, 116 Va. 624, 82 S. E. 716.

The assignment to a widow, at her instance, by a court of general jurisdiction, of land of her husband as a homestead is conclusive upon her and those claiming under her that the land so assigned was the property of her husband and not of herself. Arendall v. Arendall, 119 Va. 1, 89 S. E. 87.

Digitized by Google

The assignment of a homestead is the exercise of the probate jurisdiction of the court. Its judgment imports verity, and is not amenable to collateral attack. Arendall v. Arendall, 119 Va. 1, 89 S. E. 87.

See Burks' Pl. & Pr., 795, 801.

Sec. 6538. If widow receives dower or jointure, she cannot have the exemption.—The two preceding sections are subject to this qualification: If the widow be entitled to dower or jointure, under chapter two hundred and six, and claims and receives either, she shall not have the benefit of the provisions of either of the said sections; but, in such case, the rights of the minor children thereunder shall not be impaired. (Code 1887, § 3637.)

Until the revision of 1887, the widow of a householder could claim, not only her dower or jointure, but also the exemption. This section puts her to her election. Burks' Address, 2 Barton, L. Pr. (2d Ed.) 1400.

See Burks' Pleading and Practice, p. 802.

Sec. 6539. Householder may, in lieu of real estate, set apart the exemption in personal estate.—If the householder does not set apart any real estate as before provided, or if what he does or has so set apart is not of the value of two thousand dollars, he may (in addition to the property or estate which he is entitled to hold exempt under sections sixty-five hundred and fifty-two, sixty-five hundred and fifty-three and sixty-five hundred and fifty-five), in the first case, select and set apart to be held by him as exempt under section sixty-five hundred and thirty-one, so much of his personal estate as shall not exceed in value the sum of two thousand dollars, and, in the latter case, personal estate, the value of which, when added to the value of the real estate set apart, does not exceed the said sum. (Code 1887, § 3638.)

See Gregory's Forms No. 527.

Sec. 6540. How set apart in personal estate.—Such personal estate shall be selected by the householder and set apart in a writing signed by him. He shall, in the writing, designate and describe with reasonable certainty, the personal estate so selected and set apart and each parcel or article, affixing to each his cash valuation thereof; and the said writing shall be admitted to record, to be recorded as deeds are recorded, in the county or corporation wherein such householder resides. (Code 1887, § 3639.)

This section is a reasonable exercise of legislative authority to fix in "what manner and on what conditions" householder may hold exempt, etc. Const. 1869, article 11, section 5 (Const. 1902, section 192). Wray v. Davenport, 79 Va. 19.

Failure to properly describe and value certain personal property in the deed will not affect its validity as to other property accurately described and valued. Williams v. Watkins, 92 Va. 680, 24 S. E. 223.

A writing filed by bankrupt with referee in bankruptcy, claiming the "exemptions allowed a householder under the State law," in the property surrendered, and referring therein to inventory made by trustee, wherein each article or parcel has value affixed, which writing is followed by a homestead deed, is a sufficient designation of the property under this section. In re Tobias (D. C.), 103 Fed. 68.

A claim by bankrupt of an exemption out of stock of goods, claim-

Digitized by Google

ing such stock in bulk, is an insufficient compliance with this section. In re Wilson (D. C.), 108 Fed. 197.

See Burks' Pl. & Pr., 794; Gregory's Forms No. 527.

Sec. 6541. If householder has not set it apart in his lifetime, how his widow and minor children may do so; how they shall hold it.—If a householder die, leaving a wife or minor children, and he has not selected and set apart personal estate as provided in the two preceding sections, she, or if she die or marry, such minor children, each by his guardian or next friend, may select and set apart such personal estate in the manner prescribed by the preceding section, and the same so set apart, and what, if any, may have been set apart by the householder in his lifetime, shall be held by the widow and minor children in the same manner and exempt as real estate set apart under this chapter would be held by them after the death of such householder. If a widow receives dower or jointure under chapter two hundred and six, the value thereof shall be deducted from any exemption she may claim under this section, but in such case the rights of minor children hereunder shall not be impaired. (Code 1887, § 3640.)

Revisors' Note.—The last sentence of this section is new. If the widow has received dower or jointure in the real property, it seems she ought not to be allowed to claim the full amount of the exemption in the personal estate; but it is expressly provided that the rights of minor children shall not be impaired. As to real estate, see section 6538.

See Burks' Pleading and Practice, pp. 795, 801, 802.

Sec. 6542. When and how exemption in real or personal estate, held by widow and minor children, may be sold and proceeds of sale invested.—Any real or personal estate, set apart and held as a homestead by a householder in his lifetime, or by his widow and minor children, or any of them, after his death, may, upon his death, on a petition for the purpose filed by such widow and minor children, or any of them, in the circuit court of the county, or circuit or corporation court of the corporation, wherein they or any of them reside, or the estate or any part thereof is, be sold by order of the court and the proceeds of sale invested in other property, if it appears to the court that such sale and investment would be proper. To such petition all others interested (who are not plaintiffs) shall be made defendants. (Code 1887, § 3641.)

Sec. 6543. When the exemption may be set apart.—The real or personal estate, which a householder, his widow, or minor children are entitled to hold as exempt, may be set apart at any time before the same is subjected by sale or otherwise under judgment, decree, order, execution ,or other legal process. (Code 1887, § 3642.)

A person becoming householder after lien of judgment may yet claim exemption against such lien. Oppenheim v. Myers, 99 Va. 588, 39 S. E. 218, cited in note to section 6531.

Where the record did not show that claimant had filed deed in conformity with law, the appellate court refused to entertain his claim to the benefit of the exemption. Wray v. Davenport, 79 Va. 19, 25.

Under this section a homestead deed is effectual so far as the ques-

Digitized by Google

tion of time is concerned if recorded before the property is subjected by sale or otherwise under judgment decree order execution or other legal process, and a claim to exemption may be allowed bankrupt although not made in original schedules and although the homestead deed was made and recorded after the filing of such schedules, but before any action was taken by the trustee for a sale of the property. In re Fisher, 142 Fed. 205.

Sec. 6544. When it is not affected by increase of value of estate set apart.—The rents and profits of the property set apart as the homestead shall be exempt in the same manner as the corpus of the homestead, and if the whole real and personal estate set apart be not of greater value than two thousand dollars at the time it is so set apart, the exemption thereof shall not be affected by any increase in its value afterwards, unless such increase consists of permanent improvements placed upon real estate set apart by means derived from some source other than the homestead. (Code 1887, § 3643.)

Revisors' Note.—The first part of this section pertaining to the rents and profits of the property set apart as a homestead is new, and the latter part of the section differs somewhat from the former language. Formerly, the exception was in these words: "Unless such increase is caused by permanent improvements on the real estate set apart." The new language makes it clear that if such increase consists of permanent improvements placed upon the real estate by means derived from the homestead itself, that the homestead shall not be deemed to be excessive, but that if the permanent improvements are made by means derived from some other source, then the excess may be subjected under the following section.

See Burks' Pleading and Practice, p. 803.

Sec. 6545. When estate set apart exceeds in value the amount of exemption allowed, or is made so by improvements, equity may subject excess to debts.—Any creditor, against whom the exemption is claimed, may file a bill in equity, alleging that the value of the estate at the time it was set apart was more than two thousand dollars, or that by reason of permanent improvements made on the real estate after it was set apart, the whole estate set apart is of greater value than two thousand dollars; and if the court be satisfied, from the proofs in the cause, that the allegations of the bill are true, it shall make such decree or order as may be necessary to subject the estate set apart, so far as it exceeds in value the sum of two thousand dollars, to the payment of the debt or demand of such creditor. (Code 1887, § 3644.)

Sec. 6546. How estate held, in which proceeds of sale of exempted property are invested, or which was acquired in exchange; how such new estate, when acquired otherwise than under order of court, to be set apart; when acquired through court, what to be recorded, and where.—The estate or property in which proceeds of sale are invested, or which may be acquired in exchange, under any of the preceding sections of this chapter, shall be held exempt in like manner and to the like extent as the estate sold or exchanged was held.

Digitized by Google

But such estate or property when acquired in exchange or otherwise than by investment under an order of court, or unless when set apart by a court, shall be set apart, if real estate, by such a writing as is prescribed by section sixty-five hundred and thirty-two; if personal estate, by such a writing as is prescribed by section sixty-five hundred and forty; and such writing shall be recorded as provided by the same sections respectively. In addition to the requirements of said sections, the said writing shall state from what source the estate was derived and with what means acquired. When such estate is invested or set apart under an order of court, a copy of the order and of any report of a commissioner or other officer making the investment thereunder, if confirmed, and a copy of the order of confirmation, duly certified by the clerk of the said court, shall be recorded in the deed book of the county or city wherein the writing, if the estate had been set apart by a writing, is required to be recorded. (Code 1887, § 3645.)

Sec. 6547. When householder's right to exemption is exhausted.—When estate, real or personal, or both, of the value of two thousand dollars, has been once set apart to be held by a householder as exempt under section sixty-five hundred and thirty-one, he shall not afterwards be entitled to the exemption of any estate other than that so set apart, or that mentioned in the preceding section, and sections sixty-five hundred and forty-four, sixty-five hundred and fifty-two, sixty-five hundred and fifty-three and sixty-five hundred and fifty-five. (Code 1887, § 3646.)

Debtor may supplement original homestead by a new one, so as to make the aggregate equal (not exceed) $2,000. This privilege once fully exercised is regarded as exhausted. A new homestead created determines the original one, if the property exempted under the latter remains in existence. At all events, debtor will be required to account for its value in ascertaining the amount he is entitled to under a new assignment. Oppenheimer v. Howell, 76 Va. 218.

This section originated with the revision of 1887, and was intended to conform to the decision in Oppenheimer v. Howell, 76 Va. 218. Burks' Address, 2 Barton, L. Pr. (2d Ed.) 1401.

Sec. 6548. Waiver of exemption; its effect; form of waiver.—If any person shall declare in a bond, bill, note, or other instrument, by which he is or may become liable for the payment of money to another, or by a writing thereon or annexed thereto, that he waives, as to such obligation, the exemption from liability of the property or estate which he may be entitled to claim and hold exempt under the provisions of this chapter, the said property or estate, whether previously set apart or not, shall be liable to be subjected for said obligation, under legal process, in like manner and to the same extent as other property or estate of such person: except that such waiver shall not extend to or affect the exemption of the property or estate exempt under sections sixty-five hundred and fifty-two, sixty-five hundred and fifty-three and sixty-five hundred and fifty-five. The following or equivalent words shall be sufficient to operate as

Digitized by Google

the waiver hereinbefore provided for: "I (or we) waive the benefit of my (or our) exemption as to this obligation." If a debt which is superior to the homestead, or as to which the homestead is waived, be paid off by a surety therein, the principal shall not be allowed to claim the homestead as against such surety. (Code 1887, § 3647.)

Revisors' Note.—The last sentence of this section is new. As the law stood before the revision, the principal could probably claim the homestead against the surety in the case covered by this sentence, but the revisors were of opinion that the law should be otherwise.

This section was intended by the revisors of 1887 to better define the right to waive the benefit of the exemption, the mode of exercising the right, and the effect of its exercise, than under the former law. Burks' Address, 2 Barton, L. Pr. (2d Ed.) 1401.

This section was held to be not in conflict with article 11 of the Constitution of 1869. If a party, executing his bond or note, waives his homestead as to his bond or note, neither he nor his wife can set up said homestead exemption as against the said bond or note. Reed v. Union Bank, 29 Grat. 719; White v. Owen, 30 Grat. 43; Linkenhoker's Heirs v. Detrick, 81 Va. 44, 59 Am. Rep. 648; Williams v. Watkins, 92 Va. 685, 24 S. E. 223; Va.-Tenn. Co. v. McClelland, 98 Va. 427, 36 S. E. 479.

The conveyance of homestead property by mortgage or deed of trust for payment of a debt would effectually subject it to the payment of debt, for it is in effect a waiver of the right of exemption. White v. Owen, 30 Grat. 52. See sections 6535 and revisors' note.

The waiver of the homestead exemption in the body of a non-negotiable note is only a waiver as to the particular obligation expressed in the body of the note, and not as to the implied obligation growing out of an assignment of the note; and as against the liability of the assignor to the assignee the former may claim the benefit of the exemption, although the note declares that "the drawer and indorsers each hereby waive the benefit of our homestead exemptions as to this debt." Long v. Pence's Committee, 93 Va. 584, 25 S. E. 593.

Waiver creditors cannot subject exempted property in bankruptcy court, but must resort to State court. Lockwood v. Bank, 190 U. S. 294, 47 L. Ed. 1061, 23 Sup. Ct. 751.

The decision of the rights of creditors having claims against a bankrupt's exempt property properly belongs to the tribunals of the State under the laws of which they are claimed. Barker-Bond L. Co. v. Whaley, 117 Va. 642, 86 S. E. 160.

A note in which debtor waives homestead creates no lien which is preserved by bankruptcy act. In re Moran (D. C.), 105 Fed. 901.

As to the form of waiver, see 3 Va. Law Reg. 309.

Can homestead exemption be waived under new constitution? See 10 Va. Law Reg. 363, 472, 469, 565.

See Burks' Pleading and Practice, pp. 797, 799, 820; Gregory's Forms Nos. 396, 397, 399, 406.

Discussed, 1 Va. Law J. 383, 514, 592.

Sec. 6549. How claim enforced, as to which exemption is waived, or which is otherwise paramount to the exemption.—In any proceeding for the enforcement of a claim, which by reason of the waiver aforesaid or otherwise, is paramount to the exemption, if there be, in the county or corporation wherein the proceeding is, estate of the debtor other than that which has been set apart as aforesaid, such other estate shall be subjected and exhausted before the estate so set apart is resorted to. If, however, the claim is secured by mortgage, deed of trust, or other specific lien, on the estate set apart, nothing in this section contained shall prevent the enforcement of

Digitized by Google

the security in the first instance and before resorting to other estate of the debtor. If a debtor die leaving unsecured debts which stand on the same footing, but as to some of which the homestead is waived and as to others not, his property not embraced in the homestead shall be first applied ratably to all debts of the same class, and if it be not sufficient to pay them all in full, then the creditors holding a waiver of the homestead exemption may resort to the property set apart as a homestead for the payment of the balance of their debts. (Code 1887, § 3648.)

Revisors' Note.—The last sentence of this section is new, and makes statutory the decision in Strange v. Strange, 76 Va. 240, and the cases following it.

If homestead be not claimed by debtor during his life, nor by his widow, etc., after his death, the whole estate must be distributed ratably among all the creditors (regardless of whether they hold homestead waiver obligations), unless there be some entitled to priority under section 5390 (Scott v. Cheatham, 78 Va. 82); but if claimed by either, and the homestead is waived as to some debts and not as to others, all the debts share ratably in the surplus above the exempted property, and when such surplus has been exhausted the exempted property may be subjected to pay such portion of the waived debts as remain unpaid. Strange's Adm'r v. Strange, 76 Va. 240; Scott v. Cheatham, 78 Va. 82; Hatorff v. Wellford, 27 Grat. 358; Linkenhoker's Heirs v. Detrick, 81 Va. 44, 59 Am. Rep. 648; Breeden v. McMinn's Adm'r, 5 Va. Law J. 771.

Sec. 6550. When the exemption ceases; how estate then passes; when and on what exempted estate the lien of a judgment or decree against householder attaches.—When any person, entitled as a householder to the exemption provided for in section sixty-five hundred and thirty-one, ceases to be a householder, or when any person removes from this State, his right to claim or hold any estate as exempt under the provisions of this chapter, shall cease; and, upon the death of a householder leaving neither wife nor minor children surviving him, or, if she or any of them survive him, and he leaves any estate which they or any of them are entitled to hold, or to have set apart to be held by them, as exempt under the preceding sections of this chapter, then upon her death or marriage, and if there be minor children, as soon as the youngest of those who attain the age of twenty-one years attains that age, or all marry, if they all marry before attaining that age, the exemption of any estate, real or personal, of such householder, then remaining and held as exempt under the provisions of this chapter, shall cease, and it shall pass as other real and personal estate, according to the law of descents and distributions, or as the same may be devised or bequeathed by said householder, subject to his debts; but the lien of a judgment, or decree for money, rendered against a householder, and which is not paramount to the exemption provided for in this chapter, shall, as to the real estate held as exempt by him, his widow, or minor children, attach to such only of that estate as he may be possessed of or entitled to at the time the exemption thereof ceases, as aforesaid, and until that time the said lien shall not be enforced. Such judg-

Digitized by Google

ments shall attach in the order of their priority, respectively. (Code 1887, § 3649.)

Revisors' Note.—The last sentence of this section is new, and makes statutory in plain terms the order in which the judgments shall attach. It may be argued with a good deal of force that the judgments are all in existence and stand ready to attach to the property, and hence that they should stand pari passu and all attach at the same time, but this argument would apply equally to any property acquired by a judgment debtor after several judgments had been rendered against him.

It was formerly held that where homestead exemption had been regularly set apart it was for the benefit of the householder and his family, and it was not ended by the latter's decease. Wilkinson v. Merrill, 87 Va. 513, 12 S. E. 1015, 11 L. R. A. 632, thus far overruling Calhoun v. Williams, 32 Grat. 18, 34 Am. Rep. 759. See, also, 2 Min. (4th Ed.) 910; 4 Min. (3d Ed.) 1007. But see 2 Va. Law Reg. 170, where the correctness of this construction is questioned. The question seems now settled by the language of the above section, which was not in existence when the party claiming homestead in Wilkinson v. Merrill ceased to be a householder. See, also, 6 Va. Law Reg. 143, where the opinion is expressed that the first clause of above section is unconstitutional.

"Main object of the section, in declaring when the exemption shall cease, was to fix the time when a judgment lien shall attach to the exempted real estate; and it is declared that it shall not attach except to such real estate as the householder shall have at the time the exemption right ceases, and it shall attach then. This leaves the householder at liberty, while the exemption continues, to alien the exempted real estate, free from any incumbrance by the lien of judgment (in the absence of waiver) recovered during the time the right of exemption exists, and thus enables him to make a good title to the purchaser, at least so far as any such judgment is concerned." Burks' Address. 2 Barton, L. Pr. (2d Ed.) 1402. See, also, Richardson v. Butler, 1 Va. Law J. 120.

Since the homestead is not so much an estate in the land itself as a right of occupancy which cannot be disturbed while the homestead character exists (Richardson v. Butler, 1 Va. Law J. 120; Scott v. Cheatham, 78 Va. 83; Lindsay v. Murphy, 76 Va. 428), it follows that whilst the lien of the judgment which attached before the homestead was claimed could not be enforced during the existence of the homestead yet it revived in all its original form so soon as the homestead exemption ceased (Blose v. Bear, 87 Va. 178, 179, 12 S. E. 294, 11 L. R. A. 705). Quaere, as to effect of above section upon this subject, Id.; Williams v. Watkins, 92 Va. 685, 24 S. E. 223; 2 Va. Law Reg. 179.

This statute clearly contemplates that, even in the case of real estate, the householder may alien his homestead free from liens that are not paramount thereto. Much more would this be true in the case of personal estate. Williams v. Watkins, supra.

The householder himself ought not to be required to give bond and security to have the corpus of the homestead forthcoming at the expiration of the homestead period. Williams v. Watkins, 92 Va. 680, 24 S. E. 223; Mahoney v. James, 94 Va. 176, 26 S. E. 384. Nor should the widow or the guardian of the infant children of the householder be required to do so. Mahoney v. James, 94 Va. 176, 26 S. E. 384. But see 2 Va. Law Reg. 897; Clendenning v. Conrad, 91 Va. 410, 21 S. E. 818.

It is plain that the property held as a homestead exemption which remains after said exemption expires can be subjected to the debts of the said householder. Hanby's Adm'r v. Henritze's Adm'r, 85 Va. 177, 185, 7 S. E. 204.

See, also, 8 Va. Law Reg. 897, note to Mahoney v. James, supra.

Where a judgment was not rendered until a homestead was set apart, and it was barred by the limitations before the exemption ceased,

Digitized by Google

a suit to enforce the lien after the householder's death, leaving neither widow nor minor child, instituted more than twenty years after the issue of execution, was barred. Akiss' Ex'rs v. Satchell, 104 Va. 700, 52 S. E. 378, 11 Va. Law Reg. 886.

See sections 6470, 6474, 6477, 6498 and notes; Burks' Pl. & Pr., pp. 608, 615, 805.

As to priority of waiver debts over non-waiver debts, see section 6549 and note.

Discussed, 1 Va. Law J. 261.

Sec. 6551. Judgments or decrees on instruments waiving the homestead or on demands against which the homestead cannot be claimed to embody the fact; the same on the executions issued thereon.—Whenever a judgment or decree is rendered on an instrument waiving the homestead or upon a demand against which the homestead cannot be claimed the court shall include in its judgment or decree words to the following effect, as the case may be: "Upon an instrument waiving the homestead," or "upon a claim against which the homestead cannot be demanded." This statement shall be endorsed upon the executions issued upon said judgments or decrees. In any action or suit when it is not apparent from the face of the pleadings that the demand is not subject to the homestead exemption the plaintiff shall not have the benefit of the foregoing section unless in his declaration he alleges that his demand is not subject to such homestead exemption. But no presumption of non-waiver or that the judgment or decree was rendered upon a demand against which homestead could be claimed is to be drawn from the silence of any judgment, execution, or decree on the matters provided for by this section. (1889-90, p. 117.)

The fact that a judgment erroneously states that it was rendered on an instrument waiving the homestead does not vitiate the judgment, but it may be amended in that respect. Long v. Pence's Committee, 93 Va. 584, 25 S. E. 593.

Sec. 6552. The articles which a householder, in addition to the foregoing exemption, may hold exempt from levy or distress.—In addition to the estate, not exceeding in value two thousand dollars, which every householder residing in this State shall be entitled to hold exempt, as provided in the preceding sections of this chapter, he shall also be entitled to hold exempt from levy or distress the following articles, or so much or so many thereof as he may have, to be selected by him or his agents, except that the live stock so exempted under this and the following sections of this chapter shall not be exempt from any levy or distress made under the provisions of chapter one hundred and thirty-seven of this Code:

First. The family Bible.

Second. Family pictures, school books, and library for the use of the family, not exceeding in all one hundred dollars in value.

Third. A seat or pew in any house or place of public worship.

Fourth. A lot in a burial ground.

Fifth. All necessary wearing apparel of the debtor and his fam-

Digitized by Google

ily; all beds, bedsteads, and bedding necessary for the use of such family; and all stoves and appendages put up and kept for the necessary use of the family, not exceeding three.

Sixth. One cow and her calf till one year old, one horse, six chairs, six plates, one table, six knives, six forks, one dozen spoons, two dishes, two basins, one pot, one oven, six pieces of wooden or earthenware, one loom and its appurtenances, one safe or press, one spinning wheel, one pair of cards, one axe, two hoes; fifty bushels of shelled corn, or, in lieu thereof, twenty-five bushels of rye or buckwheat; five bushels of wheat, or one barrel of flour; twenty bushels of potatoes, two hundred pounds of bacon or pork, three hogs, fowls not exceeding in value ten dollars, ten dollars in value of forage or hay, one cooking stove and utensils for cooking therewith, one sewing machine, and in the case of a mechanic, the tools and utensils of his trade, not exceeding one hundred dollars in value, and in case of an oysterman or fisherman, his boat and tackle, not exceeding two hundred dollars in value; if the boat and tackle exceed two hundred dollars in value the same shall be sold, and out of the proceeds the oysterman or fisherman shall first receive two hundred dollars in lieu of such boat and tackle. (Code 1887, § 3650; 1889-90, p. 102; 1901-2, p. 48.)

Revisors' Note.—The words, "fifty bushels of shelled corn," appearing in the sixth sub-division of this section, are used in lieu of "ten barrels of corn." This change settles a much disputed question.

Cited in Riggan's Adm'r v. Riggan, 93 Va. 78, 24 S. E. 920; Hurst v. Leckie, 97 Va. 560, 34 S. E. 464, 75 Am. St. Rep. 798. The exemption under the section is never exhausted (section 6547), and cannot be waived (section 6548).

See note to section 6562; Burks' Pleading and Practice, pp. 12, 633, 799, 807, 808, 809, 810.

Discussed, 3 Va. Law J. 257, 258, 389, 457.

Sec. 6553. Additional articles which are exempted to householder, while engaged in agriculture.—If the householder be at the time actually engaged in the business of agriculture, there shall also be exempt from such levy or distress, while he is so engaged, to be selected by him or his agent, the following articles, or so many thereof as he may have, to-wit: one yoke of oxen, or a pair of horses or mules in lieu thereof (unless he selects or has selected a horse or mule under the preceding section, in which case he shall be entitled to select under this section only one), with the necessary gearing, one wagon or cart, two plows, one drag, one harvest cradle, one pitchfork, one rake, and two iron wedges. (Code 1887, § 3651.)

Discussed, 3 Va. Law J. 257, 258.

See Burks' Pleading and Practice, pp. 12, 633, 799, 807, 808, 809, 810.

Sec. 6554. Family may use such dead victuals and live stock, as are necessary.—The dead victuals (or as much thereof as may be necessary) which, at the death of any person, shall have been laid

Digitized by Google

in for consumption in his family, shall remain for the use of such family, if the same be desired by any member of it, without account thereof being made. Any live stock necessary for the food of the family may be killed for that use before the sale or distribution of the estate, and the same shall not be taken into account by the administrator or executor of said estate. (Code 1887, § 2649.)

See Burks' Pl. & Pr., p. 808.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 85, section 14.

Sec. 6555. What wages of a laboring man, who is a householder, are exempt.—Wages owing to a laboring man being a householder, not exceeding fifty dollars per month, shall also be exempt from distress, levy, or garnishment. (Code 1887, § 3652.)

This exemption cannot be waived so as to give a lien by fi. fa. thereon. Crump v. Com., 75 Va. 922.

A mail carrier is a "laboring man." Farinholt v. Luckhard, 90 Va. 936, 21 S. E. 817, 44 Am. St. Rep. 953. The term "laboring man" includes all "householders who receive wages for their services." Section 6566.

A stenographer is a laborer within the meaning of the Ga. exemption statute. Cohen v. Alrich, 62 S. E. 1015.

Cited in Mahoney v. James, 94 Va. 178, 26 S. E. 384; Atkinson v. Solenberger, 112 Va. 667, 72 S. E. 727.

See Burks' Pleading and Practice, pp. 44, 633, 663, 799, 807, 810.

For note upon constitutionality of this section, see 9 Va. Law Reg. 458.

Sec. 6556. Proceedings by execution debtor to have wages declared exempt.—If summons in garnishment to enforce an execution issued on a judgment obtained against a laboring man who is a householder, be served on any employer of such householder, the execution debtor may, after five days' written notice to the execution creditor and to the employer, apply to the justice issuing such execution, or to the court, or judge thereof in vacation, from whose clerk's office such execution issued, as the case may be, to have so much of the wages of said execution debtor as does not exceed fifty dollars per month declared to be exempt from the execution. Such application shall be informally heard forthwith, and if it shall appear that the wages, or any part thereof, are exempt, such court, judge, or justice shall declare that the amount of wages so found to be exempt is not subject to the execution. The remedy given in this section shall be available to the execution debtor if no summons in garnishment be served, but notice of the outstanding execution is otherwise received by the employer.

Revisors' Note.—This section is new, and it purpose is to give the laboring man who is a househoder a summary remedy to have his wages not exceeding fifty dollars per month declared exempt, so that the employer may feel safe in paying the wages to that extent when due, regardless of the return day of the summons in garnishment. Ofttimes heretofore employers summoned in garnishment proceedings, fearing a liability upon themselves even when the wages were less than fifty dollars per month, or when more than fifty dollars per month, fearing a liability

Digitized by Google

for the whole amount, refused to pay the wages, or any part thereof, until the garnishment proceedings were disposed of. The result was to tie up the wages until the return day of the summons in garnishment, which in many cases caused much distress to the laboring man and his family. Under the remedy given the laboring man by this section, employers will have no ground whatever for refusing to pay the wages, when due, to the extent of the lawful exemption.

Sec. 6557. Protection of laboring men who are householders against being deprived of the exemption under section sixty-five hundred and fifty-five.—It shall be unlawful for any person to institute or permit to be instituted proceedings in his own name or in the name of any other person, or to assign or transfer, either for or without value, any claim for debt or liability of any kind held by him against a resident of this State who is a laboring man and a householder for the purpose of having payment of the same or any part thereof enforced out of the wages exempted by section sixty-five hundred and fifty-five by proceedings in attachment or garnishment in courts or before justices of the peace in any other State than in the State of Virginia, or to send out of this State by assignment, transfer, or in any other manner whatsoever, either for or without value, any claim or debt against any resident thereof for the purpose or with the intent of depriving such person of the right to have his wages exempt from distress, levy, or garnishment according to the provisions of section sixty-five hundred and fifty-five. And the person instituting such suit or permitting such suit to be instituted, or sending, assigning, or transferring any such claim or debt for the purpose or with the intent aforesaid shall, upon conviction thereof, be fined not less than ten nor more than one hundred dollars, and shall, in addition thereto, be liable in an action of debt to the person from whom payment of the same, or any part thereof, shall have been enforced by attachment or garnishment or otherwise, elsewhere than in the State of Virginia, for the full amount, payment whereof shall have been so enforced, together with interest thereon and the costs of the attachment or garnishee proceedings, as well as the costs of said action.

The amount recovered in such action shall stand on the same footing with the wages of the plaintiff under section sixty-five hundred and fifty-five and shall also be exempt and free from any and all liability of the plaintiff to the defendant in the way of set-off or otherwise.

The fact that the payment of a claim or debt against any person entitled to the exemption provided for in section sixty-five hundred and fifty-five has been enforced by legal proceedings in some State other than the State of Virginia in such manner as to deprive such person to any extent of the benefit of such exemption shall be prima facie evidence that any resident of this State who may at any time

Digitized by Google

have been owner or holder of said claim or debt has violated this section. (1895-6, p. 324; 1897-8, p. 667.)

See Burks' Pleading and Practice, pp. 89, 664, 809.

Sec. 6558. Exemption of the wages of minors from garnishment process.—The wages of a minor shall not be liable to garnishment, or otherwise liable to the payment of the debts of parents. (1897-8, p. 599.)

Sec. 6559. Garnishment of and levy of execution on wages and salaries of State employees.—Unless otherwise exempted, the wages and salaries of all employees of this State, other than State officers, shall be subject to garnishment or execution upon any judgment rendered against them. Whenever the salary or wages of such employees as above mentioned shall be garnisheed under this section, the process shall be such as is usual in other cases of garnishment, and shall be served on the judgment debtor and on the Auditor of Public Accounts, or other officer through whom the judgment debtor's salary or wages is paid, and upon such service the Auditor or such other officer shall, on or before the return day of process, transmit to the clerk of the court or justice issuing the process a certificate showing the amount due from the State to such judgment debtor, up to the return day of the process, which amount said Auditor shall hold subject to order of the court or justice issuing the process. Said certificate shall be evidence of all facts therein stated, unless the court or justice direct that the deposition of the Auditor, or such other officer through whom the judgment debtor's salary or wages is paid, be taken, in which event the deposition of said Auditor or such other officer shall be taken in his office and returned to the clerk of the court in which the garnishment is or to the justice issuing the process, just as other depositions are returned, and in no such case shall the Auditor or other such officer be required to leave his office to testify. In all proceedings under this section, if the judgment be for the plaintiff, the amount found to be due the judgment debtor by the State shall be paid as directed by the court or justice. (1899-00, p. 546; 1902-3-4, p. 136.)

Revisors' Note.—The act from which this section is taken permitted garnishment of the salaries of all State officials and employees. The revisors were of opinion that the State should not be garnished in any case, but knowing that the law had operated beneficially and effectively as to mere day laborers and employees of the State, enabling them to get credit when otherwise they could not have secured it, they struck out the provision concerning State officers and limited the revised section to employees. The places of mere employees could, in most instances, be more readily supplied than those of State officers, and if, for instance, the salaries of the Governor, Attorney-General and judges could be entirely taken away by garnishment, the State might at some time be left impotent to discharge its functions.

See note 4 Va. Law Reg. 848.

Digitized by Google

TITLE 63.

Repeal of Statutes.

CHAPTER 275.

Repeal of Acts of a General Nature.

Sec.
6567. When this Code to go into effect, and all acts of a general nature be repealed.
6568. Acts passed by General Assembly between January 9, 1918, and January 13, 1920, not affected.
6569. Effect of such repeal.
6570. Nothing in Code to operate discontinuance of any pending case; of a notice, recognizance, or process given, taken, or issued before Code in force; where books, records, and papers in custody of clerks, to remain.
6571. How persons in office affected by said repeal.

Sec. 6567. When this Code to go into effect, and all acts of a general nature be repealed.—All the provisions of the preceding chapters shall be in force upon and after the thirteenth day of January, nineteen hundred and twenty; and all acts and parts of acts of a general nature, in force at the time of the adoption of this Code, shall be repealed from and after the said thirteenth day of January, nineteen hundred and twenty, with such limitations and exceptions as are hereinbefore or hereinafter expressed. (Code 1887, § 4202.)

Revisors' Note.—As reported by the revisors this chapter fixed January 1, 1919, as the date for the Code to go into effect, but the General Assembly amended the chapter and made the date January 13, 1920.

The act of 1852 authorizing the voluntary incorporation of building fund associations was an act of a general nature, and was repealed by section 4202 of the Code of 1887. Crabtree v. O. D. B. & L. A., 95 Va. 670, 29 S. E. 741, 64 Am. St. Rep. 818.

Section 4202 of the Code of 1887 repealed act of March 9, 1880, as to the action of ejectment in certain counties, as that act was a general law. Carter's Heirs v. Ewards, 88 Va. 205, 13 S. E. 352.

An election held July 1, 1886, under act of February 26, 1886, was not invalidated by repeal of that act after May 1, 1888, by section 4202 of the Code of 1887. Thomas v. Com., 90 Va. 92, 17 S. E. 788.

Cited but not construed, Bertram v. Commonwealth, 108 Va. 902, 62 S. E. 969.

See remarks of Judge E. C. Burks on chapter 206 of the Code of 1887 (corresponding to this chapter), 2 Barton, L. Pr. (2d Ed.) 1374.

Sec. 6568. Acts passed by General Assembly between January

Digitized by Google

ninth, nineteen hundred and eighteen, and January thirteenth, nineteen hundred and twenty, not affected.—The enactment of this Code shall not affect any act passed by the General Assembly, which shall have become a law after the ninth day of January, nineteen hundred and eighteen, and before the thirteenth day of January, nineteen hundred and twenty; but every such act shall have full effect, and so far as the same varies from or conflicts with any provision contained in this Code, it shall have effect as a subsequent act, and as repealing any part of this Code inconsistent therewith. (Code 1887, § 4203.)

Act (Ex. Sess. 1887, p. 118) passed April 28, 1887, and Act (1887-8, p. 486) passed March 5, 1888, amendatory thereof, were not affected by the adoption of the Code of 1887, and the repeal of all acts and parts of acts of a general nature in force at the time of its adoption. Somers' Case, 97 Va. 760, 33 S. E. 381.

An act passed January 18, 1888, amending section 674 of the Code of 1887 was given full effect under this section, and section 674 of that Code never became a law. Powell's Ex'r v. City of Richmond, 94 Va. 79, 81, 26 S. E. 389.

Section 4203 of the Code of 1887 (same as this section, with the exception of the dates,) was held to apply to acts of a general nature, and not to acts of incorporation, which are private acts. Va. Dev. Co. v. Crozer Iron Co., 90 Va. 126, 133, 17 S. E. 806, 44 Am. St. Rep. 893.

Sec. 6569. Effect of such repeal.—Such repeal shall not affect any offense or act committed or done, or any penalty or forfeiture incurred, or any right established, accrued, or accruing before the said thirteenth day of January, nineteen hundred and twenty, or any prosecution, suit, or proceeding pending on that day, except that the proceedings thereafter had shall conform, so far as practicable, to the provisions of this Code; and where any penalty, forfeiture, or punishment is mitigated by those provisions, such provisions may, with the consent of the party affected, be applied to any judgment to be pronounced after that day: and such repeal, as to any statute of limitations, under which the bar of a right of action or remedy is complete at the time the repeal takes effect, shall not be deemed a removal of such bar, but the bar shall continue, notwithstanding such repeal. (Code 1887, § 4204.)

This section reverses the rule laid down in Scutt's Case, 2 Va. Cas. 54; Attoo's Case, Id. 382; Leftwich's Case, 5 Rand. 657; Pitman's Case, 2 Rob. 800, 813. See, also, Pegram's Case, 1 Leigh 569; Allen's Case, 2 Leigh 727, 731; Wyatt's Case, 6 Rand. 694.

Repeal of statute by implication—Not favored.—A repeal of a statute by implication is not favored by the courts. A statute will not be repealed by implication unless the latter statute is so inconsistent with the first that they cannot stand together, or the latter embraces the whole subject-matter of the first. Hogan v. Gulgon, 29 Grat. 705; Fox's Adm'rs v. Com., 16 Grat. 1; McCready v. Com., 27 Grat. 982; Davies v. Creighton, 33 Grat. 696; Haynes v. Com., 31 Grat. 96; Ryan v. Com., 80 Va. 385; Fulkerson v. Treasurer of City of Bristol, 95 Va. 5, 27 S. E. 815; Somers' Case, 97 Va. 759, 33 S. E. 381.

General revision—Presumption as to change of old law.—When there has been a general revision of the laws, the presumption is that the old law was not intended to be changed, unless a contrary intention

Digitized by Google

plainly appears in the new. Harrison v. Wissler, 98 Va. 597, 36 S. E. 982.

Proceedings conformed to new Code.—A case in which the proceedings were made to conform to the Code of 1887, though the case arose before the same went into effect. Edmunds' Ex'r v. Bruce, 88 Va. 1007, 14 S. E. 840.

Defense once valid subsists.—If a party shows a defense valid at the time it is passed on by the court, a subsequent change in the law cannot deprive him thereof. Currin v. Spraull, 10 Grat. 145, 148.

Inchoate rights.—Inchoate rights derived under a statute are lost by the repeal of the statute before they are perfected, unless expressly saved by express words in the repealing statute. Crawford v. Halsted, &c., 20 Grat. 211.

Generally.—See section 6 and notes.

For W. Va. decisions on similar statute, see Justis' Annotations, chapter 166, section 2.

Sec. 6570. Nothing in Code to operate discontinuance of any pending case; of a notice, recognizance, or process given, taken, or issued before Code in force; where books, records, and papers in custody of clerks, to remain.—Although a notice, recognizance, or process shall have been given, taken, or issued before the day prescribed for the commencement of this Code, it may, nevertheless, be given, taken, or returnable to a day after such commencement, or to a court established by this Code or the clerk's office of such court, in like manner as if this Code had commenced before the same was given, taken, or issued. And nothing in this Code shall operate to discontinue any cause or matter, civil or criminal, which shall be depending and undetermined in any court on the day before this Code takes effect; but every such cause and matter shall be proceeded in, tried and determined in such court, or in the court which succeeds to or has its jurisdiction. The papers and records of such causes and matters, and all books, records and papers whatever which on the said day may be in the custody of any clerk of a court shall remain in custody of the clerk of the same, or of such court as succeeds to or has its jurisdiction. Code 1887, § 3125.)

Sec. 6571. How persons in office affected by said repeal.—All persons who, at the time when the said repeal takes effect, shall hold any office under any of the acts hereby repealed, shall continue to hold the same according to the tenure thereof, except those offices which may have been abolished, and those as to which a different provision is made by this Code. (Code 1887, § 4205.)

Digitized by Google

APPENDIX

TAX BILL*

Sec.
1. Enacting clause.
2. Taxes on lands and lots, ground rents, and rent charge.
3. Classification of persons and personal property.

SCHEDULE A.

4. Classification under Schedule A.
5. Tax on persons.

SCHEDULE B.

6. Tangible personal property.
7. Taxes on tangible personal property.

SCHEDULE C.

8. Personal property in choses in action, etc.
9. Taxes on intangible personal property.

SCHEDULE D.

10. Income.
11. Tax on income.

ON BUSINESS AND OTHER SUBJECTS.

12. Tax on wills and administrations.
13. Tax on deeds and contracts.
14. Tax on suits.
15. When tax to be paid.
16. Tax on seals.
17. Tax on banks, banking associations, trust and security companies.
18. Further provisions as to same.
19. Time of payment of taxes against stockholders.
20. Proceedings for collection of same.
21. Transfer of stock; legal effect of lists aforesaid.
22. Penalty upon bank for failure to comply with act.
23. Tax on insurance companies.
24. Reports to Commissioner of Insurance; penalties; duty of Auditor of Public Accounts.
25. Certain local mutual fire insurance companies exempt.
26. Property of insurance companies to be taxed as other property; no tax except license tax on gross premiums.
27. Railway and canal corporations.
28. Tax on railway and canal corporations.
29. Express companies, refrigerator, oil, stock, fruit and other car loaning and other car companies, operating upon the railroads in this State except sleeping car, dining car, drawing-room car, and palace car companies.
29½ Tax on express companies, refrigerator, oil, stock, fruit and other car loaning and other car companies, operating upon the railroads in this State, except sleeping car, dining car, drawing-room car and palace car companies.
30. Corporations operating steamboats, steamships or other floating property for the transportation of passengers or freight.
31. Tax on corporations which operate steamships, steamboats or other floating property for the transportation of passengers or freight.
32. Sleeping car, parlor car, and dining car companies.
33. License tax on each sleeping car, parlor car or dining car company.
34. Incorporated telegraph and telephone companies.
35. Tax on incorporated telegraph and telephone companies owning or operating telegraph or telephone lines in this State.
36. License tax on telegraph and telephone companies, and on any firm or person operating the apparatus necessary to communicate by telegraph or telephone.
36¼. Water, heat, light and power companies.
36½. Tax on water, heat, light and power companies.
37. Fees on charters.
38. Charter tax.
38a. Entrance fees for foreign corporations.
39. Certain charter amendments prohibited; fees for amendments, mergers, etc.
40. How fees paid by foreign corporations; how preceding sections construed.
41. Fees for registration.

* The revenue act, continued in force by section 2398 of the Code, and commonly known as the tax bill, is here printed with its amendments, including those of the session of 1918.

Digitized by Google

Sec.
42. Failure to make report hereinbefore required.
43. Annual State franchise tax.
44. Tax on inheritances.

LICENSES.

45. Merchants.
46. Merchants' licenses.
46½. Merchant on train.
46½ (a) Oyster packers.
46½ (b) Oyster packers' licenses.
47. Railroad and other incorporated companies which sell mineral or forest products or other articles.
48. Commission merchants and brokers.
49. Commission merchants and brokers' license.
50. Sale by peddlers.
51 Peddlers' license.
51 (a). Lightning rod merchant.
52. Sale or barter of patent rights.
53. License for sale or barter of patent rights.
54. Land agents.
55. License on a land agent.
56. Book agents.
57. License on book agents.
58. Auction sales; who may sell without a license.
59. Auctioneer's account of sales.
60. What an auctioneer may do.
61. Classification of auctioneers.
62. General auctioneers; what they may sell.
63. License for general auctioneers.
64. Real estate auctioneers.
65. Real estate auctioneer's license.
66. Tobacco auctioneers.
67. Tobacco auctioneer's license.
67a. Live-stock auctioneers.
67b. Live-stock auctioneer's license.
68. Licenses to retailers of tobacco.
69. Junk dealers, canvassers, etc.
70. Junk dealers' license.
71. Common criers.
72. License to common crier.
73. Ship-brokers.
74. Ship-brokers' license.
75. Stock brokers.
76. License to stock brokers.
77. Private bankers.
78. License to private bankers.
79. Pawnbrokers.
80. Pawnbrokers' license.
81. Lending money on household goods, etc.
82. License on a building and loan association or company.
83. Insurance brokers.
84. Licenses—insurance brokers.
85. Mercantile agencies.
86. Licenses to mercantile agencies
86½. Collection agencies defined; license for.
87. Undertakers.
88. Undertaker's license.
89. Civil and electrical engineers.
90. Contractors.
91. Licenses to contractors.
92. Architects.
92½. License to keep a hotel.
93. Houses of private entertainment, etc.
94. What constitutes a house of private entertainment.
95. License to keep a house of private entertainment.
96 What constitutes an eating house.
97. License to keep an eating house.
97½. Exempting persons conducting temporary eating or lodging-houses, horse-lots, and confectioneries at religious gatherings from license tax.
98. What constitutes a bowling saloon.
99. License to keep a bowling saloon.
100. What constitutes a billiard room.
101. License to billiard saloons and pool rooms.
102. What constitutes a bagatelle saloon.
103. License to a bagatelle saloon.
104. Property used in licensed business taxable.
105. Theatres, public performances, exhibitions, etc.
106. Licenses to theatres, public performances, exhibitions, etc.
106½. Moving picture machines, phonographs, etc.
107. Circus, menagerie, carnival shows, etc.
108. Separate license for shows described in preceding section; duties of police.
109. License for shows, circuses or menageries.
109½. License for circuses, carnivals, etc., held during fairs.
110. Hobby-horse machines, merry-go-round, and other like machines.
111. License to hobby-horse machines, merry-go-round, and other like machines.
111½. License to permanent parks for public amusement.
112. License to public rooms and skating rinks.
113. Public rooms.
113½. Soft drinks, manufacture, sale of, etc.
114. Attorneys, physicians and dentists.
115. Attorney at law; where he may practice.
116. Licenses to attorneys at law.
117. Dentists.
118. License of dentists.
118a. Veterinary surgeons.
119. Venders of medicines, salves, liniments, etc.
120. License to venders of medicines, salves, liniments, etc.
121. Daguerrean and photograph artists and their agents.
122. License of daguerrean and photograph artists and agents.
123. Stallions and jackasses.
124. Licenses to owners of stallions and jackasses.
125. License on bulls.
126. Agents for renting houses.
127. License to agents for renting houses.
128. Labor agents.
129. Licenses to labor agents.
130. Persons operating laundries.
131. Storage and impounding.
132. Licenses for storage and impounding.
133. Livery stables.
134. Licenses to livery stable keepers.
135. Licenses to persons selling or offering to sell sewing machines and accessories.

Digitized by Google

Sec.
136. Agents for the sale of manufactured implements or machines by retail other than sewing machines.
137. License to agents for the sale of manufactured implements or machines by retail other than sewing machines.
138. License tax on peddlers of manufactured implements and machines other than sewing machines, and on peddlers of cooking stoves and ranges and clocks.
139. Licenses on slot machines.
140. License on dealers in pistols, dirks or bowie knives.
141. License tax upon gypsies, etc. (Repealed.)
142. Social club license. (Repealed.)

GENERAL PROVISIONS.

143. Tax on each business engaged in.
144. Aggrieved corporation may appeal; penalty for failure to make report; duty of the Corporation Commission; penalty for failure to pay taxes.
145. School taxes to be separately assessed and paid in money.
146. Inconsistent acts repealed.

An Act to raise revenue for the support of the government and public free schools, and to pay the interest on the public debt, and to provide a special tax for pensions as authorized by section 189 of the Constitution. Approved April 16, 1903.

1. Be it enacted by the General Assembly of Virginia, That the taxes on persons, property, and incomes for the year commencing the first day of February, nineteen hundred and three, and each year thereafter, and on licenses to transact business shall be as follows:

If the construction of a revenue statute is doubtful, the instructions issued by the Auditor of Public Accounts to the commissioners of the revenue who are to put the statute into operation are entitled to great weight. Com. v. Armour & Co., 118 Va. 242, 87 S. E. 610.

Sec. 2. Taxes on lands and lots, ground rents, and rent charge.—On tracts of land and lots, and the improvements thereon, not exempt from taxation, ground rents and rent charge, there shall be a tax of ten cents on every hundred dollars of the assessed value thereof, which shall be applied to the support of the public free schools of the State.

See section 2205 of the Code.
As to ground rents, see section 2245 of the Code.

Sec. 3. Classification of persons and personal property.—The taxable subjects shall be classified by schedules as follows—to-wit:

Schedule A.

Sec. 4. Classification under Schedule A.—The classification under Schedule A shall be as follows—to-wit:

First. The number of white male inhabitants who have attained the age of twenty-one years, except those pensioned by this State for military services.

Second. The number of colored male inhabitants who have attained the age of twenty-one years, except those pensioned by this State for military services.

Sec. 5. Tax on persons.—Upon every male person, classified in Schedule A, there shall be a tax of one dollar and fifty cents, of which one dollar shall be for aid of the public free schools, and fifty cents shall be returned and paid into the treasury of the county or city in which it shall have been collected.

Schedule B.

Sec. 6. Tangible personal property.—The classification under Schedule B shall be as follows:

(1) The aggregate number of horses, mules, asses, and jennets, and the value thereof.

Digitized by Google

(2) The number of cattle, and the value thereof.
(3) The number of sheep and goats, and the value thereof.
(4) The number of hogs, and the value thereof.
(5) The aggregate number and value of all family carriages, stage coaches, carts, wagons, carry-logs, spring wagons, carryalls, gigs, buggies, sleighs, automobiles, bicycles, and vehicles of like kinds, to either of those numerated.
(6) The aggregate value of all books and pictures, except so far as the same are exempt by law.
(7) The aggregate value of all tools of mechanics.
(8) The aggregate value of all farming implements.
(9) The aggregate value of all felled timber, railroad ties, telegraph, telephone or electric light poles, piles, mine props, cord wood, hoop-poles, staves, and bark which has been felled for sale by other than the owner of the land upon which it has been felled within twelve months preceding the first day of February of each year.
(10) The number of watches and clocks, and the value thereof.
(11) The aggregate number and value of pianofortes, melodeons, harps, organs, and musical instruments of all kinds.
(13) The aggregate value of all household and kitchen furniture.
(14) The aggregate value of gold and silver plate, plated ware, diamonds, cameos, or other precious stones or precious metals used as ornaments or jewelry, not including such subjects as are embraced in any other number of this schedule.
(15) The aggregate value of grain, tobacco, and other agricultural productions in the hands or possession, legal or constructive, of a purchaser.
(16) The number of boats or water crafts under five tons burthen, used for business or pleasure, and the aggregate value thereof.
(17) The number of all ships, tugboats, barges, boats, or other water crafts of five tons burthen and over, and all other floating property not required to be assessed by the State Corporation Commission, used for business or pleasure, and the aggregate value thereof, with their tackle, rigging, and furniture and all else that pertains to them, or of any share or interest therein, though the said ships, or other water craft, or any of them, may not be, at the time when the assessments are made, in the waters of Virginia.
(18) The aggregate value of all shot-guns, rifles, muskets, and other fire-arms, bowie knives, dirks, and all weapons of a similar kind; provided, that all fire-arms issued by the State to members of volunteer companies, or for purposes of police, shall not be listed for taxation.
(19) The value of all seines, pound nets, fykes, weirs, or other devices for catching fish.
(20) The value of all toll bridges, turnpikes and ferries, except steam ferries, owned and operated by a chartered company.
(21) The value of all poles, wire, switchboards, et cetera, telephone or telegraph instruments, apparatus, et cetera, owned by any person, firm, or association or company (not incorporated).
(22) The aggregate value of all other tangible personal property not specifically enumerated in this or other schedules, and not exempt from taxation; provided, that grain, tobacco, and other agricultural productions in the hands of a producer of the same are hereby declared exempt from taxation as property uner this schedule. (1910, p. 487.)

Sec. 7. Taxes on tangible personal property.—On all personal property mentioned in this schedule there shall be a tax of ten cents on every hundred dollars of the assessed value thereof, which shall be applied to the support of the public free schools of this State.

See section 2205 of the Code.

Digitized by Google

Schedule C.

Sec. 8. Personal property in choses in action, etc.—The classification under "Schedule C" shall be as follows:

First. Bonds (except bonds of the United States), notes, and other evidences of debt, including bonds of other States than Virginia, bonds of counties, cities and towns located outside of the State of Virginia, bonds of railroad and canal companies and other corporations, bonds of individuals and all demands and claims, however evidenced, whether secured by mortgage, deed of trust, judgment, or otherwise, or not so secured.

The commissioner shall require each person, natural or artificial, residing in his district, city or town, to make out and deliver to said commissioner a list in detail of the date, amount for which originally given, but not the name of the debtor, the dates and amounts of the credits thereon, the balance due, and the time of payment of all bonds, notes and other evidences of debt owing to such person in excess of one hundred dollars, and a statement of the aggregate amount of all bonds, notes, and other evidences of debt under one hundred dollars each. The Auditor of Public Accounts shall furnish the necessary blanks for such lists and statements to the commissioner of the revenue.

The list and statement shall be signed and sworn to by the taxpayer before the commissioner of the revenue or some notary public, or some person authorized to administer oaths, who shall certify that said list was signed and sworn to before him. The commissioner shall sign the lists and determine the value of the bonds, notes and other evidences of debt therein enumerated, subject to an appeal from his valuation to the circuit, county or corporation court. The said list and statement shall include bonds of railroad and canal companies, bonds of counties, cities, towns, located outside of the State of Virginia, and bonds of other States and corporations, bonds of individuals, and all demands and claims, however evidenced, whether due or not, from debtors residing out of or within the State, city or county, whether secured by a deed of trust or by judgment or not, deducting from the aggregate amount thereof all such bonds, demands or claims not otherwise deducted owing to others as such principal debtor, and not as a guarantor, endorser or surety; but not deducting any voluntary obligation nor any money that may be due to others on account of the purchase of securities which are non-taxable; but no bond, demand or claim constituting a part of the capital, as defined in this act of the business done out of this State, or any capital used by any merchant or manufacturer, and taxed under this act, shall be included in this section. No credit shall be given for debts due, nor deductions made, unless such taxpayer shall append to said list an inventory showing the persons and address to whom said demands or debts are owing and the amount of each.

The list and statement herein provided for shall be delivered by said commissioner to the clerk of the circuit, county or corporation court of his county or city, who shall file the same in his office, properly labeled, keeping the list for each year separate. If any person, firm or corporation shall, with a view to evade the payment of taxes, fail or refuse to make out and deliver under oath such list and statement as herein provided for of any such bonds, notes or other evidences of debt, then the omitted evidences of debt shall not be recoverable, by action at law or suit in equity in any of the courts of this Commonwealth or by any legal process, or by sale under deed of trust, or otherwise, until they shall have been reported for assessment and the taxes paid thereon for the years that they should have been paid, with an addition of fifty per centum of the amount of said unpaid taxes; and the failure to make out such list and statement to the said commissioner shall be taken as prima facie evidence of the intention to so evade payment of taxes.

But where in any action at law or suit in equity it is ascertained

Digitized by Google

that there are unpaid taxes and penalties on the evidence of debt sought to be enforced, and the suitor makes affidavit that he is unable to pay these taxes and penalty, but is willing for the same to be paid out of the first recovery on the evidence of debt, the court shall have authority to enter as a part of any judgment or decretal order in said proceedings that the amount of taxes and penalties due and owing shall be paid to the proper officer out of the first collection on said judgment or decree.

Second. All capital of persons, firms and corporations employed in a trade or business not otherwise taxed; and, in case of a corporation when all of such capital is taxed by this State, the shares of its stock in the hands of individual shareholders shall not be further taxed for State purposes. But real estate belonging to such persons, firms and corporations shall not be held to be capital, but shall be listed and taxed as real estate.

Capital as used in the tax laws shall be defined as follows:

1. Inventory of stock on hand, which shall include all raw materials for use of the business, whether at the place of business, in storage, or elsewhere in the State.

2. The excess of bills and accounts receivable over bills and accounts payable.

3. All machinery and tools not taxed as real estate.

4. Money on hand and on deposit.

5. All other property of any kind whatsoever, including all choses in action, equities, demands and claims.

Capital used or employed in business as above defined shall, wherever the laws of this State require a tax on capita, be taxed at the rate prescribed by law.

Every person, firm and corporation engaged in a business whose capital is subject by the laws of this State to taxation, is hereby required to keep accounts showing the above items, which shall at all times be open to the inspection of the commissioners of the revenue, the examiners of records, local boards of review, and the State advisory board of taxation; and every such person, firm or corporation shall be required to make a return under oath to the commissioner of the revenue, on forms prescribed by the Auditor of Public Accounts, showing the items of capital as above defined, and also the bills and accounts payable which were used as deductions in order to ascertain the amount under section 2 in the above definition of capital, and the names, addresses, of the parties to whom said bills and accounts are due, and the various amounts constituting said indebtedness, and shall further certify that such indebtedness was made in the usual course of business of said company, firm or corporation.

Nothing herein shall prevent cities and towns of this Commonwealth from imposing a license tax on merchants, mercantile firms or corporations based on their purchases, in pursuance of their respective charters, or of the general laws of the State for the government of cities and towns.

Where any person, firm or corporation domiciled and doing business in this State maintains a branch of such business outside of this State, no part of the capital of such person, firm or corporation permanently invested in any such branch of its business, nor any intangible assets, arising from business originating at any such branch and transacted outside of this State, shall be considered as situated in this State for the purpose of taxation or be assessed with taxes in this State—any statutory provisions or rule of construction to the contrary notwithstanding—it being the intent and purpose of this provision to exact of citizens of this State no higher or greater tax than that exacted of non-residents doing business in this State.

The situs for the taxation of the stock on hand, raw materials for use in business, whether at the place of business, in storage, or elsewhere, and machinery and tools not taxed as real estate, as provided

Digitized by Google

in this schedule, shall be the county or incorporated community in which they are physically located. Which items of capital shall be taxed by such localities as other capital is taxed by localities, at the rate prescribed by law, and not as tangible personal property, and it shall be the duty of the said person, firm or corporation to make returns of such capital, stating the county or city where located, to the commissioner of revenue at the point in the State wherein the person resides, wherein the principal offices of the partnership or corporation is located in this State; and if any of the said items contained in classes one, three and four in the above definition of capital be located in any county or city, other than in that in which the said return is required to be made, then the commissioner of the revenue to whom such return is made shall make two copies thereof and shall forward one copy to the commissioners of the revenue at the points where said property is located, and one copy to the Auditor of Public Accounts, and the commissioners of the revenue receiving same shall enter upon their books such of said property as may be located in their county or city for taxation, as other capital is listed, and shall assess the same as required by section four hundred and ninety-two of chapter twenty-four of the Code of Virginia, as amended.

Provided, however, that whenever any of the items in said clauses one, three and four shall be located at a point or points other than that in which the return is made, and whenever any deduction of bills and accounts payable shall be allowed any taxpayer, the entire amount of such bills and accounts payable shall not be deducted from the amount of capital assessed where such return is made, but the same shall be distributed in such ratable proportion as the value of the capital located in such other point or points shall bear to the entire amount of capital assessed against the taxpayer. The commissioner of the revenue to whom the return is made shall certify the proper ratable amount of such deduction to the commissioner of the revenue at such other point or points, who shall accordingly deduct said amount from the value of the property assessed in his jurisdiction.

In making return of capital in business according to the method defined above the return shall be made as of February the first, provided the taxpayer at his option may make return as shown by average of February the first of the current year and August first preceding.

Third. The value of the principal of personal estate and credits other than tangible personal property and money under the control of a court receiver or commissioner, in pursuance of an order, judgment or decree of any court, or in the hands or under the control of an executor, administrator, guardian, trustee, agent, or other fiduciary; and the principal estate and credits other than tangible personal property and money deposited to the credit of any suit and not in the hands of a receiver or other fiduciary.

Fourth. All money other than money used or employed in any trade or business not otherwise taxed on deposit with any bank or other corporation or firm or persons, or in the possession or under control of the owner, whether such money be actually in or out of this State and belonging to a citizen of this State, which shall include certificates of deposit of any bank, banking association, trust or security company; provided, that money as herein defined, shall not be liable to taxation by any of the counties, cities, towns, school districts or other local sub-divisions of this State. All money under the control of a court receiver or commissioner in pursuance of an order, judgment or decree of any court or in the hands or under the control of an executor, administrator, guardian, trustee, agent, or other fiduciary; and all moneys deposited to the credit of any suit, and not in the hands of a receiver or other fiduciary.

Fifth. All shares of stock of corporations or joint stock companies, except such corporations and joint stock companies all of whose capital is taxed by this State, or which pay a franchise tax in this State, and

Digitized by Google

banks, banking associations, trust and security companies, and insurance companies, which are otherwise taxed in this State.

Sixth. All bonds of counties, cities and towns, or other political sub-divisions of this State.

2. This act shall be in force on and after February first, nineteen hundred and nineteen. (1908, p. 322; 1915, pp. 98, 160; 1916, p. 65[5]; 1918, p. 171.)

The word "capital" as defined in sub-section 4 applies as well to corporations as to individuals conducting the same business. Bridgewater Man. Co. v. Funkhouser, 115 Va. 476, 79 S. E. 1074, 19 Va. L. Reg. 830 and note. (Decided before the amendments of 1915 and subsequent amendments.)

The meaning of the word "capital" as defined in sub-section 4 of this section was intended to apply also to capital as used in sub-sections 2 and 3. Bridgewater Man. Co. v. Funkhouser, 115 Va. 476, 79 S. E. 1074, 19 Va. L. Reg. 830 and note. (Decided before the amendments of 1915 and subsequent amendments.)

The capital employed in the business of a miller is taxable under this section. Bridgewater Man. Co. v. Funkhouser, 115 Va. 476, 79 S. E. 1074, 19 Va. L. Reg. 830 and note. (Decided in 1913.)

The capital which is taxable is the amount invested in the business, and not the nominal capitalization of the company which is divided into shares and sold to the stockholders. Bridgewater Man. Co. v. Funkhouser, 115 Va. 476, 79 S. E. 1074, 19 Va. L. Reg. 830 and note. (Decided before the amendments of 1915 and subsequent amendments.)

Under the definition of the word "capital" appearing in this section as it stood in Acts 1908, p. 322, it was held that tangible property of a manufacturer on hand for the purpose of manufacture or sale should be listed as "capital" under Schedule C and not as tangible personal property under Schedule B. Furthermore, that moneys and credits of all kinds actively used and employed in the business should likewise be listed as "capital." Com. v. United Cig. Machine Co., 119 Va. 447, 89 S. E. 935.

Under this section as it stood in Acts 1908, p. 322, it was held that the "capital" of a foreign manufacturing corporation was taxable in this State where every function of the company's corporate existence was performed here exclusively, except the single formal act of auditing the company's accounts, and where the evidences of the "credits" were all lodged and kept in the company's office located in this State. The third sub-division of the section as it appears in the act above referred to was held to apply to corporations, foreign or domestic, which were engaged in the manufacturing business in this State. Com. v. United Cig. Machine Co., 119 Va. 447, 89 S. E. 935.

Under the provisions of this section and sections 2307, 2308 and 2309 of the Code, money arising from the sale of a debtor's personal property at the suit of creditors and on deposit in bank, is amenable to taxes before a report of debts has been made, but not after. Myers v. Com., 110 Va. 600, 66 S. E. 824. (Decided in 1910.)

The "moneys and credits actively used and employed in carrying on the trade or business" are all taxable though a part of the money may have been borrowed. No deduction can be made on that account. Bridgewater Man. Co. v. Funkhouser, 115 Va. 476, 79 S. E. 1074, 19 Va. L. Reg. 830 and note (Decided before the amendments of 1915 and subsequent amendments.)

Under this section as it stood in Acts 1908, p. 322, it was held that while it required the commissioner of the revenue to list the property of persons, natural or artificial, **residing** in his district, yet section 494 of the Code of 1887 (section 2310 of this Code) contemplates not only that the property of persons residing in the commissioner's district, but also that of persons, firms and corporations that **reside or do business** in his district, or **have an office** therein shall be listed by the commissioner. Com. v. United Cig. Machine Co., 119 Va. 447, 89 S. E. 935.

Sec. 9. Taxes on intangible personal property.—The taxes on intangible personal property shall be as follows: On all property embraced in classes one, three and five in this schedule, there shall be a tax of sixty-five cents on every hundred dollars of the assessed value thereof, and on all property embraced in class two of this schedule, there shall be a tax of seventy cents on every hundred dollars of the assessed value thereof, which shall be paid into the State treasury and applied to the payment of the expenses of the government. And any city in this State may levy a tax on such property assessed to residents therein at a rate not to exceed thirty cents on the one hundred dollars on the assessed valuation thereof; and the board of supervisors of any county may levy a district road tax on such property assessed to residents in any magisterial district proposed to be taxed for district purposes to be used exclusively for the construction and repair of public roads

Digitized by Google

and bridges located within the magisterial district in which said levy is laid at a rate not to exceed thirty cents on the one hundred dollars of assessed valuation thereof, but this clause shall not be considered to authorize the board of supervisors of any county to levy such tax against the residents of any incorporated town within such magisterial district which maintains its own roads; and any incorporated town in this State which is exempt by statute or by the express provision of its charter from the payment of district road taxes, or which maintains its own roads, free of expense to the magisterial district, may levy a tax on such property assessed to residents therein at a rate not to exceed thirty cents on the one hundred dollars of assessed valuation thereof.

On all property embraced in class four in this schedule the tax shall be as provided by law. On all property embraced in class six in this schedule there shall be a tax of thirty-five cents on every one hundred dollars of the assessed value thereof, which shall be paid into the treasury of the State. Provided, however, that from and out of the tax on all such property paid to and retained by the State for the expenses of the State government there shall be set aside ten cents on every hundred dollars of the assessed value thereof, which shall be applied to the support of the public free schools of this State. Provided, further, however, that in the event any taxpayer shall fail, without just cause shown, to return for taxation any intangible personal property under the provisions of this schedule within the time prescribed by law, and it is ascertained thereafter that any such property has not been returned for taxation, it shall be assessed when discovered, and taxed at the full rate of taxation provided for real estate in this State, which shall include the State rate and the local rates and levies of the county, district, town or city wherein the owner or taxpayer has his legal residence.

The provisions of section eight and of this section of this schedule shall apply with equal force to any person or corporation representing in this State business interests that may claim a domicile elsewhere, the intent and purpose being that no non-resident person or corporation, either personally or through any agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens, and all bills receivable, obligations or credits and other intangible assets arising from the business done in this State are hereby declared assessable within this State and at the business domicile of said non-resident person or corporation, his or its agents or representative. (1915, pp. 98, 160; 1916, p. 655.)

The amending act contains the following: "The provisions of this act shall apply to the assessment and collection of State taxes and local levies in the year nineteen hundred and sixteen, and thereafter until otherwise provided by law."

Under the amendment of 1915 (Acts 1915, p. 163) it was held under this section that notes evidencing loans made by a non-resident on property situated in this State, and secured by deeds of trust thereon, were not taxable where the lender had not established a business in the State, had no agent here, and the evidences of debt were not kept in the State. Jamison v. Com., 120 Va. 137, 90 S. E. 640.

Situs for taxation of intangible property owned by corporations which do no business in this State—section 2313 of the Code and Acts 1918, p. 356.

Schedule D.

Sec. 10. Income.—The classification under Schedule D providing for the taxation of income shall be as follows, to-wit:

The aggregate amount of income of each person and corporation residing or doing business in this State, whether received or due but not received within the year next preceding the first of January in each year, subject to the deductions and exemptions hereinafter recited.

The terms "person" and "corporation" as used in this act are hereby defined as follows:

(a) The term "person" shall mean and include any individual, firm or co-partnership.

(b) The term "corporation" shall mean and include every incor-

Digitized by Google

porated company, every joint stock company, and every association having capital stock represented by shares or certificates of stock, organized for profit.

The term "income" as used in this act shall include:

(a) All rents, including ground rents and rents charge, salaries, wages, fees or compensation of whatever kind from professions, vocations or other services.

(b) All interest upon notes, bonds or other evidences of debt of every description, including those of other States or other countries (except bonds of this State and bonds of the United States), of any corporation, company, partnership, firm or individual, all dividends derived from stock or other evidences of ownership or interest in property, but not including dividends paid in stock; all royalties derived from mines, patents, copyrights, or the possession or use of franchises or legalized privileges of any kind; and all annuities from invested funds or trusts; provided, that the proceeds of life insurance policies paid upon the death of the person insured or payments made by or credited to the insured on life insurance, endowment or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract or upon surrender of contract, shall not be included as income.

(c) All profits derived from the transaction of business or from the sale of real or personal estate.

(d) The amount of sales of live stock and meat of all kinds, less the actual purchase price of live stock the sales of which are reported as income.

(e) The amount of sales of wood, butter, cheese, hay, tobacco, grain and other vegetables and agricultural productions during the preceding year, whether the same was grown during the preceding year or not, less all sums paid for labor, fences, feed, fertilizers and seed purchased and used upon the land upon which the vegetables and agricultural productions were grown or produced, and the rent of such land paid by said person, if he be not the owner thereof.

(f) All other gains and profits derived from any source whatever.

There shall be exempt from taxation under this schedule income as follows:

(a) To an individual income up to and including the sum of twelve hundred dollars.

(b) To husband and wife living together income up to and including the sum of eighteen hundred dollars.

(c) For each additional person who is actually supported by and entirely dependent upon the taxpayer for support, the sum of two hundred dollars.

(d) In computing said exemptions and the amounts of taxes payable by persons residing together as members of a family, the income of the wife and the income of each child under twenty-one years of age shall be added to that of the husband or father, or if he be not living, to that of the head of the family, and assessed to him. The taxes levied thereon shall be payable by such husband or head of the family, but if not paid by him may be enforced against any person whose income is included in the assessment.

(e) Salaries, wages and other compensation received from the United States by officials or employees thereof.

(f) Pensions received from the United States or from the State of Virginia.

(g) Income received by the United States, the State of Virginia or any political subdivision thereof.

(h) The value of property acquired by gift within the year not exceeding the sum of one thousand dollars.

(i) All inheritances, devises and bequests received during the year which are subject to the inheritance tax laws of this State and have actually been assessed under such laws, but income received from such

Digitized by Google

inheritances, devises and bequests shall be assessed under the provisions of this schedule.

Persons and corporations in reporting income for purposes of taxation shall be allowed the following deductions:

(a) Payments made within the year for salaries of officers, wages of employees and a reasonable allowance for services of co-partners or members of a firm actually rendered in producing such income, but no deduction shall be made for any amount paid for personal services unless there be reported the name and address and amount paid each such officer, employee or co-partner residing within the State to whom the sum of one thousand dollars or more shall have been paid during the assessment year.

(b) The necessary expenses actually paid within the year in carrying on the profession, occupation or business from which the income is derived, not including personal living or family expenses.

(c) A reasonable annual allowance for depreciation by use, wear, tear and obsolescence of the property from which the income is derived, on the basis of its cost in cash or the equivalent of cash; but no deduction shall be made for any amount of expenses of restoring property or making good the exhaustion thereof for which an allowance is or has been made; and no deduction shall be allowed for any amount paid for books, tools, instruments, machinery, appliances, furniture or fixtures, buildings, permanent improvements or betterments, or other taxable property purchased, whether used in connection with the business or not.

(4) Losses of property actually sustained during the year and not compensated for by insurance or otherwise.

(e) Debts due to the taxpayer actually ascertained to be worthless and actually charged off within the year, provided same are listed showing amounts, when due, and names of debtors.

(f) Sums paid by the taxpayer within the year for taxes imposed by any State of this Union or possession thereof, upon the property, profession, occupation or business from which the income hereby taxed is derived; but not including assessments for local improvements or inheritance taxes wherever imposed.

(g) Dividends or profits received from stock or an interest in any corporation or co-partnership the income of which shall have been assessed under the provisions of this act, provided, that when only part of the income of any corporation or co-partnership shall have been assessed under this act only a corresponding part of the dividends or profits received therefrom shall be deducted.

(h) All interest paid within the year on existing indebtedness; provided, that the amount so deducted by any corporation or co-partnership shall not exceed one-half of the sum of its interest-bearing indebtedness and its paid up capital stock outstanding at the close of the year, or if no capital stock, the amount shall not exceed the sum of its net worth and one-half of its interest-bearing indebtedness as both stood at the close of the year; the actual amount paid during the year for repairs to and maintenance of buildings, the rent of which is reported as income, and all fire, tornado and casualty insurance premiums on property in this State due and paid during the year.

(i) No deduction shall be made for expenses chargeable to residence property occupied by its owner, nor for the depreciation thereof, and the annual value of estimated rental thereof shall not be included in the income subject to taxation.

Persons and corporations doing a part of their business within the State and a part without the State, and having offices or other regular places of business both within and without the State, shall be taxed only upon such income as is derived from business transacted and property located within the State, which may be determined by an allocation and separate accounting for such income when the books of such person or corporation show income realized from such transactions and

Digitized by Google

property located within the State; otherwise such income shall be apportioned and determined as follows:

The gross business in dollars, of the person or corporation in the State, including the business of production measured by cost of production and the business of distribution or sales measured by the value of gross sales less the cost of production for the year ending December thirty-first, shall be added to the book value of the gross assets on the first day of January of the year for which return is being made, employed in the business within this State (with no deduction on account of any encumbrance thereon). The sum so obtained shall be the numerator of a fraction of which the denominator shall consist of the total gross business, as above defined, of the person or corporation both within and without the State, added to the total book value of the gross assets on the day last aforesaid, wherever employed in business (with no deduction on account of any encumbrance thereon). The proportion of the entire gross income of such person or corporation which is represented by the fraction so obtained shall be the gross income of such person or corporation returnable for taxation in this State, subject only to the exemptions and deductions hereinbefore provided for.

Guardians, trustees, executors, administrators, committees, agents, receivers, curators, conservators, and all persons or corporations acting in any fiduciary capacity, hereinafter called fiduciaries, shall make and render a verified list or return of the amount of income of every person for whom they act, subject to this tax, coming into their custody or control and management, and be subject to all of the provisions of this section which apply to individuals; provided that no deduction or exemption shall be allowed which has been otherwise claimed by or for any person for whom they act.

When the return of income has been made by a fiduciary according to the provisions of this section and the tax on same has been paid or withheld such income shall not be again taxed under this shedule when it is distributed or paid to the beneficiaries.

The Auditor of Public Accounts shall prepare and furnish to the commissioner of the revenue necessary forms of interrogatories for the assessment of the income tax, separate and distinct from other forms of interrogatories.

In entering the income tax returns for each year, the commissioners of the revenue shall not use for such entry the property book, or any other public record book, but shall use a special book, which shall be furnished by the Auditor of Public Accounts, and such book and the return blanks containing the statement of incomes shall be kept safely by the commissioners under lock and key except when in their personal possession, and shall not be inspected by any person not officially entitled to inspect them, and the commissioner shall not give to any person, except some other officer authorized by law, or by special order of a court of competent jurisdiction to receive the same, any information regarding such returns.

The treasurers of the several counties and cities of the State, and the Auditor of Public Accounts shall keep under lock and key all lists of individuals paying the tax upon incomes and shall not permit the same to be inspected, except by tax officers of this State; provided, that in the event the United States government, or any other State, allows this State's officials to examine its income tax returns, then this State shall allow an inspection of its income tax returns by proper officials of the United States government, or such other State, whose official duties require them to make such inspection; nor shall they give any information to any person other than those hereinbefore enumerated except in obedience to a decree or order of court of competent jurisdiction. (1908, p. 20; 1912, p. 572; 1914, p. 264; 1915, pp. 91, 113; 1916, p. 793; 1918, p. 392.)

Fees of lawyers are income within the meaning of the fifth clause of this section. Com. v. Werth, 116 Va. 604, 82 S. E. 695. (Decided under amendment of 1912.) As the section now reads, fees are expressly mentioned in the second paragraph designated (a).

(3086)

Digitized by Google

The subject matter of this schedule is "income" and not the sources from which it is derived. Com. v. Werth, 116 Va. 604, 82 S. E. 695. (Decided in 1914.)

License and occupation taxes, which are payable in respect to the privilege of engaging in or carrying on a particular business or vocation, are not income taxes. Com. v. Werth, 116 Va. 604, 82 S. E. 695. (Decided in 1914.) See 2 Va. L. Reg. N. S. 375, 443.

Sec. 11. Tax on income.—On income, as defined in this schedule, the tax shall be one per centum and no city, town or county shall levy or assess any tax on income for municipal or county purposes, and any provision of any city or town charter in conflict with this act is hereby repealed; provided nothing herein contained shall be construed as imposing an income tax on any part of the receipts of any public service corporation which are now subject to a State franchise tax upon such receipts, or on insurance companies which may pay a State license tax on gross premiums, or on State and national banks, banking associations, trust and security companies, or on religious, educational, benevolent, and other corporations or associations of individuals not organized or conducted for pecuniary profit. (1915, pp. 91, 113; 1916, p. 793; 1918, p. 392.)

On Business and Other Subjects.

Sec. 12. Tax on wills and administrations.—On the probate of every will or grant of administration, not exempt by law, there shall be a tax of one dollar, where the estate, real or personal or mixed, passing by such will or by intestacy of the decedent, shall not exceed one thousand dollars, and for every additional one hundred dollars, or fraction of one hundred, an additional tax of ten cents; and no one shall be permitted to qualify and act as executor or administrator until said tax shall have been paid; and should it thereafter appear that on the probate of said will or grant of administration the estate has been undervalued, the commissioner of accounts before whom the appraisement is directed to be filed, shall report such fact to the court, whereupon the said tax shall forthwith be paid to the clerk of the court in which said will was admitted to probate or letters of administration granted, and said estate shall not be distributed until such inventory has been filed and the tax paid.

When an estate is committed to a sheriff to be administered, he shall be required to pay said tax as soon as sufficient assets of said estate shall have come into his hands; provided, that said tax shall be charged only upon the value of such estate—real, personal or mixed—the legal situs of which for taxation was in Virginia during the lifetime of decedent. (1914, p. 487.)

Sec. 13. Tax on deeds and contracts.—On every deed, except a deed exempt from taxation by law, which is admitted to record, the tax shall be fifty cents where the consideration of the deed or the actual value of the property conveyed is three hundred dollars or less; where the consideration of the deed or the actual value of the property conveyed is over three hundred dollars and does not exceed one thousand dollars the tax shall be one dollar; where the consideration of the deed or the actual value of the property conveyed exceeds one thousand dollars there shall be paid ten cents additional on every hundred dollars or fraction thereof of such consideration or actual value; on deeds of trust or mortgages the tax shall be upon the amount of bonds or other obligations secured thereby. On deeds of trust or mortgages upon the works and property of a railroad or other internal improvement company, lying partly in this State and partly in another State, the tax shall be upon such proportion of the amount of bonds or other obligations secured thereby as the number of miles of the line of such company in this State bears to the whole number of miles of the line of such company conveyed by such deed; the tax on a deed of release shall be fifty cents; the tax on any deed of partition among joint tenants, tenants in common, or co-partners, shall be fifty cents. The tax on every deed,

Digitized by Google

contract or agreement shall be determined and be collected by the clerk in whose office it is first offered for recordation and may thereafter be recorded in the office of any other clerk without the payment of any tax.

On every contract relating to real or personal property, except as hereinafter provided, which is admitted to record, the tax shall be fifty cents where the consideration or value contracted for is three hundred dollars or less; where the consideration or value contracted for is over three hundred dollars, and does not exceed one thousand dollars the tax shall be one dollar; where the consideration or value contracted for exceeds one thousand dollars there shall be paid ten cents additional on every hundred dollars or fraction thereof of such consideration or value contracted for.

On every contract or agreement relating to the sale of rolling stock or equipment (whether the title is reserved in the vendor or not), with a railroad corporation, or other corporation, or with a person, firm, or company, admitted to record, the tax shall be ten cents on every hundred dollars or fraction thereof, of the amount contracted for in such contract or agreement, except in the case of a railroad corporation lying partly in this State and partly in another State, in which case the tax shall be upon such proportion of the amount contracted for as the number of miles of the line of such railroad corporation in this State bears to the whole number of miles of line of such railroad corporation.

Any deed, contract, or will may be recorded in the same clerk's office when the record containing such deed, contract, or will, has been destroyed by fire or otherwise, free of tax. (1910, p. 488.)

An option contract is a right to purchase and the tax on recordation should be on the sum paid for the option, not the figure at which the land may be bought. Stearnes v. Goad, 111 Va. 834, 69 S. E. 1101.

The change in the language of this section made by the amendment of 1910 was not intended to increase the amount due for the recordation of deeds relating to real estate. The amendment and the original section have an identical legal effect. Saville v. Rountree, 111 Va. 832, 70 S. E. 850.

A tax on the recordation of a deed is not a tax on property, but a tax on the civil privilege of being allowed to avail oneself of the benefits and advantage of the registration laws of the State. Such a privilege is a proper subject of taxation. Pocahontas Collieries Co. v. Com., 113 Va. 108, 73 S. E. 446.

A deed of trust was given by the Pocahontas Colleries Co., conveying property lying partly in the State of Virginia and partly in the State of West Virginia, securing the payment of bonds, amounting in the aggregate to the sum of $20,000,000. Held, a tax of $20,000, assessed by the clerk upon the recordation of the deed, was proper. Pocahontas Collieries Co. v. Com., 113 Va. 108, 73 S. E. 446.

The tax upon the recordation of a deed is not a tax upon property, but upon a civil privilege; and the power of the legislature to impose a tax upon such a privilege, to fix the amount thereof, and to classify the subjects upon which the tax is imposed is well-nigh unlimited, so long as the classification is reasonable. Saville v. Va. Ry. & P. Co., 114 Va. 444, 76 S. E. 954.

Pursuant to the terms of an after acquired property clause in a certain mortgage, the grantor in such mortgage executed a supplemental mortgage, conveying certain after acquired property to secure the same bonds which were secured by the first mortgage. Held, the tax required for recording the supplemental mortgage is the same as that required for recording the first mortgage. Saville v. Va. Ry. & P. Co., 114 Va. 444, 76 S. E. 954.

The tax on deeds of trust and mortgages should be, under the proper and long recognized construction of the statute providing therefor, computed upon the principal amount of the bonds or other obligations secured by such deeds of trust or mortgages. Va. Blue Ridge Ry. v. Kidd, 120 Va. 426, 91 S. E. 1075.

See 2 Va. L. Reg. N. S. 491, 536.

Deeds, wills, etc., not to be admitted to record until tax is paid, see section 2403 of the Code.

Sec. 14. Tax on suits.—When any original suit, whether commenced by writ or notice, ejectment or attachment, other than a summons to answer a suggestion, or other action, except a suit in chancery, is commenced in a county, circuit or corporation court, and in every case of removal or appeal of a cause from a justice's court to the county, circuit or corporation court, or upon any appeal from the decision of the board of supervisors of a county, or of an attachment issued by a justice and

Digitized by Google

returnable to the county or circuit court, there shall be a tax thereon if the amount of the debt or demand for damages shall not exceed five hundred dollars, of one dollar; and when the debt or demand for damages exceeds five hundred dollars, there shall be an additional tax of ten cents for every hundred dollars, or fraction of one hundred dollars, of such debt or demand in excess of five hundred dollars; provided, that in all suits the plaintiff or his attorney may endorse upon his writ or notice the real amount claimed in his action, and the tax upon the said suit shall be fixed with reference to the amount so claimed.

Second. Upon every appeal, writ of error, or supersedeas in a circuit court, except as otherwise provided, there shall be a tax of three dollars; and on every appeal, writ of error, or supersedeas in the Supreme Court of Appeals, there shall be a tax of six dollars; which, if not paid within thirty days from the granting of such appeal, the said appeal shall be dismissed.

Third. Upon every chancery suit, originating either in a corporation or circuit court, there shall be a tax of one dollar and fifty cents.

Fourth. Upon every writ of mandamus sued out of any court there shall be a tax of three dollars.

The dismissal of an appeal for failure to comply with a mandatory statute as payment of the register's fee for his return is held in Lohrstorfer v. Lohrstorfer (Mich.), 70 L. R. A. 621, to confer a vested right which cannot be impaired by a subsequent statute permitting the reinstatement of appeals within a specified time upon proof that the fee has been paid in the interim. 12 Va. Law Reg. 75.

Sec. 15. When tax to be paid.—No clerk shall issue any writ, or docket any removed or appealed warrant, or any notice mentioned in the fourteenth section, or record any deed or will or grant any letter or certificate of administration, until the tax thereon shall be paid.

The tax on suit is to be paid to the clerk, see section 2401 of the Code.

Sec. 16. Tax on seals.—When the seal of the State, of a court, or notary public is affixed to any paper, except in the cases exempted by law, the tax shall be as follows: For the seal of the State, two dollars, and for the seal of a court or notary, one dollar, and herein shall be included a tax on a scroll or any impression on paper in the place of a seal, or having the force and effect of a seal, and the said tax, except in the case of the seal of the State, shall be collected and paid in the following manner:

All seals taxable under this act, except the seal of the State, are hereby declared illegal and of no effect, and shall not be received or accepted as a legal notarial or court seal in any court of the State, unless the same shall be superimposed upon an adhesive stamp in such manner as to cancel said stamp which adhesive stamp shall be supplied in the manner and form hereinafter provided for.

It shall be the duty of the Auditor of Public Accounts, by and with the advice of the Attorney General and the Treasurer of the State, to cause to be prepared suitable adhesive stamps, of such size and design as may be best adapted to the purpose, and to furnish the same to the treasurer and county clerk of each county and the treasurer of each city in the State in such quantities as may be necessary, charging the said treasurers and clerks on the books of his office with the said stamps at the rate of one dollar each.

The several county and city treasurers and county clerks shall be held accountable under their official bonds for all such stamps so furnished them in the same manner as they are now held accountable for State moneys or other property coming into their hands.

It shall be the duty of the said county and city treasurers and county clerks at all times to keep on hand a supply of said stamps and to sell the same to any person wishing to purchase them, charging therefor the sum of one dollar each, and for such service the several county and city treasurers and county clerks shall receive a commission of five per centum on all stamps sold.

The treasurer of each county and city and county clerks shall report

Digitized by Google

annually, on the first day of July, to the Auditor of Public Accounts, the number of adhesive stamps sold by him during the preceding twelve months, and shall at once pay into the treasury the money received for the same, less his commission.

All mutilated or unused stamps may be returned to the Auditor of Public Accounts under such regulations as he may provide, and when so returned, proper credit shall be given on the books of his office.

In all cases, in which no tax is required by law, the officer affixing the seal shall certify that it is a case in which, by the laws of Virginia, no tax is required upon the seal so affixed by him.

In any case in which a tax is required upon a seal, and the officer affixing the same shall fail to use the adhesive stamp herein provided for, or shall make a false certificate that no tax is required, he shall be guilty of a misdemeanor, and shall be punished by a fine of twenty dollars for each offense, which shall be recovered and paid as are other fines due the Commonwealth; and any person who makes, or knowing the same to be false or counterfeit, sells, uses, or has in his possession any false or counterfeit stamps or die for printing or making the same, which is in imitation of or purports to be a lawful stamp or die, or who knowingly procures the same to be done, shall for each offense be deemed guilty of a felony, and shall be imprisoned in the State penitentiary for a period of not less than one, nor more than five years.

For seals upon which no tax is charged, see Code, section 2402. The tax on the seal of the State is to be paid to the Secretary of the Commonwealth, see Code, section 2401.

For discussion as to when adhesive stamps need not be used with notaries' seals, see 11 Va. Law Reg. 776.

Sec. 17. Tax on banks, banking associations, trust and security companies.—No tax shall be assessed upon the capital of any bank or banking association organized under the authority of this State or of the United States, nor upon capital of any trust or security company chartered by this State, but the stockholders in such banks, banking associations, trust and security companies shall be assessed and taxed on their shares of stock therein. Each bank, banking association, trust and security company aforesaid, on the first day of February in each year, shall make up and return to the commissioner of the revenue of the county, city or town, or district in which said bank, banking association, trust or security company is located, a report in which shall be given the names and residences of all its stockholders, the number and actual value of the shares of stock held by each stockholder. From the total value of the shares of stock of any such bank, banking association, trust or security company, which shall be ascertained by adding together its capital, surplus and undivided profits, there shall be deducted the assessed value of its real estate otherwise taxed in this State, or if the title to the building in which any such bank, banking association, trust or security company does its business, and the land on which it stands, is held in the name of a separate corporation, in which such bank, banking association, trust or security company owns all or a majority of the stock, and such real estate be otherwise taxed in this State, then there shall be deducted from the value of the shares of stock of such bank such proportion of the assessed value of said real estate as the stock it owns in such holding corporations bears to the whole issue of stocks in such corporation; and the actual value of each share of stock shall be its proportion of the remainder. The owners of the shares of stock of such bank, banking associations, trust or security companies, shall be entitled to no deduction from the taxable value of their shares because of the personal indebtedness of such owners or for any other reason whatsoever; provided, that it is declared to be the purpose and intent of this section that when the affairs of any such bank or banking association, or trust or security company are being wound up under the provisions of an act approved March fifteenth, nineteen hundred and twelve, being chapter three hundred and forty-four of the Acts of Assembly of nineteen hundred and twelve, entitled an act to amend and re-enact section one

Digitized by Google

thousand one hundred and sixty-nine of the Code of Virginia, as heretofore amended, the assets of such bank or banking association or trust or security company so being wound up, shall continue to be and constitute the capital of such bank or banking association, or trust or security company, and that no tax shall be assessed thereon, as such capital.

Returns of such assets of February first of each year shall be made up by those having actual custody or control thereof as the same is held and the commissioner of the revenue shall assess the tax thereon against those holding said funds at the rate provided for the taxation of money, and said assessment shall as to such funds be in lieu of all taxes against those beneficially interested therein, but if any surplus shall remain after payment of depositors and creditors in full, such surplus, together with the names and residences of the stockholders and the number of shares owned by them respectively, shall then be reported by the liquidating officer to the commissioner of the revenue who shall ascertain the fair market value of such surplus assets and assess against each stockholder in such bank or banking association, or trust or security company, for each year for which no tax on stock has been paid, a proportionate tax on said surplus at the rate, and for the purposes prescribed in section eighteen of this act; and such tax shall be paid by the liquidating officer into the treasury before any distribution of such surplus to stockholders. (1908, p. 322; 1912, p. 18; 1915, pp. 116, 209.)

A city ordinance imposing a tax on the capital stock of banks located within the city is not a violation of the provision of this section that no tax shall be assessed on the "capital" of any bank. West v. City of Newport News, 104 Va. 21, 51 S. E. 206.

In ascertaining the value of shares of bank stock under this section, the **assessed**, not the **actual**, value of real estate otherwise taxed should be deducted from the aggregate of the bank's capital, surplus and profits. Com. v. Va. Bank Co., 110 Va. 552, 66 S. E. 852.

In Tresnon v. Supervisors, 120 Va. 203, 90 S. E. 615, it was held that the act of March 18, 1915 (Acts 1915, p. 209), amending sections 17 to 22 of the tax bill, did not repeal by implication section 1040a of Pollard's Code (Acts 1889-90, p. 111, amended 1902-3-4, p. 412); that the two acts were harmonious, and when read together constituted the law of the State touching the assessment and taxation of shares of bank stock. Under these acts it was held that shares of stock in city banks owned by residents of a county were properly taxable in the county. Section 1040a of Pollard's Code above referred to does not appear in the present Code, but the General Assembly at its session of 1918 restored in part that section (Acts 1918, p. 535).

It was also held in the case referred to in the preceding paragraph that Acts 1889-90, p. 111 (amended Acts 1902-3-4, p. 431, section 1040a of Pollard's Code) was not unconstitutional on the ground that it violated section 15, article 5 of the former Constitution (section 52, article 4 of the present Constitution). Nor on the ground that it violated section 168 of the present Constitution.

For a review of "Recent Virginia Tax Cases," see 2 Va. L. Reg. N. S. 733.

Sec. 18. Further provisions as to same.—It shall be the duty of the commissioner of the revenue of each city of the State, as soon as he receives such report, to assess upon each stockholder upon such actual value of the shares of stock owned by him a tax to be levied by the city council or other governing bodies thereof of not exceeding one dollar and twenty-five cents on every one hundred dollars of actual value thereof; provided, that such city council or other governing body may, in its discretion, direct said commissioners of the revenue to deduct from the value of such shares of stock of such bank, for the purposes of local taxation only, the value of any municipal bonds of that particular municipality held by such bank. The word "banks" for the purposes of this act shall be so construed to include banks, banking associations, trust and security companies.

It shall likewise be the duty of the commissioners of the revenue in the several counties of the State to assess upon each stockholder a tax to be levied by the board of supervisors or other governing body of not exceeding one dollar and twenty-five cents on every one hundred dollars of actual value thereof, for county and district and district school purposes, except upon the stock of banks located in incorporated

Digitized by Google

towns, in which case the rate shall not exceed twenty-five cents for such purposes; provided the sum to be derived from any such district levy shall be expended by said board only in those districts wherein such bank or banks are located.

And it shall be the duty of the commissioners of the revenue or other assessing officers of the several incorporated towns in which such bank or banks are located to assess upon each stockholder, a tax, to be levied by the council or other governing body thereof, of not exceeding one dollar on every one hundred dollars of actual value thereof for town purposes. Provided, that such boards of supervisors and councils of towns or other governing bodies may, in their discretion, direct such commissioners of the revenue to deduct from the value of such shares of stock of such bank for purposes of local taxation only, the value of any county or town bonds of said county or town, held by such bank; provided, that any incorporated town which does not constitute a separate school district shall appropriate not less than fifty per cent. of the fund derived from said taxes, and may appropriate the whole thereof to be used for school purposes in the school district in which said town is located.

The said tax shall be in lieu of all other taxes whatsoever for State, county or local purposes upon the said shares of stock. In pursuance of the provisions of section one hundred and sixty-nine of the Constitution of Virginia, all shares of stock in such banks are hereby segregated, set apart, and made subject to taxation only by the counties, cities and towns of this State; except to the extent of any State tax which may be imposed upon such shares of stock along with other property; and except that there shall be and there is hereby imposed a tax of ten cents on each one hundred dollars of the actual value of such stock, which shall be applied to the support of the public free schools of the State and to be apportioned on a basis of school population.

The commissioners of the revenue shall make out three assessment lists, give one to the bank, banking association, trust or security company, send one to the Auditor of Public Accounts, and retain one. The security company shall be notice to the bank, banking association, trust or security company of the tax assessed against its stockholders and assessment list so delivered to said bank, banking association, trust or each of them, and shall have the legal effect and force of a summons upon suggestion formally issued and regularly served. The tax assessed upon each stockholder in said bank, banking association, trust or security company shall be the first lien upon the stock standing in his name and upon the dividends thereof due and to become due, no matter in whose possession found, and shall have priority over any and all liens by deeds of trust, mortgages, bills of sale, or other assignment made by the owner or holder, and take priority over all liens by execution, garnishment or attachment process sued out by creditors of the stockholder. The bank, banking association, trust or security company shall hold the dividend or other fund belonging to the stockholder and in its custody at the time the assessment list is received or that thereafter shall come under its control, and apply the same to the payment of the tax assessed, and when thus applied shall be acquitted and discharged from all liability to the stockholder for the money so disbursed. (1908, p. 322; 1915, p. 209; 1918, p. 624.)

Sec. 19. Time of payment of taxes against stockholders.—Each bank, banking association, trust or security company, on or before the first day of June in each year, shall pay to the treasurers of the several counties, cities and towns, respectively, the tax assessed against its stockholders. (1915, p. 209; 1918, p. 624.)

Sec. 20. Proceedings for collection of same.—Should any bank, banking association, trust or security company fail to pay the tax assessed against its stockholders, as provided by this act, on or before the first day of June in each year, then, as soon thereafter as practicable (3092)

Digitized by Google

the Auditor of Public Accounts shall transmit to the treasurer of the county or city in which said bank, banking association, trust or security [company] is located the copy of the assessment list furnished him by the commissioner of the revenue, and it shall be said treasurer's duty to collect the taxes therein assessed, and to this end to levy upon the stock of the taxpayer or so much thereof as is necessary to pay said tax, and sell the same at public auction for cash as chattels and other personal property are sold under execution. He shall give to the purchaser a bill of sale made under his hand and seal. (1915, p. 209; 1918, p. 624.)

Sec. 21. Transfer of stock; legal effect of lists aforesaid.—The bank, banking association, trust or security company, on presentation by a purchaser of his bill of sale, shall cause the stock therein described to be transferred to said purchaser, and he shall take a clear and unencumbered title to the stock purchased. Should the taxes assessed against said stockholders be not paid or collected as hereinbefore provided, the lists aforesaid shall stand and be treated and have the legal effect of tax tickets regularly made out against each of said stockholders named in said lists as to which tax the right of levy and distress has accrued to the Commonwealth, and the treasurer shall proceed to collect the same by levy, or distress, and possess, all and singular, the authority and power conferred upon him by law to collect other State taxes, and be governed by sections six hundred and twenty-two and six hundred and twenty-three of the Code of Virginia. (1915, p. 209.)

Sec. 22. Penalty upon bank for failure to comply with act.—The bank, banking association, trust or security company, which shall fail or neglect to comply with each and every provision of this act, for each separate offense, shall be fined not less than one hundred nor more than five hundred dollars, which fine shall be recovered upon motion, after five days' notice in the circuit, corporation or hustings court, of the county or city in which the said bank, banking association, trust or security company is located. Said motion shall be in the name of the Commonwealth and presented by the attorney for the Commonwealth, of the court in which the motion is brought or made. The real estate of all banks, banking associations, trust and security companies shall be assessed on the land books of the commissioners of the revenue, with the same taxes with which other real estate is assessed. (1915, p. 209.)

Sec. 23. Tax on insurance companies.—Every person, partnership, company or corporation, which contracts on his, their or its account to issue policies or contracts for or agreements for life, fire, marine, surety, guaranty, fidelity, employers liability, liability, credit, health, accident, live stock, plate glass, tornado, automatic sprinkler, burglary, steam boiler, and all like insurance, shall pay an annual license tax based on the gross premium income, derived from business in this State during each year ending the thirty-first day of December prior to the year for which such license tax is to be paid for the privilege of doing business in this State.

The license year shall expire on the thirtieth day of April of each year. No license shall be issued for less than a year, except to a person, partnership, company or corporation, when he, they, or it first commenced business in this State, in which case the license shall be issued for that part of the year from the date of the issuance of the license to the thirtieth of April following, and the tax thereon shall be two hundred dollars if the said license period be one year, otherwise the first year's license tax shall be such proportion of the two hundred dollars license tax as the space of time between the issuance of the license and the thirtieth of April following bears to the whole year. The license tax herein provided shall be paid into the State treasury on or before the first day of April of each year, but the Auditor of Public Accounts shall not receive the same until the Commissioner of Insurance has notified him in writing, showing the amount due, which information the Com-

Digitized by Google

missioner of Insurance shall furnish to the Auditor of Public Accounts on or before the fifteenth day of March of each year, but said commissioner shall for the purposes of the immediate collection of the license tax for the current year furnish the information herein required to the Auditor of Public Accounts within five days after the passage of this act.

Every such person, partnership, company or corporation which contracts on his, their or its account to issue policies or contracts for or agreements for fire, marine, surety, guaranty, fidelity, employer's liability, liability, credit, health, accident, live stock, plate glass, tornado, automatic sprinkler, burglary and steam boiler, and all like insurance, shall pay into the State treasury, as hereinabove provided, a license tax of two and three-fourths per centum upon the gross amount of all premiums, assessments, dues and fees collected, received or derived, or obligations taken therefor, from business in this State during each year ending the thirty-first day of December, without any deduction for dividends paid, or deduction on any other account, except for premiums returned upon cancelled policies, and premiums paid for re-insurance upon business in this State in companies duly authorized to do business in this State; and every such person, partnership, company or corporation which contracts on his, their, or its account to issue policies or contracts for or agreements for life insurance, and all like insurance, shall pay into the State treasury, as hereinabove provided, a license tax of two and one-fourth per centum upon the gross amount of all premiums, assessments, dues and fees collected, received or derived, or obligations taken therefor, from business in this State during each year ending the thirty-first day of December, without any deduction for dividends paid or deduction on any other account, except for premiums returned upon cancelled policies, and premiums paid for re-insurance upon business in this State in companies duly authorized to do business in this State. Provided, that any such insurance companies chartered by and doing business solely in this State which are purely mutual and have no capital stock, and are not designed to accumulate profits for the benefit of, or pay dividends to, the members thereof, or any insurance company chartered by and doing business solely in this State, with a capital stock not exceeding twenty-five thousand dollars and which pays losses from assessments against its policyholders or members, shall pay a license tax of one per centum upon the gross amount of all premiums, assessments, dues and fees collected, received or derived, or obligations taken therefor, from business in this State during the year ending the thirty-first day of December, without any deduction for dividends paid, or deduction on any other account, except for premiums returned upon cancelled policies, and premiums paid for re-insurance upon business in this State in companies duly authorized to do business in this State. Provided, further, that nothing herein shall be construed to apply to mutual fire insurance companies chartered in this State and doing a local business in this State, as defined by an act approved March seventh, nineteen hundred and four, nor to industrial sick benefit companies, as defined by an act approved March sixteenth, nineteen hundred and ten, or to fraternal beneficiary associations, as defined by chapter five of the act concerning the Bureau of Insurance, approved March ninth, nineteen hundred and six, as amended by an act approved March twenty-fourth, nineteen hundred and fourteen. And provided, further, that nothing herein shall be construed to apply to section twenty-eight of chapter one, and section fourteen of chapter two, of an act concerning the Bureau of Insurance approved March ninth, nineteen hundred and six, providing that the expenses of maintaining the Bureau of Insurance shall be paid by the insurance companies doing business in this State, and providing that the expense of keeping the bonds deposited with the Treasurer of the State shall be paid by the insurance company depositing same; provided, however, that the license tax to be paid by each of the above described persons, partnerships, companies or corporations for the license year commencing May first, nineteen hundred and fifteen, and ending April thirtieth, nineteen hundred and sixteen, shall be based

Digitized by Google

upon the gross amount of all premiums, assessments, dues and fees collected, received or derived, or obligations taken therefor, from business in this State during the year beginning January first, nineteen hundred and fourteen, and ending December thirty-first, nineteen hundred and fourteen, both dates inclusive, without any deduction for dividends paid o deduction on any other account except for premiums returned upon cancelled policies, and premiums paid for re-insurance upon business in this State in companies duly authorized to do business in this State, which State license tax shall be paid into the State treasury on or before the first day of April, nineteen hundred and fifteen.

The proceeds of the said license tax to be paid into the State treasury by every person, partnership, company or corporation doing an insurance business in this State as herein provided, shall be retained for the expenses of the State government. (1910, p. 224; 1914, p. 675; 1915, p. 106.)

The percentage clause in this section is not a property but a privilege tax and is not in conflict with article 13, section 170 of the Constitution of 1902. Scottish Un. Ins. Co. v. Winchester. 110 Va. 451. 66 S. E. 84.

Sec. 24. Reports to Commissioner of Insurance; penalties; duty of Auditor of Public Accounts.—Every such person, partnership, company or corporation shall, on or before the first of March of each year, report, under oath, to the Commissioner of Insurance, upon forms to be furnished by him, the gross amount of all premiums, assessments, dues and fees collected, received or derived, or obligations taken therefor, from business in this State during the preceding year ending the thirty-first day of December, without any deduction for dividends paid, or deduction on any other account, except for premiums returned upon cancelled policies, and premiums paid for re-insurance upon business in this State in companies duly authorized to do business in this State. The said annual report shall be examined into by the Commissioner of Insurance in order to ascertain as to its correctness, and it shall be his duty to file said report, or a copy thereof, when approved by him, with the Auditor of Public Accounts.

Every such person, partnership, company or corporation which shall fail to make the report of premium, assessments, dues and fees as herein required shall be fined fifty dollars for each day's failure to make such report, said fine to be imposed in the discretion of the Circuit Court of the city of Richmond, upon the motion of the Attorney General, after ten days' notice, made at the suggestion of the Commissioner of Insurance.

The Commissioner of Insurance shall, upon notification from the Auditor of Public Accounts, that the license tax on premiums, assessments, dues and fees, has not been paid, revoke the license issued the person, partnership, company or corporation.

The Auditor of Public Accounts shall, upon the failure of any such person, partnership, company or corporation to make the payment of the license tax on premiums, assessments, dues and fees, within the time required by law, add a penalty of ten per centum of the amount of said license tax to the same, and proceed to recover the penalty and the license tax by suit in the Circuit Court of the city of Richmond on the bond given by any such person, partnership, company or corporation to secure the payment of said tax. (1910, p. 224; 1915, p. 106.)

Sec. 25. Certain local mutual fire insurance companies exempt.—No charge shall be made against any fire insurance company chartered in this State for the privilege of transacting its business when such company is purely a local mutual association, doing business in not more than four contiguous counties in this State, or in more than four contiguous counties, provided the territory embraced in the counties in which business is done has not a population, exceeding one hundred thousand, and is not designed to accumulate profits for the benefit of, or pay dividends to, the stockholders or members thereof; and, provided, further, that nothing in this act shall be construed to require any tax, other than the tax imposed upon property and the fees imposed by the

Digitized by Google

general law, defining and regulating fraternal beneficial associations, orders or societies, upon secret or fraternal orders where the benefit or relief is payable by the grand or supreme body of the same, and is derived from assessment upon lodges, councils or other bodies.

Sec. 26. Property of insurance companies to be taxed as other property; no tax except license tax on gross premiums.—The real estate and tangible personal property, situated or located in this State, of every person, partnership, company or corporation, whether organized by the laws of another State or country, or organized under the laws of this State, and doing an insurance business in this State, shall be listed and assessed on the land and property books of the commissioners of the revenue in the same manner as other real estate and tangible personal property is assessed, and shall be taxed at the same rate as other like property is taxed in this State.

The license tax on gross premiums as provided in section twenty-three and the tax on real estate and tangible personal property herein provided to be paid by every person, partnership, company or corporation doing such an insurance business in this State, shall be in lieu of all other license fees, taxes or levies whatsoever for State, county, municipal or local purposes, which shall be construed to include their agents, except that the certificate fee of one dollar required to be paid by all such agents to the Bureau of Insurance shall be paid by them as heretofore. (1910, p. 224; 1915, p. 106.)

Sec. 27. Railway and canal corporations.—Every railway and canal corporation of this State not exempt from taxation by virtue of its charter, and every railway and canal corporation incorporated under the laws of any other State doing business in this State, shall report annually on or before the fifteenth day of August, to the State Corporation Commission all of its real and personal property of every description, as of the thirtieth day of June preceding, showing particularly in what county or corporation the principal office or agency of such corporation is located in this State, and in what county or corporation the principal office or agency of such corporation is located, and also showing what parts of such property is located in each school district of such county, and classifying the same under the following heads:

First. Roadway and track or canal bed.

Second. Depots, depot grounds and lots, station buildings and fixtures and machine shops.

Third. Real estate not included in other classes.

Fourth. Rolling stock, including passenger, freight, cattle or stock, baggage, mail, express, sleeping, palace and all other cars owned by or belonging to the corporation, boats, machinery, depot and office furniture and equipment, houses and appurtenances occupied by lockgate keepers and other employees; provided, that foreign railway and canal corporations doing business in this State shall report and be assessed on the average amount of rolling stock habitually used by them in this State.

Fifth. Stores.

Sixth. Telegraph lines.

Seventh. Stock, bonds and other evidences of debt of other corporations and individuals, and firms held by such company.

Eighth. Stocks, bonds and other evidences of debt of any person or corporation belonging to any such company chartered in this State, in excess of its indebtedness, whether the same be held in trust or otherwise by some other person, firm or corporation, within or without this State, which, for the purpose of this act, shall be considered to be located at the principal office of such company in this State.

Ninth. All other personal property of such company not enumerated in either of the foregoing heads, which would be taxable under this act if the same belonged to an individual, including money of the corporation, derived from actual transportation operations, on deposit with any bank or other corporation or firm or person, or in the possession or under the

Digitized by Google

control of the corporation, whether such money be actually in or out of this State, and if such railway or canal is only in part within this Commonwealth, the money to be reported shall be such proportion of the total money on deposit, derived as aforesaid, as the gross earnings in Virginia bear to the gross earnings of the system.

Every such corporation shall also report, on or before the fifteenth day of August of each year, the gross transportation receipts of the railway or canal for the twelve months preceding the thirtieth day of June of each year, and in all cases the report shall be so made as to give the data on which the same is made. If such railway or canal is only in part within the Commonwealth, the report shall show what part is within the Commonwealth, and what proportion the same bears to the entire length of the road or canal, and shall apportion the said receipts accordingly. The report herein required shall be verified by the oath of the president or proper officer. The State Corporation Commission shall, after thirty days' notice previously given by it to the president, treasurer, or other proper officer of such corporation, proceed to ascertain the value of property and the gross transportation receipts so reported, upon the best and most reliable information that can be procured, and to this end shall be authorized and empowered to send for persons and papers. The State Corporation Commission shall assess upon said property and gross transportation receipts the taxes imposed thereon by law.

A certified copy of this assessment, when made, shall be immediately forwarded by the clerk of the State Corporation Commission, not later than the fifteenth day of October, to the Auditor of Public Accounts and to the president or other proper officer of each railway and canal corporation so assessed, whose duty it shall be to pay into the treasury of the State, on or before the first day of November following, the taxes upon its property and the franchise tax upon the gross transportation receipts as shown by said copy of the assessments.

The State Corporation Commission shall, at such times as it may elect, on or before the fifteenth day of October of each year, proceed to ascertain and assess the gross transportation receipts of any railway or canal corporation which has failed to make the report herein required, and shall also assess the value of the property of any such corporation, except its franchise and non-taxable shares of stock issued by other corporations and owned by it, at a fair cash valuation, upon the best and most reliable information that can be procured, and to this end shall be authorized and empowered to send for persons and papers, and said commission shall assess upon such gross transportation receipts and property the taxes imposed thereon by law. A certified copy of the assessment when made shall be immediately forwarded by the clerk of the State Corporation Commission to the Auditor of Public Accounts and to the president or other proper officer of such railway or canal corporation so assessed, whose duty it shall be to pay into the treasury of the State within thirty days after receiving said certified copy of the assessment, the taxes upon its property, and the franchise tax upon its gross transportation receipts as shown by said copy of the assessment.

Such taxes so assessed, and a penalty in addition thereto of five per centum thereon, if the said taxes be not paid at the time provided herein, shall be collected by the treasurer of any county or city in which such corporation owns property, to whom the auditor may deliver a copy of the assessment. The treasurer may distrain and sell any personal property of such corporation, and shall pay the amount of said tax and penalty into the treasury within one month from the time of delivery to him of the copy as aforesaid. The roadbed, depot grounds, rolling stock, tools, oil and other articles used in operating railroads, owned by mining, lumber and like companies which transport passengers or freight for other than such owners, shall be assessed by the State Corporation Commission in the mode prescribed by this act. All other property of such mining, lumber and like companies shall be assessed by the commissioner of the revenue upon the land and personal property books of the counties and cities where located. Mining, lumber, and like com-

Digitized by Google

panies operating railroads to transport passengers or freight for others shall be construed as in the provision of this section as to all of their property, except their real estate, not used as a part of their roadbed or for depot purposes, which shall be assessed by the commissioner of the revenue in the district or city wherein situated.

It shall be the duty of the State Corporation Commission to prepare and furnish to the several corporations required to make reports under this section forms for such reports, which said corporations shall use in making the reports required of them, and any such corporation which shall fail to make the report hereinbefore required, within the time herein prescribed, shall be liable to a fine of not less than one hundred dollars nor more than two hundred and fifty dollars for each day such corporation may be in default in making such report. The said fine to be imposed and judgment entered therefor by the State Corporation Commission after thirty days' notice to any such defaulting corporation to appear before the said commission and show cause, if any, against the imposition of such fine, subject to appeal to the Supreme Court of Appeals. It shall be the duty of the clerk of the State Corporation Commission to furnish to the council of every city and town and to the board of supervisors of every county, and to the treasurer of every county and city, wherein any property belonging to such corporation is situated, a certified copy of the assessment made by the State Corporation Commission of such corporation's property, which shall definitely show the character of the property, its value and location for the purpose of taxation in each county, city, town and school district, so that county, city, town and school district levies may be laid upon the same; provided, however, that it shall be the duty of the division superintendent of schools in each county in which a railway or canal is located and operated to furnish, on or before the first day of July in each year, to such railway or canal corporation or corporations, the boundaries of each school district of said county in which any part of such railway or canal and its property is situated, and a copy of such boundaries to the clerk of the State Corporation Commission. Wherever any division superintendent of schools shall fail to furnish to such railway or canal corporation or corporations and the clerk of the State Corporation Commission, the boundaries of each school district of said county in which any part of such railway or canal and its property is situated, it shall be the duty of the clerk of the State Corporation Commission to notify the judge of the circuit court of the county wherein such superintendent of school resides, who shall instruct the grand jury at the next term of the circuit court to ascertain whether such boundaries have been furnished as required in this act, and should said grand jury ascertain that such boundaries have not been furnished, they shall find an indictment against each such division superintendent of schools, who shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars for each school district so omitted. (1906, p. 529; 1910, p. 394; 1912, p. 490; 1915, p. 197.)

See Com. v. C. & O. R. Co. (Corporation Commission), 20 Va. L. Reg. 825; affirmed 118 Va. 261, 87 S. E. 622; Supervisors v. Com., 116 Va. 311, 81 S. E. 112, 20 Va. L. Reg. 71; section 2207 of the Code.

For a review of "Recent Virginia Tax Cases," see 2 Va. L. Reg. N. S. 733.

Sec. 28. Tax on railway and canal corporations.—The State tax on the rolling stock of all corporations operating railroads by steam, doing business in this State, so far as the same is taxable in this State, shall be at the rate of one and three-fifths per cent. of the assessed value thereof, to be applied to the support of the government of this State, and there shall be no local levies assessed on such rolling stock.

The State tax on the intangible personal property as assessed in the section next preceding (other than bonds issued by counties, cities and towns or other political subdivisions of this State) owned by every railway and canal corporation, shall be at the rate of sixty-five cents on every hundred dollars of the assessed value thereof, the proceeds of which

Digitized by Google

shall be applied to the payment of expenses of the government, and upon all such intangible personal property there may be local levies at the rate authorized by law; however, such rate not to exceed thirty cents on every one hundred dollars of the assessed value thereof, the proceeds of said local levies to be applied as is provided by law.

The State tax on the money of every railway and canal corporation shall be twenty cents on every one hundred dollars assessed value thereof, one-half of which shall be applied to the support of the government and one-half of which shall be applied to the support of the public free schools of this State, and there shall be no local levies assessed on such money.

The State tax on bonds issued by counties, cities and towns or other political subdivisions of this State, owned by every railway and canal corporation shall be at the rate of thirty-five cents on every one hundred dollars assessed value thereof, the proceeds of which tax shall be applied to the payment of the expenses of the government.

The State tax on the real estate, rolling stock (other than the rolling stock of corporations operating railroads by steam) and tangible personal property of every railway and canal corporation, shall be at the rate of ten cents on every one hundred dollars assessed value thereof, the proceeds of which shall be applied to the support of the public free schools of this State, and on such real estate, rolling stock (other than the rolling stock of corporations operating railroads by steam) and tangible personal property there shall be local levies at the same rate or rates as are assessed upon other real estate and tangible personal property, located in such localities, the proceeds of which local levies shall be applied as is provided by law.

Every such railway or canal corporation shall pay to the State an annual State franchise tax equal to one and one-fourth per centum upon the gross transportation receipts, hereinafter specified, for the privilege of exercising its franchise in this State, which, with the taxes hereinbefore provided for, shall be in lieu of all taxes or license charges whatsoever, upon the franchises of such corporation and the shares of stock issued by it, and upon all its property, as hereinbefore provided; provided, that nothing herein contained shall exempt such corporation from the annual fee required by section one hundred and fifty-seven of the Constitution or from assessment for street and other local improvements, which shall be authorized by law, or from the county, city, town, district or road levies hereinafter provided for other than a franchise tax; and provided, further, that nothing herein contained shall annul or interfere with, or prevent, any contract or agreement by ordinance between street railway corporations and municipalities as to compensation for the use of the streets or alleys of such municipalities by such railway corporation; and provided, further, that the case of any railway or canal corporation operated wholly within this State whose actual operating expenses exceed its gross transportation receipts, the annual State franchise tax shall be equal to one and one-eighth per centum upon the gross transportation receipts.

The amount of such franchise tax shall be equal to one and one-fourth per centum of the gross transportation receipts of such corporation for the year ending June thirtieth of each year, to be ascertained by the State Corporation Commission in the following manner:

(a) When the road or canal of the corporation lies wholly within this State, the tax shall be equal to one and one-fourth per centum of the entire gross transportation receipts of such corporation.

(b) When the road or canal of the corporation lies partly within and partly without this State, or is operated as a part of a line or system extending beyond this State, the tax shall be equal to one and one-fourth per centum of the gross transportation receipts earned within this State, to be determined as follows:

By ascertaining the average gross transportation receipts per mile over its whole extent within and without this State, and multiplying the result by the number of miles operated within this State; provided,

Digitized by Google

that from the sum so ascertained there may be deducted a reasonable sum because of any excess of value of the terminal facilities or other similar advantages situated in other States over similar facilities or advantages situated in this State.

The real and personal property (other than the rolling stock of corporations operating railroads by steam) of such corporation, and other than its franchise, shall be assessed on the valuation fixed by the State Corporation Commission with county, city, town, district and road levies at the same rate as real and personal property of natural persons are assessed with such levies.

No State tax, county, city, town, district or road levy shall be laid on the net income of any railway or canal corporation, nor shall any county, city, town, district or road levy be laid on the gross transportation receipts of any such company.

All the taxes and levies shall, until paid, be a lien upon the property within this State of the corporation owning the same, and take precedence of all other liens or encumbrances.

Any such railway or canal corporation, or the State or any county or city at the instance of the Attorney General for the State or the Commonwealth's attorney for any county or city, aggrieved by the assessment and ascertainment of such taxes, may within thirty days after receiving a certified copy thereof, apply for relief to the circuit court of the city of Richmond. Notice of the application setting forth the grounds of complaint, verified by affidavit if the appeal be taken by any such railway or canal corporation shall be served on the State Corporation Commission, and on the Attorney General, whose duty it shall be to represent the Commonwealth, or if the appeal be taken by the State or any county or city, notice of the application, setting forth the grounds of complaint, shall be served on such railway or canal corporation. If the court be of opinion that the assessment or tax is excessive, it shall reduce the same, but if of the opinion that it is insufficient it shall increase the same. Unless the applicant paid the taxes under protest when due, the court, if the decision is adverse to the applicant shall, in disallowing the application, give judgment against it for the taxes assessed by the State Corporation Commission, and for a sum, by way of damages, equal to interest at the rate of one per centum per month, upon the amount of taxes from the time the same were payable If the decision is in favor of such railway or canal corporation, in whole or in part, appropriate relief shall be granted, including the right to recover any excess of taxes that may have been paid, with legal interest thereon, and the legally taxable costs of said application from the State or local authorities, or both, as the case may be, the judgment to be enforced by mandamus or other proper process issuing from the court finally adjudicating the application. If the decision be in favor of the State, or any county or city, appropriate relief shall be granted and the court shall enforce its judgments by mandamus or other proper process.

The Supreme Court of Appeals may, subject to the provisions of article six of the Constitution, allow a writ of error to either party. Provided, however, that any steam railway company in which nine-tenths of the stock of such company is owned by a city or county of this State and which is operated at a loss, shall pay to the State an annual State franchise tax of only five dollars. (1915, p. 197; 1916, p. 814.)

A railroad company, which by its charter is exempt from any public charge or tax whatsoever, but which avails itself of the provisions of section 1089 of the Code of 1887 (now section 4379), and so falls under the provisions of section 158 of the Constitution, is liable for the franchise tax under this section. Com. v. R. F. & P. R. R. Co., 111 Va. 611, 69 S. E. 1070.

See sections 2206, 2207, 2208 of the Code.

Sec. 29. Express companies, refrigerator, oil, stock, fruit and other car loaning and other car companies, operating upon the railroads in this State except sleeping car, dining car, drawing room car, and palace car companies.—All companies doing express business on any railroad, steamboat or vessel in this State; all refrigerator, oil, stock, fruit and other car

Digitized by Google

loaning and other car companies, operating upon the railroads in this State, except sleeping car, dining car, drawing room car and palace car companies, shall report annually on or before the first day of September to the State Corporation Commission all of its real and personal property of every description in this State belonging to it on the thirtieth day of June preceding, showing particularly in what city, town, county and school district property is located and classifying the same under the following heads:

(a) All of its real and personal property of every description in this State belonging to it on the thirtieth day of June next preceding, showing the cost and present market value of said property.

(b) The total number of miles operated within and without this State for the year ending June thirtieth next preceding.

(c) The gross receipts from operation entirely within this State, and if operations are partly within and partly without this State the entire gross receipts from operation for the year ending June thirtieth next preceding.

(d) Any and all other information, in such manner and in such detail as the State Corporation Commission shall require.

The said State Corporation Commission shall, after thirty days' notice previously given by it to the president or other proper officer, assess the value of the property of each such companies.

Should any such company fail to make the report required by this section on or before the first day of September the said State Corporation Commission shall, at such time as it may elect, upon the best and most reliable information that can be procured, assess the value of the property of said company within this State, and shall ascertain the information required herein, and in the execution of the duty shall be authorized and empowered to take testimony, summon and compel the attendance of witnesses and send for persons and papers.

A certified copy of the assessment when made shall be immediately forwarded by the clerk of the State Corporation Commission to the Auditor of Public Accounts and to the president or other proper officer of each such company, and such company shall pay into the treasury of the State by the first day of December following the taxes assessed against it.

It shall be the duty of the clerk of the State Corporation Commission to furnish to the council of every city and town and to the board of supervisors of every county wherein the property belonging to said company is situated a certified copy of the assessment made by the State Corporation Commission of such companies' property, which assessment shall definitely show the character of the property, its value and location for the purpose of taxation in each city, town, county and district, so that city, town, county and district levies may be imposed upon the same; provided, however, that it shall be the duty of the division superintendent of schools in each such county in which any express company, refrigerator, oil, stock, fruit and other car loaning and other car companies own property, on or before the first day of July in each year to furnish to such companies the boundaries of the school districts of said county wherein any such property is situated.

Any such company failing to pay said taxes into the treasury within the time herein prescribed shall incur a penalty thereon of five per centum, which shall be added to the amount of said taxes.

Any such company failing to make the report hereinbefore required within the time herein prescribed shall be liable to a fine of not less than twenty-five dollars nor more than one hundred dollars for each day such company may be in default in making such report, the said fine to be imposed and judgment entered therefor by the State Corporation Commission after thirty days' notice to any such defaulting corporation to appear before the said commission and show cause, if any, against the imposition of such fine, subject to appeal to the Supreme Court of Appeals of Virginia. (1908, p. 240; 1915, p. 197.)

Digitized by Google

Sec. 29½. Tax on express companies, refrigerator, oil, stock, fruit and other car loaning and other car companies, operating upon the railroads in this State, except sleeping car, dining car, drawing room car and palace car companies.—Each and every one of the said companies doing business in this State shall, on or before the first day of December of each and every year, pay to the State and to the several counties, cities and towns of the State wherein they may have taxable properties located, the taxes levied on said property, as follows:

(a) The State tax on the intangible personal property (other than bonds issued by counties, cities and towns or other political sub-divisions of this State) owned by every such company shall be at the rate of sixty-five cents on every one hundred dollars of the assessed value thereof, the proceeds of which shall be applied to the expenses of the government, and upon all such intangible personal property there may be local levies at the rate authorized by law, however, such rates not to exceed thirty cents on every one hundred dollars of the assessed value thereof, the proceeds of said local levies to be applied as is provided by law.

(b) The State tax on the money of every such company shall be twenty cents on every one hundred dollars assessed value thereof, one-half of which shall be applied to the support of the government and one-half of which shall be applied to the support of the public free schools of this State, and there shall be no local levies assessed on such money.

(c) The State tax on bonds issued by counties, cities and towns or other political sub-divisions of this State, owned by every such company, shall be at the rate of thirty-five cents on every one hundred dollars assessed value thereof, the proceeds of which tax shall be applied to the payment of the expenses of the government.

(d) The State tax on the real estate and tangible personal property of every such company shall be at the rate of ten cents on every one hundred dollars assessed value thereof, the proceeds of which shall be applied to the support of the public free schools of this State, and on such real estate and tangible personal property there shall be local levies at the same rate or rates as are assessed upon other real estate and tangible personal property located in such localities, the proceeds of which local levies shall be applied as is provided by law.

(e) Every such company for the privilege of doing business in this State, in addition to the annual registration fee and the property tax as herein provided, shall pay an annual license tax as follows:

Said tax shall be equal to the percentages hereinf fixed upon the gross receipts from operation of such companies and each of them within this State. When such companies are operating partly within and partly without this State, the gross receipts within this State shall be deemed to be all receipts on business beginning and ending within this State, and all receipts earned in Virginia on business passing through, into or out of this State; provided, unless otherwise clearly shown such last mentioned receipts shall be deemed to be that portion of the total receipts from such business which the entire mileage over which such business is done bears to the mileage operated within this State the percentages above mentioned shall be as follows:

On all companies doing express business within this State one and one-quarter per centum; on all refrigerator, oil, stock, fruit and other car loaning and other car companies, except sleeping car, dining car, drawing room car and palace car companies, four per centum.

The amount of the taxes and license herein imposed shall be in lieu of all other taxes and licenses, State, county and municipal, upon all the property, franchises and privileges of said companies. (1915, p. 197.)

See section 2399 of the Code and Acts 1916, chapter 283, p. 499.

Sec. 30. Corporations operating steamboats, steamships or other floating property for the transportation of passengers or freight.—Each and every corporation which operates steamships, steamboats or other floating property for the transportation of passengers or freight, shall report annually, on or before the first day of September, to the State

Digitized by Google

Corporation Commission, all of its real and personal property of every description in this State belonging to it on the thirtieth day of June preceding, showing particularly in what city, town, county and school district the property is located, and classifying the same under the following heads:

First. All steamships, steamboats and other floating property, their machinery and equipments.

Second. All wharves, sheds, offices, stores, docks, machine shops, granaries, elevators and other buildings.

Third. All real estate and personal property not included in the foregoing classification.

Each such corporation shall also give in said report—

(a) The total number of miles operated within and without this State for the year ending June thirtieth next preceding; (b) the gross receipts from operations entirely within this State and if operations are partly within and partly without this State the entire gross receipts from operations for the year ending June thirtieth next preceding; (c) any and all other information in such manner and in such detail as the State Corporation Commission shall require.

The said Corporation Commission shall, after thirty days' notice previously given by it to the president or other proper officer, assess the value of the property of each of such corporations.

Should any such corporation fail to make the report required by this section on or before the first day of September, the said Corporation Commission, shall at such time as it may elect, upon the best and most reliable information that can be procured, assess the value of the property of said company, and shall ascertain the information required herein, and in the execution of the duty shall be authorized and empowered to send for persons and papers.

The State Corporation Commission shall assess upon said property the taxes imposed thereon by law, and upon said corporations the license tax imposed by law.

A certified copy of the assessment, when made, shall be immediately forwarded by the clerk of the State Corporation Commission to the Auditor of Public Accounts and to the president or other proper officer of each such corporation, and such corporation shall pay into the treasury of the State by the first of December following, the taxes assessed against it.

It shall be the duty of the clerk of the State Corporation Commission to furnish to the council of every city and town, and to the board of supervisors of every county wherein the property belonging to said corporation is situated, a certified copy of the assessment made by the State Corporation Commission of such corporation's property, which assessment shall definitely show the character of the property, its value and location for the purpose of taxation in each city, town, county and district, so that city, town, county and district levies may be imposed upon the same; provided, however, that it shall be the duty of the division superintendent of schools in each such county in which any such corporation owns property, on or before the first day of July in each year, to furnish to each such corporation the boundaries of the school districts of said county wherein any such property is situated.

Any such corporation failing to pay said taxes into the treasury within the time herein prescribed shall incur a penalty thereon of five per centum, which shall be added to amount of said taxes.

Any such corporation which shall fail to make the report hereinbefore required within the time herein prescribed, shall be liable to a fine of not less than twenty-five dollars nor more than one hundred dollars for each day such corporation may be in default in making such report. The said fine shall be imposed and judgment entered therefor by the said Corporation Commission after thirty days' notice to any such defaulting corporation, to appear before the said commission and show cause, if any, against the imposition of such fine, subject to appeal to the Supreme Court of Appeals of Virginia. (1908, p. 240; 1915, p. 197.)

Digitized by Google

Sec. 31. Tax on corporations which operate steamships, steamboats or other floating property for the transportation of passengers or freight. —The State tax on the intangible personal property (other than bonds issued by counties, cities and towns or other political sub-divisions of this State) owned by corporations which operate steamships, steamboats or other floating property for the transportation of passengers or freight, shall be at the rate of sixty-five cents on every hundred dollars of the assessed value thereof, the proceeds of which shall be applied to the expenses of the government, and upon all such intangible personal property there may be local levies at the rate authorized by law, however, such rates not to exceed thirty cents on every one hundred dollars of the assessed value thereof, the proceeds of said local levies to be applied as is provided by law.

The State tax on the money of every such company shall be twenty cents on every one hundred dollars assessed value thereof, one-half of which shall be applied to the support of the government and one-half of which shall be applied to the support of the public free schools of this State, and there shall be no local levies assessed on such money.

The State tax on bonds issued by counties, cities and towns or other political sub-divisions of this State owned by every such company, shall be at the rate of thirty-five cents on every one hundred dollars assessed value thereof, the proceeds of which tax shall be applied to the payment of the expenses of the government.

The State tax on the real estate and tangible personal property of every such company shall be at the rate of ten cents on every one hundred dollars assessed value thereof, the proceeds of which shall be applied to the support of the public free schools of this State, and on such real estate and tangible personal property there shall be local levies at the same rate or rates as are assessed upon other real estate and tangible property located in such localities, the proceeds of which local levies shall be applied as is provided by law.

Every such company for the privilege of doing business in this State, in addition to the annual registration fee, and property tax, shall pay an annual State license tax as follows:

Said tax shall be equal to one and one-eighth per cent. upon the gross receipts from the operation of such companies, and each of them, within this State. When such companies are operated partly within and partly without this State, the gross receipts within this State shall be deemed to be all receipts on business beginning and ending within this State and all receipts earned in Virginia on business passing through, into or out of this State; provided, that unless otherwise clearly shown such last mentioned receipts shall be deemed to be that proportion of the total receipts from such business which the entire line mileage over which said business is done bears to the mileage operated within this State. (1908, p. 257; 1910, pp. 164, 166; 1915, p. 197.)

Sec. 32. Sleeping car, parlor car, and dining car companies.—Each sleeping car, parlor car, and dining car company doing business between points in this State shall report annually, on or before the first day of September, to the State Corporation Commission, the number of miles of track over which it operates its cars in this State on the thirtieth day of June preceding.

The report herein required shall be verified by the oath of the president or other proper officer of the company making the same.

Every such company which shall fail to make the report required in this section within the time herein prescribed shall be liable to a fine of not less than five hundred dollars nor more than two thousand five hundred dollars. The said fine to be imposed and judgment entered therefor by the State Corporation Commission after thirty days' notice to any such defaulting corporation to appear before the said commission, and to show cause, if any, against the imposition of such fine, subject to appeal to the Supreme Court of Virginia.

If any such company should fail to make such report at the time

Digitized by Google

herein prescribed, the State Corporation Commission shall, at such time as it may elect, upon the best and most reliable information that can be procured, ascertain the number of miles operated by it in this State, and in the execution of such duty shall be authorized and empowered to send for persons and papers. The State Corporation Commission shall assess upon said companies the license tax imposed thereon by law.

A certified copy of the assessment when made shall immediately be forwarded by the clerk of the State Corporation Commission to the Auditor of Public Accounts and to the president or other proper officer of each such company, and such company shall pay into the treasury of the State by the first day of December following the tax assessed against it.

Any such company failing to pay said tax into the treasury within the time herein prescribed shall incur a penalty thereon of five per centum, which shall be added to the amount of said tax. (1908, p. 330.)

Sec. 33. License tax on each sleeping car, parlor car or dining car company.—Each and every sleeping car, parlor car and dining car company doing business in this State shall, for the privilege of doing business in this State, pay a license tax as follows:

Each and every sleeping car, parlor car and dining car company operating a mileage and doing business within this State shall pay a license tax of three dollars for each and every mile of track over which it operates its cars in this State.

The taxes herein imposed shall be in lieu of all other taxes, State, county and municipal, against such companies, except that they shall be required to pay to the State the annual registration fee. (1908, p. 330; 1915, p. 49.)

Sec. 34. Incorporated telegraph and telephone companies.—Each incorporated telegraph and telephone company doing business in this State owning and operating a telegraph or telephone line in this State, shall report annually, on the first day of September, to the State Corporation Commission all of its real and personal property of every description in this State belonging to it on the thirtieth day of June preceding showing particularly in what corporation, county and school district the property is located and classify the same under the following heads:

(1) Number of miles of poles or conduits owned or operated by it within this State on the thirtieth day of June preceding in each county, city, town and school district.

(2) Number of miles of wire in excess of one wire in each city, county, town and school district.

(3) Real and personal property, including the value of the telephone instruments, switchboards, et cetera, and the value of telegraph instruments, apparatus, et cetera, in each city, county, town or school district.

(4) The gross earnings and receipts in this State for the twelve months next preceding the thirtieth day of June.

The report herein required shall be certified by the oath of the president or other proper officer of the company making the same.

The State Corporation Commission shall after thirty days' notice previously given by it to the president or other proper officer of each of such companies incorporated under the laws of this or any other State, assess the value of the property of said company and assess upon said property the State taxes imposed by law, and shall also assess the State license tax imposed by law upon every such company. Should any such incorporated company fail to make such report at the time herein prescribed, the State Corporation Commission shall, at such time as it may elect, upon the best and most reliable information that can be procured, assess the value of the property of said company and assess upon said property the taxes imposed by law, and shall also assess the license tax imposed by law upon every such company, and in the execution of such duty shall be authorized and empowered to send for persons and papers.

Digitized by Google

A certified copy of the assessment, when made, shall be immediately forwarded by the clerk of the State Corporation Commission to the Auditor of Public Accounts and to the president or other proper officer of each such company, and such company shall pay into the treasury of the State by the first day of December following the taxes assessed against it.

It shall be the duty of the State Corporation Commission to furnish to the council of every corporation and to the board of supervisors of every county, and to every city and county treasurer wherein any property belonging to any such corporation is situated a certified copy of the assessment made by the State Corporation Commission of such company's property, which assessment shall definitely show the character of the city, town, county and district, so that city, town, county, district and road levies may be imposed upon the same.

It shall be the duty of the division superintendent of schools in each county in which any such telegraph or telephone company operating a telegraph or telephone line owns property on or before the first day of July of each year, to furnish such telegraph or telephone company and the clerk of the State Corporation Commission, the boundaries of the school district of said county wherein any such property is situated.

It shall be the duty of the judge of the circuit court for each county, at the next term of said court after the first day of July in each year, to instruct the grand jury to inquire into and ascertain whether or not the division superintendent of schools has furnished the boundaries of each school district to such telegraph and telephone companies operating in said county and to the clerk of the Corporation Commission. If the grand jury shall find that the division superintendent of schools has not furnished the boundaries of such school district as herein provided, indictments shall be found against him for a misdemeanor, and, upon conviction thereof, he shall be fined not less than twenty-five nor more than one hundred dollars for each school district so omitted.

Any company failing to pay said taxes into the treasury within the time herein prescribed, shall incur a penalty thereon of five per centum, which shall be added to the amount of said taxes. (1906, p. 517; 1908, p. 587; 1910, p. 366; 1915, p. 197.)

Sec. 85. Tax on incorporated telegraph and telephone companies owning or operating telegraph or telephone lines in this State.—The State tax on the intangible personal property (other than bonds issued by counties, cities and towns or other political sub-divisions of this State) owned by every incorporated telegraph or telephone company owning or operating telegraph or telephone lines in this State shall be at the rate of sixty-five cents on every hundred dollars of the assessed value thereof, the proceeds of which shall be applied to the expenses of the government, and upon all such intangible personal property there may be local levies at the rate authorized by law, however, such rates not to exceed thirty cents on every one hundred dollars of the assessed value thereof, the proceeds of said local levies to be applied as is provided by law.

The State tax on the money of every incorporated telegraph and telephone company owning or operating telegraph or telephone lines in this State shall be twenty cents on every one hundred dollars assessed value thereof, one-half of which shall be applied to the support of the government and one-half of which shall be applied to the support of the public free schools of this State, and there shall be no local levies assessed on such money.

The State tax on bonds issued by counties, cities and towns or other political sub-divisions of this State, owned by every incorporated telegraph and telephone company owning or operating telegraph or telephone lines in this State shall be at the rate of thirty-five cents on every one hundred dollars, assessed value thereof, the proceeds of which tax shall be applied to the payment of the expenses of the government.

The State tax on the real estate and tangible personal property of

Digitized by Google

every incorporated telegraph and telephone company owning or operating telegraph or telephone lines in this State shall be at the rate of ten cents on every one hundred dollars, assessed value thereof, the proceeds of which shall be applied to the support of the public free schools of this State, and on such real estate and tangible personal property there shall be local levies at the same rate or rates as are assessed upon other real estate and tangible personal property, located in such localities, the proceeds of which local levies shall be applied as is provided by law. (1910, p. 365; 1915, p. 197.)

Sec. 36. License tax on telegraph and telephone companies, and on any firm or person operating the apparatus necessary to communicate by telegraph or telephone.—Each telegraph company and firm, or person, operating the apparatus necessary to communicate by telegrapn, shall for the privilege of doing business between points within this State pay a license tax as follows, to-wit:

Two dollars per mile of line of poles or conduits owned or operated by the company, firm, or person in this State, and an additional charge of two per centum of the gross receipts of the company, firm or person received (or due, though not received), from business done within the State during the year ending the thirtieth day of June.

The specific license tax to be paid by every corporation, person, or association for the privilege of operating the apparatus necessary to communicate by telephone, shall be, when the gross receipts do not exceed fifty thousand dollars, and when the number of miles of poles does not exceed four hundred, and a majority of the stock or other property of such company is not owned or controlled by any other telephone or telegraph company whose receipts exceed fifty thousand dollars, a sum equal to one per centum of the gross receipts of such corporation, person or association from business done within this State during the year ending the thirtieth day of June preceding; when the gross receipts from business done within this State during any such year are in excess of fifty thousand dollars, or the number of miles of poles exceed four hundred, or a majority of the stock or other property of such company is owned or controlled by any other telephone or telegraph company whose receipts exceed fifty thousand dollars, the license tax shall be a sum equal to one per centum of such receipts up to fifty thousand dollars and an additional sum equal to two per centum of such receipts exceeding fifty thousand dollars, and, in addition, a sum equal to two dollars per mile of line of poles or conduits, owned or operated by such corporation, person, or association in this State; provided, that no license tax shall be charged against any telephone company chartered in this State for the privilege of prosecuting its business when such company is purely a local mutual association, and does not charge others for transmitting messages over its line, or lines, and is not designed to accumulate profits for the benefit of, or to pay dividends to, the stockholders or members thereof.

The license tax to be paid by any firm or person not incorporated, transacting a telegraph or telephone business, or owning and operating a telegraph or telephone instrument, line, or conduit, shall be assessed by the commissioner of the revenue for the district or city wherein the principal office of such firm or person is located, or in which such firm, or person resides. (1910, p. 231.)

Cited but not construed in Postal Tel. Co. v. Norfolk, 118 Va. 455, 87 S. E. 555.

Sec. 36¼. Water, heat, light and power companies.—1. All corporations doing in Virginia the business of furnishing water or heat, light and power, whether by means of electricity or gas, shall, on or before the first day of September of each year, report to the State Corporation Commission all of its real and personal property of every description in this State belonging to it on the thirtieth day of June preceding, showing particularly in what city, town or county and school district therein the property is located. This report shall include all water power

Digitized by Google

rights and privileges, dams, flumes and canals, and shall be itemized as provided in sections two, three, and four of this section. Each such corporation shall also report its gross receipts from all business done in Virginia for the year ending June thirtieth preceding. The reports herein required shall be verified by the oath of the president or other proper officer or person making the same. The State Corporation Commission shall, after thirty days' notice, previously given to the president or other proper person, assess the value of the property of each such corporation, and shall assess the franchise tax hereinafter provided for. Should any such corporation fail to make the reports required by this section on or before the first day of September of each year, the State Corporation Commission shall, at such time as it may elect, upon the best and most reliable information that can be procured, assess the value of the property of such corporation, and shall, in the execution of such duties, be authorized and empowered to send for persons and papers, and administer an oath to witnesses and examine the same. The State Corporation Commission shall, after thirty days' notice previously given by it to the president, treasurer or other proper officer of such corporation, proceed to ascertain the value of the property and gross receipts so reported upon the best and most reliable information that can be procured, and to this end shall be authorized and empowered to send for persons and papers. The State Corporation Commission shall assess upon said property and gross receipts the taxes imposed thereon by law. A certified copy of the assessment when made shall be immediately forwarded by the clerk of the State Corporation Commission to the Auditor of Public Accounts and to the president or other proper officer of each such corporation, and such corporation shall pay into the treasury of the State by the first day of December following the taxes assessed against it. It shall be the duty of the clerk of the State Corporation Commission to furnish to the council of every city and town and to the board of supervisors of every county wherein any property belonging to such corporation is situated a certified copy of the assessment made by the State Corporation Commission of such company's property, which assessment shall definitely show the character of the property, its value and location for the purpose of taxation in each city, town or county and school district therein, so that city, town, county and district levies may be imposed upon the same; provided, however, that it shall be the duty of the county superintendent of schools in each county in which any such corporation set forth in this section does business or owns property, on or before the first day of July of each year, to furnish each such corporation the boundaries of the school districts of the said county wherein any such property is situated or business done. Any such corporation failing to pay the tax into the treasury within the time herein prescribed, shall incur a penalty thereon of five per centum, which shall be added to the amount of said tax. Any such company which shall fail to make the report hereinbefore required within the time herein prescribed shall be liable to a fine of not less than twenty-five nor more than one hundred dollars for each day such company may be in default in making such report, the said fine to be imposed and judgment entered therefor by the State Corporation Commission after thirty days' notice to any such defaulting corporation, to appear before said commission, and show cause, if any, against the imposition of such fine, subject to appeal to the Supreme Court of Appeals.

2. All electric light and power companies shall, to the extent that the property hereinafter particularly set forth is situated in Virginia, report to the State Corporation Commission the following property, which shall be particularly set forth in said report: The number of feet of conductor or cable, number of conductors, insulators, size of conductor and standard of gauge, total cost of conductor installed, number, kind, height, diameter at top, average cost, including arms and insulators of poles carrying conductors; number, kind, and total cost of lamp poles erected; number of arc lamps, type, capacity in amperes, and total cost

Digitized by Google

of same; number of incandescent lamps, candle power, and total cost of same; number of transformers, capacity of each in kilowatts, and the total cost of the same installed; length in feet and size of each conduit, number of ducts, type of ducts, number of duct feet in each size conduit, character of excavation, manner in which the ducts are laid, number of manholes and handholes, size and character of manholes and handholes, character and number of square yards of paving, and total cost of each conduit; the number of feet of cable in each conduit, number of conductors, character of insulation, working pressure, size and standard gauge, total cost of cable installed with junction boxes, and the number, type, and total cost of junction boxes installed; the number and capacity each in kilowatts of subway transformers and the total cost of subway transformers installed.

3. All corporations manufacturing and furnishing gas shall report the diameter in inches of their mains, length of cast iron mains, length of steel and wrought iron mains, the depth laid of mains, the kind of soil or rock excavated for same, the age, cost per foot, including paving, kind of paving, and total cost as laid; the number, size, age and cost of each installed of valves and curb boxes, and the total cost of same; the number, diameter in inches, length in feet, cost per foot, including paving, and the total cost of services, including meters; number of street lamps, cost of same installed.

4. All corporations furnishing and selling water shall report the diameter in inches of mains, length of cast iron mains, length of steel and wrought iron mains, the depth laid and the kind of soil or rock excavated, the age and cost per foot, including paving, kind of paving, and total cost of said mains; the number, size, age and cost of each gate installed, and the total cost of gates installed; the number, size, age and cost of each hydrant, and the total cost of hydrants installed; the number, diameter in inches, length in feet, cost per foot, including paving, of each service, and the total cost of service.

5. Railway companies which, in addition to operating a railroad, also sell heat, light or power within this State, shall come within the provisions of this act. The value of the plant of each such company shall be apportioned as between its heating, lighting and power business on the one hand, and its railroad business on the other, upon the basis of its gross receipts from each department, and each such company shall segregate its gross receipts from the sale of heat, light and power from its gross receipts from its railroad, and report its gross receipts from the same of heat, light and power to the State Corporation Commission, and pay the property and franchise tax as herein provided. (1916, p. 793.)

Sec. 36½. Tax on water or heat, light and power companies.—The State tax on the intangible personal property (other than bonds issued by counties, cities and towns or other political sub-divisions of this State) owned by every corporation doing in this State the business of furnishing water or heat, light and power, whether by means of electricity or gas, shall be at the rate of sixty-five cents on every hundred dollars of the assessed value thereof, the proceeds of which shall be applied to the expenses of the government, and upon all such intangible personal property there may be local levies at the rate authorized by law, however, such rates not to exceed thirty cents on every one hundred dollars of the assessed value thereof, the proceeds of said local levies to be applied, as is provided by law.

The State tax on the money of every corporation doing in this State the business of furnishing water or heat, light and power, whether by means of electricity or gas, shall be twenty cents on every one hundred dollars assessed value thereof, one-half of which shall be applied to the support of the government and one-half of which shall be applied to the support of the public free schools of this State, and there shall be no local levies assessed on such money.

The State tax on bonds issued by counties, cities and towns or other

Digitized by Google

political sub-divisions of this State, owned by every corporation doing in this State the business of furnishing water or heat, light and power, whether by means of electricity or gas, shall be at the rate of thirty-five cents on every one hundred dollars, assessed value thereof, the proceeds of which tax shall be applied to the payment of the expenses of the government.

The State tax on the real estate and tangible personal property of every corporation doing in this State the business of furnishing water or heat, light and power, whether by means of electricity or gas, shall be at the rate of ten cents on every one hundred dollars, assessed value thereof, the proceeds of which shall be applied to the support of the public free schools of this State, and on such real estate and tangible personal property there shall be local levies at the same rate or rates as are assessed upon other real estate and tangible personal property, located in such localities, and proceeds of which local levies shall be applied as is provided by law.

Every corporation coming within the provisions of this and the preceding section shall pay to the State an annual State franchise tax equal to three-fourths of one per centum of its gross receipts, for the privilege of exercising its franchise in this State, which, with the taxes hereinbefore provided for, shall be in lieu of all State taxes or license charges whatsoever upon the franchises of such corporations, and the shares of stock issued by it, and upon all its property as hereinbefore provided; provided, that nothing herein contained shall exempt such corporation from the annual fee required by section one hundred and fifty-seven of the Constitution, or from assessments for street and other local improvements, which shall be authorized by law, nor from the county, city, town, district or road levies; provided, that any city or town may impose a license tax upon such corporation for the privilege of doing business therein, which shall not exceed one-half of one per centum of the gross receipts of such business accruing to such corporation from said business in such city or town; and, provided, further, that from the amount of any such license tax there shall be deducted any sum or sums paid by corporations to such city or town as a merchant's license tax, and license taxes; and provided, further, that nothing herein contained shall annul or interfere with or prevent any contract or agreement by ordinance between such corporations and municipalities as to compensation for the use of the streets or alleys of such municipalities by such corporations.

The real and personal property of such corporation, other than its franchise, shall be assessed on the valuation fixed by the State Corporation Commission with county, city, town, district, and road levies, at the same rate as real and personal property of natural persons are assessed with such levies.

No State tax, county, city, town, district or road levy shall be laid on the net income of any such corporation, nor shall any county, city, town, district or road levy be laid on the gross receipts of any such company.

All taxes and levies shall, until paid, be a lien upon the property within this State of the corporation owning the same, and take precedence of all other liens or encumbrances.

Any such corporation, or the State or any county or city, at the instance of the Attorney General of the State, or of the Commonwealth's attorney for any county or city aggrieved by the assessment and ascertainment of such taxes, may, within thirty days after receiving a certified copy thereof, apply for relief to the circuit court of the city of Richmond. Notice of the application setting forth the grounds of complaint, verified by affidavit, if the appeal be taken by any such corporation, shall be served on the State Corporation Commission, and on the Attorney General, whose duty it shall be to represent the Commonwealth, or if the appeal be taken by the State or any county or city, notice of the application, setting forth the grounds of complaint, shall be served on such corporation. If the court be of the opinion that the assessment or tax is excessive, it shall reduce the same, but if of the opinion that it is

Digitized by Google

insufficient, it shall increase the same. Unless the applicant pay the taxes under protest when due, the court, if the decision is adverse to the applicant, shall, in disallowing the application, give judgment against it for the taxes assessed by the State Corporation Commission and for a sum by way of damages, equal to interest at the rate of one per centum per month upon the amount of the taxes from the time the same were payable. If the decision is in favor of such corporation, in whole or in part, appropriate relief shall be granted, including the right to recover any excess of taxes that may have been paid with legal interest thereon, and the legally taxable cost of said application from the State or local authorities, or both, as the case may be, the judgment to be enforceable by mandamus or other proper process issuing from the court finally adjudicating the application. If the decision be in favor of the State or county or city, appropriate relief shall be granted, and the court shall enforce its judgment by mandamus or other proper process.

The Supreme Court of Appeals may, subject to the provisions of article six of the Constitution, allow a writ of error either party. (1916, p. 793.)

Sec. 37. Fees on charters.—Every domestic corporation authorized by its charter to exercise the powers of a transportation or transmission company, or to own, lease, construct, maintain and operate a public service line or road of any kind, upon the granting or extension of its charter, shall pay a fee into the treasury of the State of Virginia to be ascertained and fixed as follows:

For a company whose maximum capital stock is five thousand dollars or under, twenty-five dollars; for a company whose capital stock is over five thousand dollars, and not to exceed ten thousand dollars, fifty dollars; over ten thousand and not to exceed twenty-five thousand dollars, seventy-five dollars; over twenty-five thousand dollars, and not to exceed fifty thousand dollars, one hundred and twenty-five dollars; over fifty thousand dollars, and not to exceed one hundred thousand dollars, two hundred dollars; over one hundred thousand dollars, and not to exceed three hundred thousand dollars, three hundred and twenty-five dollars; over three hundred thousand dollars, and not to exceed five hundred thousand dollars, four hundred and fifty dollars; over five hundred thousand dollars, and not to exceed eight hundred thousand dollars, five hundred and seventy-five dollars; over eight hundred thousand dollars, and not to exceed one million dollars, seven hundred and fifty dollars; over one million dollars, and not to exceed ten million dollars, one thousand dollars; over ten million dollars, and not to exceed twenty million dollars, one thousand two hundred and fifty dollars; over twenty million dollars, and not to exceed thirty million dollars, one thousand five hundred dollars; over thirty million dollars, and not to exceed forty million dollars, one thousand seven hundred and fifty dollars; over forty million dollars, and not to exceed fifty million dollars, two thousand dollars; over fifty million dollars, and not to exceed sixty million dollars, two thousand two hundred and fifty dollars; over sixty million dollars, and not to exceed seventy million dollars, two thousand five hundred dollars; over seventy million dollars, and not to exceed eighty million dollars, two thousand seven hundred and fifty dollars; over eighty million dollars, and not to exceed ninety million dollars, three thousand dollars; over ninety million dollars, five thousand dollars.

For the purpose of this act the amount to which the company is authorized by the terms of its charter to increase its capital stock shall be considered its maximum capital stock. (1910, p. 77.)
institutions. (1910, p. 77; 1912, p. 596.)

Under the Constitution (section 156a), section 3847 of the Code and the Tax Bill (sections 37-40), all corporations are placed upon terms of equality and are required to pay a charter fee (as distinguished from an annual license fee), as a condition precedent to doing business in this State, with a proviso that this charter fee shall not be exacted of those corporations by which this

Digitized by Google

fee has been at any time paid. The fact no charter fee has been heretofore required of surety companies, or that they have paid an annual license fee, does not exempt them from the payment of the charter fee required by Tax Bill (sections 37-40), and there is nothing to interfere with the unquestioned power of the State to impose the tax. American Surety Co. v. Com., 102 Va. 841, 47 S. E. 994. See present section 38a of tax bill.

This section requires a foreign corporation authorized to exercise the powers of a public-service corporation to pay the fee prescribed therefor in order to carry on any business in the State; the test for such foreign corporation's liability being whether its charter authorizes it to carry on that business. Standard Oil Co. v. Com., 104 Va. 683, 52 S. E. 390. (Decided before the amendment of 1910. See section 38a of tax bill.)

It is not the object of this section to confer on foreign corporations authority to exercise the powers of public-service corporations. Com. v. American Can Co. (Corporation Commission), 11 Va. Law Reg. 565; affirmed, 104 Va. 689, 52 S. E. 393. (Decided before the amendment of 1910. See section 38a of tax bill.)

For note upon how to avoid delay in obtaining a charter, see 11 Va. Law Reg. 747.

Sec. 38. Charter tax.—Every domestic corporation other than such as are described in the last preceding section, upon the granting or extension of its charter, shall pay a fee into the treasury of the State of Virginia to be ascertained and fixed as follows:

For a company whose maximum authorized capital stock is fifty thousand dollars or less, ten dollars; for a company whose maximum authorized capital stock is over fifty thousand dollars and less than three million, twenty cents for each one thousand dollars or fraction thereof; for a company whose maximum authorized capital stock is three million dollars or more, six hundred dollars; provided, however, that building fund associations, mutual insurance companies without capital stock, and other mutual companies not organized for strictly benevolent or charitable purposes, shall pay twenty-five dollars only for such certificate of incorporation or charter granted; and provided, further, that no fee shall be imposed on corporations organized for religious, benevolent or literary purposes, or to conduct a purely charitable institution or

A foreign corporation mentioned in section 37 does not belong to the class named in this section; for it, by express terms, excludes corporations included in section 37. Standard Oil Co. v. Com., 104 Va. 683, 52 S. E. 390. (Decided before the amendment of 1910. See section 38a of tax bill.)

The object of this and the preceding section was to impose on public-service corporations a larger charter fee than on ordinary trading companies, and a foreign corporation authorized by its charter to act as an ordinary trading company and in addition to act as a public-service corporation must, when it obtains a right to do business in Virginia, pay the charter fee required of public-service corporations. Commonwealth v. American Can Co., 11 Va. Law Reg. 565; affirmed, 104 Va. 689, 52 S. E. 393. (Decided before amendments of 1910.)

Sec. 38a. Entrance fees for foreign corporations.—Every foreign corporation, when it obtains from the State Corporation Commission a certificate of authority to do business in this State, shall pay an entrance fee into the treasury of Virginia to be ascertained and fixed as follows:

For a company whose maximum capital stock is fifty thousand dollars, or less, thirty dollars; for a company whose capital stock is over fifty thousand dollars, and not to exceed one million dollars, sixty cents for each one thousand dollars or fraction thereof; over one million dollars, and not to exceed ten million dollars, one thousand dollars; over ten million dollars, and not to exceed twenty million dollars, one thousand two hundred and fifty dollars; over twenty million dollars, and not to exceed thirty million dollars, one thousand five hundred dollars; over thirty million dollars, and not to exceed forty million dollars, one thousand seven hundred and fifty dollars; over forty million dollars, and not to exceed fifty million dollars, two thousand dollars; over fifty million dollars, and not to exceed sixty million dollars, two thousand two hundred and fifty dollars; over sixty million dollars, and not to exceed seventy million dollars, two thousand five hundred dollars; over seventy million dollars, and not to exceed eighty million dollars, two thousand seven hundred and fifty dollars; over eighty million dollars, and not to exceed ninety million dollars, three thousand dollars;

Digitized by Google

over ninety million dollars, five thousand dollars; provided, however, that foreign corporations without capital stock shall pay fifty dollars, only for such certificate of authority to do business in this State.

For the purpose of this act the amount to which the company is authorized by the terms of its charter to increase its capital stock shall be considered its maximum capital stock. (1910, p. 77.)

Where a foreign corporation carries on a purely local business separate from its interstate business the State may impose an excise tax upon it for the privilege of carrying on such business and measure the same by the authorizd capital of the corporation. General Ry. Co. v. Commonwealth, 118 Va. 301, 87 S. E. 598. See this case for what constitutes doing business in this State.

See notes to sections 37, 38 of tax bill.

Sec. 39. Certain charter amendments prohibited; fees for amendments, mergers, etc.—A charter heretofore granted or issued under the law of this State, whereby none of the powers of a transportation or transmission company or other public service corporation were conferred upon the corporation so chartered, shall not be amended so as to add to the powers and privileges originally acquired by the corporation, any of the powers, rights and privileges of a transportation or transmission or of any other public service company.

Upon the amendment of any charter, domestic or foreign, the fee to be charged on the amended charter shall be an amount equal to the difference between the amount already paid on the original charter and the amount required by this act to be paid on the maximum amount provided for in such amendment and upon the amendment or extension of any charter, domestic or foreign, if no fee was paid to this State on the original charter, the amount to be paid shall be the same as would have to be paid on original charter.

Upon the amendment or extension of a charter of a transportation or transmission company, or any other public service company, in the event that the charter fee paid on the original charter and any prior amendments, shall be less than the amount of charter fee required to be paid on an original charter of that character by the terms of this act then a charter fee shall be paid on the amended charter equal in amount to the difference between the charter fee already paid on the original charter and any prior amendments thereof and the amount required by this act to be paid on the maximum amount of authorized capital stock provided for in the charter of said corporation at the time of such amendment.

Upon the merger or consolidation of two or more corporations in the manner provided for by the laws of this State, whenever one of the corporations so merging or consolidating is a foreign corporation, then a charter fee shall be paid, as provided for in this act, upon the amount of capital stock proposed to be issued by the new or consolidated corporation taken as the maximum capital stock for the purpose of estimating said charter fee. (1906, p. 573; 1910, p. 77.)

Sec. 40. How fees paid by foreign corporations; how preceding sections construed.—The fees hereinbefore required to be paid by corporations organized under the laws of a jurisdiction beyond this State, and proposing to transact business in this State, shall be paid direct into the treasury of the State, whereupon the State Corporation Commission may issue a certificate authorizing the said corporation to transact such business and conduct operations of a character to be described in said certificate within this State, but the said corporation shall not have the right to transact business or conduct operations of any character in this State until said fees have been paid, and said certificate been duly issued. Nothing contained in this section or the three preceding sections shall be construed to impose a fee for a charter, or for authority to transact business in this State, upon any company which has already paid the fee or tax heretofore imposed by law upon its charter, or for authority to transact its business in this State; but this provision shall not be construed to exempt any amendment or extension of any such charter or of

Digitized by Google

such authority to transact business in this State from the fees imposed by the sections hereinabove mentioned, or either of them. And the clerk of the State Corporation Commission shall, along with the order of the commission in the premises, record said certificate and the certificate of the Auditor of Public Accounts as to the payment of such fees in a proper book to be kept by said clerk for the purpose.

Sec. 41. Fees for registration.—Every domestic corporation, other than a purely charitable institution, and every foreign corporation doing business in this State, whose maximum capital stock is fifteen thousand dollars, or under, and every such corporation organized on a mutual basis or without capital stock, shall pay into the treasury of the State, on or before the first day of March in each and every year, an annual registration fee of five dollars; a corporation whose maximum capital stock is over fifteen thousand dollars, and does not exceed fifty thousand dollars, shall pay an annual registration fee of ten dollars; a corporation whose maximum capital stock is over fifty thousand dollars, and does not exceed one hundred thousand dollars, shall pay an annual registration fee of fifteen dollars; a corporation whose maximum capital stock is over one hundred thousand dollars and does not exceed three hundred thousand dollars, shall pay an annual registration fee of twenty dollars; and a corporation whose maximum capital stock exceeds three hundred thousand dollars, shall pay an annual registration fee of twenty-five dollars; said annual registration fee shall be irrespective of any specific license tax or other tax or fee imposed by law upon said corporation for the privilege of carrying on its business in this State or upon its franchise, property or receipts.

The State Corporation Commission shall ascertain from its records the amount of the authorized maximum capital stock of each of said corporations, as of the first day in January of each year, and shall assess against each such corporation the registration fee herein imposed, and a certified copy of the assessment, when made, shall be forwarded by the clerk of the State Corporation Commission, before the fifteenth day of February, to the Auditor of Public Accounts, and to each such corporation.

The State Corporation Commission may require every domestic and foreign corporation, in the month of January, in each year, and within such time as it may prescribe, to make to the commission, on forms prescribed by it, such report of the status, business, and condition of each such corporation as the commission may call for.

The failure of any corporation for two successive years to pay its annual registration fee, or to make such report, shall, when such failure shall have continued for ninety days after the expiration of such two years, operate, without further proceedings, as a revocation and annulment of the charter of such corporation, if it be a domestic corporation, or if its certificate of authority to do business in this State, if it be a foreign corporation, and the State Corporation Commission shall publish the fact of such revocation or annulment once a week for four consecutive weeks in a daily newspaper published in the city of Richmond, Virginia.

The failure of any corporation to pay its annual registration fee for any single year shall, when such failure shall have continued for ninety days after the same has been assessed, subject such corporation to a fine of not less than double the amount of such assessment, to be imposed and judgment entered therefor by the State Corporation Commission. (1906, p. 516; 1908, p. 338.)

Sec. 42. Failure to make report hereinbefore required.—Any such corporation which shall fail to make the report hereinbefore required within the prescribed time, shall be liable to a fine of not less than twenty-five nor more than one hundred dollars for each offense, and each period of thirty days wherein such company may be in such default in making such report shall constitute a distinct and separate offense. (3114)

Digitized by Google

The said fine to be imposed and judgment entered therefor by the State Corporation Commission, after thirty days' notice to any such defaulting corporation to appear before the said commission, and to show cause, if any, against the imposition of such fine, subject to appeal to the Supreme Court of Appeals of Virginia.

Sec. 43. Annual State franchise tax.—Every corporation, joint stock company, or association, organized or formed under, by or pursuant to law in this State, except railway, canal, light, heat, and power companies, gas and water companies, insurance, banking and security companies, telephone companies, having an authorized maximum capital stock of five thousand dollars or less, cemetery, religious and charitable associations, shall, in addition to the charter fee, tax on property, and income or receipts, and license tax, and the registration fee prescribed by law, pay into the treasury of the State on or before the first day of March, of each and every year, an annual State franchise tax to be assessed by the State Corporation Commission.

The amount of such franchise tax shall be as follows: Where the maximum capital stock is twenty-five thousand dollars, and under, ten dollars; over twenty-five thousand dollars, and not in excess of fifty thousand dollars, twenty dollars; over fifty thousand dollars, and not in excess of one hundred thousand dollars, forty dollars; over one hundred thousand dollars, and not in excess of three hundred thousand dollars, sixty dollars; over three hundred thousand dollars, and not in excess of five hundred thousand dollars, one hundred dollars; over five hundred thousand dollars, and not in excess of one million dollars, two hundred dollars; and for all in excess of one million dollars, an additional sum of ten dollars for each one hundred thousand dollars or fraction thereof in excess of one million dollars.

The State Corporation Commission shall ascertain the amount of the authorized maximum capital stock of each such corporation, company or association as of the first day of January in each year, and shall assess against each such corporation, company, or association the State franchise tax herein imposed, and a certified copy of such assessment, when made, shall be forwarded by the clerk of the State Corporation Commission before the fifteenth day of February to the Auditor of Public Accounts and to the president or other proper officer of every such corporation, company or association.

Any such corporation, company or association failing to pay said tax into the State treasury within the time prescribed shall incur a penalty thereon of five per centum and interest at the rate of six per centum per annum on the total amount of tax and penalty from the date when the same was due until paid, which shall be added to the amount of said tax. (1908, p. 590; 1910, p. 87.)

What building and loan associations are exempt from the payment of franchise tax—Code, section 4168.

Sec. 44. Tax on inheritances.—(1) All property within the jurisdiction of the Commonwealth, real, personal and mixed, and any interest therein, whether belonging to inhabitants of the Commonwealth or not, which shall pass by will, or grant or gift (except in case of a bona fide purchase for full consideration in money or money's worth) made or intended to take effect in possession or enjoyment after the death of the grantor, whether absolutely or in trust, except to or for the use of (Class A) the husband, wife, lineal ancestor, or lineal descendant of a decedent, or to or for the use of (Class B) the brother, sister, nephew, or niece of a decedent, shall be subject to a tax of five per centum of the fair market value or so much thereof as is in excess of one thousand dollars and not in excess of fifty thousand dollars, to a tax of seven per centum upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, to a tax of nine per centum upon all in excess of one hundred thousand dollars and up to five hundred thousand dollars, to a tax of twelve per centum on all in excess of five hundred thousand

Digitized by Google

dollars and up to one million dollars, and to a tax of fifteen per centum upon all in excess of one million dollars; and such property which shall so pass to or for the use of a member of Class A shall be subject to a tax of one per centum of the fair market value of so much thereof as is in excess of ten thousand dollars and not in excess of fifty thousand dollars, to a tax of two per centum upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, to a tax of three per centum upon all in excess of one hundred thousand dollars and up to five hundred thousand dollars; to a tax of four per centum upon all in excess of five hundred thousand dollars and up to one million dollars, and to a tax of five per centum upon all in excess of one million dollars; and such property which shall so pass to or for the use of a member of Class B shall be subject to a tax of two per centum of the fair market value of so much thereof as is in excess of four thousand dollars and not in excess of fifty thousand dollars; to a tax of four per centum upon all in excess of fifty thousand dollars and up to one hundred thousand dollars; to a tax of six per centum upon all in excess of one hundred thousand dollars and up to five hundred thousand dollars; to a tax of eight per centum upon all in excess of five hundred thousand dollars and up to one million dollars; to a tax of ten per centum upon all in excess of one million dollars; but no such gift, bequest, device or distributive share of an estate which shall so pass to or for the use of the husband, wife, lineal ancestor or lineal descendant of a decedent, unless its fair market value exceed the sum of ten thousand dollars, and no such gift, bequest, devise or distributive share of an estate which shall so pass to or for the use of the brother, sister, nephew or niece of a decedent, unless its fair market value exceed the sum of four thousand dollars, and no other such gift, bequest, devise or distributive share of an estate unless its fair market value exceed the sum of one thousand dollars, nor any such gift, devise or bequest made exclusively for State, county, municipal, charitable, educational or religious purposes in this State, nor any such gift, devise or bequest made for the exclusive benefit of any institution, association or corporation in this State whose property is exempt from taxation by the laws of this State, shall be subject to the provisions of this act.

2. The personal representative of such decedent shall withhold and pay the whole of said tax, except the tax on the transfer of such real estate belonging to the estate of the decedent as he is not authorized to sell or receive the rents and profits from, and the sureties on his official bond shall be bound for the payment thereof.

3. Where the personal representative is not authorized to sell or receive the rents and profits from any real estate belonging to the estate of his decedent and passing at his death, the taxes upon the transfer of such real estate shall be paid by the devisee, devisees, or heirs at law of such decedent, or other person or persons to whom such real estate shall pass, whether by the terms of the decedent's will or of any deed or grant made by him in his lifetime and taking effect at his death, or by operation of the statutes regulating descents and distributions.

4. The tax on the transfer of any property, of whatever nature, as to which the decedent shall die intestate, or which is not under the control of a personal representative, shall be paid by the distributee, distributees, heir or heirs at law of such decedent, or by the other person or persons to whom such property shall pass under the laws regulating descents and distributions, or by operation of any deed or gift made by the decedent in his lifetime and taking effect upon his death.

5. The corporation or hustings court of a city, or the circuit court of a county or city, the chancery court of the city of Richmond, the law and chancery court of the city of Norfolk, or the clerk of the circuit court of a county or city, or the clerk of the corporation or hustings court of the city, before whom the will is probated or administration is granted, shall determine the amount of the tax provided for by this

Digitized by Google

act to be imposed upon the transfer of such property as passes by such will, or as comes into the hands of such administrator. For the purpose of ascertaining the taxes due under this act, the court of every city and county having jurisdiction to admit wills to probate and to grant letters of administration shall designate one of its commissioners whose duty it shall be, except where the estate is administered in a suit, to investigate and report to the court or clerk, as the case may be, the value of the estate of every decedent chargeable with a tax under this act, and the probate of whose will or letters of administration on whose estate is had in said court or clerk's office, and report the amount and kinds thereof and the persons who are entitled to the same; and the said commissioner shall be allowed for his services for making said appraisement and report, one-half of one per cent. of said estate so taxable, payable out of said estate as part of the costs of administration; provided, however, that said compensation shall in no case be less than five nor more than fifty dollars, except that for special services rendered the court may allow greater compensation. Upon the report of said commissioner the said court, or the clerk of any court clothed with probate powers and in the exercise thereof, shall determine the inheritance taxes, if any, to be paid on the estate passing by will or administration, and shall enter of record in the order book of the court or clerk, as the case may be, the amount of the taxes to be paid and by whom. And no estate of any decedent, subject to tax under this act, shall be distributed unless and until the tax has been assessed thereon as provided by this act. The clerk of the court shall certify a copy of said order to the treasurer of his county or city and a copy to the Auditor of Public Accounts, for which service such clerk shall be paid a fee of two dollars and fifty cents by the personal representative of such decedent. The Auditor of Public Accounts shall charge the treasurer with the tax and the treasurer shall pay the same into the treasury as collected, less a commission of five per centum.

6. The amount of the tax on a transfer of any property, of whatever nature as to which the decedent shall die intestate, or which is not under the control of a personal representative, shall be determined in the same manner provided in paragraph five of this act by the corporation or hustings court of a city, or the circuit court of a county or city, the chancery court of the city of Richmond, the law and chancery court of the city of Norfolk, or the clerk of the circuit court of the county or city, or other court in which certificate was granted the personal representative for obtaining probate of the will or letters of administration; and if there has been no qualification on the estate of the decedent, the amount of said tax shall be determined in the same manner provided in paragraph five of this act by the corporation or hustings court of a city, or the circuit court of a county or city, the chancery court of the city of Richmond, the law and chancery court of the city of Norfolk, or the clerk of the circuit court of the county or city, or other court, in which qualification might have been had. Entry shall be made in the order book of the court or clerk, as the case may be, showing the nature and value of the property so passing, the amount of the tax determined and by whom the same shall be paid. The clerk of the court shall certify a copy of such order to the treasurer of his county or city and a copy to the Auditor of Public Accounts, for which service the clerk shall be paid a fee of two dollars and fifty cents by the person or persons to whom such property passes. The Auditor of Public Accounts shall charge the treasurer with the tax and the treasurer shall pay the same into the treasury as collected, less a commission of five per centum.

7. Said taxes shall be assessed upon the actual value of the property at the time of the death of the decedent. In every case where there shall be a devise, descent, bequest or grant to take effect in possession or enjoyment after the expiration of one or more life estates, the tax shall be assessed on the actual value of the property or the interest of the beneficiary therein at the time when he becomes entitled

Digitized by Google

to the same in possession or enjoyment. The value of an annuity or a life interest in such property, or any interest therein less than an absolute interest, shall be determined by the annuity tables provided for by section twenty-two hundred and eighty-one of the Code of Virginia. In every case in which it is impossible to compute the present value of any interest in property so passing the court or clerk then engaged in determining the amount of the said tax shall, subject to approval of the Auditor of Public Accounts, affect such settlement of the tax as such court or clerk shall deem to be for the best interest of the Commonwealth, and payment of the same so agreed upon shall be a full satisfaction of such taxes.

8. The clerk by whom the tax is to be determined, or the clerk of the court by which the tax is to be determined, shall serve a written notice on the attorney for the Commonwealth of the city or county in which such determination shall be had, and on each personal representative, devisee, heir at law, or other person to be charged with taxes by the said clerk or court, at least ten days before the entry of the order charging the taxes, and said notice shall set forth the time and place at which such determination shall be had; but the mailing of said notice to the last known address of the party to be notified, or to the attorney at law representing such party, shall be sufficient service under this section.

9. Taxes imposed by the provisions of this act shall be payable to the treasurer of the county or city in which the amount of such tax was determined and at the expiration of one year after the death of the decedent. In all cases in which there shall be a grant, devise, descent or bequest to take effect in possession or come into actual enjoyment after the expiration of one or more life estates or a term of years, the taxes thereon shall be payable by the executors, administrators or trustees in office when such right of possession occurs, or, if there is no such executor, administrator or trustee, by the person or persons so entitled thereto, and at the expiration of one year after the date when the right of possession accrues to the person or persons so entitled. If the taxes are not paid when due a penalty thereon of twenty per centum and interest at the rate of six per centum per annum on the total amount of taxes and penalty from the date when the same was due until paid, shall be added to the amount of said taxes and collected as a part of same.

10. Property of which a decedent dies seized or possessed subject to taxes as aforesaid, in whatever form of investment it may happen to be, and all property acquired in substitution therefor, shall be charged with a lien for all taxes and interest thereon which are or may become due on such property; but said lien shall not affect any personal property after the same has been sold or disposed of to a bona fide purchaser for value by the executors, administrators or trustees. The lien charged by this act upon any real estate or separate parcel thereof may be discharged by the payment of the taxes due and to become due upon said real estate or separate parcel, or by an order or decree of the court discharging said lien and securing the payment to the Commonwealth of the taxes due or to become due by bond or deposit. The treasurer may levy upon and sell so much of said property, both real and personal, as shall be sufficient to pay the taxes and expenses of sale, or he may rent or lease any portion of the real estate charged with the taxes for cash sufficient to pay the amount of taxes due

11. If the amount of the taxes charged is determined by a court, the person or persons so charged with the taxes shall have the right of appeal to the Supreme Court of Appeals as in other cases.

12. Any person charged with taxes under this section, aggrieved by an order of any clerk of a court determining the amount of said taxes, may, within one year after the date on which such order was entered, apply for relief to the court of which such clerk is an officer. An application in writing, setting forth the manner in which the applicant considers himself aggrieved, shall be filed with the clerk by

Digitized by Google

whom such order was made, at least ten days before the hearing of the cause, and notice of the time at which such application will be presented to the court shall be served upon the clerk of the court and the attorney for the Commonwealth, and a copy of both the application and the notice mailed to the Auditor of Public Accounts. Said notice shall be served on the clerk and the attorney for the Commonwealth, and a copy thereof mailed to the Auditor of Public Accounts at least fifteen days prior to the date on which the application is presented to the court. The attorney for the Commonwealth shall defend the application, and no order made in favor of the applicant shall have any validity unless it is stated therein that such attorney did so defend; that the clerk charging the taxes, or his successor, was examined as a witness touching the application; and the facts proved upon such hearing be certified.

13. If the court be satisfied that the applicant is erroneously charged in the clerk's order and that the erroneous charge was not caused by the failure or refusal of the applicant to furnish an inventory of the property subject to the tax to the clerk of the court, the court may order that the order of the clerk be corrected. If the order of the clerk charges more than the proper amount, the court may order that the applicant be exonerated from the payment of so much as is erroneously charged, if not already paid, and if paid, that it be refunded to him. If the order of the clerk charges less than the proper amount, the clerk shall order that the applicant pay the proper taxes. A copy of any order made under this section correcting an erroneous order of a clerk shall be certified by the court to the Auditor of Public Accounts and the Treasurer of the State.

14. If, from the statement of the facts or other evidence, the Auditor of Public Accounts shall be of the opinion that the order of the court, or the orders of the clerk, determining the taxes is erroneous, he may, within one year from the time such order is made, file a petition for a rehearing or review of such order; said petition may be filed in the court by which the order was made or of which the clerk is an officer, or with the judge thereof in vacation, and shall be in the name of the Commonwealth, and on the filing of the same shall operate as a supersedeas and the matter shall thereupon be reheard or the order reviewed in said court, and witnesses examined in the same manner as if no previous determination had been had. The petition shall be presented and the hearing conducted by the attorney for the Commonwealth of the county or corporation.

At the rehearing the court shall make such order therein as may be proper, and should the order of the court be against the Commonwealth, the Auditor of Public Accounts may take an appeal to the Supreme Court of Appeals, and a supersedeas may be granted in such case in the same manner as now provided by law in cases other than cases of appeal of right. No costs shall be adjudged against the Commonwealth on the appeal, but costs may, in the discretion of the court, be awarded against the clerk of the court who charged the tax, if the same be erroneous.

15. Of all taxes upon said inheritances paid into the State treasury one-half shall be placed to the credit of the public school fund of the Commonwealth and shall be apportioned according to school population, and the other half shall be remitted to the counties and cities in which such taxes are respectively collected, and all of such taxes shall be used for the primary and grammar grades of the public free schools of the State and in such counties and cities. (1910, pp. 229. 270; 1916, p. 134; 1918, p. 416.)

In Eyre v. Jacobs, Sheriff, 14 Grat. (55 Va.) 422, the court held that a collateral inheritance tax upon the succession or transmission of property is a tax upon a civil right or privilege, and not a tax on property. Pocahontas Collieries Co. v. Com., 113 Va. 108, 73 S. E. 446.

The act imposing a collateral inheritance tax (Acts 1895-6, pp. 367-8), is not retrospective in its operation, and does not warrant the imposition of such tax on a remainder which vested in interest in 1861, although the life tenant did not die until 1907. Com. v. Wellford, 114 Va. 372, 76 S. E. 917.

Digitized by Google

The exception in the last clause of this section is intended to meet a case arising under the statute in which the estate had vested in interest within the year from the decedent's death, but where, from some cause, the possession or enjoyment was postponed beyond that time. Com. v. Wellford, 114 Va. 372, 76 S. E. 917. (Decided before amendments of 1916.)

For article commenting on the procedure under this section, see 17 Va. Law Reg. 90.

For note upon collateral inheritance tax, and exception in favor of charitable institutions in State, see note 11 Va. Law Reg. 935.

For a discussion of the lien of the collateral inheritance tax, see 19 Va. L. Reg. 241.

For an article on "The New Inheritance Tax Law of Virginia" (Acts 1916, chapter 484), see 2 Va. L. Reg. N. S. 259.

LICENSES.

Sec. 45. Merchants.—Every person, firm, company or corporation engaged in the business of a merchant shall pay a license tax for the privilege of doing business in this State to be graduated by the amount of purchases made by him during the period for which the license is granted, and all goods, wares and merchandise manufactured by such merchant and sold or offered for sale, in this State, as merchandise, shall be considered as purchases within the meaning of this section; provided, that this section shall not be construed as applying to manufacturers taxed on capital by this State, who offer for sale at the place of manufacture, goods, wares and merchandise manufactured by them. To ascertain the amount of purchases it shall be the duty of such merchant, on the first day of April of each year, or within ten days thereafter, to make report in writing, under oath, to the commissioner of the revenue, for the district for which he was licensed, showing purchases as above defined, and also all goods, wares and merchandise manufactured and sold or offered for sale in this State during the next preceding twelve months; except such goods, wares and merchandise as is manufactured by persons, firms and corporations taxed on their capital by this State. The form of the report required by this section shall be prepared by the Auditor of Public Accounts and furnished to each commissioner of the revenue, and by him distributed to each licensed merchant; and each commissioner shall, in the mode prescribed for making such report by him of the violations of the revenue law, report every merchant who shall fail to comply with the requirements of this section. Any person violating the provisions of this section shall pay a fine of not less than thirty dollars, or more than one thousand dollars for each offense. (1914, p. 487; 1915, p. 232.)

A merchant is one whose business is to buy and sell merchandise, and the term embraces all persons who habitually trade in merchandise. Morris & Co. v. Com., 116 Va. 912, 83 S. E. 408.

Sausage, head cheese, mincemeats and like products manufactured by a non-resident pork packer and sent to its branch in this State and there sold by it are not "purchases" within the meaning of this section. Morris & Co. v. Com., 116 Va. 912, 83 S. E. 408. Quaere as to fresh meat so sent.

See Commonwealth v Armour & Co., 118 Va. 242, 246, 87 S. E. 610, from which it appears that the amendment of March 19, 1915, was passed to overrule Morris v. Com., 116 Va. 912, 83 S. E. 408.

This section does not unjustly discriminate against the foreign manufacturer, nor deny to him the equal protection of the law, nor attempt to regulate commerce between the States, but is a valid enactment. Com. v. Armour & Co., 118 Va. 242, 87 S. E. 610.

When this section is read as a whole, as it should be, and the object of the statute is considered, the first and second sentences of the statute do not conflict with each other. Com. v. Armour & Co., 118 Va. 242, 87 S. E. 610.

See notes to section 47 of the tax bill.

Sec. 46. Merchants' licenses.—For every license to a merchant, firm, company or corporation as defined in section forty-five engaged in the business of a merchant, the amount to be paid shall be graduated as follows: If the amount of purchases shall not exceed one thousand dollars the amount shall be five dollars. When purchases exceed one thousand dollars, but do not exceed two thousand dollars, the amount shall be ten dollars, and for all purchases over two thousand dollars and less than one hundred thousand dollars, there shall be paid twenty cents on

Digitized by Google

the one hundred dollars; and upon all the purchases over one hundred thousand dollars, there shall be paid ten cents on every hundred dollars in excess of one hundred thousand dollars.

Each merchant shall keep his invoices and a record with ink of all purchases, and from whom made, which record shall be open to inspection and examination by the taxing officers of the State, and the report of purchase made by the merchant shall be taken from that record; and he or his agents shall make oath to the correctness of the report and that the same is in accordance with said record, and that the record has been accurately kept.

It shall be the duty of the commissioner of the revenue to examine the record of purchases required to be kept by the merchant and to verify the merchant's report of purchases by that record; and he shall state upon the report of purchases made to him by the merchant that he did examine the record of purchases kept by the merchant. Every merchant who does not keep the record herein provided for shall be assessed with and pay a minimum State license tax of twenty-five dollars, in addition to such tax as may be ascertained by the local board of review as hereinafter provided for. Every merchant who does not keep the record herein provided for shall be reported by the commissioner of the revenue to the local board of review, whose duty it shall be to ascertain the correct purchases of such merchant by summoning the merchant before it by such investigation and examination as it deems proper to make or to have made, to correctly determine the true and correct purchases of such merchant, and when this fact has been ascertained the local board of review shall direct the commissioner of revenue to assess such merchant with the State license tax provided by law upon the purchases so ascertained, in addition to the minimum State license tax of twenty-five dollars hereinbefore provided for, but the minimum State license tax of twenty-five dollars hereinbefore provided for shall not apply to license granted merchants in the license year beginning May first, nineteen hundred and sixteen, and ending April thirtieth, nineteen hundred and seventeen. Should the commissioner of the revenue fail to perform the duty herein imposed upon him he shall not be paid by the State any commission upon the tax so assessed, and he shall be subject in each case of failure to a fine of twenty-five dollars to be recovered as other fines are recovered, and it shall be the duty of the local board of review to bring to the attention of the attorney for the Commonwealth each failure of the commissioner of the revenue to perform the duty herein required of him.

Provided, further, that goods, wares and merchandise not belonging to a merchant which are offered for sale by the merchant or by another person at the merchant's duly licensed place of business shall require such merchant to take out the license of a commission merchant. The sums imposed under and by virtue of this section shall be in lieu of all taxes for State purposes on the capital actually employed by said merchant or mercantile firm or corporation in said business, except the registration fee and franchise tax, and except that such merchant shall not be exempt from the payment of county, district, and road or other levies on the net amount of capital, as defined by law, on hand on the first day of February of each year and may be required to pay the usual city, county, district, and road or other levies thereon, notwithstanding this act. The word "capital" shall include moneys and credits actively used in carrying on the business, including goods, wares and merchandise on hand, and all solvent bonds, demands and claims made and contracted in the business during the preceding year; but real estate shall not be held to be capital, but shall be assessed and taxed as other specific property; but any merchant may file with the commissioner of the revenue a statement verified by affidavit showing the amounts owing upon the purchase price of such goods, wares and merchandise, if any, and further showing the persons, firms, or corporations to whom the same is due, and the address of each, and thereupon it shall become the duty of the commissioner of the revenue to deduct

Digitized by Google

the aggregate of such amounts from the capital of such merchants in making the assessment on such capital.

For the purposes of ascertaining the tax to be paid by a merchant beginning business, his purchases shall be considered to be the amount of goods, wares and merchandise bought to commence business with, including goods, wares and merchandise manufactured by him to be offered for sale at the place at which he conducts his business as a merchant, provided such place is not the place of manufacture, also including an estimate of purchases which the merchant will make between the date of the issuance of his license and the thirty-first of March following, and including an estimate of the amount of goods, wares and merchandise manufactured by him to be offered for sale at the place at which he conducts his business as a merchant, provided such place is not the place of manufacture.

If, after the close of the year for which the license is issued, the merchant should elect not to renew it, but desires the privilege to sell whatever remnant or purchase he may have on hand at the time, it may be lawful for him to do so upon the payment of a license upon said remnant of merchandise to be regarded for purposes of revenue as purchases.

All other property held by such merchant or firm or corporation engaged in mercantile business, not offered for sale as merchandise, shall be separately listed and taxed as other property. The sums required by this section to be paid when the license is taken out shall be collected in the same manner that the amounts required to be paid for other licenses are collected. Dealers in coal, wood or ice paying license tax under this section may peddle the same from vehicles without paying additional tax. But nothing in this section shall be construed as to require a license of any person who may canvass any county or corporation to buy lambs, pigs, calves, fowls, eggs, butter and such like small matters of subsistence designed as food for man, but any person who shall keep a place of business for the purpose of selling such articles in, or within a half mile of any city or town in the State shall take out license therefor, as hereinbefore prescribed; provided that dealers in coal and wood in cities of forty thousand inhabitants or more, who peddle the same from vehicles shall pay an additional tax of fifty dollars for each wagon thus used. (1914, p. 487; 1916, p. 793.)

A non-resident pork packing company which purchases and slaughters live stock and from the carcasses manufactures and prepares for sale various food products, as well as the fresh meat, but which does not sell in this State fresh meat, is not a butcher within the meaning of this section. Morris & Co. v. Com., 116 Va. 912, 83 S. E. 408. See notes to section 45.

Cited but not construed in Bridgewater Man. Co. v. Funkhouser, 115 Va. 476, 79 S. E. 1074, 19 Va. L. R. 830 and note; Standard Oil Co. v. Fredericksburg, 105 Va. 82, 52 S. E. 817.

Sec. 46½. Merchant on train.—That every person, firm, company or corporation engaged in the business of selling on railroad trains in this State, newspapers, periodicals, magazines, candies, fruits, et cetera, shall pay a license tax at the rate of twenty cents for each and every mile of track for which the person, firm, company or corporation operates in this State.

The person, firm, company or corporation desiring to take out the license required by this act shall make a sworn statement of the trackage over which it is proposed to operate in Virginia, and file the same with the commissioner of the revenue, to whom he applies for the license. Any person, firm, company or corporation making a false statement under oath as to trackage shall be guilty of a misdemeanor, and shall be fined not less than twenty-five dollars nor more than five hundred dollars for each offense.

The license required by this act shall be issued by the commissioner of the revenue, and the tax thereon shall be paid to the county or city treasurer where the license is issued, in the same manner other licenses are applied for and tax thereon paid is now provided by law. The li-

Digitized by Google

cense issued under this section shall be good on railroad trains throughout the State. (1915, p. 232.)

Sec. 46½(a). Oyster packers.—Every person, firm or corporation engaged in the business of shucking or packing oysters in this State shall pay a license tax for the privilege of transacting such business, to be graduated by the amount of oysters shucked or packed by him during the period for which his license is granted. To ascertain the amount of oysters shucked or packed, it shall be the duty of such person, firm or corporation, on the first day of April of each year, or within ten days thereafter, to make report in writing, under oath, to the oyster inspector for the district for which he was licensed, showing the amount of oysters actually shucked or packed by him during the next preceding twelve months. The form of report required by this section shall be prepared by the Auditor of Public Accounts and furnished to each oyster inspector and by him distributed to each licensed oyster packer, and each inspector shall, in the mode prescribed for making such report by him of the violations of the oyster laws, report every oyster packer who shall fail to comply with the requirements of this section. Any person, firm or corporation violating the provisions of this section shall pay a fine of not less than thirty dollars, nor more than one thousand dollars, for each offense. (1915, p. 232.)

Sec. 46½(b). Oyster packers' licenses.—For every license to a person, firm or corporation engaged in the business of shucking or packing oysters, the amount to be paid shall be graduated as follows: If the amount of oysters shucked or packed by such person, firm or corporation shall not exceed twenty-five thousand gallons, the amount shall be five dollars. When the amount of such oysters exceeds twenty-five thousand gallons, but does not exceed fifty thousand gallons, the amount shall be ten dollars. When the amount of such oysters exceeds fifty thousand gallons, and does not exceed one hundred thousand gallons, the amount shall be twenty-five dollars. When the amount of such oysters exceeds one hundred thousand gallons, and does not exceed two hundred thousand gallons, the amount shall be fifty dollars. When the amount of such oysters exceeds two hundred thousand gallons, the amount shall be one hundred dollars. The sums imposed under and by virtue of this section shall be in lieu of all taxes for State purposes on the capital actually employed by said person, firm, or corporation in said business. The word "capital" shall include moneys and credits actively used in carrying on the business, including goods, wares and merchandise on hand, and all solvent bonds, demands, and claims made and contracted in the business during the preceding year; but real estate shall not be held to be capital, but shall be assessed and taxed as other specific property. All other property held by such person, firm, or corporation shall to be paid when the license is taken out shall be collected in the same manner that the amounts required to be paid for other licenses under the oyster laws of the State are collected, and shall be accounted for as part of the oyster fund. (1915, p. 232.)

Cited but not construed in Bridgewater Man. Co. v. Funkhouser, 115 Va. 476, 79 S. E. 1074, 19 Va. L. R. 830 and note.

Sec. 47. Railroad and other incorporated companies which sell mineral or forest products or other articles.—Every railroad company or other granted in its charter or not, which shall sell any mineral or forest product, or any other article, shall be taxed as other merchants dealing in like commodities. This act shall apply to companies keeping commissaries, or having agents for the sale of any other article than their own product; provided, that nothing herein contained shall prevent a railroad company from buying and distributing to its employees, as a part of their compensation, meat, meal and flour, at the cost price thereof, but

Digitized by Google

nothing in the foregoing shall be construed as requiring a company selling the products of their own mines, or lands, or manufactories, to pay a merchant's license for so doing, but any such company selling its product at a definite place of business apart from its mine, land or place of manufacture, shall pay the merchant's license tax as provided by law. Any railroad company or other incorporated company selling any article or product on account of the owner, and receiving a compensation therefor other than for transportation, storage or handling as provided for in its charter, shall pay a license the same as commission merchants. It shall be the duty of the commissioner of the revenue to ascertain the liability of such individuals or companies in this State to the payment of such license taxes, and shall assess the same in the same manner as other merchants. (1915, pp. 139, 232; 1916, p. 793.)

This section imposes no tax upon a manufacturer, certainly not upon a resident manufacturer, for the sale of its products, and excludes the idea that it is liable to pay a merchant's license for so doing. Morris & Co. v. Com., 116 Va. 912, 83 S. E. 408. (Decided before the amendments of 1915 and 1916.)

The proviso in this section does not apply to or affect section 45 of the tax bill. Com. v. Armour & Co., 118 Va. 242, 87 S. E. 610. (Decided under the amendment approved March 19, 1915.)

Sec. 48. Commission merchants and brokers.—Every person, firm or corporation doing business in this State who receives or distributes provisions and merchandise, including flour, hay or grain, shipped to such person, firm or corporation for distribution on account of the shipper, or who participates in the profits ensuing from or accruing out of the sales of such provisions or merchandise, including flour, hay or grain, or who invoices such sales or collects the money therefor, shall be deemed to be a broker who receives or distributes provisions and merchandise, including flour, hay or grain.

Every person, firm, or corporation, buying or selling for another any kind of merchandise on commission shall be a commission merchant. Any person, firm or corporation licensed as a commission merchant may sell any personal property which may be left with or consigned to him for sale, except wine, ardent spirits and malt liquors, gold or silver coin, bonds, certificates of public or private debts or other securities; provided, however, that any such merchant may sell wine, ardent spirits and malt liquors, gold or silver coin, bonds, certificates of public or private debts or other securities by taking out the license therefor prescribed in the case of liquor merchants or stock brokers. Any person, firm or corporation buying or selling contrary to the provisions of this section, or who shall in any manner violate the same, shall pay a fine of not less than fifty dollars, nor more than one thousand dollars for each offense. (1915, p. 232.)

Sec. 49. Commission merchants and brokers' license.—Every person, firm or corporation shall pay for the privilege of transacting the business of a commission merchant or broker the sum of fifty dollars, provided, the commissions do not exceed one thousand dollars, but when the commissions exceed one thousand dollars, the tax shall be fifty dollars, and an additional tax at the rate of one dollar on each one hundred dollars, or fraction thereof, or commissions in excess of one thousand dollars, and if the license is to include the privilege of selling wine, ardent spirits, and malt liquors, gold or silver coins, bonds, certificates of public or private debts, or other securities, there shall be paid, in addition, the amounts required in each case to be paid by liquor merchants and stock brokers and in like manner. (1914, p. 487; 1915, p. 232.)

Sec. 50. Sale by peddlers.—Any person who shall carry from place to place, any goods, wares, or merchandise, and offer to sell or barter the same, or actually sell or barter the same, shall be deemed to be a peddler, and any person licensed as a peddler may sell any personal property a merchant may sell, or he may exchange the same for other articles: and whenever a license is granted to a peddler to sell such

Digitized by Google

goods, wares, or merchandise, his license shall be valid for one year from the date of its issue. Said license shall not be transferable, and any person so licensed shall endorse his name on said license, and such license shall confer authority to sell at any house or place within the county or city in which the license was granted. Any peddler who shall peddle for sale or sell or barter without a license shall pay a fine of not less than fifty dollars, nor more than five hundred dollars for each offense, one-half of which shall go to the informer; any person selling or offering to sell as a peddler shall exhibit his license on demand of any citizen of the county, city or town in which he sells or offers to sell or barter; and upon his failure or refusal to do so he shall be subject to the penalties of peddling without a license. This section shall be construed to include persons engaged in peddling lightning rods. All persons who do not keep a regular place of business (whether it be a house or a vacant lot, or elsewhere), open at all times in regular business hours, and at the same place, who shall offer for sale goods, wares and merchandise, shall be deemed peddlers under this act. All persons who keep a regular place of business, open at all times in regular business hours and at the same place, and who shall elsewhere than at such regular place of business, personally, or through their agents, offer for sale or sell, and at the time of such offering for sale, deliver goods, wares and merchandise, shall also be deemed peddlers as above, but this section shall not apply to those who sell or offer for sale in person or by their employees, ice, wood, meats, milk, butter, eggs, poultry, fish, oysters, game, vegetables, fruits, or other family supplies of a perishable nature grown or produced by them and not purchased by them for sale. But a dairyman who uses upon the streets of any city one or more wagons may sell and deliver from his wagons milk, butter, cream and eggs in said city without procuring a peddler's license. (1914, p. 487; 1915, p. 232; 1916, p. 772.

A traveling salesman for a broom manufacturer went from place to place, and his employer shipped him from the factory to stations along his route in such quantities as was thought sufficient to supply the trade. From shipments so made the salesman would select samples, and take orders from merchants only, and never for less than dozen lots, after which the salesman would get the brooms from the depot and fill the orders taken. This method of selling brooms was an established feature of the business. The salesman had no license to peddle. Held, that he was not within the spirit of this section, defining a peddler, and fixing a penalty upon him for doing business without a license. In so far as a revenue law imposes penalties for its violation, it is a penal statute and is to be strictly construed, and no man is to be subjected to its penalties unless he comes clearly within the spirit and letter of the statute. Kloss' Case, 103 Va. 864, 49 S. E. 655. (Decided before the amendment of 1914 and subsequent amendments.)

An agent sold certain pictures with the agreement that when the pictures were delivered the purchaser would also buy a frame. It is held that the negotiations for the picture frame were wholly within this State and the agent should have gotten a licenes. This section does not violate the United States Constitution. Roselle's Case, 110 Va. 235, 65 S. E. 526. This case was affirmed by the United States Supreme Court on March 18, 1912. But see Davis v. Com., 113 Va. 562, 75 S. E. 1135, reversed 35 Supreme Court Reporter 479.

This section as it then stood construed in Crall & Ostrander's Case, 103 Va. 857, 49 S. E. 638.

In Com. v. Myer, 92 Va. 809, 23 S. E. 915, it was decided this section as it previously existed discriminated against non-resident manufacturers and was therefore void.

As to lightning rod merchants, see section 51(a) of tax bill.

Sec. 51. Peddler's license.—For the privilege of peddling or bartering in any county, city or town, there shall be paid two hundred and fifty dollars for each person so engaged or employed, when he travels on foot, and when he peddles otherwise than on foot, the tax paid shall be five hundred dollars, except that the tax on peddlers of ice, wood, meat, milk, butter, eggs, poultry, fish, oysters, game, vegetables, fruits or other family supplies of a perishable nature not grown or produced by them, shall be twenty-five dollars for each vehicle used in such peddling, except that no State license shall be charged for peddling fish and oysters in the country or in incorporated towns, nor shall this section apply to

Digitized by Google

persons who are engaged in selling melons from a car or cars in the country and in towns where the same does not remain for more than twenty-four hours at any one place, and except that the tax on peddlers of pianos and organs shall be ten dollars for each person engaged in selling pianos or organs from a peddler's wagon, said tax to be paid to the proper officer of each county, city, and town wherein such wagon is so used; provided, however, that nothing in this act shall be construed to prevent any city or town from requiring an additional license tax on such peddlers of pianos and organs, where the charter of such city or town authorizes it to impose license taxes, and except that the tax on the peddlers of lightning rods shall be two hundred dollars, and that peddlers in coal and wood in cities of over forty thousand inhabitants who peddle the same from vehicles, shall pay a tax of fifty dollars for each vehicle used; provided, that no State license tax shall be imposed on peddlers of meats sold in the country. Every vehicle used in peddling as aforesaid shall have conspicuously displayed thereon the name of the peddler using the same, together with the street and number of his residence, if he resides in any city or town. It shall be the duty of the commissioner of revenue to issue a peddler's license to a person desiring to obtain the same, upon the presentation to him of the certificate of the county or city treasurer that the license tax has been paid to him. Nothing under this or the preceding section shall be construed to require of any farmer a peddler's license for the privilege of selling or peddling farm products, wood or charcoal grown or produced by him. (1908, p. 124; 1914, p. 487; 1915, p. 232.)

See State v. Wright, and note 21 L. R. A. (N. S.), 349 for a discussion of the constitutionality of discrimination in tax as between peddlers handling equally harmless articles.

Sec. 51(a). 1. Lightning rod merchant.—That any person, firm, or corporation who sells by sample in person or through agents taking orders and thereafter delivering the lightning rods and all material necessary to the erection of the same to the person or persons from whom said orders have been secured and erecting the same as directed, the same shall be known as a lightning rod merchant.

2. Every such lightning rod merchant shall pay a specific State license tax of twenty-five dollars for each license year, which shall not be subject to any abatement, and shall, in addition to said State license, secure from the commissioner of every county or city, in which such business is done an additional license for each license year of ten dollars.

3. Nothing in this act shall apply to peddlers of lightning rods selling and delivering same at the time of the sale. Any person, firm, or corporation, selling contrary to the provisions of this act shall be fined not less than fifty dollars nor more than five hundred dollars for each offense. (1915, p. 232.)

Sec. 52. Sale or barter of patent rights.—No person, except the patentee, shall sell or barter the right to manufacture or use any machinery or other thing patented under the laws of the United States, without first having obtained a license therefor from some commissioner of the revenue of a county or city, which license shall grant the privilege of selling anywhere in the State, but if used out of the county or city where granted shall be authenticated by the certificate of the clerk of the circuit court of the county, or the clerk of the corporation court of the city where granted, that the person signing the same is really the commissioner of the revenue, and that his signature is believed to be genuine. A separate license shall be required on each patented thing of which the right to make or use is sold, but any person owning the State right for any patented thing may sell anywhere in the State through agents provided with a copy of his license thus obtained certified as hereinbefore provided. Any person violating the provisions of this section shall pay a fine of not less than fifty dollars nor more than five hundred dollars for each offense. (1915, p. 232.)

Digitized by Google

Sec. 53. License for sale or barter of patent rights.—Every person who shall sell or barter the right to manufacture or use machinery or other thing patented under the laws of the United States, except the patentee, if he be a citizen of the United States, shall pay for the privilege the sum of twenty-five dollars. Nothing in this or the preceding section shall be construed to authorize the sale of the article or thing patented. (1915, p. 232.)

Sec. 54. Land agents.—No person, firm, or corporation shall without a license, act as agent for the sale of lands. Any person licensed as a land agent may sell land in this Commonwealth entrusted to him for sale. Any person selling land or offering to sell the same, who is not an auctioneer, or who has not the fee simple title, or any other less estate therein, shall be held to be a land agent; but this section shall not be construed to prevent any person not engaged in the business of selling land for compensation from selling, without license, any lands for the sale of which he has a duly authenticated power of attorney, nor commissioners and receivers appointed by the courts, nor executors of wills, nor trustees in deeds of trust. For any violation of this section the person offending shall pay a fine of not less than one hundred dollars nor more than five hundred dollars for each offense. (1915, p. 232.)

This section makes it an indictable offense for any firm or corporation to do business as a land agent, as herein defined, without the payment of a license tax. A society organized under section 1783l of Pollard's Code (omitted from present Code and thereby repealed) is indictable where it offered for sale, as land agent, without a license, for compensation, lands not owned by members of the society. Immigration Soc. v. Com., 103 Va. 46, 48 S. E. 532, 10 Va. Law Reg. 532.

Sec. 55. License on a land agent.—A land agent shall pay for the privilege of selling land entrusted to him for sale, the sum of ten dollars and one-eighth of one per centum on amount of sales; provided, however, that if his place of business is in a town or city of more than two thousand and not exceeding three thousand inhabitants, he shall pay the additional sum of ten dollars; if in a town or city of more than three thousand and not exceeding four thousand inhabitants, he shall pay the additional sum of twenty dollars; if in a town or city of more than four thousand and not exceeding five thousand inhabitants, he shall pay the additional sum of thirty dollars; if in a town or city of five thousand inhabitants or more, he shall pay the additional sum of forty dollars; and provided, further, that where there is a firm of land agents doing business at one locality, said tax shall be on the firm and not on each member thereof. (1915, p. 232.)

Sec. 56. Book agents.—No person, firm, or corporation shall, without a license, act as a book agent.

Any person, firm or corporation other than a licensed merchant, who shall receive subscriptions for, or shall in any manner furnish books, maps, prints, pamphlets or periodicals, shall be deemed to be a book agent. Any person desiring to distribute any religious books, pamphlets, or periodicals, may apply to the judge of the county, circuit or corporation court of any county or city in which he may desire to distribute the same, and said judge, upon being satisfied that the person applying is of good character, and a proper person in whom to confide the trust of distributing such books, may direct the commissioner of the revenue to grant him a license without the payment of a license tax therefor. Any person, firm, or corporation violating the provisions of this section shall pay a fine of not less than fifty dollars nor more than one hundred dollars for each offense. (1915, p. 232.)

Sec. 57. License on book agents.—A book agent shall pay for the privilege of acting as such the sum of ten dollars. (1915, p. 232.)

Sec. 58. Auction sales; who may sell without a license.—No person shall sell at auction or public outcry, for compensation, without a license, except in the following cases—to-wit:

Digitized by Google

First. The estate of a decedent may be sold by his personal representative or his agent, according to law or the provisions of the will.

Second. Property conveyed by deed of trust, or decree or ordered to be sold by a court may be sold according to the deed, decree or order.

Third. Any person may sell the agricultural products of this State arising from his own or other labor under his control, or his real or personal estate not sold or purchased on speculation.

Fourth. Any officer may sell property distrained by him under execution or other legal process.

Fifth. Licensed commission merchants may sell live or dressed fowls, fresh vegetables, and fresh fish, upon taking out license of a common crier. (1915, p. 232.)

Sec. 59. Auctioneer's account of sales.—Every auctioneer other than a tobacco auctioneer shall keep an account of sales made by him, showing the aggregate amount thereof; and whenever required by a commissioner of the revenue, shall render an account for assessment of all his sales during the period for which his license was granted, and shall sign and answer all interrogatories respecting such sales as may be propounded to him in pursuance of law. Such accounts, statements and answers shall always be on oath. (1915, p. 232.)

Sec. 60. What an auctioneer may do.—An auctioneer may conclude the sales of anything he is authorized to sell, grant a certificate or other evidence of the sale, and receive the money; but no auctioneer shall authorize or permit any person to sell any property under and by virtue of his license, except the person so authorized or permitted is actually and bona fide in the employment of such auctioneer, and is actually and bona fide a resident of the county or city where such auctioneer is licensed to do business, and the commissions on such sale are actually and bona fide for the benefit of such auctioneer; and no license shall be construed to authorize the person to whom it is issued to sell at more than one regular establishment: but an auctioneer may sell anywhere in the county or city wherein he is licensed, public stocks, houses, lots, and furniture on ships or vessels, on the premises where the same may be or at the exchange or the store of a regular licensed merchant declining business, or goods in the original form and packages as imported and bulky articles such as have been usually sold in warehouses, or in the public streets, or on the wharves, or at such other places in the county or city wherein such auctioneer is licensed, as shall be desired by the owner or importer of such bulky articles or imported goods. If any auctioneer shall violate any of the provisions of this section, he shall forfeit and pay for every offense twenty dollars, to be recovered for the use of the party prosecuting the same before a justice of the peace, in like manner as other fines and penalties are imposed and collected. The offer to sell each article shall be deemed a separate offense. (1915, p. 232.)

Sec. 61. Classification of auctioneers.—Auctioneers shall consist of general auctioneers, real estate auctioneers, tobacco auctioneers and livestock auctioneers, and shall be so classified that their powers and duties and the restrictions and penalties thereon shall be separate and distinct—that is to say: (1915, p. 232; 1916, p. 460.)

Sec. 62. General auctioneers; what they may sell.—Any person, licensed as a general auctioneer, may sell any goods, wares, merchandise and other articles not prohibited by law; but he shall not sell wine, ardent spirits, malt liquors or any mixture thereof, unless and until he shall have obtained a license therefor in the mode prescribed by law. (1915, p. 232.)

Sec. 63. License for general auctioneers.—A general auctioneer shall pay the sum of fifty dollars, and if the place of business is in a city or town having a population of more than five thousand inhabitants, (3128)

Digitized by Google

two dollars for every thousand above that number; but said sum shall in no case exceed one hundred and thirty dollars. And he shall pay an additional sum of one-fourth of one per centum on the amount of sales for the year. Provided, however, a general auctioneer is not required to pay the percentage tax on sales made by him under order of court, or for persons acting in a fiduciary capacity where the general auctioneer only cries the sale and grants the certificate thereof. If he sells wine, ardent spirits, malt liquors, or any mixture thereof, he shall pay one-half of one per centum on the amount of such sales. (1915, p. 149.)

Sec. 64. Real estate auctioneers.—Any person licensed as a real estate auctioneer, may sell, in the county or city wherein he is licensed, at auction or privately, any real estate in this Commonwealth entrusted to him for sale; provided, that no such auctioneer shall be allowed to negotiate loans upon a mortgage of real estate or otherwise, without taking an additional license as a private banker. For any violation of this section the person so offending shall pay a fine of not less than one hundred dollars, nor more than one thousand dollars, for each offense. (1915, p. 232.)

Sec. 65. Real estate auctioneer's license.—A real estate auctioneer shall pay the sum of fifty dollars; if the place of business is in a city or town containing a population of five thousand inhabitants or under, he shall pay seventy-five dollars; if in a city of more than five thousand, but not exceeding twenty thousand inhabitants, he shall pay one hundred dollars; and in a city of more than twenty thousand inhabitants, he shall pay one hundred and twenty-five dollars. (1915, p. 232.)

Sec. 66. Tobacco auctioneers.—Any person or firm licensed as a tobacco auctioneer may sell at auction any tobacco, not prohibited by law to be sold. For any violation of this section the person or firm offending shall pay a fine of not less than fifty dollars nor more than five hundred dollars for each offense. (1915, p. 232.)

Sec. 67. Tobacco auctioneer's license.—Tobacco auctioneers shall pay for the privilege of transacting business twenty-five dollars, except in cities they shall pay fifty dollars; and, provided, further, that in incorporated towns the auctioneer for any warehouse or warehouses in which were sold during the previous year, ending April thirtieth, five million pounds or more of tobacco, shall pay fifty dollars; but in any case where such sales amount to less than one million pounds, the tax shall be only ten dollars. (1915, p. 232.)

Sec. 67-a. Live-stock auctioneers.—Any person, firm or corporation licensed as an auctioneer to sell horses, mules and other live-stock, may sell in the county or city wherein licensed, at auction or privately for their own account or for the account of others, horses, mules and other live-stock. (1916, p. 460.)

Sec. 67-b. Live-stock auctioneers' license.—Live-stock auctioneers shall pay for the privilege of transacting business the sum of fifty dollars, provided the commissions and profits from sales do not exceed one thousand dollars, but when the commissions and profits from sales exceed one thousand dollars the tax shall be fifty dollars and an additional tax at the rate of one dollar on each one hundred dollars, or fraction thereof, of commissions and profits from sales in excess of one thousand dollars. Any licensed live-stock auctioneer who buys and sells on his own account shall for the conduct of that business be deemed to be a merchant and shall take out a merchant's license. Said license tax upon a live-stock auctioneer who sells for the account of others the license tax provided in this section shall be in lieu of any tax, State or local, on capital, except that the cities and towns may prescribe a license tax in addition to the one hereby imposed. (1916, p. 460.)

Digitized by Google

Sec. 68. Licenses to retailers of tobacco.—No person, not a producer, shall be allowed to sell by retail, tobacco, snuff and cigars without having obtained a specific license to do so. The sums to be paid by retailers of tobacco, snuff and cigars shall be for such privilege, a specific tax of five dollars, which shall be assessed and collected as other license taxes; but shall not be in lieu of merchants' license on purchases.

Provided, however, that a licensed hotel keeper or a keeper of a house of private entertainment or eating house whose purchases of tobacco, snuff and cigars are in any year less than five hundred dollars, may under the license to retail tobacco sell such tobacco, snuff and cigars in a duly licensed hotel or house of private entertainment or eating house without taking out a merchants' license, provided he does not conduct a mercantile business in connection with the business of hotel keeper or keeper of a house of private entertainment or eating house, in which case he shall for such business be licensed as a merchant and required to return with his other purchases, his purchases of tobacco, snuff and cigars. (1914, p. 487; 1916, p. 793.)

Sec. 69. Junk dealers, canvassers, etc.—No keeper of a shop, for the purpose herein mentioned, or master of a vessel, or other person shall, without a license authorized by law, purchase, sell, barter, or exchange any kind of second-hand articles, junk, rags, rag cullings, bones, bottles, puer, scrap, metals, metal drosses, steel, iron, paper, old lead pipe, old bathroom fixtures, old rubber, old rubber articles, or other like commodities, except furniture, clothes, shoes and stoves intended to be re-sold for use as such. The hustings or corporation court of any city, and the circuit court of any county, may grant a license to any citizen of the United States who shall produce to it satisfactory evidence of his good character to carry on the business of a junk dealer, which license shall designate the premises on which said person shall exercise or carry on said business; and no person shall exercise or carry on the business of a junk dealer without being duly licensed, nor in any other premises than the one designated in said license, except by the consent of the court which granted the license, under the penalty of fifty dollars for each day he shall exercise or carry on said business without such license, or in any other premises than the one so designated, except by the consent of the court aforesaid. The place at which such business may be conducted shall be kept open for the purchase or sale of any of the articles mentioned aforesaid. Nor shall any purchase be made by such person, or by any other person or persons for him, except between the hours of sunrise and sunset; and such place of business shall be open at all times to the inspection of any revenue or police officer of the county or corporation wherein the license issued. Every person receiving such license shall place over the principal entrance of his place of business a sign designating that he is a licensed junk dealer. No person shall canvass for the purpose of buying any junk or other like commodity enumerated above in this section, for any such junk dealer, or for sale to such junk dealer, or to any other person unless such person be authorized so to do, in writing, by some junk dealer licensed and appointing him under this section. Every such junk dealer, desiring to appoint such canvassers, shall take out a license for each canvasser he shall wish to appoint. Such canvasser's license shall be issued in the name of the dealer applying therefor, and the commissioner of revenue shall furnish with each canvasser's license two tin signs, numbered in duplicate, with the following words thereon, viz.: "Licensed Junk Canvasser No. ——," and said signs are to be firmly and conspicuously fixed by such canvasser to each side of his vehicle, when using the same in canvassing.

Canvassers so appointed shall be permitted to canvass anywhere in this State. Any person violating the provisions of this section shall pay a fine of not less than fifty dollars nor more than one hundred dollars for each offense. Nothing contained in this section shall be construed or operate to prevent any person, firm, or corporation keeping or operating a foundry or machine shop from exchanging his new castings

Digitized by Google

for old ones, or from buying any old metals or old machines for use in his business, or to be renovated and sold; but nothing herein contained shall authorize any such person, firm or corporation operating a foundry or machine shop to buy any old metals or old machines, and sell them again in the same condition as they were when purchased. Nothing in this section shall be construed to prevent any regular licensed merchant in the country, or in towns having a population of two thousand or less from buying or trading for rags, old iron, or other articles or junk, unless there be a regular licensed junk dealer within three miles of his place of business, such merchant to be subject at all times to the same conditions of inspection as a regular junk dealer. Every junk dealer and every merchant and foundryman who deals in junk, old metals, et cetera, shall keep at his place of business a book, in which shall be fairly written in English, at the time of each transaction in the course of his business, an accurate account of such transaction except as to the purchase of rags, bones, old iron, and paper, setting forth a description of the goods, articles, or anything purchased, the time of receiving the same, the name and residence of the person selling or delivering the same, the terms and conditions of purchase or receipt thereof, and all other facts and circumstances respecting such purchase or receipt. Which said book or books shall, at all times, be subject to the inspection of the judges of the criminal courts, the chief of police, the captains and sergeants of the police of the city, town or county wherein such business is being conducted, or any or either of them, sergeant and sheriff of such city, town or county, or other officer with police jurisdiction, provided, however, that this section shall not apply to articles bought without the State of Virginia. It shall be the duty of every junk dealer, every such merchant and foundryman, to admit to his premises at any time any officer mentioned above, to examine any books or other record on the premises, as well as the articles purchased or received; and to search for and take into possession any article known by him to be missing, or known or believed by him to be stolen, without the formality of search warrant or any other process, which search or seizure is hereby authorized. Every junk dealer shall be liable to all the penalties herein provided for violation of any of the provisions of this section, whether such violation be committed by himself or by his agent, clerk or employee. (1906, p. 537; 1915, p. 232.)

Sec. 70. Junk dealers' license.—Every junk dealer shall pay for the privileges of transacting business the sum of fifty dollars, and for the privilege of doing business at other premises than that designated in the license the sum of twenty-five dollars, and for the privilege of appointing canvassers, for the purpose of buying any junk or other matter or things for any such junk dealer, or for sale to a junk dealer, the sum of thirty dollars for each canvasser appointed and licensed, as well as the cost of the tin signs furnished such canvasser. (1906, p. 537; 1915, p. 232.)

Sec. 71. Common criers.—No person shall act as a common crier without a license. A person licensed as a common crier may, except in cities of over fifteen thousand inhabitants, cry for sale at any place in the county or city in which his license issued, any property, real or personal, for an auctioneer, fiduciary, or the owner of the property, when such owner is authorized to sell the same by auction, but he shall not conduct a sale otherwise than under the present and immediate direction of the property owner or other person authorized to sell the same, nor shall he cry such property or conduct such sale by an agent. He shall not, as such crier, receive money on account of the sale or grant acquittances. He may receive for his services a stated compensation, but he shall not receive any commission or percentage on the amount of the sale, nor any specific or contingent interest in the sale as a compensation for his services, directly or indirectly. Any person licensed as a common crier in a city of over fifteen thousand inhabitants may sell fowl, butter, fresh fish, fresh vegetables, fruit, or articles of like perish-

Digitized by Google

able nature. For any violation of this section the person offending shall pay a fine of not less than fifty nor more than five hundred dollars for each offense. (1915, p. 232.)

Sec. 72. License to common crier.—Each and every person, in order to be licensed as a common crier, shall pay five dollars. (1915, p. 232.)

Sec. 73. Ship-brokers.—No person, firm, or corporation shal act as a ship-broker without a license. Any person engaged in the management of business matters occurring between the owners of vessels and the shippers or consignors of the freight which they carry, shall be deemed to be a ship-broker. Any person, firm or corporation violating the provisions of this section shall pay a fine of not less than one hundred dollars nor more than five hundred dollars for each offense. (1915, p. 232.)

Sec. 74. Ship-brokers' license.—A ship-broker shall pay for the privilege of transacting business the sum of fifty dollars. (1915, p. 232.)

Sec. 75. Stock brokers.—No person, firm, bank, or corporation shall, without license, act as a stock broker. Any person, firm, bank or corporation that deals in coin, foreign or domestic, exchange, government stock, or other certificates of debt, or shares in any corporation or chartered company, bank notes or other notes used in currency, or who sells the same or any of them on commission or for other compensation, or who negotiates loans upon real estate security, except a licensed attorney at law, shall be deemed to be a stock broker. A stock broker shall have the right to buy and sell for profit, or to sell on commission, the coin, exchange, stocks, certificates of debt, shares in chartered companies, bank notes, and notes used as currency as aforesaid, and may sell either privately or by auction, and also negotiable loans upon real estate security. Any person, bank, or corporation violating the provisions of this section shall pay a fine of not less than one hundred dollars nor more than five thousand dollars for each offense. (1915, p. 232.)

Bankers or brokers engaged in dealing in options or futures.—Any person, firm, or corporation engaged in buying and selling, or who receives orders to buy or sell, cotton, grain, provisions, or other commodities, stocks, or bonds, shall be deemed to be a banker or broker dealing in options and futures. Any person so dealing in options or futures without a license to transact or engage in such business shall pay a fine of not less than three hundred dollars, nor more than five hundred dollars for each offense.

License to bankers or brokers dealing in options or futures.—Every banker or broker dealing in options or futures or in buying or selling options or futures shall pay the sum of two hundred dollars for the privilege of transacting such business. (1915, p. 232.)

Sec. 76. License to stock brokers.—A stock broker shall pay for the privilege of transacting business the sum of one hundred dollars, but in towns or cities of over five thousand and not more than ten thousand inhabitants he shall pay one hundred and fifty dollars, and in cities of more than ten thousand inhabitants he shall pay two hundred and fifty dollars for each office or place of business kept for that purpose. (1915, page 232.)

Sec. 77. Private bankers.—No person or firm shall engage in the business of a private banker without a license. Any person or firm engaged in the business of receiving money on deposit, in lending or advancing money, or in negotiating loans on notes, bonds, furniture, or any class of security or securities, or in discounting, buying or selling negotiable or other paper or credits, commonly known as street brokers, whether at an office kept for the purpose or elsewhere, shall be deemed to be a private banker. Any person or firm violating the provisions of this section shall pay a fine of not less than one hundred dollars nor more than five thousand dollars for each offense, provided this sec-

Digitized by Google

tion shall not apply to a licensed attorney at law or land agent who negotiates loans upon real estate security. (1915, p. 232.)

Sec. 78. License to private bankers.—A private banker shall pay fifty dollars on a capital of five thousand dollars or under; one hundred dollars on a capital exceeding five thousand and not exceeding ten thousand; one hundred and fifty dollars on a capital from ten thousand dollars to twenty thousand dollars; two hundred and fifty dollars on a capital of over twenty thousand dollars and not exceeding thirty thousand dollars, and an additional sum of five dollars per thousand on every thousand dollars in excess of thirty thousand dollars. (1915, p. 232.)

Sec. 79. Pawnbrokers.—No person shall, without a license, act as a pawnbroker. Any person who shall in any manner lend or advance money or other things for profit on the pledge and possession of personal property, or other valuable things other than securities or written or printed evidences of indebtedness, or who deals in the purchasing of personal property or other valuable thing on condition of selling the same back to the seller at a stipulated price, shall be held to be a pawnbroker. Any person acting as a pawnbroker without a license shall pay a fine of not less than fifty dollars nor more than five hundred dollars for each offense.

The hustings or corporation court of any city, and the circuit or county court of any county, may from time to time, grant a license to any citizen of the United States who shall produce satisfactory evidence of his good character, to exercise or carry on the business of a pawnbroker in his city or county, which license shall designate the building in which said person shall carry on said business; and no person shall exercise or carry on the business of a pawnbroker without being duly licensed by the hustings or corporation court of the city, or the circuit or county court of the county in which he may desire to carry on said business, nor in any other building other than the one designated in said license, except by consent of the court which granted the license, under the penalty of fifty dollars for each day he shall exercise or carry on said business without such license or in any other building than the one so designated.

Every person so licensed, shall, at the time of receiving such license and before the same shall be operative, enter with two sufficient sureties, into a joint and several recognizance to the Commonwealth of Virginia in the penal sum of two thousand five hundred dollars, conditioned, for the due observance of all acts of the General Assembly of Virginia which may be in force respecting pawnbrokers at any time during the continuance of such license. If any person shall be aggrieved by the misconduct of any such licensed pawnbroker, and shall recover judgment against him, therefor, such person may, after the return unsatisfied, either in whole or part, of any execution issued upon said judgment, maintain an action in his own name upon the bond of said pawnbroker in any court having jurisdiction of the amount claimed; provided, such court shall, upon the application made for the purpose, grant such leave to prosecute.

Every pawnbroker shall keep a book, in which shall be fairly written at the time of each loan an accurate account and description of the goods, article, or thing pawned or pledged, the amount of money loaned thereon at the time of pledging same, the rate of interest to be paid on such loan, and the name and residence of the person pawning or pledging the said goods, article, or thing, together with a particular description of such person, including complexion, color of eyes and hair, and his or her height and general appearance.

Every pawnbroker shall at the time of each loan deliver to the person pawning or pledging any goods, article, or thing, a memorandum or note, signed by him or her, containing the substance of the entry required to be made in his or her book by the last preceding section,

Digitized by Google

except as to the description of the person, and no charge shall be made or received by any pawnbroker for any such entry, memorandum or note.

Such book shall at all reasonable times be open to inspection of the judges of the criminal courts, the chief of police, and captains and sergeants of the police of the city, town or county wherein such business is being conducted, or any or either of them, sergeant and sheriff of such city, town or county, or other officer with police jurisdiction.

No pawnbroker shall sell any pawn or pledge until the same shall have remained four months in his or her possession, unless by consent in writing of the pawner, and all such sales shall be made at public auction and not otherwise, and shall be made or conducted by such auctioneers as shall be designated and approved of for that purpose by the court granting the license.

Notice of every such sale shall be published for at least five days previous thereto, in one or more of the daily newspapers of general circulation printed in such city. Those doing business in any county shall advertise as above in some newspaper, if any be published in said county, and if no newspaper be published in such county, then in some newspaper published in an adjoining county, and such notice shall specify the time and place at which such sale is to take place, the name of the auctioneer by whom the same is to be conducted, and a description of the articles to be sold.

The surplus money, if any, arising from any such sale, after deducting the amount of the loan, the interest then due on the same, and the expenses of the advertisement and sale, shall be paid over by the pawnbroker to the person who would be entitled to redeem the pledge in case no such sale had taken place.

Any licensed pawnbroker who shall violate or neglect or refuse to comply with any or either of the provisions of this act, except those contained in section one, shall, for every such offense, upon conviction before a court of competent jurisdiction, pay a fine of not more than one hundred dollars.

No pawnbroker shall ask, demand, or receive a greater rate of interest than ten per centum per month on a loan of twenty-five dollars or less, or five per centum per month on a loan of over twenty-five dollars and less than one hundred dollars, or three per centum per month on a loan of one hundred dollars or more, secured by a pledge of tangible personal property. And no loan shall be divided for the purpose of increasing the percentage to be paid the pawnbroker.

Police regulations.—Every pawnbroker shall keep at his place of business a book or books, in which shall be fairly written in English, at the time of each loan or transaction in the course of his business an accurate account of such loan or transaction, setting forth a description of the goods, article, or thing pawned, or received on account of money loaned thereon; the time of receiving the same; the name and residence of the person pawning or delivering the same; the terms and conditions of loan, including the period for which any such loan may be made, and all other facts and circumstances respecting such loan, which said book or books shall at all times be subject to the inspection of the officers before mentioned.

No property of any kind received on deposit or pledge by any pawnbroker shall be disfigured or its identity destroyed or affected in any manner whatsoever, so long as it continues in pawn or in the possession of such pawnbroker, nor shall such property be in any manner concealed for the space of forty-eight hours after the same shall have been received by such pawnbroker.

It shall be the duty of every pawnbroker and of every person in the employ of such pawnbroker to admit to his premises at any time any officer mentioned in this act to examine any pledge or pawn, book or other record on the premises, as well as the articles pledged, and to search for and take into possession any article known by him to be missing, or known or believed by him to have been stolen, without the

Digitized by Google

formality of the writ of search warrant or any other process, which search or seizure is hereby authorized.

The following regulation is hereby made for storing or taking care to prevent injury during disuse on blankets, clothing, carpets, furs, rugs, dress goods, cloths, mirrors, oil paintings, glass and china ware, pianos, organs, curtains, beddings and upholstered furniture. Pawnbroker shall be allowed to charge two per centum per month in addition to the regular charges for the first three months, or part thereof, while such goods shall remain as pledge for money advanced.

Every pawnbroker shall be liable to all the penalties hereinafter provided for violation of any of the provisions of this article, whether such violations be committed by himself or by his agent, clerk, or employee.

Every person who shall be convicted of violating any of the provisions of this section shall, for the first offense, forfeit and pay a penalty, except in cases where a different penalty is herein provided, not exceeding twenty-five dollars, and for a subsequent offense shall pay such penalty as the court may impose, and shall in the discretion of the court, forfeit his license. (1915, p. 232.)

The business of pawnbrokers, because of the facility it furnishes for the commission of crime and its concealment, is one which belongs to a class where the strictest police regulation may be imposed. Elsner Bros. v. Hawkins, 113 Va. 47, 73 S. E. 479.

Sec. 80. Pawnbrokers' license.—A pawnbroker shall pay for the privilege of transacting business, two hundred and fifty dollars. (1915, p. 232.)

Sec. 81. Lending money on household goods, etc. (1915, p. 232.) (Repealed by Uniform Small Loan Act. See Acts 1918, page 662.)

Sec. 82. License on a building and loan association or company.—No building and loan association or company, incorporated under the laws of this or any other State, shall, without a license, conduct any business, or solicit the sale of stock, or offer to lend money in this State, nor shall any person act as agent of any such association or company unless the association or company he represents has a license.

The specific license tax upon every building and loan association or company for the privilege of doing business in this State shall be seventy-five dollars; provided, the capital of such association or company actually paid in, whether from paid-up stock or partially-paid stock, is not over twenty-five thousand dollars; if the capital paid in, whether from paid-up stock or partially paid-up stock, is over twenty-five thousand dollars, then an additional license tax of three dollars on each one thousand dollars of such capital, or fraction thereof, on such excess shall be paid by all such building and loan associations or companies; provided, that a non-resident building and loan association or company doing business in this State, which has otherwise complied with the laws of Virginia, shall pay the license tax herein imposed, based upon its capital invested in this State.

A building and loan association or company which does business on a purely mutual plan, and makes loans only to their stockholders, and confines its business solely to the city or county where it is organized, and cities and counties immediately contiguous thereto, shall pay a license tax of fifty dollars.

It shall be the duty of each association or company on the first day of April of each year or within ten days thereafter, to make a report in writing of its capital paid in, if the association or company be incorporated under the laws of ths State, or of its capital invested in this State, if it be a non-resident association or company, under oath of its chief officer or agent, to the commissioner of the revenue for the district in which its principal office or agency in this State is situated.

Any building and loan association or company, or the agents of any such association or company, which does business in this State, without

Digitized by Google

paying the license tax herein imposed, shall pay a fine of not less than fifty dollars nor more than five hundred dollars.

The shares of stock issued by any building and loan association or company, which has paid the license tax herein imposed shall not be taxable in the hands of the holder, nor shall any additional State tax be imposed on the paid in capital of such association or company.

No city or town shall levy a greater license tax on the paid in capital of any such association or company than that imposed herein for State purposes, and such city or town license tax shall be levied only where the principal office of such association or company is located in this State. (1915, p. 232.)

Sec. 83. Insurance brokers.—No person shall, without a license act as an insurance broker. Every person who shall solicit for compensation, directly or indirectly, to be derived therefrom any fire, marine, life or other insurance, either on account of any person desiring to effect any such insurance, or on account of any insurance company, except the duly authorized agent (or a clerk actually employed in his office) of any insurance company licensed to do business in this State, shall be deemed an insurance broker. Any insurance agent (or clerk actually employed in his office), who shall solicit, directly or indirectly, any fire, marine, life or other insurance, either on account of any person desiring to effect any such insurance, or on account of any insurance company licensed to do business in this State, other than for the insurance company or companies for which he is the duly authorized agent, shall be deemed an insurance broker. Provided, however, this shall not apply to duly authorized agents exchanging business among themselves. Any person acting as insurance broker without a license shall pay a fine of not less than fifty dollars nor more than five hundred dollars for each offense. Any person or firm who shall fill up, sign or deliver a policy or certificate of insurance for a corporation, or person, or association, or persons not licensed to do an insurance business in this State by a legally authorized agent, shall be considered an agent of such corporation, or person, or association, and such person, corporation or association shall be liable for all licenses, taxes, and penalties as if represented by a legally appointed agent. No person licensed as an insurance broker shall be authorized under his license to place any insurance in a company or association, or with a person or firm not licensed to do an insurance business in this State. (1915, p. 232.)

Sec. 84. Licenses—Insurance brokers.—An insurance broker shall pay the sum of one hundred dollars for the privilege of transacting such business. The license shall be issued by the Commissioner of Insurance, and the tax shall be paid to him, and he shall pay the same into the treasury. (1910, p. 325; 1915, p. 232.)

Sec. 85. Mercantile agencies—Any person, firm or corporation engaged in reporting the financial standing of merchants and others as a regular business for compensation shall be deemed a mercantile agency. Any person engaged in such business without a State license to transact such business shall pay a fine of not less than one hundred dollars, and not more than five hundred dollars; provided, that this section shall not apply to employees of mercantile agencies who only report to such agencies, nor to regularly licensed attorneys at law. (1915, p. 232.)

Sec. 86. Licenses to mercantile agencies.—A mercantile agency shall pay for the privilege of transacting such business the sum of two hundred and fifty dollars. This section shall be construed to levy only one State license tax upon each such mercantile agency, which license tax of two hundred and fifty dollars shall be paid annually direct to the Auditor of Public Accounts.. (1915, p. 232.)

Sec. 86½. Collection agencies defined; license for.—Any person, firm or corporation whose business it is to collect all kinds of claims, includ-

Digitized by Google

ing notes, drafts and other negotiable instruments, on behalf of others, and to render an account of the same, shall be deemed a collecting agency. Any such person, firm or corporation engaged in such business without a license shall be fined not less than one hundred nor more than five hundred dollars; provided, however, that this section shall not apply to a regularly licens·d attorney at law. A collecting agency shall pay for the privilege of transacting such a business a license tax of twenty-five dollars, provided that his commissions and fees during the year amount to as much as one thousand dollars. (1916, p. 793.)

Sec. 87. Undertakers.—Any person, firm, or corporation engaged in the business of burying the dead shall be deemed an undertaker. Any person, firm, or corporation engaged in such business without a license shall pay a fine of not less than ten dollars nor more than twenty-five dollars. (1915, p. 232.)

Sec. 88. Undertaker's license.—An undertaker shall pay for transacting such business in the country and in towns of one thousand inhabitants or less, five dollars; and in towns and cities of over one thousand and not over three thousand inhabitants, ten dollars; and in towns and cities of over three thousand and not over five thousand inhabitants, fifteen dollars; and in towns and cities of over five thousand and not over ten thousand inhabitants, twenty-five dollars; and in cities of over ten thousand inhabitants and not over thirty thousand inhabitants, thirty-five dollars; and in cities of over thirty thousand inhabitants, fifty dollars. (1914, p. 487; 1915, p. 232.)

Sec. 89. Civil and electrical engineers.—Any person or firm who shall for compensation engage in the business of civil, mining, mechanical or electric engineering shall pay a license tax of fifteen dollars per year for the privilege of conducting such business; the said license to be procured from the commissioner of the revenue of the city or district in which said engineer shall have his office on the first day of May in each year; provided, that the license of any engineer who has not practiced his profession for more than five years, or whose income from such business is less than five hundred dollars for the preceding year shall be five dollars; and, provided, further, that on the payment of the license as herein provided the said engineer shall be entitled to engage in such business in any part of this State. Any person or firm violating the provisions of this section shall be fined not less than ten dollars, nor more than thirty dollars, for each offense. (1915, p. 232.)

Sec. 90. Contractors.—Any person, firm or corporation accepting orders or contracts for doing any work on or in any building or stucture, requiring the use of paint, stone, brick, mortar, wood, cement, structural iron or steel, sheet-iron, galvanized iron, metallic piping, tin, lead, electric wiring or other metal, or any other building material; or who shall accept contracts to do any paving or curbing on sidewalks or streets, public or private property, using asphalt, brick, stone, cement, wood or any composition, or who shall accept an order for or contract to excavate earth, rock, or other material for foundations or any other purposes, or who shall accept an order or contract to construct any sewer of stone, brick, terra cotta, or other material, shall be deemed a contractor. Every contractor shall, on the first day of May in each year, procure from the commissioner of the revenue for the city or district in which he has his office a license to carry on the business of a contractor; provided, that if such contractor has no office in this State, then he shall procure such license from the commissioner of the revenue for the city, county, or district where he conducts his business. Any person, firm, or corporation doing such business without a license shall pay a fine of not less than thirty dollars, nor more than one hundred dollars for each offense; provided, that no further license shall be required by the State for conducting said business in any part thereof; and, provided, further, that

Digitized by Google

this section shall not apply to contractors the gross amount of whose orders accepted and executed does not exceed five thousand dollars per annum. (1915, p. 232.)

The following clause appeared in the charter of the city of Norfolk: "For the execution of its powers and duties the city council may raise annually by taxes and assessments in said city, such sums of money as they shall deem necessary to defray the expenses of the same, and in such manner as it shall deem expedient, in accordance with the Constitution and laws of this State and of the United States." Under this charter provision the city sought to divide and make of one subject of taxation (that of occupation of contractor, defined and classified by the above section) a number of subjects for the purpose of city taxation, and it was held that this could not be done. Norfolk v. Griffin, 120 Va. 524, 91 S. E. 640. For reasons, see opinion.

Sec. 91. Licenses to contractors.—Every such contractor, for the privilege of transacting business in this State, shall pay a license, to be ascertained in the following manner:

If the gross amount of all orders or contracts accepted aggregate five thousand dollars, he shall pay the sum of five dollars; if the amount of such orders or contracts are more than five thousand dollars, and do not exceed ten thousand dollars, ten dollars; if the amount of such orders or contracts exceed ten thousand dollars, and do not exceed twenty thousand dollars, fifteen dollars; if the amount of such orders or contracts exceed twenty thousand dollars, and do not exceed fifty thousand dollars, twenty dollars; if the amount of such orders or contracts exceed fifty thousand dollars, and do not exceed one hundred thousand dollars, fifty dollars; if the amount of such orders or contracts exceed one hundred thousand dollars, and do not exceed one hundred and fifty thousand dollars, one hundred dollars; and if the amount of such orders or contracts exceed one hundred and fifty thousand dollars, one hundred and fifty dollars; and when any such contractor shall have obtained a license for any year for which he has paid a license tax of less than the maximum above described, he shall not accept any contract or contracts during such year the aggregate amount of which exceeds the maximum amount for which his license was obtained, unless and until he shall have paid such additional sum as will make the total license tax paid by him for that year sufficient to cover the aggregate amount of such contract or contracts as prescribed above; and unless he pay such additional sum he shall be deemed to be acting without a license. (1915, p. 232.)

Sec. 92. Architects.—Any person or firm who shall, for compensation, draw or furnish plans for the construction of any building or other structure, shall be deemed an architect, and shall pay a license tax of twenty-five dollars a year for the privilege of conducting such business; the said license to be procured from the commissioner of the revenue of the city or district in which said architect has his or their office, on the first day of May of each year; provided, that the tax upon an architect or architects whose income from such business has been less than five hundred dollars for the preceding year, shall be ten dollars; and, provided, further, that no further license shall be required by the State for doing business in any part thereof. Any person or firm violating the provisions of this section shall be fined not less than ten dollars nor more than thirty dollars for each offense. (1915, p. 232.)

Sec. 92½. License to keep a hotel.—That any person who keeps a public inn or lodging house of more than thirty bedrooms where transient guests are fed or lodged for pay in this State, shall be deemed for the purposes of this act to be engaged in the business of keeping a hotel.

A transient guest is one who puts up for less than one week at such hotel, but such a house is no less a hotel because some of its guests put up for longer periods than one week.

Any person conducting the business of keeping a hotel as defined in this act shall pay an annual license tax of one dollar for each bedroom, and fifty cents for each bathroom, in said hotel; provided, that hotels at summer and health resorts, keeping open not more than four

Digitized by Google

months in a year, shall pay only one-half of the foregoing sums. (1914, p. 419; 1915, p. 232.)

The prior law imposing a tax on hotels was repealed by the Byrd law of 1908 (Acts 1908, p. 275). After that date and until the act of 1914 (Acts 1914, p. 419) there was no statute in this State imposing a tax upon the business of conducting a hotel. Hotel Richmond v. Com., 118 Va. 607, 88 S. E. 173.

Sec. 93. Houses of private entertainment, etc.—No person shall, without a license authorized by law, keep a house of private entertainment, or eating house. (1915, p. 232.)

Sec. 94. What constitutes a house of private entertainment.—Any person who shall furnish, for compensation, lodging or diet to travelers, or sojourners in any house of thirty bedrooms or less, shall be deemed to keep a house of private entertainment. A license to keep a house of private entertainment shall not be construed to authorize the sale of wine, spirituous or malt liquors, or a mixture of them on the premises or within the curtilage of such house of private entertainment, nor shall any license be granted to sell by retail or to be drunk, where sold, any wine, spirituous or malt liquors upon the premises or within the curtilage of any licensed house of private entertainment. Any person who shall keep a house of private entertainment without a license shall pay a fine of not less than thirty dollars nor more than one hundred dollars for each day he may keep the same. (1915, p. 232.)

This section and sections 95 and 96 were never intended to authorize the imposition of a license tax upon hotels. Hotel Richmond v. Com., 118 Va. 607, 88 S. E. 173.

Sec. 95. License to keep a house of private entertainment.—Every person who keeps a house of private entertainment shall pay an annual license tax of five dollars, and if the house has more than ten bedrooms shall pay an additional sum of one dollar per annum for each additional bedroom, over and above ten. (1915, p. 232.)

See note to section 94 of tax bill.

Sec. 96. What constitutes an eating house.—Any person who shall cook, or otherwise furnish for compensation, diet or refreshments of any kind, for casual visitors at his house, for consumption therein, and who does not furnish lodging, and who is not the keeper of an hotel, house of private entertainment, or boarding house shall be deemed to keep an eating house, but the refreshments herein named shall not consist of wines, spirituous or malt liquors, or a mixture of any of them. Any person who shall keep an eating house without a license shall pay a fine of not less than thirty dollars, nor more than one hundred dollars, for each day he may keep the same. (1915, p. 232.)

See note to section 94 of tax bill.

Sec. 97. License to keep an eating house.—Every person who shall keep an eating house shall pay for the privilege twenty-five dollars, and where the annual rent or rental value of the house and furniture is more than one hundred dollars, and not more than one thousand dollars, he shall pay an additional sum equal to five per centum of such rent or rental value; and where such annual rent or rental value exceeds one thousand dollars, he shall pay an additional sum equal to four per centum of such rent or rental value. The commissioner of the revenue shall determine such rent or rental value, and may require the proprietor or tenant to state on oath what is the actual rent or what would be a fair rent for the house and furniture, and if he refuses to state the same, he shall pay a fine of five hundred dollars. (1915, p. 232.)

Sec. 97½. Exempting persons conducting temporary eating or lodging-houses, horse-lots, and confectioneries at religious gatherings from license tax.—That the license tax shall not be required of persons conducting temporary eating or lodging-houses, horse-lots, and confectioneries at camp-meetings, associations, and other religious gatherings; provided, such eating or lodging-houses, horse-lots and confectioneries shall

Digitized by Google

be only carried on for the purpose of entertaining the persons attending such religious gatherings. (1915, p. 232.)

Sec. 98. What constitutes a bowling saloon.—Any person who shall keep a saloon for the reception of company to play at bowls shall be deemed to keep a bowling saloon. Any person who shall keep a bowling saloon without a license shall pay a fine of not less than fifty dollars nor more than one hundred and fifty dollars for each day he may keep the same. (1915, p. 232.)

Sec. 99. License to keep a bowling saloon.—Every person who shall keep a bowling saloon shall pay for the privilege the sum of twenty-five dollars, and an additional sum of ten dollars for each alley exceeding one. If the license be for a bowling saloon at a watering place and if for four months or less, the sum to be paid shall be twelve dollars and fifty cents and an additional sum of five dollars for each alley exceeding one. (1915, p. 232.)

Sec. 100. What constitutes a billiard room.—Any person who shall keep a saloon wherein there is a table at which billiards or pool are played shall be deemed to keep a billiard saloon, and if any sum is imposed upon the tables kept therein the same shall be on every table in excess of one capable of being used for the purpose, and kept therein, whether used or not. Any person who shall keep a billiard saloon without a license shall pay a fine of not less than fifty dollars nor more than one hundred dollars for each day he may continue to keep the same. (1915, p. 232.)

Sec. 101. License to billiard saloons and pool rooms.—Every person who shall keep a billiard saloon or pool room shall pay for the privilege the sum of fifty dollars, and the sum of twenty-five dollars for each table over one kept; or to be kept therein. If the license be for a billiard saloon or pool room at a watering place, and is for four months or less, the sum to be paid shall be twenty-five dollars, and the sum of twelve dollars and fifty cents for each table over one kept, or to be kept thereat. If the license be for a billiard saloon or pool room in the country or in a town of less than one thousand inhabitants, the sum to be paid shall be twenty-five dollars and twelve dollars and fifty cents for each table over one kept, or to be kept, therein. (1910, p. 380; 1915, p. 232.)

Sec. 102. What constitutes a bagatelle saloon.—Any person who shall keep a saloon or other public room wherein is a table at which to play at bagatelle, whether charge for the use thereof is made or not, shall be deemed to keep a bagatelle saloon. Any person who shall keep a bagatelle saloon without a license shall pay a fine of not less than fifty dollars nor more than one hundred dollars for each day he may continue to keep the same. (1915, p. 232.)

Sec. 103. License to a bagatelle saloon.—Every person who shall keep a bagatelle saloon shall pay for the privilege the sum of ten dollars, and an additional sum of five dollars for each table over one kept, or to be kept, therein. (1915, p. 232.)

Sec. 104. Property used in licensed business taxable.—Nothing herein shall be construed to exempt the furniture in houses mentioned in this schedule from being taxed as property. (1915, p. 232.)

Sec. 105. Theatres, public performances, exhibitions, etc.—No person shall, without a license authorized by law, exhibit for compensation any theatrical performance, or any performance similar thereto, panorama, or any public performance or exhibition of any kind, lectures, literary readings, and performances, except for benevolent or charitable or

Digitized by Google

educational purposes. Whenever a theatrical performance shall be licensed, the actors acting thereat under said license shall be exempt from a license tax; but unless the performance shall be so licensed, each person engaged therein shall be liable to the penalty for the violation of this section. Every license shall be for each performance, but a license for a theatrical performance or panorama may, if the person applying of this section every person so offending shall pay a fine of not less for the same desire it, be for the term of one week. For any violation than fifty dollars nor more than five hundred dollars for each offense. (1915, p. 232.)

Sec. 106. Licenses to theatres, public performances, exhibitions, etc.—On every theatrical performance or any performance similar thereto, panorama, or any public performance or exhibition of any kind, except for benevolent or charitable or educational purposes there shall be paid five dollars for each performance or fifteen dollars for each week of a continuous performance; provided, that in towns or cities of less than four thousand inhabitants there shall be paid two dollars for each performance, or six dollars for each week of continuous performance; but nothing herein shall be construed as taxing games of football, baseball, basketball or kindred ball games. (1915, p. 232; 1916, p. 806.)

A panoramic reproduction of the battles of the Boer war with scenery, etc., unaccompanied by circus rings, trapeze acting, clowns or menagerie, is subject to this section and not to section 109. Boer War Spectacle v. Com., 107 Va. 653, 60 S. E. 85.

Sec. 106½. Moving picture machines, phonographs, etc.—That for the exhibition of any automatic moving picture machine, phonograph, graphophone or similar musical machine, except for benevolent, charitable or educational purposes, where the price of admission does not exceed the sum of thirty cents and where the seating capacity of any such place of amusement does not exceed three hundred and fifty, there shall be paid in cities of over twenty thousand inhabitants a license fee of fifteen dollars for each week or for less time than a week; or ninety dollars for the exhibition thereof for a period of one year; and when the seating capacity of any such place of amusement exceeds three hundred and fifty there shall be paid an additional tax of two dollars for every ten seats or fraction thereof in excess of three hundred and fifty seats; provided, that in towns or cities of more than four thousand inhabitants and less than twenty thousand inhabitants there shall be paid a license fee of ten dollars for each week, or less time than a week, or sixty dollars for the exhibition thereof for a period of one year, and the license tax for said additional seating capacity shall be one dollar for every ten seats or fraction of ten seats in excess of three hundred and fifty seats; provided, further, that in towns or cities of more than one thousand inhabitants and less than four thousand inhabitants there shall be paid a license fee of three dollars for each week, or less time than a week, or twenty-five dollars for the exhibition thereof for a period of one year, and the license tax for such additional seating capacity shall be fifty cents for every additional ten seats or fraction thereof in excess of three hundred and fifty seats; and provided, further, that in towns of less than one thousand inhabitants and in the portions of the counties not included in any town there shall be paid as the only license tax to the State one dollar per day, or two and one-half dollars for a full continuous week, or ten dollars for the year; the license for one year to be paid annually; provided, however, that when such exhibition is given for benevolent, charitable or educational purposes, and is given for a period of more than one day in any one year, and the exhibitor thereof receives a part of the receipts from such exhibition as his compensation, then such exhibition after the first day shall not be exempt from the payment of the license fee herein prescribed. (1916, p. 806; 1918, p. 531.)

Sec. 107. Circus, menagerie, carnival shows, etc.—Every person, firm, company or corporation who exhibits or gives performances in a

Digitized by Google

side show, dog and pony (or either) show, trained animal show, carnival, circus, menagerie and circus, or any other show, exhibition or performance similar thereto shall procure a license therefor, but this section shall not be construed to prohibit a resident mechanic or artist from exhibiting any production of his own art or invention without compensation, nor shall any license be required of any agricultural fair or the shows exhibited within the grounds of such fair or fairs, during the period of such fair, whether an admission be charged or not, nor of resident persons giving or performing in a show or exhibition for charity or other benevolent purposes. Whenever such show, exhibition or performance is given, whether exempted by the terms hereof or licensed, those engaged therein and operating under either such license or exemption, shall be exempt from a license tax for performing or acting thereat. (1910, p. 387; 1912, p. 502; 1915, p. 232.)

Sec. 108. Separate license for shows described in preceding section; duties of police.—Every show, exhibition or performance, such as is described in the next preceding section, whether under the same canvas or not, unless exempt by the terms hereof, shall be construed to require a separate license therefor, whether exhibited for compensation or not.

Every person, firm, company or corporation who exhibits or gives a performance of any of the shows described in the next preceding section which are not exempt from license tax by the terms hereof, without the license required by law, shall be fined not less than fifty dollars nor more than five hundred dollars for each offense. The police authorities of a town, city or county shall not allow any such performance to open until the license required by law is exhibited to them. (1910, p. 387; 1912, p. 502; 1915, p. 232.)

Sec. 109. License for shows, circuses or menageries.—In the country or in towns of one thousand inhabitants, or less, unless the same be exempt from license tax by the terms of section one hundred and seven hereof, there shall be paid for each day's performance or exhibition of a side (or like) show, a license tax of five dollars; and on a dog and pony (or either, or like) show, a license tax of ten dollars; on a trained animal (or like) show, a license tax of ten dollars; on a carnival (or other like) show, a license tax of one hundred dollars; on a circus, or for a circus and menagerie, a license tax of one hundred and fifty dollars.

In a town or city, or within five miles thereof, of more than one thousand and not over ten thousand inhabitants, unless the same be exempt from taxation by the terms of section one hundred and seven hereof, there shall be paid for each day's performance or exhibition of a side (or like) show, a license tax of ten dollars; of a dog and pony (or either, or like) show, a license tax of twenty dollars; on a trained animal (or like) show, a license tax of twenty dollars; on a carnival (or other like show), a license tax of one hundred dollars; on a circus and menagerie (or like) show, a license tax of two hundred dollars.

In a city, or within five miles thereof, of more than ten thousand inhabitants, unless the same be exempt from taxation by the terms of section one hundred and seven hereof, there shall be paid for each day's exhibition or performance of a side (or like) show, a license tax of fifteen dollars; on a carnival (or other like) show, a license tax of one hundred and fifty dollars; on a dog and pony (or either, or like) show, on a trained animal (or like) show, or a wild west (or like) show, on a circus or circus and menagerie (or like) show, for each day or part of a day, a license tax as follows:

On shows requiring transportation of—
One to ten cars ..... Twenty-five dollars
Eleven to twenty cars ..... Fifty dollars

Digitized by Google

Twenty-one to thirty cars.....One hundred dollars
Thirty-one to forty cars.....One hundred and fifty dollars
Forty-one to sixty cars.....Two hundred dollars
Sixty-one to seventy cars.....Two hundred and twenty-five dollars
Seventy-one cars and over.....Two hundred and fifty dollars

The commissioner of the revenue shall require the agent of any railway company furnishing transportation for such show or shows to state under oath the total number of cars of every kind, whether belonging to the show or to the railway company, used in the transportation of any such show, and any agent of any railway company failing or refusing to make such statement to the commissioner of the revenue shall be fined not less than one hundred nor more than five hundred dollars. (1910, p. 387; 1912, p. 502; 1915, p. 232.)

A panoramic reproduction of the battles of the Boer war with scenery, etc., unaccompanied by circus rings, trapeze acting, clowns or menagerie, is not subject to the high license tax imposed by this section, but comes under the provisions of section 106. Boer War Spectacle v. Com., 107 Va. 653, 60 S. E. 85.

Sec. 109½. License for circuses, carnivals, etc., held during fairs.—Every traveling circus, carnival or show giving performances in the open air or tents in any county or city in this State, wherein there is held an agricultural fair, for one week previous to, or during the week of, or one week after the time of holding such regular or annual fair, shall pay a State license tax of one thousand ($1,000) dollars for each performance in addition to the license tax now required by law of a circus, carnival or like show, the State license tax provided for in this section and the State license tax now required by law, to be assessed by the commissioner of the revenue, and these license taxes to be paid to the county or city treasurer before any performance is permitted to be held.

It shall be unlawful for any such circus, carnival or show to publish or post in any way in such county or city at any time within thirty days prior to the holding of such regular annual fair, advertising of the exhibition of any such circus, carnival or show. Any person, firm, company, or corporation violating any provision of this section shall be fined two thousand ($2,000) dollars for each offense by the justice of the peace or court trying the case. The provisions of this section shall not apply to circuses, carnivals or shows inside the grounds of any agricultural fair held in any county or city. (1916, p. 496.)

Sec. 110. Hobby-horse machines, merry-go-round, and other like machines.—No person shall, without a license authorized by law, exhibit and operate any machine known as hobby-horse machine, merry-go-round, ocean wave, ferris wheel, or other like machines, whether the same is propelled by hand, horse, steam, electric or other power. (1915, p. 232.)

Sec. 111. License to hobby-horse machines, merry-go-round, and other like machines.—Every person who operates a hobby-horse machine, merry-go-round, ocean wave, ferris wheel, or other like machines, on which persons are charged for riding, shall pay ten dollars for each county or city in which such machine is operated. Any person operating any such machine, without first having paid the specific amount therefor shall pay a fine of not less than twenty dollars, nor more than fifty dollars for each offense. (1915, p. 232.)

Sec. 111½. License to permanent parks for public amusement.—That all owners and operators of permanent parks for public amusement, which shall be open for the public for at least three months during each year, shall have the option of being exempted from the payment of the licenses provided in sections ninety-eight, ninety-nine, one hundred and five, one hundred and six, one hundred and seven, one hundred and nine, one hundred and ten, one hundred and eleven, one hundred and twelve, one hundred and twenty-two, one hundred and thirty-nine, of an act approved April sixteenth, nineteen hundred and three,

Digitized by Google

and amended by an act approved February nineteenth, nineteen hundred and four, entitled "an act to raise revenue for the support of the government and public free schools, and pay the interest on the public debt, and provide a special tax for pensions, as authorized by section one hundred and eighty-nine of the Constitution, and in lieu thereof, upon the payment of a special license tax of four hundred dollars for a period of four months, and six hundred dollars for a period of eight months, and eight hundred dollars for a period of one year, shall have the privilege of doing any, or all of the things, set out in the above sections ninety-eight, ninety-nine, one hundred and five, one hundred and six, one hundred and seven, one hundred and nine, one hundred and ten, one hundred and eleven, one hundred and twelve, one hundred and twenty-two, one hundred and thirty-nine of said act, and shall be exempted from the payment of the license taxes provided in said section. (1915, p. 232.)

Sec. 112. License to public rooms and skating rinks.—Every proprietor or occupier of a public theater, or other room or rooms fitted for public exhibitions for the use of which a charge is made shall pay twenty dollars for the privilege, except in a county or town of less than two thousand inhabitants; provided, that every person who shall establish, keep or exhibit for profit a skating rink shall pay for the privilege of keeping or exhibiting such skating rink as follows:

First. When such rink is kept or exhibited in a city of more than ten thousand inhabitants, he shall pay the sum of ten dollars per quarter.

Second. When such rink is kept or exhibited in a city or town of not more than ten thousand nor less than two thousand inhabitants, he shall pay the sum of seven dollars and fifty cents per quarter.

Third. When such rink is kept or exhibited anywhere else than in the towns and cities above mentioned, he shall pay the sum of five dollars per quarter. (1915, p. 232.)

Sec. 113. Public rooms.—No person shall, without a license authorized by law, charge for the use of any house or room therein in city or town, or in any manner receive compensation for the use of same, while used or employed to exhibit therein any theatrical performance, lecture, concert or any other exhibition. Wherever such charge is made, or compensation is demanded or received for the use of such house, or any public room or rooms, fitted for the purpose, a license shall be obtained; but no license shall be required of the proprietor or occupier of such house or public room or rooms in a town containing less than two thousand inhabitants. No license to use such house for such exhibition or performance shall be construed to exempt the house from taxation as property or to allow the use of such hall as a skating rink without paying an additional license. For any violation of this section the person so offending shall pay a fine of not less than fifty dollars nor more than one hundred dollars for each offense. (1915, p. 232.)

Sec. 113½. Soft drinks, manufacture, sale of, etc.—That for the privilege of selling soft drinks from a soda fountain in cities and towns of two thousand or more inhabitants there shall be paid to the State an annual license of seven dollars and fifty cents for each fountain, and for the privilege of selling soft drinks from soda fountains otherwise located, there shall be paid an annual license tax of three dollars and seventy-five cents for each fountain, and for the privilege of manufacturing otherwise than at soda fountains, or for bottling soft drinks, there shall be paid the annual license tax of twenty-two dollars and fifty cents. Provided that merchants in the country whose purchases do not exceed one thousand dollars shall not be subject to the provisions of this act.

Soft drinks under this act shall include all of the drinks for which liquor license is not required. (1916, p. 793.)

Sec. 114. Attorneys, physicians and dentists.—No person shall, without a license authorized by law, practice as attorney at law, physician, (3144)

Digitized by Google

surgeon, dentist, or the art of healing bodily or mental infirmities without physic or surgery; and no person who shall hereafter apply for license to practice as a physician, or surgeon, or dentist, shall have such license granted to him unless at the time of such application he shall exhibit to the commissioner of the revenue to whom such application is made a certificate from the president of the State Board of Medical Examiners or from the president of the State Board of Dental Examiners, that such person has passed a satisfactory examination before said board, or a special permit from the president of either of said boards, or shall file with him an affidavit that such applicant for a license to practice medicine or surgery commenced the practice of medicine or surgery in this State prior to the first day of January, eighteen hundred and eighty-five, which affidavit shall be subscribed and sworn to by such applicant. Any person who shall make a false oath in such affidavit shall be deemed guilty of perjury and liable to all the prescribed penalties therefor; provided, that persons who held license to practice dentistry in this Commonwealth on the twenty-eighth day of January, eighteen hundred and ninety, and have complied with the requirements of section seventeen hundred and seventy-four, shall not be required to have a certificate from the president of the board of dental examiners when he applies for a license; and provided, further, that nothing contained in this section shall prevent any authorized physician or surgeon, or other person, from extracting teeth from any one suffering from toothache. (1915, p. 232.)

Sec. 115. Attorney at law; where he may practice.—Every attorney at law, in addition to being licensed, sworn and admitted to prosecute or defend actions or other proceedings in the courts of this Commonwealth, on the retainer of clients, shall obtain a revenue license; and no person shall act as attorney at law or practice law in the court of this Commonwealth without a separate revenue license. A revenue license to practice law in any county or corporation shall authorize such attorney to practice in all the courts of this State without additional license. Any person violating the provisions of this section shall pay a fine of not less than fifty dollars nor more than one hundred dollars for each offense. (1915, p. 232.)

Sec. 116. Licenses to attorneys at law.—Every attorney at law who has been licensed for less than five years shall pay fifteen dollars; and on attorneys who have been licensed and practiced for five years and more, twenty-five dollars; provided, that no attorney at law shall be required to pay more than fifteen dollars whose receipts are less than five hundred dollars per annum. (1915, p. 232.)

Sec. 117. Dentists.—No person shall practice as a dentist for compensation without a revenue license, but a license granted to practice dentistry in any county or corporation shall authorize such dentist to practice throughout the Commonwealth. Any person violating any of the provisions of this section, or who shall practice the profession of dentistry without having first obtained a revenue license therefor, shall pay a fine of not less than thirty dollars nor more than one hundred dollars for each offense, and shall be debarred from recovering any compensation for such services by action, suit, motion, or warrant in any of the courts of the Commonwealth. And any commissioner of the revenue who shall grant a license to practice as a dentist to any person who shall not have complied with the provisions of this section shall be deemed guilty of a misdemeanor, and shall be subject to a fine of fifty dollars for each offense. (1914, p. 265; 1915, p. 232.)

Sec. 118. License of dentists.—Every dentist who has been licensed for less than five years shall pay ten dollars, and every dentist who has been licensed and practiced for five years and more shall pay fifteen dollars; but in cities and towns of five thousand inhabitants or more, the tax on dentists shall be twenty-five dollars; provided, that no dentist shall be required to pay more than ten dollars whose receipts are

Digitized by Google

less than five hundred dollars per annum. Every dentist shall be licensed by the commissioner of the revenue for the district or city wherein such dentist has his regular and principal office. (1914, p. 265; 1915, p. 232.)

Sec. 118-a. Veterinary surgeons.—No person shall practice as a veterinary surgeon for compensation without a license.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and shall, upon conviction, pay a fine of not less than twenty-five dollars nor more than fifty dollars for each offense.

Every veterinary surgeon shall pay a license tax of ten dollars; provided, that nothing in this act shall be construed as requiring a license tax of persons who confine their practice to castration, spaying or dishorning of live stock. (1915, p. 232.)

Sec. 119. Venders of medicines, salves, liniments, etc.—No person shall sell any patent, proprietary or domestic medicines, salve, liniment, or compounds of a like kind, or any spices, or extracts, toilet articles or other articles of like kind unless he be a licensed merchant, whether he be the manufacturer thereof or not, without a license. Any person selling any patent, proprietary or domestic, medicine, salve, liniment, or any compound of like kind, or any spices, extracts, toilet articles or other articles of like kind without having first obtained a license for such privilege, shall pay a fine of not less than thirty dollars nor more than one hundred dollars for each offense. (1915, p. 232.)

Sec. 120. License to venders of medicines, salves, liniments, et cetera.—Every person who shall sell any patent, proprietary or domestic medicine, salve, liniment or compound of the like kind, or any spices, extracts, toilet articles and other articles of like kind, except a licensed merchant at his regular place of business, shall pay a license tax of one hundred and twenty-five dollars for each wagon used, which shall be the only license required of such person for such privilege; provided, that nothing in this act shall be construed to conflict with or repeal any provision of the acts passed by the General Assembly of nineteen and sixteen, relating to ardent spirits as therein defined. (1915, p. 232; 1916, p. 949.)

Sec. 121. Daguerrean and photograph artists and their agents.—Any person who takes, or exposes, on plates, films or sensitized material, or who develops or prints images of objects according to the invention of the daguerreotype process, or who does any or all of these things, by whatever name it may be known or called, shall be deemed a daguerreotype artist, and any person who shall canvass for any daguerrean artist, or photographer, or shall act as the agent of such artist, or photographer in transmitting pictures, daguerreotypes, or photographs, to other points for the purpose of having them copied or enlarged, or colored, shall be deemed a daguerrean artist's agent or canvasser, and he shall be deemed a daguerrean or photograph canvasser wherever he acts for himself or for another, and every such artist or agent engaged in the business aforesaid, or as a canvasser therefor, shall obtain a license, and it shall be unlawful so to engage without a license.

For every violation of this section the person offending shall pay a fine of not less than fifty dollars, nor more than five hundred dollars.

Nothing in this act shall apply to amateur photographers who expose, develop and finish their own work, and who do not part with same for compensation, and who do not receive any compensation for performing any of the processes herein set forth. (1908, p. 337; 1915, p. 232.)

Sec. 122. License of daguerrean and photograph artists and agents.—Every person who shall engage in the business of a daguerrean or photograph artist's agent or canvasser, shall pay for the privilege the sum of ten dollars in a county or in a town of two thousand inhabitants or under; and if in a city or town of more than two thousand, and less

Digitized by Google

than ten thousand inhabitants, he shall pay thirty dollars; and if in a city of more than ten thousand and less than twenty thousand inhabitants, he shall pay forty dollars; and if in a city of more than twenty thousand inhabitants, he shall pay fifty dollars; and he shall pay an additional sum of five dollars for each county or city in which he operates other than that in which he has his regular place of business. (1915, p. 232.)

Sec. 123. Stallions and jackasses.—No person shall without a license authorized by law, let to mares, other than his own, for compensation, any stallion or jackass. Every license to the owner of a stallion or jackass shall specify the name of such stallion or jackass, if any name has been given. A license to the owner of any such stallion or jackass, for any county or corporation, shall be good for twelve months from its date, and shall authorize the stallion or jackass to stand in any county or city without an additional license. Any persons violating the provisions of this section shall pay a fine of not less than thirty dollars nor more than fifty dollars for each offense. (1915, p. 232.)

Sec. 124. Licenses to owners of stallions and jackasses.—For letting to mares any stallion or jackass there shall be paid ten dollars. (1915, p. 232.)

Sec. 125. License on bulls.—Any person owning a bull or bulls in this State may apply to the commissioner of the revenue of the district or city in which he resides, for a special license for the privilege of letting such bull or bulls to cows other than his own, which tax shall be for the sum of two dollars and fifty cents on each bull so licensed.

Any person so obtaining said license shall have a lien on the get of such bull so licensed for a period of six months from the date of the birth of such get for the price agreed upon between him and the owner of any such cow or cows served by such bills. (1915, p. 232.)

Sec. 126. Agents for renting houses.—Any person engaged in renting houses, farms, or other real estate for compensation or profit shall be deemed to be an agent for renting houses, and when licensed as such may engage not only in renting houses, but in renting any real estate; provided that administrators, guardians, executors, and other fiduciaries shall be exempt from the license herein required. Any person engaged as an agent for renting houses as aforesaid without a license shall pay a fine of not less than fifty dollars nor more than one hundred dollars for each offense. (1915, p. 232.)

Sec. 127. License to agents for renting houses.—Every person who shall act as agent for the renting of houses in cities of over five thousand inhabitants shall pay the sum of thirty dollars, and in towns of less than five thousand inhabitants, or in any one county, ten dollars for the privilege of transacting such business. (1915, p. 232.)

Sec. 128. Labor agents.—Any person who solicits, hires, or contracts with, laborers, male or female, to be employed by persons other than himself, and every agent of such person, except as provided in the next following section, shall be deemed to be a labor agent; and no person shall engage in such business without having first obtained license therefor. Every person who shall without a license conduct business as a labor agent, shall pay a fine of not less than one hundred dollars ($100), nor more than five hundred dollars ($500). (1916, p. 880.)

A person employed by a railroad construction company as a day laborer and sent to a city to employ additional labor, and who hired other laborers and was inducing others to enter the service of the construction company, was not a labor agent under this section. Watts v. Com., 106 Va. 851, 56 S. E. 223.

Employment agencies regulated, Code, sections 1803-1806.

Sec. 129. Licenses to labor agents.—Every person who engages in the business of a labor agent except as hereinbelow provided, shall pay

Digitized by Google

annually five hundred dollars ($500) for the purpose of transacting the said business, but before any such license shall be issued, the applicant shall produce a certificate from the corporation court of the city, or the circuit court of the county in which such labor agent proposes to have his office, or of the county in which he proposes to do business, that to the personal knowledge of the judge of such court, or from the information of credible witnesses under oath before such court, the court is satisfied that the applicant is a person of good character and honest demeanor; provided, that labor agents in cities and towns of the Commonwealth who have and keep a regular office in such city or town, and who transact all their business in such office, and who do not in person or by agent solicit, or hire or contract with laborers outside of such office, or attempt so to do, except by written or telegraphic or telephonic communication, shall be required to pay annually only twenty-five dollars ($25) license tax for such privilege, and the license so paid for and obtained shall permit all the employees and agents of such person who assist in the prosecution of such work in such office only, as aforesaid, to aid therein. (1916, p. 880.)

Sec. 130. Persons operating laundries.—Every person who operates a laundry shall pay for the privilege of conducting such business; if it be a laundry, operated other than by hand, in the country or in towns of two thousand inhabitants or less, five dollars; and in towns and cities of over two thousand and not over five thousand inhabitants, ten dollars; and in towns and cities of over five thousand inhabitants, twenty-five dollars; and if it be a hand laundry the amount to be paid for the privilege shall be two dollars and fifty cents in the country, and in towns of two thousand inhabitants or less, and in towns and cities of over two thousand inhabitants and not over five thousand inhabitants, five dollars; and in towns and cities of over five thousand inhabitants, ten dollars. Any person who shall without a license conduct such business shall be subject to a fine of not less than ten dollars nor more than fifty dollars. But nothing in this act shall be construed to impose a license tax upon persons who wash bed-clothing, wearing apparel, and so forth, without laundry machinery, and who do not keep shops or other regular places of business for laundry purposes. (1914, p. 487; 1915, p. 232.)

Sec. 131. Storage and impounding.—No person shall without a license authorized by law keep for compensation any house, yard, or lot for storage or impounding any produce wares or merchandise, including wood, coal, lumber, guano, marl, or other commodities, or any live stock, or make demand or receive in any manner compensation for storage or impounding. Any person who shall demand or receive compensation for storage or impounding, as aforesaid, or who shall in any manner violate the provisions of this section, shall pay a fine of not less than fifty dollars nor more than five hundred dollars for each offense. (1915, p. 232.)

Sec. 132. Licenses for storage and impounding.—Every person who shall keep for compensation any house, yard or lot for storage or wagon yard, or other impounding, shall pay a sum for said privilege, to be graduated as follows: On every house, the sum of twenty-five dollars, except that in a city or town whose population exceeds thirty thousand the amount to be paid shall be fifty dollars, and on every yard, wagon yard or lot, ten dollars; provided, that nothing shall be charged for this privilege when the compensation to the owner is less than fifty dollars per annum. (1914, p. 424; 1915, p. 232.)

Sec. 133. Livery stables.—Any person who keeps a stable or stalls in which horses are kept at livery or fed or at which horses and vehicles are hired for compensation by the proprietor, shall be deemed to keep a livery stable; and no person shall, without a license authorized by law, keep a livery stable; but this section shall not be construed to prevent the keeper of a licensed ordinary or house of private entertain-

Digitized by Google

ment from feeding the horses of travelers or guests stopping at such ordinary or house of private entertainment. Any person violating the provisions of this section shall pay a fine of not less than thirty dollars nor more than one hundred dollars for each offense. (1915, p. 232.)

Sec. 134. Licenses to livery stable keepers.—Every person who shall keep a livery stable in the country, and in towns of less than two thousand inhabitants, shall pay the sum of fifteen dollars, and an additional sum of fifty cents for each additional stall in excess of twenty-five, and in towns of two thousand inhabitants and over, he shall pay twenty-five dollars, and an additional tax of fifty cents for each stall therein. And herein shall be included as stalls such space as may be necessary for a horse to stand and in which a horse may be kept. The license to keep a stable by the proprietor of public watering places and other places of summer resort, or any other person at such places, for six months or less, shall be one-half of the sums hereinbefore specified. Every person, for the privilege of running a single hack, carriage, cab or other vehicle for carrying passengers for hire, shall pay ten dollars, except that a license of two dollars and fifty cents only shall be imposed on persons running such conveyances solely in the country or in towns of not more than one thousand inhabitants. Every person who shall keep a feed stable for boarding horses for compensation, shall pay for such privilege five dollars in the country and in a town of less than two thousand inhabitants, and in a town or city of two thousand or over two thousand inhabitants, ten dollars. Every person for the privilege of running a conveyance of any kind for transfer of baggage, freight, furniture, or other articles of merchandise in cities and towns of two thousand inhabitants and over, shall pay for each one-horse conveyance the sum of two dollars and fifty cents, and for each conveyance of two horses or more, the sum of five dollars on each conveyance. (1906, p. 572; 1915, 232.)

Sec. 135. Licenses to persons selling or offering to sell sewing machines and accessories.—First. No manufacturer or other person, whether he be licensed as a peddler, merchant or sample merchant, or not, shall canvass any county, town or city, for the purpose of selling or offering to sell, or shall actually sell or deliver, sewing machines and accessories, unless he be licensed as provided in this section.

Second. Any manufacturer desiring the privilege of selling, or offering to sell, or of selling and delivering sewing machines manufactured by him and accessories to sewing machines, throughout the Commonwealth shall apply to the Auditor of Public Accounts for a license, and it shall be the duty of the Auditor of Public Accounts, upon the payment into the State treasury of the sum of two hundred dollars for the privilege of transacting such business, to grant such license, and such payment shall be in lieu of any additional State, county, city or town license tax or levy.

The name of the manufacturer shall be stated in the license and such license shall be a personal privilege to the manufacturer to whom it is granted, and shall not be transferable, but any one representative of such manufacturer can sell thereunder for the said manufacturer; should such manufacturer desire to employ more than one representative, such manufacturer so licensed may obtain from the Auditor of Public Accounts separate certificates for as many agents as he may desire to employ in selling and offering to sell, or selling and delivering sewing machines manufactured by him, and accessories to sewing machines, upon the payment of five dollars into the State treasury for each certificate, and such certificate shall state the name of the manufacturer, and shall entitle such agent to sell, or offer to sell, or to sell and deliver, sewing machines manufactured by such manufacturer and accessories to sewing machines throughout the Commonwealth, without the payment of any additional State, county, city or town tax or levy

Any licensed merchant may sell, or offer to sell, or to sell and deliver, at his regular place of business under his merchant's license, without the payment of any additional State, county, city or town license tax

Digitized by Google

or levy, sewing machines purchased by him from any manufacturer of such sewing machines who has taken out a license to sell sewing machines of his manufacture, and accessories to sewing machines throughout the Commonwealth; but such merchant, if he desire to sell, or offer to sell, or to sell and deliver, at any place other than at his regular place of business, the sewing machines purchased by him from a manufacturer who has been licensed as hereinbefore provided, shall obtain a certificate from the Auditor of Public Accounts, and shall pay into the State treasury therefor the sum of five dollars and he shall also in like manner pay five dollars for a certificate for each person in his employment engaged in selling or offering to sell, or in selling and delivering, elsewhere than at his regular place of business, the said sewing machines, and accessories to sewing machines, and such payment shall be in lieu of any additional State, county, city or town license tax or levy.

Any person other than a licensed merchant or manufacturer, may sell, or offer to sell, or sell and deliver, throughout the Commonwealth sewing machines purchased by him from any manufacturer of such sewing machines, who has taken out a license to sell sewing machines of his manufacture, and accessories to sewing machines, throughout the Commonwealth; provided, he obtain a certificate from the Auditor of Public Accounts and pay into the treasury of the State the sum of five dollars, and such payment shall be in lieu of any additional State, county, city, or town license tax or levy.

Third. Any person other than those licensed under the foregoing section desiring the privilege of canvassing any county or city, for the purpose of selling or offering to sell sewing machines and accessories, shall apply to one of the commissioners of the revenue for such county or city for such license; and upon the granting of such license, and the payment of twenty dollars to the treasurer of each county or city, he shall have the privilege of selling, offering to sell, and of selling and delivering sewing machines and accessories of any manufacturer in such county or city. Any such person so licensed may obtain the like privilege in any other county or city upon the production to one of the commissioners of the revenue of such other county or city of his license to sell as aforesaid, and upon the payment of the sum of ten dollars to the treasurer of such other county or city. Such license shall be a personal privilege, and shall not be transferable; but no separate license shall be required to be obtained by any person licensed under this section in order to authorize such person to sell the said accessories of any manufacturer.

Fourth. There shall be no abatement from the said sum to be paid for the license to sell sewing machines or accessories, if the same be exercised for less than one year. All licenses issued under this section shall expire on the thirtieth day of April next after the date of their issue.

Fifth. Any manufacturer, person, or agent selling, or offering to sell, or taking orders for the sale of sewing machines or accessories, without having obtained the license or certificate hereinbefore required, shall be deemed guilty of misdemeanor, and upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, one-half of every such fine to go to the informer.

Sixth. Nothing in this section shall prevent licensed auctioneers or officers of the law, under legal process, from selling second-hand sewing machines, nor prevent any person licensed under this section from dealing in second-hand sewing machines of any manufacture which have become second-hand by having been sold and used in this State previous to the passage of this act, or those which may become second-hand machines after having been sold under the provisions of this section. (1915, p. 232.)

Except as required by this section no merchant's license is required of a manufacturer, whether resident or non-resident, upon articles manufactured by him. Morris & Co. v. Com., 116 Va. 912, 83 S. E. 408. See present section 45 of tax bill and notes.

Sec. 136. Agents for the sale of manufactured implements or machines by retail other than sewing machines.—Any person who shall sell, (3150)

Digitized by Google

or offer for sale, manufactured implements or machines by retail, or take orders therefor on commission or otherwise, other than sewing machines, unless he be the owner thereof, or a duly licensed merchant, at his regular place of business, who shall have paid a license tax amounting to as much as fifteen dollars shall be deemed to be an agent for the sale of manufactured articles, and shall not act as such without taking out a license therefor. No such person shall, under his license as such, sell, or offer to sell, such articles through the agency of another; but a separate license shall be required for any agent or employee who may sell, or offer to sell, such articles for another. For any violation of this section the person offending shall pay a fine of not less than fifty dollars nor more than one hundred dollars for each offense. (1915, p. 232.)

Sec. 137. License to agents for the sale of manufactured implements or machines by retail other than sewing machines.—Every agent for the sale of manufactured implements or machines, other than sewing machines, shall pay for the privilege of transacting such business the sum of fifteen dollars, and this shall give the party licensed under this section the right to sell the same within the county or city in which he shall take out his license; and if he shall sell, or offer to sell, the same in any other county or city of the State, he shall pay an additional sum of ten dollars in each county or city where he may sell, or offer to sell, the same; provided, that any person who shall pay an annual tax to the Commonwealth upon capital actually employed by him in the manufacture of the articles or machines mentioned in this section of not less than thirty dollars per annum, may without any further sum being paid for the privilege by himself or his agent, employ agents to sell said articles or machines manufactured by him in any of the counties or cities of the State; and the certificate of the treasurer of the county or city in which said tax shall be paid by such person on the capital so employed by him in the manufacture of such articles or machines shall be evidence of the fact of such payment. (1915, p. 232.)

Sec. 138. License tax on peddlers of manufactured implements and machines other than sewing machines, and on peddlers of cooking stoves and ranges and clocks.—Every person engaged in peddling manufactured implements or machines, other than sewing machines, shall pay for the privilege of transacting such business the sum of two hundred dollars; and this shall give to such peddlers the right to sell the same within the county or city in which he shall take out his license, and if he shall sell, or offer to sell, the same in any other county or city in this State, he shall pay an additional sum of one hundred dollars in each county or city where he may sell or offer to sell the same.

Every peddler of cooking stoves or ranges, and every peddler of clocks, shall pay for the privilege of engaging in such business the sum of five hundred dollars, and this shall give to such peddler the right to sell the same within the county or city in which he shall take out his license; and if he shall sell, or offer to sell, in any other county or city of the State, he shall pay an additional sum of three hundred dollars in each county or city where he may sell or offer to sell the same; provided, that any person selling clocks, stoves and ranges under a merchant's license and delivering the same shall be deemed a peddler under the provisions of this act and subject to the requirements and penalties hereinbefore imposed. (1915, p. 232.)

Sec. 139. License on slot machines.—Any person, firm or corporation, having on a street, alley or other place in any city or town, or on any public road in any county, or in shops, stores, hotels, boarding houses, depots, public or private rooms or any other place anywhere in the State of Virginia, a slot machine of any description, into which are dropped pennies or nickels or coins of other denominations to dispose of chewing gum or other articles of merchandise or for the purpose of operating musical or other devices that operate on the nickel-in-

Digitized by Google

the-slot principle, used for gain, except as a pay telephone, shall pay for every such slot machine or musical or other device, as the case may be, a State license tax of ten dollars per year for the use and benefit of the State; except such vending machines as are used solely for the sale of agricultural products or cigars, on which shall be levied a State license tax of three dollars per year for each machine; except also weighing machines and machines used solely for the purpose of selling shoe-strings, on which shall be levied a State license tax of two dollars per year for each machine; and except also automatic baggage or parcel checking machines or receptacles, which are used for the storage of baggage or parcels of any character, on which there shall be levied a State license tax of twenty-five cents per year for each receptacle that is operated on the coin-in-the-slot principle; provided, however, that nothing contained in this section shall be construed as permitting any such person, firm or corporation to keep, maintain, exhibit or operate any slot machine or other device, in the operation of which cigarettes or intoxicating liquors are disposed of or in which the element of chance enters, and it shall not be lawful for any commissioner of the revenue or other officer to issue a State license under this section to any such person, firm or corporation for the keeping, maintaining, exhibiting or operating of any slot machine or other device, in the operation of which cigarettes of intoxicating liquors are disposed of or in which the element of chance enters, the intent of this section being to license only those machines or devices, in the operation of which the element of chance does not enter, and which are not used to dispose of cigarettes or intoxicating liquors; and provided, further, that this section shall not apply to any merchant, who has paid a merchant's license tax and who uses such slot machine simply for the purpose of making sales of his goods and merchandise and to be used inside of his place of business; nor shall this section apply to slot machines that are used for the purpose of selling individual sanitary drinking cups or sanitary drinking cups and natural water at one cent.

Any person, firm or corporation having any such machine or other device and failing to procure a State license therefor, shall be subject to a fine of not less than twenty dollars nor more than fifty dollars for each offense and such machine or other device shall become forfeited to the Commonwealth. (1906, p. 512; 1912, p. 462; 1914, p. 411; 1915, p. 118.)

Sec. 140. License on dealers in pistols, dirks or bowie knives.—No person, firm, or corporation, shall sell pistols, dirks or bowie knives without having first procured a license therefor.

Every person, firm, or corporation engaged in the business of selling pistols, dirks, or bowie knives, or who may hereafter engage in said business, shall pay for the privilege of transacting said business a special license tax in the sum of twenty dollars per annum, and no such license shall be issued for any period less than one year, nor shall there be any abatement in any instance of the tax upon such license by reason of the fact that the person or persons so licensed shall have exercised such license calling for a period of less than one year. Any person selling pistols, dirks, or bowie knives contrary to the provisions hereof, or who shall in any manner violate the same, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than fifty dollars for each offense. (1915, p. 232.)

It was not the purpose or effect of this section to give to every person who paid the tax and obtained a license the right to carry on such business, notwithstanding any police regulations which might otherwise lawfully be made for the good government of a city or town; and an ordinance of the city of Richmond, making it unlawful for any licensed pawnbroker to deal in pistols, etc., is not in conflict herewith. Elsner Bros. v. Hawkins, 113 Va. 47, 73 S. E. 479.

Sec. 141. License tax upon gypsies, etc. (1915, p. 232.)

(Repealed, 1918, page 264, which act also prohibits "any company of gypsies, or other strolling companies or persons, to receive compensation

Digitized by Google

or reward for pretending to tell fortunes or to practice any so-called magic art." A violation of the act is made a misdemeanor.)

Sec. 142. Social club license.

(Repealed, 1908, page 275.)

As this act stood before it was repealed it was declared not to be special legislation within the meaning of the Constitution, and in so far as it conflicted with section 1042 of the Code of 1887, it prevailed, as it was enacted subsequently to that section. Norfolk v. Board of Trade, 109 Va. 353, 63 S. E. 987.

General Provisions.

Sec. 143. Tax on each business engaged in.—When any incorporated company, firm or person is engaged in more than one business, which is made by the provisions of this act subject to taxation, such incorporated company, firm or person shall pay the tax provided by law on each branch of its or her business.

Partnership property not otherwise taxed is to be taxed in the county or city where the partnership business is or was conducted; and where the partnership carries on separate and distinct businesses, both as to the capital and conduct, in different counties or cities, then the partnership property in each of said businesses is to be taxed in the county or city in which it is or was. Com. v. Schmelz, 114 Va. 364, 76 S. E. 905.

Under the provisions of the Code and tax bill, a partnership is, for the purposes of taxation, treated as an entity. The firm and not the individual members are considered as the owners of the partnership property. Com. v. Schmelz, 114 Va. 364, 76 S. E. 905.

Cited in Old Dominion Steamship Co. v. Virginia, 198 U. S. 301.

Sec. 144. Aggrieved corporation may appeal; penalty for failure to make report; duty of the Corporation Commission; penalty for failure to pay taxes.—Any corporation, except as otherwise expressly provided in this act, feeling aggrieved by the assessment made by the State Corporation Commission of its property, registration fee, or franchise tax under the provisions of this act may have such right of appeal as may be provided by law.

Every such company, corporation, firm, or person which shall fail to make the reports required in the preceding sections within the time prescribed, shall, unless a different penalty is hereinbefore prescribed for such failure, be liable to a fine of not less than five hundred dollars, nor more than two thousand five hundred dollars. The said fine to be imposed and judgment entered therefor by the State Corporation Commission, after thirty days' notice to any such defaulting corporation to appear before said commission and show cause, if any, against the imposition of such fine, subject to appeal to the Supreme Court of Appeals of Virginia.

It shall be the duty of the State Corporation Commission to prepare and furnish to the several corporations required to make reports under this act forms for such reports, which said corporation shall use in making the reports required of them.

Any such company, corporation, firm or person required by this act to pay its registration fee or its or his taxes, or both directly into the State treasury, failing to pay said taxes or registration fee, or both, into the treasury within the time prescribed shall incur a penalty thereon of five per centum, which shall be added to the amount of said taxes or registration fee, or both. The Auditor of Public Accounts shall deliver a bill for said taxes or registration fee, or both, and penalty, to the treasurer of any county or city in which the company, corporation, firm or person may have any property belonging to it or him, and said bill shall have the force and effect of an execution in favor of the Commonwealth.

The Treasurer may distrain or levy upon, and sell, any real or personal property of such company, corporation, firm or person, and shall pay the amount of the bill into the treasury within ten days after he has collected the same.

The treasurer shall be responsible on his official bond for the amount

Digitized by Google

of such bill; provided, however, if the amount of the bill exceed one-half of the penal sum of the official bond of such treasurer, the Auditor of Public Accounts shall require the treasurer to whom such bill is delivered to execute a bond in the penalty of double the amount of the bill placed in his hands for collection, with security, to be approved by him, conditioned for the faithful discharge of his duty in collecting and paying into the treasury the amount of such bill. The compensation of such treasurer for collecting and paying into the treasury said bill shall be five per centum of the aggregate of said bill, and shall be paid by such corporation, company, firm or person. (1910, p. 230.)

Sec. 145. School taxes to be separately assessed and paid in money.—All taxes assessed on property, real or personal, by this act, and by it dedicated to the maintenance of the public free schools of this State, shall be paid and collected only in lawful money of the United States, and shall be paid into the treasury to the credit of the free school fund, and shall be used for no other purposes whatsoever. And to this end the Auditor of Public Accounts shall have the books of the commissioner of the revenue prepared with reference to the separate assessments and collection of said school tax, and the treasurers of the several counties and cities of the Commonwealth shall have the tax bills in their respective counties and cities so made out as to specify the amount of tax due from each taxpayer to the said public free school fund, including the capitation tax and school taxes of whatever kind or nature, and to keep said capitation tax and school taxes separate and distinct from all other taxes or revenue so collected by him and forward the same thus separate and distinct to the Auditor of Public Accounts, which shall be kept separate and distinct by him from all other taxes or revenues until paid the public free schools.

Sec. 146. Inconsistent acts repealed.—All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

References are given to the following acts relating to taxation passed at the session of 1918, which acts are not amendatory of the tax bill:

An act to raise additional revenue for the support of the government. (Acts 1918, page 683.)

An act to raise revenue for the support of the government and to appropriate money for the construction of roads and projects comprised in the State Highway System, and to provide for an additional fund for the maintenance of public free schools of primary and grammar grades, from the first to the seventh, inclusive, and to provide for the prevention and eradication of tuberculosis among the people of this State, and to extend the work of the State Board of Health. (Acts 1918, page 569.)

An act to regulate the business of itinerant vendors and itinerant auctioneers, prescribing a specific license therefor and providing penalties for a violation thereof. (Acts 1918, page 490.)

Uniform small loan law. (Acts 1918, page 662.)

An act to authorize boards of supervisors to remit certain classes of local taxes upon certain steam railways operating at a loss. (Acts 1918, page 326.)

An act for the relief of all taxpayers in the State whose lands during the year 1917 were taken or acquired by the United States, or shall be so taken or acquired in any year subsequent to the year 1917. (Acts 1918, page 412.)

Cited but not construed in Shiflett v. Grimsley, 104 Va. 426, 51 S. E. 831.

Digitized by Google

General Index

References are made to Sections of the Code, Except Where Otherwise Indicated

Sec.

ABANDONMENT
As ground for divorce 5103
—from bed and board.....5104
Curtesy barred by.....5140
Of person with smallpox, on shore 4399

ABATEMENT
See also "Plea in Abatement"; "Pleading"; "Revival"
Of compensation for taking school census 653
Of dam obstructing navigation or passage of fish 3576, 3577
Of wharf, pier or bulkhead obstructing navigation ...1997
Of actions, death of joint defendant or change of parties 6165
—effect of marriage of female plaintiff or defendant 6166
—effect of death when parties in equity more than thirty.6173
Of suit, effect on limitation 5826
Of action for death by wrongful act, effect on limitation 5787
—when not to abate 5790
Action of detinue, proceeding to take possession from defendant 5800
By termination of office of visitors of Virginia Normal and Industrial Institute.... 948
Substitution of plaintiff in suit to abate house of prostitution 1523
In mandamus against supervisors or councils to compel erection or repair of jail or courthouse, defendant going out of office 2866
—notice to successors 2866
Suit to sell real estate of infant or insane person, by death of party 5336
—to sell estate held in trust.5336
Right of plaintiff in ejectment expiring before trial.5479
Of suit to recover dower by death of party, recovery by or against personal representative 5127
Actions against corporation, by dissolution 3815
—by new charter to 3811
Suit against unincorporated carrier, for failure to join partner 3931
Death of plaintiff, action brought to recover debt due State 2512
Change of time or place of sitting, or failure of court to sit not to cause 5971
Grounds for, want of jurisdiction 6105
—want of form 6085
—non-joinder or mis-joinder not ground for 6102
—misnomer as 6101

Sec.

ABATEMENT—Con.
Public nuisance, on complaint of health officer.....1518, 1519
—of citizens 1520
—house of prostitution 1525
—unauthorized use of street.3024
—by cities and towns 3030

ABATTOIR
See "Slaughter-house"

ABDUCTION
For purpose of defilement, punishment 4411
—subsequent marriage of parties 4413
—limitation of prosecutions.4413
—evidence 4413
Inmate of State hospital....4412

ABORTION
Attempt to produce, punishment 4401
—limitation of prosecution..4768
Encouraging or prompting by lecture, advertisement, etc.4401

ABSCONDING DEBTOR
Attachment 6379
Capias ad respondendum 6419-6425
Party to proceeding for enforcement of mechanic's lien 6442
Limitation on claim against..5825

ABSENT VOTERS
See also "Elections"
In general 202, 220
May vote when 202
Notice of intention to vote, when and to whom given.. 203
Application for ballot, how forwarded 204
—effect of failure to register 204
Return envelope, how directed when voter out of jurisdiction of United States..... 205
—when voter in army or navy 205
When envelope containing ballot to be opened....206, 210
Opening envelope, marking and returning ballot....206, 210
—when voter is out of jurisdiction of the United States 207, 210
—when voter is in army or navy 207, 210
Certificate of registration, form of 209
Sealed ballot, called, checked and deposited in regular box 216
Empty envelope, applications, and rejected ballots, disposition of 217
Electoral board to furnish ballots to registrars 212
Fee, of registrar 218
—posting notices 218
Judge of election to open box containing ballots 216
Registrar—duties of on receipt of application for ballot 208

Digitized by Google

Sec.

ABSENT VOTERS—Con.
—book kept by 208
—certificate made and forwarded by registered mail. 208
—what to enclose in letter.. 208
—return of unused ballots.. 212
—list of names of voters furnished with ballots 212
—deposit of return ballot by. 213
—list of voters who have applied for ballots 214
—returned ballots 214
—copy posted 214
—delivered to judge of election 215
—to deliver box containing ballots to judge of election. 215
Postmaster, duties of 210
Consular officer, duties of... 210
Army and navy officer, duties of 210
Offenses, penalties for..... 219
Disqualification from franchise 219
Disqualification from holding office 219

ABSINTHE
See **"Intoxicating liquors"**
As ardent spirits 4581

ABSTRACTS
Of judgments, recorded in judgment docket 3393
—of executions 3393
Of justice's judgment returned to clerk of court...6030
—justice to deliver 6025
Of judgment, docketing. 6461, 6463
—of United States courts 6461, 6462
—indexing 6464

ABUSIVE LANGUAGE
Punishment 4536
Over telephone, punishment. 4569

ABUTTING OWNERS
Assessment of damage to caused by grading street. 3036-3039
Assessments for local improvements 3067-3071
—Virginia Constitution, § 170
Rights in abandoned road when line of turnpike changed 4090

ACADEMIES
Maps and books furnished to 356
Property of, exempt from taxation 2272, 2301
—Virginia Constitution, § 183
Gifts to, inheritance tax on. 2272
Burning or destroying, punishment 4430

ACCEPTANCES
See **"Negotiable Instruments"**
By bank or trust company..4112

ACCESSORIES
Seconds in duels 4417
To prize fights 4427
To fights between men and animals 4427
Punishment 4764
Who deemed accessory after the fact 4765
How indicted 4766
When and where tried.....4766

ACCIDENTS
Transportation lines, investigation by State Corporation Commission 3737

Sec.

ACCIDENTS—Con.
On railroad, report of to State Corporation Commission 3988

ACCIDENT INSURANCE COMPANY
See also **"Insurance"**
Payments to policy holder not subject to garnishment, attachment, distress or execution 4219
Not to engage in banking business 4240
Policy, form filed with Commissioner of Insurance....4315
—type in which printed.....4315
—required provisions of.....4315
—prohibited provisions in...4316
—permissible provisions in..4318
—not conforming to requirements, validity of 4317
—when not applicable..4319, 4321
—penalties, revocation of license 4320
Statement filed with Commissioner of Insurance, what to show 4322-4325
—reserves for outstanding losses 4322
—unallocated payments, how distributed 4323
—indebtedness for outstanding losses, how determined 4324
—by corporation which has been issuing policies less than ten years 4325

ACCOMAC COUNTY
Clerks of courts, Virginia Constitution Schedule, § 8
Ferries to Norfolk, Hampton and Yorktown 2040
—not to interfere with Northampton county ferries.....2045
—special ferry to Norfolk..2046
—operating without license..2047
Hauling seines and setting traps in waters of for fish.3181
Fishing within regularly hauled fishing landing.....3182
Taking oysters, crabs, clams or shells with rakes or scrapes, penalty 3238
Oysters, culling.....3243, 3244
Game laws in 3247
How funds from hunters' licenses disposed of.....3247
Use of oyster scrape or dredge in, permit 3248
Seed oysters, license to carry from 3250
Terrapins, taking, penalty...3297
—disturbing eggs 3297
—forfeiture of boats 3297
Commonwealth's attorney, fees 3505
Waters in, obstructing landings by throwing oyster shells into 4751

ACCORD AND SATISFACTION
See also **"Compromise"**
Discharge of liability for misdemeanor by 4849, 4850
Debt extinguished by.....5765

ACCOUNTS AND ACCOUNTING
Of State officers, examination by auditing committee of General Assembly, Va. Const., § 68
—by Governor, Va. Const., § 74

Digitized by Google

Sec.

ACCOUNTS AND ACCOUNTING—Con.

County and city officers, examination of, Va. Const., § 115
Of officers, inspection by Governor 321
Head of State department or office to examine and certify 339
By State Librarian 363
—of sales of duplicate books, etc. 351
Fees collected by Library board for copies 350
Secretary of Commonwealth for sale of books 357
Of Superintendent of Public Printing 391
—for purchase of paper..... 383
Superintendent of Grounds and Public Buildings, purchase and sale of furniture Governor's house 405
Of escheator with auditor, penalty for failure 511
State Geological Commission, receipts and disbursements 533
Of forest warden 541
State Accountant to devise system for State officers, 552, 554
—mandamus to compel adoption 555
Inspection of by State Accountant 557
—how made 558
Of accounts of county and city officers by State Accountant 565
By trustees of gifts, devises, &c., for educational and literary purposes 590
Expenses of summer normal schools 613
Second Auditor accountant of literary fund 615
Contingent expenses of office of Superintendent of Public Instruction 616
Proceedings by county school board for settlement accounts of treasurer and district school board 650
Clerk of district school board, 653, 657
Expenses of summer schools. 698
Of high school funds 707
Of school funds 726, 728
Of forest reserve fund..... 745
By city treasurer of school funds 783
Of retired teachers' fund.790, 795
Donations to University of Va. 826
Of treasurer of Virginia Military Institute 841
Of orchard inspector 897
Va. School for Deaf and Blind 976
Expense of confining insane person in jail 1049
Committee of inebriate or drug addict 1074
Of Board of Agriculture 1102
Of fertilizer fund 1123
Of expenditures by Dairy and Food Commissioner 1228
Commission merchant, funds received by 1259, 1261
—of expenses of enforcing law relating to 1265
Of convict lime board 1270

Sec.

ACCOUNTS AND ACCOUNTING—Con.

Of tobacco samplers, 1373, 1385, 1396
Of fees, State registrar of vital statistics 1580
Of drainage engineer and board of viewers....1739, 1753
Of superintendent of roads..2027
Superintendent of penitentiary, of convict read force 2077
Road bonds of magisterial district, proceeds of.....2124
By Auditor of Public Accounts against State Treasurer 2186
—contingent expense of courts 2186
—comparison with those of treasurer 2189
—when balanced 2190
—of levies received for redemption of delinquent land 2500
Of Second Auditor 2192
State Treasurer, general ledger 2198
—with depositories 2199
—of separate branches of revenue 2193
—with auditor 2200
Of literary fund .....2195.
Of interest on public debt..2195
Of Miller fund 2195
Of sinking fund 2195, 2627
Of assessors 2250
For payment compensation local board of review.....2226
Of taxes collected on dogs, 2317, 2318
Secretary of Commonwealth, taxes received by 2404
County and city treasurers, of taxes 2407
Collector of delinquent taxes.2429
Register of the land office, to Auditor 2507
—penalty 2508
By clerk or justice, fines collected 2546
By officer of amounts received in coupons from State bonds 2605
Receipts from sale of effects of deceased inmate of R. E. Lee Camp 2672
Audit of by board of supervisors 2719
—accounts of treasurer 2719
— —of sheriff 2719
— —of superintendent of the poor 2719
Against county, allowed by supervisors 2724
—warrant for 2724
Of officers, audit by order of court 2756
Of county treasurers 2780
—settlement with supervisors 2786
Of superintendent of poor....2798
Of license taxes and forfeitures, law as to fishing 3169
Of oyster inspector 3222
Of Commissioner of Game and Inland Fisheries, rendered to Governor.....3311
—approval, payment 3312
—audit of 3313
Proceeds of sale, property forfeited to State.....3377

Digitized by Google

Sec.

ACCOUNTS AND ACCOUNTING—Con.
Settlement of, recorded in will book 3393
By clerk of Supreme Court of Appeals, costs collected for printing record on appeal.. 3486
Sheriff or constable, collection of officers' fee bills.. 3499
Wrecks, proceeds of sales of property from 3609, 3610
Pilots, collection of..... 3637
Of clerk, State Corporation Commission 3703
By Commissioner of Insurance, of money collected... 4197
Book of accounts, larceny of 4442, 4443
Fraudulent entries in by officer or clerk of bank or joint stock company..... 4457
Of committee of convict's estate 5001
Superintendent of penitentiary 5005, 5035
—annual 5038
Superintendent of State Prison Farm 5035, 5047
Clerk of penitentiary 5031
Of curator of estate of decedent 5248
Of sale by fiduciary, trustee 5404
—recordation, index 5405
Of fiduciaries, exhibited before Commissioner of Accounts 5408
—how compelled to exhibit.. 5410
—settled in chancery cause, how certified and recorded 5411
Of fiduciaries
—settlement before commissioner in chancery 5415
—receipts for vouchers 5415
—debts against decedent, 5421, 5422
—time covered by..... 5424
In proceeding by notice of motion for judgment 6046
—affidavit 6046
Filed with declaration in action of assumpsit 6090
Action on, when inquiry of damages not necessary 6132
Reference to commissioner in chancery 6179
—publication of notice as equivalent to personal service 6180
Of general receiver of court funds 6283
—settlement of 6289, 6290
Filed with bill to enforce mechanic's lien 6437

ACCOUNTANT
See **"Certified Public Accountant"; "State Board of Accountancy"**
Employment of by Governor 321

ACETANILIDE
Sale, label 1664

ACKNOWLEDGMENTS
To notification of intention to become candidate for election to office 154
To declaration of candidacy at primary election 229
To writing adopting trade mark or brand for timber.. 1449

Sec.

ACKNOWLEDGMENTS—Con.
Of receipt for taxes and expenses paid to purchaser of delinquent land 2476
Applicant to purchase delinquent land, to appointment of agent 2495
Form of 5205, 5207, 5210
Who may take 5205
—outside of United States... 5206
Of persons signing in representative capacity... 5204, 5207
Of corporations 5207, 5208
—before stockholder or officer 5209
By notary, recitals in, when term of office expires..... 5210
—change of name of female notary 5210
Writings admitted to record when acknowledged before court or clerk 5204
—on certificates of acknowledgment 5205-5208
To writing appointing agent to conduct mercantile business 5223
Contract reserving title to chattels for purchase price 5189
To writing, consenting to marriage of minor 5078
Power of attorney to execute bonds for surety company. 4349
—revocation of 4349
To plats of lots 5218
—writing vacating 5221
Of power of attorney appointing attorney in fact for married woman 5215
By attorney in fact for married woman 5215
To writing by minor designating guardian 5317
To writing by widow renouncing will 5276
To writing waiving jointure. 5121
Certificate of by commissioner of deeds 2853
Of debt barred by limitation. 5812
—by personal representative or joint contractor 5813
—will charging estate with payment of debts 5814
Of will in presence of witnesses 5229
—writing revoking 5233
To certificate of incorporation 3851
To certificate for consolidation of corporations 3822
To certificate of incorporation, new charter after dissolution 3811
To certificate for amendment of charter 3779, 3780
To certificate decreasing capital stock of corporations. 3781
To certificate of incorporation, by purchaser of property and franchises 3817
To certificate of incorporation of non-stock corporation.. 3874
—of amendment of 3875
Articles of association of railroad corporation 3857
To writing for amendment of charter of railroad corporation 3859
To articles of association of public service corporation.. 3866
To writing for amendment of charter of public service corporation 3868

Digitized by Google

Sec.

ACONITE
Sale, label 1691

ACQUITTAL
When a bar to further prosecution 4773, 4774, 4775

ACTINOMYCOSIS
Meat of animal with, unwholesome 1219

ACTION ON THE CASE
See also **"Trespass on the case"**
For damages for causing resurvey by patentee 473
For recovery of fines, 2543, 2544, 2545

ACTIONS AND SUITS
See **"Abatement"; "Revival"; "Equity"; "Injunction"; "Motions"; "Removal of Causes"**
Against transportation or transmission company not impaired by proceedings by State Corporation Commission, Va., Const., cl. h, § 156
Motion in lieu of 6046
Process to commence suit..6061
How commenced, action of unlawful entry or detainer 5445
—action of ejectment..5456, 5461
Venue for 6049, 6050
—by or on behalf of Commonwealth 6049, 6050, 6051
—against State officers, 6049, 6051
—removal to circuit court of city of Richmond 6051
Jurisdiction of circuit courts, 5890
—removal from county courts 5892
—at special term 5896
Attachments with pending suits 6410
Bonds in, who may execute 6375
—how payable 287
Compromise on behalf of infant or insane party.....5332
Costs, who to recover.....3525
—suit in name of one for another 3526
—security for by non-resident plaintiff 3519, 3520
—when not allowed plaintiff in personal action not on contract 3523
— —action on contract.....3524
Court docket of 6243, 6245
Order of trial 6243, 6244
Deposition, when may be read 6231
Guardian ad litem for infant or insane defendant 6098
Infant to sue by next friend 5331
Interest awarded in.....6259
Interrogatories to adverse party 6236
Judgment against less than all joint defendants 6263
Lost records in, procedure..6241
—new suit 6241
Not to be discontinued because of failure of court to sit or change of time or place of 5971

Sec.

ACTIONS AND SUITS—Con.
Pending at time Code takes effect, effect of Code on 6376, 6570
Tax on, paid to clerk of the court 2401
Transfer of case brought at law to equity side, or case brought in equity to law side 6084
Use of copy of writing filed in suit in different suits..6199
Vacation proceedings...6306-6309
When to be stricken from docket for failure to prosecute 6172
—reinstatement 6172, 6174

Actions by
By assignee or grantee of reversioner against lessee..5512
By lessee against grantee of reversion 5513
By assignee of life insurance policy 5767
By assignee of chose in action 5768-5770
—against assignor 5769
By equitable owner of chose in action 5144
By auditor against officers for violation of revenue laws..2544
By board of drainage commissioners for injury to ditches, drains, etc.....1769
By board of pharmacy.....1675
By board of supervisors to recover money expended fighting fire 542
By commissioner of agriculture on bond of commission merchant 1259, 1260
By county school board for settlement of accounts by officers 650
By creditor to set aside fraudulent transfer 5186
—distribution of proceeds...5186
—personal decree against debtor 5186
By curator of estate of decedent 5248
To enforce lien of policyholders on bonds deposited by insurance companies or guaranty companies 4214
—by commissioner of insurance to administer assets..4215
By holder of negotiable instrument 5613, 5619
—by holder not in due course 5620
By life tenant against remainderman for sale of fee simple 5161
—by remainderman against life tenant 5161
By notaries for fees.....2852
By owner of adrift property to recover value of.....3571
—burden of proof 3572
On stock subscriptions, by receivers, or trustees 3843
—defenses 3843
By State for proceeds sale of wrecks and property from 3610
By superintendent of penitentiary 4993
By unincorporated union or association, infringement of trade mark 1462

Digitized by Google

Sec.

ACTIONS AND SUITS—Con.
By Virginia Military Institute on bond of State cadets 849
By wife, parent, child, employer, etc., to recover damages by intoxicated person against person causing intoxication.....4675

Actions against

Against attorney for money received for client 3427
Against city or town officer for illegal interest in contract with city 2708
Against committee of insane person 1054
—against ward 1054
Against consolidated corporation 3825, 3826
Against counties 2764, 2765
Against county treasurer for failing to pay bonds issued by drainage district.....1771
Against corporations, irregularity of organization no defense 3806
—effect of dissolution of, 3810, 3815
— — of new charter.....3811
Against dissolved public service corporation 3899
Against district school board. 659
Against heirs and devisees by creditors 5398-5400
Against insane person, to sell, mortgage, lease, real estate of 1055-1057
Against initial carrier for loss or injury of goods by connecting carrier....3926, 3929
Against joint wrongdoers..6264
—effect of judgment against less than all 6264
Against joint contractors...6265
Against legatee or distributee for refund to creditors, 5438, 5439
Against manufacturer or packer by person who has been penalized for selling falsely branded goods 1440
Against member of mutual fire or storm insurance company to recover assessment 4335
Against officers for illegal contracts with counties...2707
Against person issuing notes to circulate as money 4702
Against personal representative of executor or administrator for waste 5386
Against railroad for failing to disinfect cars used in transporting live stock.... 911
—to recover forfeiture for violation of law relating to transportation of live stock 4006
—for value of stock killed or injured 3995
—for death or injury of employee when signal of overhead bridge, tunnel, etc., not provided 3970
—for injury to person or property on track....3948, 3949
—for injuries at crossings, contributory negligence not a defense when 3959

Sec.

ACTIONS AND SUITS—Con.
—to recover forfeiture for failing to receive, transport or deliver property or to take up and set down passenger 3938
—demanding or receiving more than is lawful.....3938
Against receivers 6291-6293
Against surveyor for unauthorized delivery of plat.. 441
Against telegraph or telephone company for forfeiture for failure to receive, transmit or deliver message 4042, 4045, 4047
Against treasurer using or lending public money.....2788
Against unincorporated associations and orders 6058
Against unincorporated carriers, transportation lines, etc. 3931
—when not to abate 3931
Against water works for supplying water without permit or disobeying order of board of health, recovery of fine 1794

Actions by or against

Board of supervisors 2710
By directors, trustees or receivers of dissolved corporation 3813
—against 3813
By or against personal representative on judgments or contracts of decedent..5384
By or against administrator of person presumed to be dead, substitution of supposed decedent 5367
Counties, by and against....2686
By and against convicts....4999
By and against committee of estate of convict 4999
Married women, by and against 5134
—infant married woman, sale of estate of 5137
—by or against members or clerks of General Assembly 297
—continuance when member of General Assembly is counsel 298
By and against trustees for property held for educational or literary purposes 590

Particular Causes or Grounds

On indemnifying bond.....6156
On suspending bond 6156
On bond for payment of money in installments....6262
—annuity bonds 6262
On penal bond, jurisdiction..6374
On forfeited forthcoming bond 6521
On bond of suspended pilot.3644
On bonds of officers of State Corporation Commission..3708
On bonds before State Corporation Commission 3735
On bonds of city or county treasurer 2789
On bonds of drainage district 1774
On bond of contractor for public printing 395
On bonds taken by courts and officers 256

Digitized by Google

Sec.

ACTIONS AND SUITS—Con.
On official bonds, suing in name of dead person.....6100
On bond of petitioner in habeas corpus proceeding.5850
On bond of personal representative, when execution against returned unsatisfied 5388
—judgment against, prima facie evidence against sureties 5389
On contract, judgment for defendant on verdict for plaintiff for less than twenty dollars 3524
On contract or covenant by one not a party thereto..5143
To enforce contracts reserving title to chattels..5190
On judgment of justice.....6040
On judgments, limitation....6477
To enjoin violations of law relating to advertisement of intoxicating liquors....4609
On recognizance, what judgment entered 4980
—what defects in not to defeat 4981
To recover officer's fees, limitation on 3500
To recover examination fee from bank 4122
To recover from company acting as bank of circulation 4151
—by State to recover capital stock of 4152, 4153
For wrongful distress or attachment for rent 5783
For insulting words 5781
For personal injury, effect of death of plaintiff pending action 5790
To recover damages for violation of statute 5785
To recover damages for unauthorized use of name or portrait of person for advertising purposes 5783
—penalty or forfeiture recoverable in same action.5785
On instrument waiving homestead 6551
—demand against which homestead cannot be claimed 6551
To recover penalty for nonperformance of condition, covenant, or agreement....6262
On lost instruments.....6242
For recovery of property on which judgment or execution is lien 6514
To administer real assets of decedent 5396
To transfer of property of infant or insane person out of State 5350-5356
—property held in trust.5350-5356
To sell real estate of infant or insane person.....5335-5347
—trust estate 5335-5347
To recover award of arbitrators, dispute as to division fence 3558
To recover money forfeited to State Corporation Commission 3766
—money due State on internal improvements 3766
Fines, for recovery of, 2543, 2544, 2545

Sec.

ACTIONS AND SUITS—Con.
To recover claim against State 2578-2582
To enforce debts due the State 2510-2513
Against personal representative of purchaser of land sold on execution for debt due State 2526
With reference to land, effect of sale of land for delinquent taxes 2489
To remove cloud on title, tax sale or deed 2498
—limitation on 2485
To recover assessment against person doing business without license.....2369
To recover money for literary fund 603
For negligent escape of fire 545
Expense of patient admitted to insane hospital without commitment 1035
To enjoin and abate house of prostitution as nuisance...1522
Trade mark, injunction against counterfeiting or imitating 1460
For sale of land and buildings of tuberculosis sanatorium 1510
To subject escheated land to decedent's debts 516, 518
To recover derelict property for Commonwealth 518
To recover money paid on void school contract 683
To recover penalties and forfeitures for misfeasance of school officer, trustee or teacher 687
To recover fine from escheator for failure of duty. 511
To recover damages from fertilizer falsely labelled.1128
For seduction, allegations and proof in 5780
Debt or assumpsit on note or writing 5759, 5760
—judgment, damages, &c...5760
—when promisee dead at time of making 5761
—against personal representative of joint obligor....5762
For defamation, plea of truth 6240
—apology in mitigation of damages 6240
On insurance policy.....6094
On new promise to pay money due by contract or award 5812
For death or injury to employee of intrastate railroad 5791-5796
For death by wrongful act, 5786-5790
On refunding bond of legatee or distributee.....5438
Unlawful entry or detainer, 5445, 5450
Ejectment 5451-5489
Ejectment for re-entry for non-payment of rent or breach of covenant or condition 5530
For relief against forfeiture of land for breach of condition or covenant 5532, 5533
—time for 5538
To recover rent 5519

Digitized by Google

Sec.

ACTIONS AND SUITS—Con.
To recover damages for waste 5509-5511
To recover damages for irregular or unlawful act in levying distress for rent..5527
For recovery of usury paid.5555
For recovery of money lost in gaming 5559, 5560
For partition of real estate 5279-5285
To recover money due by master for apprentice....5308
On stock subscriptions.....3807
Marriage, to annul.....5100-5116
—to affirm 5102-5111
Divorce 5103-5116
To recover dower 5126-5128

ACTS OF ASSEMBLY
See also **"Statutes"**
Increasing salary of members of General Assembly, when to take effect, Va. Const., § 45
Volume of to contain certificate of date of adjournment 4
When becomes law without Governor's signature to be noted in published act.... 4
When approved by Governor to be noted in published act 4
When takes effect 4
General Appropriation Act, when takes effect 4
Indexing 306
Tables and statements attached to 306
Custody 307
Copies for law schools..... 356
Printing and distribution.... 388
Names of magisterial districts published with.....2695
Copies as evidence....6189, 6190
Certain acts continued in force 522
Not affected by Code.....6568
—repealed by 6567
— — effect of repeal on rights, penalties, limitations 6569

ACTS OF PARLIAMENT
Writs given by preserved... 2
Denny Martin, unnecessary to prove changing name 414

ADJOINING LANDOWNERS
See also **"Abutting Owners"**
Notice to of petition to correct error in land grant.. 475
Working mine near prohibited 5287
—penalty 5287
Survey of mine by.....5288, 5289
—refusal to permit, penalty.5288
—how entry for compelled..5289
Drainage rights, how acquired 5293-5297
—commissioners, appointment 5293
— —duties 5294
— —report 5294, 5295
— —compensation.....5296
—damages, ascertainment...5294
—payment 5296
—costs 5296
—under mill canals 5297
Adjoining fishing shores, how defined 5290
—commissioners, appointment, compensation 5290
—penalty for disturbing.....5291
— —non-resident 5292

Sec.

ADJOURNMENTS
General Assembly, of session of .....Va. Const., § 46
—certificate of to be printed in published acts 4
By justice, criminal trial or examination 4839
Mandamus or prohibition proceeding 5835
Of courts 5959
—from day to day 5970
—Saturday to Monday, cl.. 9, 5
Of term of circuit courts..5893
—special term 5894
Of commissioners in chancery 6183
—to other county or corporation 6184

ADJUTANT GENERAL
To be in control of State Arsenal 402
Member Board of Visitors of Virginia Military Institute. 835
Salary, expenses 3444

ADMINISTRATION
See **"Decedents' Estates"; "Personal Representatives"; "Wills"**

ADMINISTRATOR
See **"Personal Representatives"**

ADMISSION
By maker of negotiable instrument 5622
—by drawer 5623
—acceptor 5624

ADOPTION
Of child 5333

ADRIFT PROPERTY
Taking up 3564
Description and valuation..3564
Recording certificate of valuation 3565
—posting, publication 3565
Title acquired by landowner 3566
Recovery by former owner..3567
—when landowner not liable.3568
Ashore, who entitled.....3569
—removal by owner.....3570
sale or conversion by landowner 3571
— —recovery of value by owner 3571
Action to recover, evidence of ownership 3572
Logs in Louisa River 3579

ADULTERATION
Fertilizers 1131
Foods 1176-1178, 1181, 1189
Cider vinegar 1191
Cider 1192
Candy 1193
Flour 1194
Millfeed, bran, &c.....1196
Milk 1197
Feeding stuffs 1230, 1231
Commercial feeding stuffs..1240
Of drugs, penalty 1657, 1659
Drugs, when deemed adulterated 1661
Drugs, food, penalty.....1702

ADULTERY
Divorce for 5102
—when not granted.....5110
—restraining guilty party from marrying again.....5114
Dower barred by.....5123
Bars rights of husband or wife as distributee of the other 5277
Punishment 4543

Digitized by Google

Sec.

ADULTERY—Con.
Conspiracy to cause wife to commit, punishment 4544

ADVANCEMENT
When deemed satisfaction of devise or bequest 5237
To be brought into hotchpot 5278

ADVERSE POSSESSION
See also "Limitations"
Time for entry on lands or action to recover 5805
—time for entry not saved by claim 5806
—persons under disabilities 5807, 5808
—period excluded from computation 5809
Effect of copy and certificate of unsigned land grant on 417

ADVERTISEMENT
See also "Publication"
Grant of franchise or sale of property of city or town. Va. Const., § 125
Of time and place of letting contract for public printing 382
—for paper 383
Of inquest by escheator.... 493
In proceeding to sell tobacco unclaimed in warehouse..1398
In proceeding to sell timber found adrift 1446
By sealer of weights and measures, of time of trying and proving 1477
Letting contract for maintenance of roads 2029
—accepted bid for 2030, 2031
Of Schedule Chesapeake Bay ferries 2044
By treasurer of time and place when he will receive taxes 2410
Of list of delinquent real estate 2460
Of purchase of bonds by sinking fund commissioners 2625
Of loss of State bond or certificate 2639
Of death of inmate, R. E. Lee Camp 2672
Of resources of county by supervisors 2732
Of hearing on size of oysters that may be caught 3244
—on shipment of seed oysters out of State 3249
Costs of, taxation 3535
—certificate of publisher....3535
Of wrecks 3606
Encouraging abortion by....4401
Of ardent spirits, prohibited.4583
Of intoxicating liquors, prohibited, punishment 4609
—injunction 4609
Of offers to obtain divorces penalty 5116
In proceeding to administer estate of person presumed to be dead 5362, 5363
For bids for improvement of road with State aid 2102
—sale of franchise by city or town 3016, 3018, 3019
—Va. Const., § 125
—amendment of franchise..3022
—for printing records or appeals 6358, 6359

Sec.

ADVERTISEMENTS—Con.
Of leasing or selling property for collection of taxes 2439
Of sale by warehouseman to satisfy lien 1322, 1323
Of sale of property for delinquent town taxes.....2457
Of sale by officer of goods levied on 2832
—horses, mules, oxen.....2833
Of sale of nets forfeited for fishing without license 3169
Of sale of forfeited nets and seines 3180
Of sale of property, enforcement of forfeiture 3373
Of sale of stock for failure to pay subscription 3807
Of sale by treasurer of bonds of insurance company, or guaranty company 4213
Of sale of vehicle used in transporting ardent spirits.4658
Of sale of personal property to satisfy lien 6449
Of re-sale on execution.....6492
Of sale on venditioni exponas 6493

AFFIDAVIT
See also "Oath"
Of voter for registration.... 90
Of printer of ballots for election 156
Of chairman of electoral board that ballots were counted and sealed in his presence 158
With petition of candidate at primary election 229
Administered by a justice.... 274
—notary public 274
—commissioner in chancery.. 274
—commissioner appointed by Governor 274
—court 274
—clerk of a court 274
—clerk of city council 274
Surveyor 274
Before officer of another State 275
—how authenticated 275
Of corporation 276
—presumption of authority to make 276
Filed with caveat against issuing grant 453
For order of publication in proceedings on caveat.... 454
Of person applying for land grant 459
Of State Accountant to statement of expenses 550
Of Deputy Accountant 551
Of dealer in food 1184
Of dentist, appeal from proceeding of board of dental examiners 1651
For order of publication in proceeding to establish drainage district 1740
By parent or guardian, of age of boy employed in coal mine 1871
To account, for payment of compensation to local board of review 2226
In proceeding to correct assessment of land 2248
To account of assessor.....2250

Digitized by Google

Sec.

AFFIDAVIT—Con.
To complaint against delinquent commissioner of revenue 2315
Seal, when no tax charged on 2402
To statement by treasurers to Auditor 2412
Of non-residence of owner of delinquent land, in application to purchase 2495
In proceeding for seizure of forged obligations, bonds, coupons of State 2613
Of loss of State bond.....2639
With application for pension.2648
—of income 2650
Of posting notice of petition to create new county.....2675
To account against county..2759
Warrant of arrest for violation of oyster laws issued on 3277
Of consignee for delivery of ardent spirits by transportation company.3434, 3435, 3438
Of consignee or buyer of intoxicating liquor executed in duplicate 4654
—filing in clerk's office.....4654
To complaint against attorney for malpractice 3424
To report of commissioner in chancery of hours employed on 3482
—statement of fees on.....3483
Of notary, statement of fees on 3483
For fee on return of process unexecuted by officer..3489
Officer's fees, to account for.3504
To statement of trespass by animals of non-resident...3543
To pilot's accounts.....3636
Insurance, statement in, before or after loss, when to bar recovery 4220
For renewal of license to do business by foreign insurance company 4226
To report of insurance company 4229
By fire insurance company that it has not entered into combination to fix commissions of agents 4312
—false statement in, penalty.4312
Of purchaser of wine for sacramental purposes 4592
—penalty for false 4597
Of purchaser of alcohol for scientific or mechanical purposes 4592
—penalty for false.....4597
Of druggist or hotel keeper receiving intoxicating liquor from transportation company 4605
Under prohibition law, who may administer oath 4667
Stamp affixed to, who to pay for 4668
To claim by juror for attendance and mileage 4928
Of inability to pay costs, writ of error in criminal case 4938
For order of publication in suit for divorce 5108
Of loss of original, writing for recordation of copy..5212
To re-open judgment against administrator of supposed decedent 5367

Sec.

AFFIDAVIT—Con.
By personal representative filing list of heirs 5379
—failing to file list 5379
Required for payment of fees of commissioner of accounts 5414
For distress warrant 5523
To publication of certificate of re-entry on land.....5536
To petition for indemnity by surety on bond given under decree or order of court....5776
In action of detinue, for order to take property from possession of defendant....5797
Of witnesses in habeas corpus proceeding 5854
Of jury commissioners 5987
Interpleader before justice..6035
To juror's claim for pay and mileage 6007
To account, motion for judgment on 6046
—on part of defendant.....6046
For order of publication of process 6069
—in Supreme Court of Appeals 6073
In proceeding to dispense with proof of signature, to release payment or set-off 6093
For amendment of declaration for misnomer 6101
With plea denying signature 6125
With plea denying ownership of property or instrumentality 6126
To plea denying partnership or incorporation 6127
Answer to which oath waived, when used as....6128
To pleading, before clerk...6129
—of belief sufficient.....6129
In action on account, when inquiry of damages not necessary 6132
—to declaration in assumpsit on contract 6133
— —to plea 6133
To special plea of set-off....6145
Of defendant disclaiming interest in property 6151
For subpoena duces tecum..6219
Of non-residence, as evidence 6224
For production of books and papers by adverse party..6237
Of loss or destruction of records or papers of suit..6241
For trial of issue out of chancery 6246
With bill for injunction....6332
Of defense, in attachment proceeding 6385
For order of publication in attachment proceedings ...6401
For capias against debtor about to quit State.....6419
Mechanics' lien, form of.....6427
—of sub-contractor 6429
—of person performing labor for or furnishing material to 6429
—in suit to enforce.....6437
for attachment or distress to recover advances on crops..6454
Proceeding to mark lien satisfied on record 6456
Of tenant unable to give forthcoming bond 6519

Digitized by Google

Sec.

AFFIDAVIT—Con.
For removal of proceeding on forthcoming bond before justice 6526

AFFIRMATION
See also **"Oath"**
Of members of General Assembly .....Va. Const., § 34
Of executive and judicial officers .....Va. Const., § 34
Oath includes cl. 6..... 5
Of officer of this State, form of 269
—against duelling, form of.. 270
—modifications of 271
—commissioner 272
—who may administer 273
When may be substituted for oath 278
Of taxpayer, to interrogatory 2254
Of marriage, suit for.....5102
—jurisdiction 5105

AFTER-BORN PERSONS
Bound by decree in suit by life tenant against remainderman for sale of fee simple 5161
—in suit by remainderman against life tenant 5161

AGE
Of consent, prosecution for rape 4414
—for abduction 4411
—to marriage 5090

AGENTS
See also **"Principal and Agent"**
Of State Board of Education, how appointed 603
Power to buy or sell property 603
Bond of 603
Compensation 603
County demonstration work.. 923
—boys' demonstration clubs.. 923
—girls' canning clubs..... 923
—salary 924
For service of process, on application to purchase delinquent land, designation, etc. 2495
To collect debts due State..2534
To sell lands belonging to State 2537
—compensation 2540
—deeds executed by 2541
To secure satisfaction of judgments for taxes 2596
Appointed by State Corporation Commission, powers and duties of 3715
To collect debts due State Corporation Commission...3767
—compensation 3770
Of railroad, powers as conservator of the peace 3944
Trust company may act as..4148
—fiscal agent 4148
—of married woman.....4148
Of insurance company or guaranty company doing business while company is in default, penalty.....4209
Of insurance company, certificate of registration of....4235
—fee 4235
—revocation 4235
—appeal 4235
—penalty, doing business without license 4235

Sec.

AGENTS—Con.
Of life insurance company, penalty for fraudulent procurement of policy 4248
Of guaranty company, who deemed to be 4342
Of industrial sick benefit societies 4354
Liability for violation of law relating to intoxicating liquors 4584
To conduct mercantile business, appointment, recordation of, posting, etc.....5223
—presumption of authority to purchase on credit, etc....5223
Person doing business as without disclosing name of principal or partner, liability of property for debts 5224, 5194
Liability for debts or money lost by negligence or misconduct 5406
Negotiable instruments, signature of by agent, how authority shown 5581
—liability of agent 5582
—by procuration 5583
—transferring negotiable instrument without authority 5631
—notice of dishonor given by 5653, 5656
Of corporation, service of process on 6063
—of warrant for violation of game laws 3340
—of foreign corporation.....6064
—what "agent" includes.....6066

AGREEMENTS
For merger or consolidation of corporation 3822
When writing required.....5561
For lien on crop 6452
Action to recover penalty for non-performance of 6262

AGRICULTURAL EXPERIMENT STATION
At Virginia Polytechnic Institute 869

AGRICULTURAL HIGH SCHOOLS
See **"Education"; "High Schools"**

AGRICULTURAL PRODUCE
See **"Commission Merchant"**

AGRICULTURAL PRODUCTS
See **"Board of Agriculture"**
Barrel, standard 1472

AGRICULTURE
See **"Board of Agriculture"; "Commissioner of Agriculture and Immigration"**
General Assembly may establish agricultural schools, Va. Const., § 137
Department of Agriculture and Immigration, Va. Const., §§ 143-146
Amount supervisors may expend to promote 2734

AGRICULTURAL SEED
Definition 1138
Container, label on, what to show 1139, 1143
—mixtures 1140, 1141
Dealer, liability for period of germination 1139
Weeds, designation of.....1139
Seeds not subject to provisions of chapter 1142
—not to be sold 1145
Carriers, duties of 1144

Digitized by Google

Sec.

AGRICULTURAL SEED—Con.
Penalties for unlawful selling, labelling, etc., 1146, 1150, 1151
Analysis 1148, 1152
—result, publication 1149
—prosecution 1150
—evidence 1150
Guarantor, dealer's liability as 1154

AIR BRAKES
Equipment of trains with...3989

ALBEMARLE COUNTY
Circuit court, jurisdiction over Miller Manual Labor School 1002
Jail, jailor of 2868
Commonwealth's attorney, fees 3505
Lawful fence on low lands on James river 3539

ALCOHOL
See also **"Intoxicating Liquors"**
Effect on human system taught in schools 702
Label on drugs containing..1664
As ardent spirits 4581
Manufacture and sale of, when permitted 4588, 4589
Sale by druggist for medicinal purposes 4591
Purchase of by manufacturer of flavoring extracts, patent medicines, etc.....4590
—license 4590
License to druggist to sell..4599
—wholesale druggist.....4600
—to manufacturer 4600
—to hotels 4602
Use of in hotels for cooking purposes, etc.....4602
Wood or denatured, prohibition law not applicable to 4604
Purchase by dentists, physicians and veterinary surgeons 4594

ALE
See **"Intoxicating Liquors"**
As ardent spirits 4581

ALEXANDRIA CITY
Inspection of fish brought into 1409
Ballast masters 3648
Ballast, penalty, enforcement of penalty for unloading 3655, 3657
Harbor masters 3664
—as ballast masters 3648
—term 3664, 3680
Commonwealth's attorney, fees 3505
Deputy sergeant, allowance to 3515
Circuit court 5087
Corporation court 5905
Judge, salary 3468
—increase 3469
—decrease 3469
City of first class 5905
Courts continued 5905
Larceny of dogs in 4445
—malicious trespass 4445

ALEXANDRIA COUNTY
Reannexation of territory to 16
Commonwealth's attorney, fees 3505

ALFALFA
Seed, bushel standard 1470

Sec.

ALIENATION
Of particular estate not to defeat remainder 5154
Restraint on alienation of trust estate 5157
Of property affected by judgment, order of liability..6476

ALIENEE
Motion by for assignment of dower 5125
—recovery of dower and damages against 5127, 5128
—allowance for improvements 5128

ALIENS
How may become citizens... 62
May acquire real estate..... 66
Delay of sales of escheated lands of 506
Trustee an alien not to cause estate to escheat 514
License to hunt, how obtained 3331
Inheritance by 5264
Inheritance from or through.5267

ALIMONY
On divorce 5111
—against convict 6042
—pending suit for 5107

ALLEGHANY COUNTY
Commonwealth's attorney, fees 3505

ALLOWANCE
Claims against State, 2174, 2177, 2179, 2180

ALTERATION
Of warehouse receipt, effect.1302
Of hunting license, penalty.3329
Of log brand, penalty.....3581
Of records by public officer 4516, 4517
Of books or lists of registration of voters, penalty.4729
Of plat of city or town lots 5220-5222
Of negotiable instruments, 5686, 5687

ALUM SALT
See **"Inspectors"; "Inspection"**
Brand by inspector 1422

ALUMNI ASSOCIATION
See also **"Corporations"**
Incorporation of 3872-3880

AMBASSADORS
Acknowledgments before... 5296

AMELIA COUNTY
Commonwealth's attorney, fees 3505

AMENDED BILL
Filing in clerk's office.....6095

AMENDMENT
Of statute ...Va. Const., §§ 50, 52
...legislative bill. Va. Const., § 50
Of ... have effect of enact-
Not ... local special, or
ment ...w..Va. Const., § 64
... procedure,
private ... Const., §
To constitu...

Of franchise gra...
or town ...
Of charter of corpor...
fore organization ...
—after organization ...
—fee ..... Va. Con...
—by special act prohib...
Va. Const...
—privileges and immuniti...
forfeited by .....

Digitized by Google

Sec.

AMENDMENT—Con.
— —Va. Const., § 158
Of charter, non-stock corporation 3875
Of charter of railroad corporation 3859, 3864
—exemptions surrendered...3859
Of charter, public service corporation 3868, 3871
—privileges and immunities forfeited thereby 3868
Of charter of savings bank.4144
Of charter, fraternal benefit society 4285
Of indictment, misnomer....4875
Of indictment or presentment for misdemeanor 4876
Of indictment for treason or felony before plea.....4877
—after plea 4878
When law or equity case transferred to proper forum 6084
Declaration or bill.....6095
Of declaration for misnomer 6101
Of pleadings 6104
—for variance between writ and declaration 6103
Of demurrer 6115
After demurrer, right to insist upon original pleading 6116
Of answer 6123
When action or suit revived in name of new party....6168
Of pleading after variance..6250
Of judgment or decree in same court 6333
—in appellate court 6334
Petition for attachment.6388, 6409
Pleadings in attachment proceedings 6409
Of warrant, on appeal from conviction before justice..4989
Civil warrants on appeal or removal from justice.....6018
Of petition in mandamus or prohibition proceeding 5834

AMERCEMENT
Prosecution for, limitation..4768

AMERICAN INSTITUTE OF ARCHITECTS
To nominate member of Art Club 581

AMHERST COUNTY
State Colony for Epileptics and Feeble-minded in.....1004
Commonwealth's attorney, fees 3505

AMMONIO-CHLORIDE OF MERCURY
Sale, label 1691

ANALYSIS
Of agricultural lime..1135, 1136
Of agricultural seeds..1148, 1152
Of commercial feeding stuffs. 1229, 1231
—evidence 1231
Of condimental stock and poultry foods 1245
To discover poison in criminal case, allowance for expense of 4956
Of drugs by Department of Agriculture 1660
—certificate, evidence 1660
Of feeding stuffs, samples..1241
Of fertilizer 1119
—evidence, effect as.....1119
Of food and dairy products
Va. Const.
—state chemist 1163

Sec.

ANALYSIS—Con.
Of food, at request of Commonwealth's attorney 1190
Of food, by Dairy and Food Commissioner 1176, 1178
Of mixtures supposed to contain ardent spirits 4621
—use of in evidence 4621
Of oyster and clam grounds by Dairy and Food Commissioner 3281-3289
Of soil, by State chemist....1280

ANIMALS
See also **"Bureau of Animal Industry"; "Society for Prevention of Cruelty to Animals"**
Brands, see **"Brands"**
Running at large, special laws prohibited.Va. Const., § 63
Cows, test of for tuberculosis 1224-1227
Cruelty, what constitutes, punishment 4554
—searches of premises 4557
—when animals to be destroyed 4558
—when animals and vehicles taken charge of 4559
— —lien on 4559
— —enforcement of lien, sale, notice 4561
—jurisdiction of justice of peace 4562
— —appeal from sentence of 4562
—fines, disposition of..4563, 4565
—warrant, presentment, indictment, information, form 4564
Dogs, mad, killing 1551
—penalty for concealing....1553
—worrying sheep, killing....1552
—penalty for concealing....1553
Domestic, running at large in streets of town, regulation of 3538
Diseased, quarantine 1500
Diseases, pneumonia, suppression and extirpation of 1289
Dying from disease, cremation or burial 1554
—penalty for failure 1554
Running at large in counties in which boundary lines are lawful fences 3548
—damages 3552
Fur-bearing, preservation of, etc., powers of supervisors 2743
—trapping on lands of another, consent 3348
— —season for 3348
— —on one's own land, trapping or killing 3353
—laws relating to designated counties continued in force 3365
Inspection of by bureau of animal industry 1289
Lien on, of livery stable keeper 6445
—how enforced 6449
Lien on colt, owner of stallion or jackass to have 6446
Trespassing, powers of supervisors 2743
Trespass by, impounding....3541
—damages, proceedings to recover, lien, sale 3511

Digitized by Google

Sec.

ANIMALS—Con.
—by animal of non-resident 3542
— —distress 3543
— —sale 3544
— —restored to owner.....3545
— —surrendered to resident purchaser 3546
—liability for, exemptions not to extend to 6563
Report to landowner of stock, fowl, or dog, caught in trap 3350

Offenses
Buggery, punishment 4551
Dead, casting in water courses, punishment 1782
—pollution by of water supply of city or town, punishment 1783
—pollution of drinking water, punishment 1784
—throwing into Lynnhaven river 3290
Dead, casting into road.....4743
Sick or disabled, leaving in street, road, or public place 4743
Driving on railroad track, in front of approaching train, punishment 4469
—to recover damage from railroad for death or injury of 4475
Driving on street, road or bridge at dangerous speed, penalty 4741
Fighting, for money, prize, etc., punishment 4550
Fights between men and animals 4426
Larceny of 4440
Poisoning, punishment 4467
Shooting, stabbing, cutting, punishment 4467
Registration, obtaining by false pretenses, punishment 4460
—giving false pedegree, punishment 4460
Running at large in village or unincorporated community, 3550, 3551

ANNUITY
Table 5131
Computation 5132, 5133

ANNUITY BOND
Action on 6262

ANNULLMENT
Of marriage 5100, 5111
—jurisdiction 5105
—decree concerning estate, maintenance and children.5111

ANSWER
See also "Equity"; "Pleading"
Of escheator in proceeding against escheat 497
By auditor in suit to enforce claim against State 2579
In contested election for removal of courthouse 2754
To petition of officer claiming salary withheld for debt due State 3476
Defense by, proceeding for enforcement of forfeiture..3370
In suit to sell real estate of infant or insane person 5337, 5338
To petition to release dower of insane wife 5346

Sec.

ANSWER—Con.
—to release curtesy of insane husband 5346
In proceeding to transfer property of infant or insane person out of State..5350
To petition for mandamus or prohibition 5834
To petition filed in pending chancery suit 6096
To cross bill 6097
After demurrer or plea overruled 6120
Time for filing 6122
Testing sufficiency of 6123
Amendment 6123
Interrogatories 6123
Exceptions to, abolished....6123
Effect of as evidence when oath waived 6125
Verification before clerk....6129
In attachment proceedings..6282
—of garnishee 6295
By execution debtor to interrogatories 6503-6507

ANTHRAX
Bodies dead of, transportation, rules for 1728

APPEALS
See also "Criminal Procedure"; "Writ of Error"; "Supreme Court of Appeals"; and titles of various courts
Petition for, cases in which allowed 6336, 6337
—time for 6337
—when not allowed 6337
—suspension of execution..6338
—transcript of record..6339-6345
— —printing 6357-6360
—assignment of errors.....6346
—certificate 6346
—to whom presented 6347
—endorsement by judge....6347
Refused 6348
Allowance 6349
Certiorari 6349
Supersedeas, when awarded.6349
—issuance 6350
Docketing 6350, 6361
—order of causes 6354
Process, issuance 6350
—endorsement of bond on..6352
Limitation 6355
Dismissal 6355, 6356
—reinstatement 6356
—finality 6356
—failure to indemnify surety 6353
Hearing, order of causes, 6361, 6362
What evidence considered..6364
Damages awarded appellee, when 6366
—amount of 6366
Briefs and records, rebinding 6371
Rehearing, application for..6372
—decision, entry, transmission to lower court.....6372
Decision 6365
—affirmance or reversal, when 6365
—when cause remanded....6365
—constitutional question....6365
—number of judges assenting 6365
—rule of where evidence and not facts certified 6363
—transmission to lower court 6367, 6368
—entry in lower court.....6369
—how executed 6369

Digitized by Google

Sec.

APPEALS—Con.
Errors for which judgment not to be reversed...6331, 6332
—certificate of facts proved.6331
Judgment, correction on appeal 6334
—motion for correction, necessity 6334
Affirmance of judgment for specific property, damages for detention 6377
Reversal of judgment for failure of record to show venire facias 6002
—effect on title of purchaser at judicial sale 6306
Suspension of execution, bond 6338
When motion for new trial unnecessary 6254
Bill of exceptions 6252
—certificate in lieu of 6253
Change of parties by death or otherwise, pending.....6167
Costs, on, who to recover....3528
Record, printing, cost of....3486
—dismissal for failure to pay 3486
Bonds 6351
—by whom taken 6352
—indemnity to surety.....6353
—in attachment proceeding.6413
—how payable 287
Of Commonwealth in criminal cases 4931
—Va. Const., §§ 8, 88
—proceeding to correct erroneous assessment of taxes 2391
—cases arising under prohibition law 4645

From particular courts

From court of law and chancery of Norfolk 5938
From courts of city of Richmond 5922, 5929
From court of law and chancery of Roanoke 5950

From justices of the peace

From conviction by 4989, 4990
—costs 4989
—prosecutions for cruelty to animals 4562
—in civil cases ...6019, 6027, 6028
—dismissal for failure to pay writ tax 6028
—in interpleader proceeding.6035
—duty of clerk and justice 6036
—jurisdiction 6037
—how tried, judgment..6018, 6038
—notice, preference over other cases 6030
—how tried 6018, 6038
From sentence for contempt.4523
Sale of personal property to satisfy lien 6451
In interpleader proceedings, 6035, 6038

To Supreme Court of Appeals

General provisions 6336, 6337
From judgment in proceedings on caveat against issuing grant 449
—judgment on 449
Proceeding to correct assessment of land for taxation 2237, 2240
Proceeding to correct erroneous assessment of taxes..2391
In contest of application to purchase land sold for delinquent taxes 2495

Sec.

APPEALS—Con.
From order decreasing merchants' license tax 2366
Appraisal of stock, stockholder dissenting from consolidation 3822
Proceeding to enforce forfeitures 3376
Of feeble-minded person from commitment 1080
Insurance company, from order suspending license..4223
—order imposing penalty on.4234
Proceeding to revoke license or certificate of insurance company 4180
Of insurance company from assessment, expense of bureau of insurance.....4195
Life insurance company, from revocation of license by State Corporation Commission 4250
Of fire insurance company from revocation of license for assuming excessive risk 4307
Fraternal benefit society, from refusal of license to.4288
Of transmission or transportation company, person aggrieved, or State, from order or regulation of State Corporation Commission, Va. Const., cl. d-g, § 156
From State Corporation Commission 3734, 3735
From order of State Corporation Commission, public service corporation crossing works of another.....3884
—on complaint of individual against public service corporation 3902
—imposing fine on corporation for failing to file list of officers and directors..3854
—for failing to appoint attorney for service of process 3854
—from judgments for contempt 3728
Establishment of wagon-way across works, canal, etc., of public service corporation 3883
Proceeding by public service corporation for crossing or changing course of county road 3885
From order of circuit court as to tramway or railway crossing highway 2007
By railroad company in proceeding to establish drainage district 1767
Proceeding to forfeit charter of corporation 3831
Condemnation by one corporation of property of another 3833
From order on petition to incorporate town 2884
Proceeding forming city of first class 2912
Proceeding to annex territory to city or town.....2961
From order on application by city or town for leave to erect dam 3060
From proceeding to establish drainage district ...1748, 1756

Digitized by Google

Sec.

APPEALS—Con.
—time of 1748, 1756
Issuance of additional bonds by drainage district 1777
Approval of title to real estate purchased by county or school board 2709
Proceeding for removal of officer 2706
Proceeding for discharge of county or city treasurer..2792

To circuit or corporation courts
Person denied registration as voter .....Va. Const., § 19
—General Assembly to provide for .....Va. Const., § 25
From assessment of property of railway or canal corporation for taxation, Va. Const., § 180
From decision of mayor of town 3011
—bond 3011
By officer of city, from order removing or suspending..3010
—Va. Const., § 120
From judgment of justice in unlawful detainer proceedings 5449
From justice, proceedings under law relating to cruelty to animals 4562
From judgment of police justices 3094
From civil and police justice 3106
—bond 3106
—dismissal of 3106
—judgment 3106
From civil justice, proceedings on interrogatories....3116
—contempt proceeding 3117
From trial justice.....4982
From juvenile and domestic relations courts 1950
From mandamus compelling supervisors to establish road or bridge between counties 1992
Claim against county allowed by supervisors 2759
—claim disallowed 2761
—trial of 2763
From order of levy by supervisors 2762
From order of board of supervisors removing gate.2012
Prosecutions for violations of mining laws 1886
From order of board of health relative to water supply 1792
From refusal of board of charities and corrections to license private institution for care of feeble-minded.1903
Proceeding to establish road.1980
From order of State Entomologist 891
From rulings of commissioner of labor 1831
Assessment for local improvements 3070, 3071
Of abutting owner from assessment of damages when street graded 3038
From judgment of conservator of the peace requiring recognizance 4792, 4795
—judgment on 4793
—discharge from imprisonment 4794
From order of clerk probating will 5249

Sec.

APPEALS—Con.
From appointment by clerk of executor, administrator, curator or appraisers.....5249
From report of viewers in proceeding to compel repair of turnpike 4078, 4082
Suit to recover penalty from railroad failing to construct cattle guard 3954
From conviction for violation of ordinances and by-laws 2743
From disapproval by attorney of title to real estate purchased by county or school board 2709
Decrease of merchants' license 2366
Proceeding to correct erroneous assessment of land divided among several owners 2285
From convictions for violations of laws relating to automobiles 2145
Of prisoner in jail from sentence to chain gang or public works 2075
From escheator's inquest... 497
By child under 18 committed to Board of Charities and Corrections or institution 1914, 1917
By embalmer from refusal of board of embalming to renew license 1721
—suspension 1721
Prosecution of husband or parent for desertion or non-support 1937
Inebriate or drug addict, proceeding to commit to private hospital.1071, 1072, 1073
Proceedings to condemn adulterated, misbranded or substituted food 1165
Of witness fined by commissioner in chancery 6181
Of witness fined or imprisoned for failing to attend before city council, fire or police commissioners 2985

Miscellaneous
Person denied registration as voter .....Va. Const., § 19
—General Assembly to provide for .....Va. Const., § 25
Members of police and fire departments of cities suspended or removed 3011
—Va. Const., § 120
From assessment for taxation, property of railway or canal corporation, Va. Const., § 180
In proceeding for assessment of damages for injuries in coast survey 23-25
Contested election 268
Of bidder on contract for public printing 382
—for paper 383
From decision of Commissioner of Agriculture and Immigration refusing to grant or revoking certificate of commission merchant 1262
Dentist, from revocation of license 1651
From local board of review, correcting assessment 2263

Digitized by Google

Sec.

APPEALS—Con.
From decision of mayor of town 3011
From decision of superintendent of schools with reference to attendance in school of adjoining district 719, 720
To school trustee electoral board 632
—with reference to use of schoolhouses out of school hours 677
From district school board.. 666
To State Board of Education from decision of Superintendent of Public Instruction 613
To State Board of Crop Pest Commissioners 875
From decision of orchard inspector 900
To Board of Agriculture, from Commissioner of Agriculture 1120
To State Corporation Commission by insurance agent from revocation or suspension of certificate of registration 4235
—by insurance company, refusal of Commissioner of Insurance to renew license or certificate 4210
—by property owner ordered to remedy inflammable condition 4190

APPEARANCE
Time of in proceedings on caveat against issuing grant on land warrant.... 446
By Secretary of the Commonwealth for foreign corporation 3845
Special, in attachment proceedings 6403

APPLES
Bushel, standard 1470, 1471
—barrel 1471

APPLE ORCHARD
Levy on to reimburse county for expense of destroying diseased trees 892, 893
Inspection of 898
—destruction 899-901

APPLICATION
For pension see "Pensions"
For relief from assessment of taxes, by railroad or canal corporation, Va. Const., § 180
By voters for registration. 90, 93
By voter for change of registration 100
Of circuit or corporation court that officer be furnished with Acts of Assembly 372
For loans from literary fund 758
Of teacher for restoration to retired list 803
Of voluntary patient in insane hospital 1031
For certificate to sell condimental stock and poultry food 1246
Commission merchant for certificate 1258
For registry of trade mark 1457, 1458

Sec.

APPLICATION—Con.
For standard weights and measures by courts of counties and cities 1467
For license to practice dentistry 1646
Of pharmacist, for registration 1684
—assistant 1684
—apprentice 1689
For examination for license as graduate nurse, 1706, 1707, 1712, 1714
For license by graduate nurse of other State.....1714
For license to practice embalming 1720
Of water works for permission to supply water for domestic purposes 1787
To establish new ferry.....2054
To increase rates of ferriage 2058
For State aid in improvement of roads 2098
For license and registration of automobile, motorcycle, etc. 2126-2129
For licenses 2360, 2361, 2362
By purchase of delinquent land, for deed 2482
To redeem part of land sold for delinquent taxes.....2493
For purchase of delinquent land sold to Auditor.....2495
To Governor for remission of fine 2574
For appointment of conservator of peace at poorhouse 2807
For confirmation of ordinance reducing corporate limits..2970
By town for enumeration of population 2973
—by city 2976
By city or town to erect dam to secure water supply 3054
To Commissioner of Fisheries to re-establish lines of Baylor survey 3163
For license to take fish for manufacture into oil or fertilizer 3187
—penalty for false swearing in 3190
Of riparian owner for assignment of oyster ground.3223
For assignment of oyster planting ground 3224, 3225
For assignment of location of bathing grounds 3230
For license to take oysters with scrapes and dredges..3246
For re-survey of Baylor survey 3257
For designation of clamming or crabbing grounds 3295
For county license to hunt..3328
—State license to hunt.....3329
—for license by non-resident 3330, 3331
—by aliens 3331
For payment of attorney's fee out of funds in court..3430
To court for leave to erect dam 3582, 3583
To close wharf affected with public use 3669
Of mayor, councils or supervisors for examination of transportation or transmission line by State Corporation Commission 3721

Digitized by Google

Sec.

APPLICATION—Con.
Of stockholder to judge for election of directors of corporation 3803
—contesting election of....3804
By stockholder or creditor for appointment of receiver for corporation 3813
By board of supervisors for elimination of grade crossing of county road by railroads 3974
—for country road to cross railroad 3886
To compel repair of turnpike within half mile of city....4089
By turnpike company to court for order on completion of road 4077
—for permission to change toll gate 4077
To State Corporation Commission to examine bank..4120
By State Corporation Commission for appointment of receiver of bank 4120
For insurance policy, statements in, when deemed representations and not warranties 4220
—for form for preliminary proof of loss 4221
Commissioner of insurance, proceeding to liquidate insurance company 4242
For appointment of commissioners in eminent domain proceedings 4365
To court for permission to carry concealed weapon..4534
For release of prisoner under confinement for fine and costs 4952
For appointment of commissioners, proceeding to drain land 5293
For writ of mandamus 5831
For writ of prohibition 5831
For change of name of person 5983

APPOINTMENTS
To fill vacancies in offices temporarily 136-139
Temporary on removal of State officer 330
Of agents by State Board of Education 603
Agent to assess license tax.2370
Of agents to collect debts due State 2534
—to sell land of 2537
Of agent to collect debts due State Corporation Commission 3767
Of agent on whom process against corporation may be served 3854
Of agent to conduct mercantile business 5223
Of appraisers of forfeited property 3368
Appraisers of stock, stockholder dissenting from consolidation 3822
Of appraisers of live stock killed or injured by railroad trains 3994
Of appraisers of estate of decedent 5249, 5376
Of assessors of land for taxation 2233
Of assistant orchard inspectors to try appeal 900

Sec.

APPOINTMENTS—Con.
Of assistants, dairy and food commissioner 1176
Assistant, health commissioner 1490
Of assistant chief factory inspector 1799
—deputy 1799
Of assistant, State highway commissioner 1967, 1968
Of assistant superintendent, convict road force 2083
Assistant superintendent of penitentiary 5034
—clerk, keepers, matron....5034
— —Va. Const., § 148
Of arbitrators to ascertain value of division fence....3557
—to settle dispute as to....3558
Of attorney in fact, by married woman 5215
Of attorney to represent Commonwealth, proceeding to remove Commonwealth's attorney 2706
Auditing committee of General Assembly..Va. Const., § 68
Of bacteriologist, by health commissioner 1490
Of bail commissioner 6188
Of bank examiners 4121
—clerk, assistant, stenographer 4121
Of board of directors for penitentiary 333
—Va. Const., § 148
Of board of directors of State library 617
—Va. Const., § 132
—librarian and employees.. 617
Of Board of Visitors Virginia Military Institute.... 835
Board of Agriculture, employees of 1106
Of board of veterinary examiners 1274
Of Board of Charities and Corrections 1888
—secretary 1891
—assistant secretary 1892
Of board of pharmacy 1666
Of board of drainage commissioners 1759
Of board of bar examiners..3410
Of board of commissioners to examine pilots 3613
Of church trustees 39
Of clerks of election.... 148
Of clerks, State Highway Commission 1967, 1968
Of clerks, convict road force 2083
Of clerks by city councils.2935
Of clerk of court of civil justice 3118
Of enrolling and engrossing clerks in House of Delegates 3458
Of clerks and officers, of State Corporation Commission 3699, 3702
—Va. Const., § 155
Of clerks, Supreme Court of Appeals 5870
—to fill vacancy 3351
—successor to 3352
Of collector, delinquent taxes 2436
Of collector, delinquent capitation taxes 2421
Of commission to fix salaries of councilmen 2951
Of commission of fisheries..3146

Digitized by Google

Sec.

APPOINTMENTS—Con.
Of commissioners for promotion of uniformity of legislation 322
Of commissioner of State hospitals for insane 1009
—Va. Const., § 152
Commissioner of agriculture and immigration, to fill vacancy in office of 1104
Of commissioner of labor..1798
Commissioner of revenue, successor to, when removed 2315
Of commissioner to make deed to clerk for land sold for delinquent taxes.....2483
Of commissioner to vote in meeting of supervisors in case of tie 2718
Of commissioner of deeds..2853
Of commissioner to settle boundary dispute between counties 2685
Of commissioners to rearrange magisterial districts 2691
Of commissioners on application of city to erect dam in water course 3056
Commissioner of fisheries...3146
Of commissioners, proceeding to erect dams 3584, 3587
Of commissioner of wrecks.3596
Of commissioners, establishment of wagon road across road, canal, &c., of public service corporation 3883
Of commissioner of insurance 4171
—deputy 4171
Of commissioners in eminent domain proceeding, 4366, 4375, 4387
Of commissioners to assign dower 5125
Of commissioners to designate fishing shores 5290
Of commissioners, drainage through lands of another..5294
Commissioner of accounts...5401
—assistants 5402
Of commissioners in chancery 6178
Commissioner to execute deed 6296, 6297
Of committee for convict, 4998, 5003
—power of clerk of circuit court to appoint, Va. Const., § 101
Of committee for insane person 1050, 1051, 1052
Of committee of inebriate or drug addict 1074
Of committee of feeble-minded person 1080
Of committee to inspect jail 2863
Of committee to hear applications for aid from local levy for Confederate veterans 2664, 2665
Of committee to inquire into necessity for general index in clerk's office.....3395
Of committee to manage Norfolk county ferries 2050
Of conservator of peace for poor house 2807
Of constables to preserve order at election 193
—at primary election 250
Of coroners 2815

Sec.

APPOINTMENTS—Con.
Council of town, to fill vacancy in 3003
Of county surveyors..... 126
By courts, how made.....5961
By court, of representative of unknown owners in proceeding to establish drainage district 1740
—guardian ad litem for infant or insane person....1741
—attorney to examine title to real estate purchased by school board or county....2709
—auditors of accounts of officers 2756
—crier 2821
—person to act in place of sheriff or sergeant 2821
—person to examine books and records of surveyor..2843
Of cullers of lumber.....1403
Of curator, of estate of decedent 5248, 5249
—for minor 5319
Of dairy and food commissioner 1155, 1156
—deputy 1158
Of debtor as executor not to extinguish debt 5377
Deputy State Accountant.... 551
Of Deputy, Dairy and Food Commissioner 1158
Deputy tobacco samplers...1352
Deputy, factory inspector...1799
Of deputies for certain officers 2701
Of deputy oyster inspectors.3219
Deputy clerks, Supreme Court of Appeals 3379
Deputies and inspectors, commissioner of prohibition...4627
Of Director of Legislative Reference Bureau 573
—assistant and clerks 574
Of directors for insane hospitals 1006
—Va. Const., § 149
Of directors, by State holding stock in internal improvement company 3762-3764
Of division superintendent of schools 624
—Va. Const., § 132
—to fill vacancy 607
Of dock master in city of Richmond 3689
Of electoral boards 84
—Va. Const., § 31
—of judges, clerks and registrars by 84, 86, 88
— —Va. Const., § 31
—In cities of second class..2897
Of employees, State library.. 617
Of employees, Board of Agriculture 1106
Of engineer, convict road force 2090
Of enumerators of population of towns 2973
—of cities 2976
Of escheators by Governor.. 489
Of examiners of records....2218
Of executors and administrators by clerks of courts..5249
Of fire marshal 3137
—assistants 3140
Of new fiduciary, when authority of former fiduciary revoked 5418
Freeholders, in proceeding to enforce construction of cattle guards by railroad....3950

Digitized by Google

Sec.

APPLICATION—Con.
Of freeholders, to report on completion of turnpike or section thereof 4077
Of game wardens 3819
Of general receiver 6280
Of geologist and assistant for State Geological Survey.... 829
By Governor, of executive officers .....Va. Const., § 73
—to fill vacancies 331, 332
—of staff 319
—in militia 314, 316
—of United States senator, to fill vacancy 69
Of guards, convict road force 2083
Of guards, State Farm.....3452
Of guard, State prison farm.5047
Of guardian, by parents.5314, 5315
—by court or judge....5310-5318
Of guardian for feeble-minded person 1080
Of guardian ad litem 6098
Of guardian ad litem for infant or insane person, before civil and police justice 3105
Guardian ad litem for infant or insane person in eminent domain proceeding 4365
Of guardian ad litem in suit to sell real estate of infant or insane person....5337
Of guardian ad litem to insane wife, proceeding to release dower 5346
—insane husband, proceeding to release curtesy 5346
Of harbor masters in cities of Richmond and Alexandria 3664
—cities of Norfolk and Portsmouth 3673
—for Newport News 3678
—for Warwick county.....3679
Of Health Commissioner....1489
—assistant 1490
—bacteriologist 1490
—clerks and assistants.....1490
Of inspector, by State Entomologist 880
Of inspectors, of fertilizer..1119
Inspectors of flour and other commodities 1400
—deputies 1402
Inspector, plumbing 1544
Of inspector of mines 1835
Of inspectors, by commission of fisheries 3153, 3154
Of judge, pro tempore 5900
Of judges of election 148
Of judges of election and registrars for towns.....2995
Jury commissioners 5986
Of justices of the peace in cities 3092
Of Library Board 360
By Library Board 360
Of librarian, State library... 617
Librarian, of State law library 5878
Of librarian for school library 754
Of local registrar of vital statistics 1564
Of local board of review....2226
Marriage, of person to celebrate 5080
Of matron for jail 3027
Of members of Art Commission 581

Sec.

APPLICATION—Con.
Of members, school trustee electoral board 629
Of members State Geological Commission 523, 828
Of members Virginia Normal School Board 941
Of members Board of Agriculture 1095
—Va. Const., § 143
Of members board of medical examiners 1609
Of members State Board of Health 1486
Of members local boards of health 1492
Of members board tuberculosis sanatorium 1513
Of members State Board of Dental Examiners 1642
Of members Virginia State Board of Examiners in Optometry 1625
Of members State Board of Examiners of Graduate Nurses 1703
Of members State Board of Embalming 1716, 1717
Of members State Corporation Commission 3604
—Va. Const., § 155
Of notaries 2850
Of orchard inspector 895
—assistant 900
Of officers and employees of insane hospitals 1008
—Va. Const., § 151
Of officers by city councils..2985
Officers and employees by councils of cities and towns 2988
Of pension commissioners ..2657
Of person to perform duties of suspended clerk, treasurer or other officer.....2201
Of personal representatives by clerk of the court.....5249
Of physician for poor 2796
Of physician to attend prisoners in jail 4956
Of plumbing inspector 1544
Of police for religious meeting 4580
Of police agents for steamboat wharves 4025
—for railroads 3944
Of port wardens, for city of Richmond 3658
Power of, how executed by will 5230
—effect of marriage on will..5232
—devise or bequest construed as execution of....2541
President and officers, savings bank 4140
Of probation officers, 1911, 1912, 1913
Of professors, Virginia Military Institute 842
Of proxies for stock of State in internal improvement company 3760-3764
Of receiver for dissolved corporation 3513
Of reporter of Supreme Court of Appeals 5879
Of road supervisor 2939
Of school trustees 631
Of school trustees for towns 865
Of school trustees for cities.. 730
Of sealer of weights and measures 1469, 1473

Digitized by Google

Sec.

APPLICATION—Con.
Of secretary Board of Charities and Corrections 1891
—assistant 1892
Of secretary of Commonwealth as agent on whom process against foreign corporation may be served....3845
Of shellfish commissioner....3146
Of State Accountant' 550
—to fill vacancy 550
Deputy Accountant 551
Special commissioners in suit for sale of property 6266
—of other person to receive proceeds 6272
Special police for counties 4797, 4798
—for watering place, College, University, manufacturing plant 4804, 4805
Special prosecuting officer in criminal case 4970
Of State Board of Accountancy 566
Of State Entomologist 870
Of State cadets to Virginia Military Institute 845
Of State highway commissioner 1963
—assistant, clerk 1967, 1968
Of State student Virginia Normal and Industrial Institute 954
Of students receiving free tuition at Va. Agri. & Mech. Col. & Poly. Inst..... 854
Of superintendent of schools, Va. Const., § 132
Of superintendent of the poor 126
Of superintendent of penitentiary 333
—Va. Const., § 148
Of superintendent State prison farm 5047
Of superintendent Virginia Military Institute 836
Superintendent insane hospitals 1007
—Va. Const., § 151
Of superintendent of roads, 2019, 2020
Of substitute civil and police justice 3101
Of successor to suspended county or city treasurer or collector 2791
Of surgeon at State penitentiary 333
—Va. Const., § 148
—at State prison farm.....5047
Of surveyor, to survey oyster ground and re-establish Baylor survey 3257
Of tobacco samplers.....1349
—deputy 1352
Of treasurer Virginia Military Institute 840
Trial justices 4988
Of trustees for church..... 39
Of trustees of district school board 651
Of new trustees of property for school purposes 659
Of trustees for gifts, devise, etc., for educational or literary purposes 588, 590
Of trustees and receivers for dissolved corporation 3813
Trustee, successor to...6298-6303
Of viewers, establishment of road 1977, 1978

Sec.

APPLICATION—Con.
Of viewers, proceeding to discontinue road 1984
Of viewers in proceeding to establish ferry 2055
Viewers, proceeding to compel repairs of turnpike, 4078, 4082
Of visitors of University of Virginia 807
Of visitors Va. Agricultural and Mechanical College and Polytechnic Institute 859
Of visitors William and Mary College 935
Of visitors Virginia Normal and Industrial Institute... 948
Of visitors Virginia School for Deaf and Blind 971
Of visitors Virginia State School for Colored Deaf and Blind Children 984

APPOMATTOX COUNTY
Fees of Commonwealth's attorney 3505

APPOMATTOX RIVER
Allowing noxious substances to pass into, injuring fish.3195
—penalty 3196

APOLOGY
Evidence of in mitigation of damages, action for defamation 6240

APPORTIONMENT
Of members of council among wards .....Va. Const., § 121
—re-appointment, Va. Const. § 121
Of State into senatorial and house districts, Va. Const., § 43
Of State into congressional districts 70
—Va. Const., § 55
Of forest reserve funds..743, 744
Of county school fund..... 647
Of school funds, scheme of.. 753
—Va. Const., § 135
—when district is more than one county 656
—State funds to city schools. 783
Of visitors of the University of Virginia to grand divisions of the State 807
Of students at Virginia Agricultural and Mechanical College and Polytechnic Institute 854
Of State aid for roads among counties 2103, 2104, 2107
To counties of fund derived from fees collected under automobile laws 2154
Of money raised by taxation, to schools 2205
—Va. Const., § 135
For taxation, value of rolling stock of electric railway..2208
Of assessment of land and of timber thereon 2284
Of assessment, land divided among different owners...2285
Of compensation of commissioner on death or removal 2353
Of license taxes 2373
Of tax on property partitioned 2449
Local assessment by city, cost of improvements.....3067
Of city taxes when land divided 2493

Digitized by Google

Sec.

APPORTIONMENT—Con.
Of salary of judges of circuit court 3466
—Va. Const., § 103
Of rent, land occupied by emblements 5541
—from lessee of life tenant, &c. 5543
—on death, &c.....5544-5547
—on purchase of part of land or rent 5547
Of money, hire, &c., on death of person interested..5544-5547
Of pay and mileage of jurors 6007-6010
Of proceeds of judicial sale to taxes 6268
Of commissions for selling property under decree....6279

APPRAISAL
Of property forfeited for violation of fish, game and oyster laws 3368
Recorded in will book 3393
Of stock of dissenting stockholder, consolidation of corporations 3822
Of live stock killed or injured by railroad trains 3994
—fees of appraisers 3996
Of decedent's estate 5376
—effect as evidence 5376
—appointment of appraisers by clerk 5249
— —Va. Const., § 101

APPRENTICES
To pharmacist 1673, 1689
To pilot, examination of....3620
—fee 3641
Infants, how bound 5298
—by overseer of poor 5299
—by incorporated association, asylum, or school 5300
Term 5301
Authority of employer 5301
Articles of apprenticeship, what to specify 5302
—where filed 5304
—form of 5305
Instruction to 5302
Payment for services of....5303
—bond for 5303
— —where filed 5304
—how paid 5306
—for last year, how paid....5307
—recovery of 5308
Transfer to new master....5305
Complaints between master and apprentice, trial of, 5309-5311
Change of residence 5310
Desertion by, damages 5312
Penalty for harboring or enticing 5313

APPROPRIATION
To church or sectarian society prohibited, Va. Const., § 67
To charitable institutions, Va. Const., § 67
—by counties, cities and towns .....Va. Const., § 67
Fund and taxes for school purposes .....Va. Const., § 135
By General Assembly, Va. Const., § 51
For private educational institutions prohibited, Va. Const., § 141
—exceptions ....Va. Const., § 141

Sec.

APPROPRIATION—Con.
Ordinance of cities, procedure for passing, Va. Const., § 123
Time within which to be made payable..Va. Const., § 136
Objects for which prohibited, Va. Const., § 136
For pensions..Va. Const., § 139
For school for manual, industrial or technical training 664
For high schools....705, 707, 708
—normal departments 709
—agricultural, by supervisors 718
To school by supervisors....741
—for libraries 754, 755
—by city councils 780
To retired teachers' fund....791
To University of Virginia..819
To Virginia Military Institute 834
For inspection of San Jose scale 881
To State Board of Crop Pest Commissioners 884
For county demonstration work 921, 924
To Hampton Normal and Agricultural Institute..926, 928
To Virginia State Agricultural Experiment Station. 933
To State Normal Schools....946
To Virginia School for Deaf and Blind 978
To school for feeble-minded children at Central State Hospital 1092
To school at State Colony for Epileptic and Feeble-minded 1077
For treatment of person bitten by animal suspected of having hydrophobia 1553
For carrying out laws relative to vital statistics...1584
For State convict road force 2092
To pay judgment or decree against Commonwealth....2582
For armories by supervisors 2731
By supervisors for erection and care of Confederate monuments 2742
By town council for redemption of bond issue...2750
By cities and towns to charitable institutions 3034
For expenses, etc., of commission of fisheries 3160
For maintenance of Northwestern turnpike road....4096

APPROVERS
Not admitted in any case....4777

APPURTENANCES
Included in deed conveying land 5168

ARBITRATION AND AWARD
Compensation of laborers saving wreck 3604
Submission, record, rule of court 6159
—irrevocable 6160
—power of court over 6160
—by fiduciaries 6163
Extension of time 6160
Award, entry as judgment of court 6161, 6162
—setting aside 6162

Digitized by Google

Sec.
ARBITRATION AND AWARD—Con.
Arbitrators to determine value of division fence, appointment 3557
—to settle dispute as to division fence, appointment...3558
— —duty, decision.....3558, 3559
— —recordation of decision.3560
—of loss on insurance policy to be citizen and resident of Virginia 4308
— —oath 4309
—bribery of, punishment....4503
Award, limitation of action on 5810
—new promise 5812
— —by personal representative or joint contractor....5813
— —will charging estate with payment of debts....5814

ARDENT SPIRITS
See **"Intoxicating Liquors"**
Definition of 4581

ARGUMENT
Counsel, number of counsel.6255

ARMORIES
Appropriations for by supervisors 2731

ARRAIGNMENT
On amended indictment. 4877, 4878

ARREST
Privilege of voter from during elections..Va. Const., § 29
Members and clerks General Assembly, privilege against 297, 299, 300
—Va. Const., § 48
Member of General Assembly privileged against for word written or spoken.. 302
—Va. Const., § 48
Of persons copying or carrying away ballot 163
For disturbance of election.. 196
For intimidating voter..... 194
In Capitol Square 413
Of lunatic, inebriate, etc., escaped from hospital....1044
Contempt proceeding, for violation of injunction against house of prostitution 1524
Quarantine, persons escaping from 1539
Of defendant in prosecution of husband or parent for desertion of wife or child, for violating order of court 1944
Of person doing business without license 2369
Reward for arrest of felon, offer of by supervisors....2733
Persons privileged from on civil process 2823
Obligation taken by officer, when void 2824
By city police officer at race course, park, etc., outside city limits 3005
Person violating fishing laws. 3155, 3215
By fish wardens 3197
Resistance to officer enforcing oyster law, penalty...3265
Oyster law, violation of, warrant for 3277
—proceeding on 3278
For violations of law relating to oysters in polluted areas 3287
By game warden 3320

Sec.
ARREST—Con.
By Commissioner of Game and Inland Fisheries 3320
For violation of game laws, service of warrant on corporation 3340
Person assisting, fees, out of treasury 3504
Of suspended pilot 3644
Of deserting seaman 3661
By bailiff of State Corporation Commission 3706
By police agent of railroad.3944
—conductor 3944
—depot agent or station agent 3944
By police agents of steamboat companies 4025
—masters of vessels of.....4025
—wharf agents of 4025
Person charged with arson, by Commissioner of Insurance 4188
Officer failing to execute process of, punishment 4510
By officer of Society for Prevention of Cruelty to Animals 4555, 4559
Of person carrying weapon on Sunday or to place of religious worship 4578
Of person in charge of vehicle transporting ardent spirits.4657
By conservator of the peace.4789
Special police, power of.....4802
Process for, who may issue..4823
—when issued, how directed, executed, and returned...4824
—may be executed anywhere in State 4825
—when not necessary after indictment, information, or presentment 4866
Bringing accused before justice 4826
Warrant to carry accused to county or corporation where trial should be 4827
On capias 6421
—to whom accused delivered 4886
Of execution debtor failing to answer interrogatories 6506

ARREST OF JUDGMENT
Effect on limitation.....5826
For failure of record to show venire facias 6002
Errors for which judgment not to be arrested 6331

ARSENAL
Condemnation of land by United States for 19
Control of 402
Virginia Military Institute.. 838

ARSENIC
Sale of, label 1691

ARSON
See also **"Burnings"**
Report of by Commissioner of Insurance to Commonwealth's attorney 4188
Homicide in attempt to commit 4393
Dwelling house, boat, jail, etc. 4428
—other houses...4430, 4431, 4432

ART
See **"Art Commission"**

ART CLUB OF RICHMOND
To nominate member of Art Commission 581

Digitized by Google

Sec.

ART COMMISSION
Members 581
Appointment 581
Term 581
Officers 581
Vacancies 581, 584
Quorum 581
Acquisition by State of works of art 582
—approval by Commission.. 582
—removal or alteration of.. 582
—definition of "works of art" 583
Disqualification of members. 584
—vacancies caused thereby.. 584
Annual report to Governor.. 585

ARTICLES OF ASSOCIATION
See also "Charters"; "Corporations"
Of railroad corporation 3856
—signature, acknowledgment 3857
—presentment to State Corporation Commission 3857
—certification to Secretary of the Commonwealth 3857
—recordation 3857
Of public service corporation. 3865
—signatures 3866
—acknowledgments 3866
—presented to State Corporation Commission 3866
—certified to Secretary of Commonwealth 3866
—recordation 3866

ARTICLES OF WAR
Distribution of 317

ARTISANS
Lien of 6443
—how enforced 6449-6451

ASSAULT AND BATTERY
Warrant of coroner for, 4812, 4813
Discharge on compromise of 4849

ASSAYING
Minerals, by Board of Agriculture 1281

ASSES
Running at large in villages and unincorporated communities, penalty ...3550, 3551
Larceny of 4440

ASSESSMENT
See "Taxation"
Against insurance companies, guaranty companies, etc., to pay expense of Bureau of Insurance 4194-4197
Establishment of drainage district 1752
—damage to land 1751
— —railroad companies.....1765
—benefit to land..1752, 1756, 1757
— —highways 1764
— —railroads 1765-1767
—assessment rolls 1771
— —effect of judgment, lien 1771
— —collection 1771
— —sale of land 1771
—payment of full amount for which land is liable 1772
—mandamus 1774
—fees to county treasurer..1775
—changes in, re-levy.....1776
By treasurer on bonds deposited by insurance and guaranty companies 4211
—when collected 4211

Sec.

ASSESSMENT—Con.
—disposition of 4211
On legal reserve insurance companies 4257
By co-operative life insurance or casualty company, what notice of to show....4267
—penalty for failing to make 4262
By mutual fire or storm insurance company ...4332-4335

ASSESSMENT COMPANY
See "Insurance Company"
Certificate of incorporation, what to contain 4202

ASSESSOR
See "Taxation"
To ascertain damages by coast survey 21
—notice given by 21
—procedure 21
—report 22
—appeal from 23
—order of court on report.. 24
—how appeal tried 25
Of city or town, who to perform duties of 2987

ASSIGNATION HOUSE
See "House of Prostitution"
Employment agency sending female servant to 1804
—penalty 1806

ASSIGNEES
Of property of treasurer, effect of execution against.2433
Of purchaser of land sold for delinquent taxes, deed to, 2484, 2486
Of chose in action, suit by, 5144, 5768-5770
—against assignor.....5769
Of lease, rights of.....5512
—recovery of rent by.....5520
—liability for rent 5521
— —distress for 5523
Liability of goods of for rent due by tenant 5523
Of life insurance policy, recovery by 5767
Plea of set-off by 6148-6150
—assignor made party.....6150
Of labor or supply lien against corporation, rights of 6440
Of property subject to lien of execution 6501

ASSIGNMENT
Of contracts, see "Contracts"
Of land office warrant 460
Of license 2377
Oyster planting ground to riparian owners 3223
—to renter 3224, 3225
—by renter 3225
Of bathing ground.....3233
Interest of incorporator of corporation 3785
Of stock of corporation 3837
—liability of assignee.....3837
Of wages, as security for loan by building association 4154
Of dower 5125-5128
—recordation of 5216
—in action of ejectment....5480
In fraud of creditors..5184-5186
Of negotiable instrument by infant or corporation, effect of 5584
Liability of transferer of negotiable instrument 5611
—defenses to 5620

Digitized by Google

Sec.

ASSIGNMENT—Con.
Bill of exchange not 5689
Check not to operate as....5751
Of life insurance policy....5767
Voluntary, limitation on suit to avoid 5820
Proof of, when averred in pleading 6125
When ground for attachment 6379
By general contractor, effects as to sub-contractors.....6435
Of debt secured by mortgage, deed of trust, vendor's lien, etc., entry on record.....6457
Of claim against laborer with intent to defeat exemption.6557

ASSIGNMENT FOR BENEFIT OF CREDITORS
Notice of dishonor of negotiable paper by debtor....5663
Bill of exchange, presentment for acceptance 5707
Protest of bill for better security 5720

ASSIGNS
Form of covenant in deed construed as binding.....5170
—general warranty 5171, 5173
—for lessee's quiet enjoyment 5181

ASSOCIATIONS
See **"Benevolent Associations"; "Building and Loan Associations"; "Lee Memorial Association"; "Prison Association of Virginia"**
Exemption from operation of act of legislature prohibited .....Va. Const., § 64
Private act granting exclusive privilege to prohibited. Va. Const., § 63
—naming or changing name of .....Va. Const., § 63
Word "person" includes, when 1188
Wearing insignia of when not entitled to 4719

ASSOCIATION FOR THE PRESERVATION OF VIRGINIA ANTIQUITIES
Property of exempt from taxation 2272, 2301
—Va. Const., § 183
Inheritance tax on gifts to..2272

ASSUMPSIT
On note or writing...5759, 5760
—parties, judgment 5760
In case in which covenant may be brought 6088
—general issue 6088
Account filed with declaration 6090
Affidavit with declaration, sworn plea required 6133
—writ of inquiry not necessary 6133

ASSUMPTION OF RISK
In action for death or injury of employee of intrastate railroad 5793
—Va. Const., § 162

ASYLUMS
See **"Insane Hospitals"; "Orphan Asylums"**
Property, exemption from taxation 2272, 2301
—Va. Const., § 183
Inheritance tax on gifts to..2272

Sec.

ASYLUMS—Con.
Burning or destroying, punishment 4428

ATTACHMENT
See **"Capias"; "Execution"; "Exemptions"; "Garnishment"**
Property of foreign corporation subject to, Va. Const., § 163
Of witness summoned before General Assembly 203
—before commission of fisheries 3258
—failing to attend or produce writing 6220
Action to recover damages caused by fertilizer falsely labelled 1128
Goods in warehouse, surrender of receipt 1314
In action of debt for recovery of penalty for violation of license or revenue laws....2395
From civil justice, to whom directed 3120
Against justice failing to certify proceedings to clerk of court when accused committed for trial..4847
Bail by officer arresting on..4887
Against judge, bail commissioner, or justice failing to certify recognizance to clerk of court 4847
To answer bill taken for confessed 6136
Indemnifying bond 6154
—effect as to claimant or purchaser of property.....6155
Of party refusing to answer interrogatories 6236
—refusing to produce books and papers 6237
Who may sue out 6378
Grounds for 6378, 6379
Jurisdiction 6380
Venue 6381
Pleadings 6382
—amendment 6409
Release 6394
Claims of third persons, how tried 6407
Petition for 6383
—what to state 6383
—who made defendants 6383
—oath to 6383
—return of to clerk's office.6386
—amendment of 6388, 6409
Bonds, for possession 6384
—of plaintiff when defendant makes affidavit of defense.6385
—for release of attachment..6394
—sale 6406
—on appeal, property restored 6413
—by whom given 6414
Issuance 6386
—several attachments on original petition 6388
Property subject to....6386, 6389
Specific personal property, 6386, 6389
To whom directed 6387
Return of 6386, 6387
Service 6389
Levy 6389, 6390
—how made 6390
—officer's return 6391
—on property held under process 6408
Injunctions, receivers 6389

Digitized by Google

Sec.

ATTACHMENT—Con.
Officer's return 6391
Issue and execution on Sunday 6392
Lien of 6393
—on property held under process 6408
—goods, warehouse receipt for which has been transferred without indorsement 1331
—recording memorandum...6469
Forthcoming bond 6394
—returning, filing 6395
—exceptions to 6395
—of defendant indebted to principal defendant 6398
—by whom given 6414
Property, how kept.....6397
—possession, bond for,.....6384
—restoration 6394
—interest and profits, how applied 6396
—restoration on appeal 6413
Sale, perishable property....6397
—real estate 6405
—disposition of proceeds....6405
—bond 6406
—protection of purchaser....6411
—surplus, distribution of....6158
Exemptions 6398
—pension 2658
—payment on insurance policy, when 4219
—payments by fraternal benefit society 4292
Garnishee, examination of ..6398
—debts admitted due by....6398
—bond 6398
—payment to officer 6398
—exemptions 6398
—judgment against 6398
—failure to appear 6399
—failure to fully disclose...6400
—costs 6400
Returned not served, issue of other attachments.....6401
Order of publication 6401
Defenses 6403
—who may make 6402
Motion to quash 6403
Hearing 6404
Dismissal 6404
—for failure to give bond..6385
—for failure to pay writ tax 6387
—formal defects not ground for 6409
Judgment for plaintiff 6405
—for defendant 6402
—for restitution 6412
Costs, additional attachment.6388
—in favor of garnishee.....6400
—interpleader 6407
—security for on rehearing..6411
In connection with pending suits 6410
In equity 6410
Rehearing 6411, 6412
New trial 6411, 6412
For rent 6416
—entry by force to levy....5526
—levy on goods in personal possession of party 5526
—remedy when rent not payable in money 5529
—wrongful, action for 5782
—jurisdiction of court of law and chancery of Roanoke..5947
—for twenty dollars or more 6417
—for less than twenty dollars 6418

Sec.

ATTACHMENT—Con.
Claim under twenty dollars, jurisdiction, petition, proceedings 6415
—real estate, removal from justice's court 6415
To recover advance, on crops.6454
Recording, necessity as to purchasers 6469

ATTAINDER
Bill of, prohibited, Va. Const., § 58.
Not to work corruption of blood or forfeiture of estate 4762

ATTEMPTS
See "Crimes"; "Criminal procedure"
To usurp government 4391
To poison 4400
To produce abortion, punishment 4401
—limitation of prosecution..4768
Wounding in attempt to commit felony, punishment....4403
How punished 4767
Verdict for on indictment for felony 4922
—verdict of not guilty to bar prosecution for 4922

ATTESTATION
Commissions and grants, Va. Const., § 78
Record of official acts of Governor .....Va. Const., § 80
Of writs by clerks of courts, Va. Const., § 106
Of warrants on library fund. 359
By register of land office of copies of unsigned grants. 417
Of assignment of land warrant 460
Of warrant by State Board of Education for payment from library fund 615
Of bonds and notes for loans from literary fund 760
Of warrant of Auditor and Second Auditor for claims allowed against State.....2181
Of copies of books or papers in office of Auditor, &c....2318
By justice of petition for formation of new county..2675
Of bonds of town, removal of county courthouse.....2750
Of bonds issued by city or town 3084
Forgery of, punishment....4484
Of contract reserving title to chattels 5189
Of extension of time of lien of mortgage, deed of trust, &c. 5827
Of copies of records submitted as evidence 6197
—foreign 6207
Of release of part of amount of judgment or decree....6333
Of satisfaction of mechanics' lien 6441
Of entry on record of satisfaction of lien 6456
—transfer of debt secured by lien 6457
Of satisfaction of judgment..6466

ATTORNEY-AT-LAW
See also "Attorney in Fact"; "Board of Bar Examiners"; "Commonwealth's Attorney"; "Counsel"

Digitized by Google

Sec.

ATTORNEY-AT-LAW—Con.
Member of State Corporation Commission not to practice law .....Va. Const., § 155
Continuance when member of General Assembly is counsel in suit 298
May use State Law Libraries. 371
Procuring law library 373
Fee, suit to abate house of prostitution 1526
—establishing drainage district 1771, 1774
—none charged applicant for pension 2658
—motion against county treasurer failing to pay warrant 2787
—taxed in costs ..3428, 3533, 3534
—contract for 3428
—when no contract 3428
—lien for 3429
— —written notice of.....3429
—when decreed or ordered paid out of funds in court.3430
—when condemnation proceedings dismissed 4387
—provision for in negotiable instrument 5564
—in quo warranto proceeding 5847
For service of process on, application to purchase delinquent land, designation, etc. 2495
Employment of by Auditor to collect taxes 2533
To assist Commonwealth's attorney, appointment ...2728
Real estate purchased by school board or county, examination of title of....2709
—approval, recordation of..2709
—disapproval, appeal from..2709
—compensation 2709
Employment of by Commission of Fisheries 3154
On board of bar examiners..3410
Who may practice 3408
License, how granted 3409
—attorney from another State 3409
—teacher in law school.....3409
—applicant passing examination 3411
—examination for 3411-3415
— —fee 3417
—certificate of character and age 3418, 3419
—separate to members of firm 2368
— —exemptions 2368
—revocation of by board of bar examiners 3420
—revocation of by court, for misconduct, &c.....3423
— —procedure for 3424
—suspension of 3423, 3424
—practicing without, penalty 3422
To qualify in each court in which he practices 3421
"Any malpractice or any corrupt or unprofessional conduct," meaning of 3424
Security for good behavior..3425
Contempt of court, fine for..3425
When clerk, sheriff, sergeant, or deputy, etc., may not practice as 3426
Liability to client for negligence 3427
—for failing to pay money to 3427

Sec.

ATTORNEY-AT-LAW—Con.
—for debts lost by negligence or misconduct 5406
Appointment of as agent on whom process against corporation may be served..3854
Employment of by Commissioner of Prohibition 4627
Disbarment for advertising offer to obtain divorce....5116
Judge not to practice.....5975
—Va. Const., § 105
Exempt from jury service..5985
Guardian ad litem for infant or insane defendant..6098
—proceeding to establish drainage district.....1741
Homestead exemption not to extend to liability for money collected by.....6531
—Va. Const., § 190

ATTORNEY IN FACT
Words of conveyance and signature in deed by.....5145
Acknowledgment by for recordation of writing..5204, 5207
Appointment of by married woman 5215
—writings executed by.....5215

ATTORNEY GENERAL
Impeachment ....Va. Const., § 54
Commission .....Va. Const., § 107
Removal .....Va. Const., § 107
Duties .....Va. Const., § 107
Notice to by corporation of application for relief from assessment of taxes, Va. Const., § 180
—duty to represent State, Va. Const., § 180
Election 118
—Va. Const., § 107
—contested, how determined, 264, 265
Term 118
—Va. Const., § 107
Vacancy in office, how filled. 122
Annual report of 377
Office of 378
Salary 3433
Mileage 3433
—Va. Const., § 107
Assistant 3433
—salary 3433
Clerical force 3433
—salaries 3433
Contingent expenses 3433
Record of oath taken by.... 277
Application by to require officer to give a new or additional bond 280
Member of board to approve cost of surety on officers' bond 325
Examination of bonds of officers and clerks 326
State reports furnished to.... 347
May use State Law Library.. 371
Opinions, who may require.. 375
—Governor may request, Va. Const., § 74
To approve form of bond of contractor for public printing 382
—of contractor to furnish paper 383
Duty with respect to conveyances to State Geological Commission 526, 527
Member of State Board of Education 596
—Va. Const., § 130

Digitized by Google

Sec.

ATTORNEY-GENERAL—Con.
To select member of State Board of Education 596
Approval of bond, Commissioner of Agriculture and Immigration 1105
To represent board of health, when 1795
Appearance of, petition to reopen coal mine closed by inspector 1870
Opinion on bond of State depository 2161
Approval by of adjustment of debt due State 2532
Notice to of writ of error in criminal case 4936
Exempt from jury service..5985
Venue of actions against....6049
—court in which brought....6051
Member board of indemnity.2819
Duty to represent State, in what courts 376
—in appeals from orders of State Corporation Commission cl. d....Va. Const., § 156
—in proceeding by officer claiming salary withheld for debt due State 3476
—criminal case removed to United States court 6971
To represent Commissioner of Insurance, in bill to administer assets of insurance company or guaranty company 4215
—in liquidation of insurance company 4243
To prescribe form of bond of county treasurers.....2698
—of city treasurers.....2699
Proceedings by to recover from escheator for failure to perform duty 511
—mandamus to compel State officer to adopt system of accounting 555
—to revoke certificate of certified public accountant... 570
—against railroad company for failure to disinfect cars used in transporting live stock 911
—for violation of laws relative to agricultural seeds..1150
—suit to enjoin house of prostitution 1522
—action to recover penalty of water works for failure to obtain permit from or obey order of board of health 1793
—to correct assessment of taxation by State Corporation Commission 2392
—recovery of fine from clerk failing to comply with law as to taxes and money belonging to State collected by him 2406
—against delinquent treasurers with their sureties..2432
— —list of furnished to.....2432
—to enforce liability of Auditor and sureties for failure to report delinquent treasurers 2434
—to forfeit charter of corporation for paying debt due State in other than currency 2617
—petition in appeal, proceeding forming city of first class 2912

Sec.

ATTORNEY-GENERAL—Con.
—petition for supersedeas to order of State Corporation Commission 3734
—to forfeit charter of corporation 3821
—against corporation for failure to file list of officers and directors 3854
— —failure to appoint agent on whom process may be served 3854
—suit to recover capital stock of company acting as bank of circulation 4152
—bill to enjoin violations of law relating to advertisement of intoxicating liquors 4609
—petition for quo warranto..5842
— —for leave to file information in nature of 5844
— —against fraternal benefit society 4297, 4298
Approval of bond of Commissioner of Prohibition..4626
Causing judgments in favor of State to be docketed...6468

ATTORNMENT
When not necessary 5514
When void 5515

AUCTION
Sale of property of county at 2723
Sale of wrecks and property from at 3606-3608

AUDIT
By State Board of Education of expense of summer normal schools 613
—of claims to be paid from literary fund 615
Expenses Dairy and Food Commissioner 1243
By supervisors, accounts of treasurer 2719
—sheriff 2719
—superintendent of the poor.2719
Of accounts of officers upon order of court 2756
Accounts of Commissioner of Game and Inland Fisheries.3313
State officers, salaries, mileage, allowances 3472

AUDITING COMMITTEE
Of General Assembly 311
—Va. Const., § 68

AUDITOR OF PUBLIC ACCOUNTS
See **"Second Auditor"**
Record of oath taken by.... 277
Orders by Governor for payment from civil contingent fund directed to 318
Election of by General Assembly 323
—Va. Const., § 82
—time of 323
Term 324
—Va. Const., § 82
When to qualify 324
Bond of 325
—submission of to Attorney General 326
—new or additional 327
—effect of failure to give.... 327
—when filed 328
—liability on, failure to furnish list of delinquent treasurers 2434
vacancy in office if bond not approved or oath not taken 329

Digitized by Google

AUDITOR OF PUBLIC ACCOUNTS—Con. Sec.
—how vacancy filled, 122, 329, 331
Removal from office 330
Business hours 337
Proceedings and vouchers... 338
Absence of, notice to Governor 340
When first clerk to act for.. 341
—liability for defaults of.... 342
Books of Superintendent of Public Printing open to.... 381
Appeal to of bidder for contract for public printing.. 382
—for contract to furnish paper 383
Employees 402
Member of finance board....2156
Recommendations by in report 2203
Member and secretary State tax board 2213
Member board of indemnity.2619
Indemnity to for damage sustained in collecting taxes..2620
Commissioner of sinking fund 2621
Fees of paid into treasury..3435
Salary 3435
Contingent expenses 3435
Bribery of 4503
Exempt from jury service..5985
Venue of actions against....6049
—court in which brought..6051
Certificates of as evidence...6197
Copies of records of as evidence 6197
Garnishment of wages of State employees, service of process on 6559
—certificate 6559
—deposition 6559

Clerks

Record of oath taken by.... 277
Bond of 325
—submission of to Attorney General 328
—new or additional 327
—effect of failure to give.... 327
—where filed 328
Vacancy in office if bond not given and approved.... 329
—how filled 329
Appointment of 335, 3435
Removal 336
Salary 3435
First clerk, appointment 340
—authority 340, 341
—when Governor to designate 341
—vacancy 341

Powers and duties

Prescribed by law. Va. Const., § 82
To transmit Governor's order of sale of escheated land to escheator 505
To institute proceedings to recover fine from escheator for failure to perform duty. 511
May require State Accountant to audit certain accounts 564
Apportionment of amount received from forest reserve. 743
Calculation of funds applicable to school purposes 746, 749
Old books and papers, boxing and storing 2188
Powers and duties not changed or abridged by chapter 94 2232

AUDITOR OF PUBLIC ACCOUNTS—Con. Sec.
Certificate to purchaser of waste and unappropriated land 2504
Proceedings against officers for violations of revenue laws 2544
State bonds, cancellation and reissue 2637
Lost bond or certificate, issue of new 2639
Apportionment of salaries of judges of circuit courts to counties and cities 3466
—statement to supervisors and councils 3466
Petition of officer claiming salary withheld for debt due State, answer, etc....3476
—employment of counsel....3476
Officer indebted to State, credit of indebtedness on salary 3477
Unclaimed funds under control of court, record of....6310
—account of 6313
—payment to person entitled 6314

Accounts

Examination of by auditing committee 311
—Va. Const., § 68
Reports of defaults or irregularities in by State Accountant 560
State Accountant to devise system of accounting for, 552, 554
—mandamus to compel adoption 555
Inspection of accounts of.557, 558
—duties and penalty 558
Fiscal year 2172
With treasurer 2186
Separate accounts for contingent expenses of courts.2186
Comparing with books of treasurer 2189
Balancing 2190
Ledger, how kept 2190
Sale of wrecks and property from 3609

Bonds, certificates, &c., filed with

List of persons paying poll taxes furnished to, Va. Const., § 38
—taxes charged to treasurer Va. Const., § 38
—of land grants furnished to 2277
—by commissioner of revenue of land belonging to State.2536
Bonds of State officers and clerks 328
—of State librarian and doorkeeper 348
—of treasurer of Virginia Military Institute transmitted to 840
—of treasurer of Virginia Agricultural and Mechanical College and Polytechnic Institute 866
—of treasurer Virginia Normal and Industrial Institute 950
—of tobacco sampler copy..1351
—of county and city officers, copies 2700
— —order of court on.....2700
—of oyster inspector, copy..3219
—of officers of State Corporation Commission 3708

Digitized by Google

Sec.

AUDITOR OF PUBLIC ACCOUNTS—Con.

Inventory of property in Governor's house delivered to 404
License taxes, list furnished to 2374
Schedule of route for transportation of insane persons, convicts, etc.....3739
Statement, receipts and disbursements by clerks of boards of supervisors....2775
—by auditors of cities.....2775
—by clerk of State Corporation Commission 3703
Certificate of accounts for printing, stationery, etc... 385
—of registration of dealer in nursery stock 882
—by judges and clerks, allowances made by courts..2187
—discharge of city or county treasurer 2792
—oyster laws, proceeds of forfeiture for violation, order as to disposition....3275
—cost of publishing process against corporation in criminal case 4892
—fees of sergeants and sheriffs 3503
—of account of fees, justice of the peace, by judge....3507
—fees of witnesses 3530
—apportionment of proceeds of judicial sale to taxes...6268
—cost of mailing decisions of Supreme Court of Appeals..6368

Claims against State

Presentment 2173
Allowance 2174
Laid before Governor 2176
May administer oaths 2178
Disallowing 2179, 2578
—petition to circuit court city of Richmond 2578
Auditor to defend 2579
Allowance by courts, not paid unless presented in two years 2180
Warrants for 2181
Suit on coupons, officer or clerk not to leave office to testify 2618
—books not taken from office 2618
—copy as evidence.....2618
—depositions 2618

Debts due State

Enforcing payment 2510
—court in which action brought 2511
—the proceeding 2511
—in what name suit brought.2512
—when not to abate.....2512
—motion, against whom.... made 2513
— —notice 2513
—judgment 2513, 2514
—execution 2517, 2518, 2519
State bonds received in settlement of, disposition of..2191
Agents to collect.....2534
Land sold for, when purchased for State 2535

Forms furnished by

Blanks to officers stating how money may be paid into treasury by check, draft or certificate of deposit.....2170
To clerks for accounts payable out of treasury.....2175

Sec.

AUDITOR OF PUBLIC ACCOUNTS—Con.

For report and certificate by court and clerk of allowances 2187
For reports of examiners of records 2220
For report of local board of review 2227
To assessors of land for taxation 2243
Personal property book.2254, 2300
Tax books 2254
Interrogatories to taxpayer, 2254, 2310
For assessment of omitted persons and property 2333
Recapitulation of tax levy, etc. 2337
For report of merchant's purchases 2366
For assessment license tax of merchants 2366
—increase of 2366
For list of license taxes....2374
Record book for taxes and other money belonging to the State, to clerk of the court 2405
For reports by clerk of taxes and other money belonging to State 2405
Tax tickets 2408
For treasurer's list of delinquent and uncollectible taxes 2415
For report by clerk of redemption of land sold to State for taxes.....2491
Receipts for fines 2546
—distribution 2546
To clerk for list of fines....2551
For record of coupons tendered to officer in payment of debt due State 2608
For pensions 2651
Bond of county treasurer..2698
Bond of city treasurer 2699
To Commission of Fisheries.3159

Insurance fund

Fees for licenses to agents paid to 4235
Assessment of life insurance companies for 4257

Licenses

When and how issued.....2362
Form of 2362
Filing 2362
Merchant, decrease 2366
—appeal 2366
Assessment of license tax, reformation of 2370
—appointment of agent for.2370
—requiring new bond.....2370
—compensation of agent making 2370
—less than law requires, deduction from commissioner's compensation 2371

Payments to

Fees of candidates for election at primary 249
By county and city treasurers for services of State Accountant 565
Proceeds from forest reserve 742
Funds received from secretary of Interior of the United States 853
Check, draft, certificate of deposit received for payment into State treasury 2165
—record of 2166, 2167

Digitized by Google

Sec.

AUDITOR OF PUBLIC ACCOUNTS—Con.
—delivery to treasurer.....2156
—receipt for 2166
—settlement with treasurer..2167
—not received except from treasurer 2168
By Secretary of Commonwealth of taxes received..2404
Taxes and money belonging to State collected by clerk.2405
—when payment made 2406
—how payment made 2406
—penalty for failure 2406
—procedure to collect .. .2406
—delinquent taxes 2419
By oyster inspector of revenues collected 3222
Fines for removal of oysters from polluted areas 3287
License tax of pilots 3515

Pensions

To answer inquiries and furnish information relative to 2650
Forms, rules and regulations.2651
Warrant for 2652
Roll, entry on 2652
—how kept 2653
—copies 2653
—names erased from, 2650, 2653, 2657
—names enrolled under previous statutes to remain....2654
Warrant for funeral expenses of pensioner 2646
Affidavit of income filed....2650
Application, copy of and order allowing pension 2656
—examination 2652
Certificate to of pensioner dying or removed from rolls 2657
Stationery, forms, etc., furnished by Superintendent of Public Printing 2659
Payment of 2661
Furnishing artificial limbs to pensioners 2668-2671
—order for payment 2670

Reports by

Funds applicable to school purposes 746, 749
To courts and Commonwealth's attorneys whether treasurers have settled with State 2201
—clerk or other officer who has failed to settle.....2201
To Governor, annual.....2202
—statement 2202
—what to contain 2203
To court of misconduct of commissioner of revenue..2265
—examiner of records.....2265
To General Assembly, collection of debts due State....2542
—sale of State lands 2542
To Commonwealth's attorney of officer not accounting for fines 2546
To Attorney General of corporation paying taxes in other than currency 2617
To State Corporation Commission of banks failing to pay fee for examination..4122

Reports to

By Secretary of the Commonwealth of sales of books, etc. 357
—of taxes received 2404
By Superintendent of Public Printing 391

Sec.

AUDITOR OF PUBLIC ACCOUNTS—Con.
By escheator, of sales 510
—penalty for failure to make. 511
By State Accountant 560
By county treasurer, of forest reserve 743
Distributive statement of school funds 746
By State institutions 987
By convict lime board 1272
Of jail prisoner put on State convict road force 2076
By Superintendent of Penitentiary, accounts of jail prisoners on State convict road force 2077
By State depositories 2162
Of allowances made by courts 2187
By treasurer of receipts and payments 2197
—of violations of duty by commissioner of revenue...2384
By local boards of review..2227
—of merchants' purchases..2366
Of proceedings against person rendering false tax list 2328
Of fine and costs, proceedings for violation of license or revenue laws 2396
By clerk of the court, collection of taxes and other money belonging to State..2405
—of delinquent taxes 2419
—of redemption of land sold to State for taxes.....2491
—list of fines 2563, 2564
—statement with 2565
—fee for 2565
—penalty for failure 2567
By commissioner of revenue, assessment of omitted capitation tax 2420
—collections 2420
Of appointment of delinquent capitation tax collector...2421
Of delinquent capitation taxes 2423, 2425
Lists of delinquent taxes, manner of forwarding....2427
—credit on to treasurers....2427
Of sale of delinquent lands..2471
Of change in report of delinquent tax sale 2473
Of correction of list of delinquent lands 2473
By register of land office....2507
Of fines collected 2546
Of violations of revenue laws 2548
Of examination of bond of county and city treasurers by commissioner 2777
Of cost of making report of prisoners in jail 2871
By oyster inspector 3222
Of sale of forfeited property 3377
By State Corporation Commission, tax collected for impression of seal 3742
—of insolvency of State depository 4120
By Commissioner of Insurance of money received....4197
Of allowances to officers in criminal cases 4961
Of allowances to jurors....6010
Of deposits of funds under control of courts 6310

State lands

List of 2536
Register 2537

Digitized by Google

Sec.

AUDITOR OF PUBLIC ACCOUNTS—Con.

Appointment of agent to sell 2538
—compensation 2540
Sales, entry 2539
Deeds 2541
Report 2542

Taxation

Preparation of land and property books 752
Application to local board of review for correction of assessment 2227
—to courts 2227
Copy of assessment transmitted to 2247
—of changes in 2249
Application by to local board of review for correction of erroneous assessment of personal property 2263
—copy of order 2263
—appeal 2263
Instructions to commissioners of revenue 2264
—expense of 2264
Authorization to commissioner of revenue to procure substitutes when books of predecessor cannot be obtained 2267
List of conveyances furnished to by clerk 2274
Copies of tax books furnished to 2342
—penalty for failure 2342
—withholding compensation 2342
—extension of time for.... 2342
—examination and comparison of 2345
—evidence in proceedings against treasurers 2345
—receipt for 2346
List, income taxes, how kept 2344
—who may inspect.... 2343, 2344
Deduction by from compensation of commissioner for extension of less tax than law requires 2330
Repayment postage and express to clerks and commissioners 2350
Compensation of commissioners, when withheld.... 2351
Order correcting assessment for taxation certified to... 2386
Warrant for refund when assessment corrected 2388
Proceeding to correct erroneous assessment of taxes, rehearing, appeal 2391
Correction of books by taxpayer before grand jury, notice of 2397
Settlement by treasurers with 2412
Statements to by treasurers 2412
Delinquent treasurers, statement of 2413
—to whom furnished 2413
Delinquent tax list certified to 2417
Omitted capitation taxes, accounting by treasurer 2420
Delinquent capitation taxes collected, disposition of funds 2424
—receipts for forwarded to. 2422
Delinquent list, delivery to collector 2429

Sec.

AUDITOR OF PUBLIC ACCOUNTS—Con.

List of delinquent treasurers furnished to Attorney General 2432
—penalty for failure to make, liability of bond 2434
Delinquent taxes, appointment of collector 2436
—compensation 2436
—bond of, filing 2437
Payment in advance of taxes on real estate 2438
—list and warrants for payments 2438
Notice to of motion for apportionment of taxes when property partitioned 2449
—copy of order apportioning 2449
Delinquent lands, record of.. 2454
—advertisement of 2460
—city and town real estate.. 3077
Purchase of delinquent land in name of 2489
—credit to treasurer 2489
—list, recordation 2489, 2490
—title 2490
—redemption 2491, 2495
—report to 2491
—effect on suits and actions. 2489
—allowance of fees, warrant for 2501
Redemption of delinquent land, accounting for levies paid for 2506
Employment of attorney to collect 2533
—compensation 2533
—bond, filing 2533
Coupons from State bonds delivered to for taxes..... 2596
—marking judgment satisfied 2596
— —agents 2596

Treasurer

Charge poll taxes to treasurer 111
To charge treasurer with capitation taxes assessed.. 117
—credits 117
Accounts with 2200
To charge with amount due State from sale of delinquent lands 2471

Warrants

On library fund 359
For paper furnished to Superintendent of Public Printing 383
For salary of Assistant Superintendent of Public Printing 398
For salary of messenger to Superintendent of Public Printing 400
For purchase of furniture for Governor's house 406
For water furnished Capitol and State Library Building. 406
For refund to person applying for land grant 439
Proceeds of derelict or escheated property to person entitled 521
To State Treasurer costs of services to counties and cities of State Accountant 565
State appropriation for high schools 708
—normal departments of... 709
Revenue set apart for school purposes 738

Digitized by Google

Sec.

AUDITOR OF PUBLIC ACCOUNTS—Con.
Proceeds from forest reserve to treasurer 742
On forest reserve fund..... 743
For disbursement of school funds 746, 749
Interest on Corcoran fund.. 827
Funds received from secretary of the Interior of United States 853, 929
For fees to State Entomologist 883
To Virginia Normal and Industrial Institute 956
Funds appropriated for State hospitals 1013
Expense of confining insane person in jail 1049
On fertilizer fund 1123
For salaries and expenses, Board of Agriculture 1153
For salary and expenses Dairy and Food Commissioner 1158, 1243
For expenses division of markets 1256
For expenses, law relative to commission merchants..1265
For expenses Board of Pharmacy 1669
Travelling expenses agent Board of Charities and Corrections 1907
Expenses of placing minor in prison association 1956
To superintendent of penitentiary, accounts of jail prisoners on State convict road force 2077
Salaries of assistants of Highway Commissioner....2103
For share of counties in State money aid for roads 2105
For payment of money into State treasury 2155, 2182
—receipt 2155
—what to contain 2183
For payment of funds from State treasury 2164
Claims allowed against State.2181
Duplicates, when issued....2184
—bond 2184
—when bond not required...2184
School warrant, loss of, relief of treasurer 2185
—bond 2185
For allowances made by courts 2187
New, when check charged off 2194
Compensation of commissioner of revenue 2349
—when withheld 2355
Merchant's license, refund of overcharge 2366
Compensation of agent appointed to assess license tax 2370
For commission of commissioner of revenue 2383
Refund of taxes after correction of assessment 2388
Compensation of commissioner to examine books of clerk of the court 2405
Taxes on real estate paid in advance 2438
For fees, purchase of delinquent lands 2501
Expenses of refunding State debt 2599
Indemnity to officer collecting taxes 2619

Sec.

AUDITOR OF PUBLIC ACCOUNTS—Con.
To refund temporary loans to State 2640
Burial expenses of pensioner 2646
For pensions 2652
For cost of preparing report of prisoners in jail 2871
Costs and expenses of executing oyster laws 3208
Accounts, Commissioner of Game 3312
On game protection fund....3336
For salaries of officers at seat of government 3453
For salary of State officer, when warrant not to issue.3476
For amount found due to officer indebted to State....3476
For fees to witnesses 3530
Expenses, fees, mileage, etc., allowed by State Corporation Commission 3744
Refund of excessive charter tax or fee charged corporation 3775
On banking fund, State Corporation Commission 4122
For fees and expenses in criminal case removed to federal court 4971
For compensation of officers, &c., of penitentiary 5041
—of State prison farm.....5047
For fees of clerks for marriages reported to 5099

AUGUSTA COUNTY
Jail, jailer 2868
Commonwealth's attorney, fees 3505

AUTOMOBILES AND MOTOR VEHICLES
Unlawful operation of 2125
Application for certificate of registration and license to operate by owner 2126
—what to contain 2126
Certificate of registration and license to owner, issuance of 2127
—form 2127
—when to be exhibited.....2127
—manufacturer, agent, dealer, 2128
— —application, fee, form..2128
—chauffeur, application 2129
— —fee 2129
— —form, badge 2129
—when terminated 2130
—number plate 2131
—fees for 2128, 2129, 2132
— —pro rate of 2132
—loss of, issue of duplicate.2135
— —fee 2135
—surrender of when machine sold 2136
—transfer to new machine..2136
— —fee 2136
—transfer to purchaser of machine 2136
— —fee 2136
—use on machine for which not issued forbidden 2136
Number plate 2131
—wrong use of, penalty....2133
—loss of, report of.....2135
Horse power of, determination 2132
Use of by non-resident owner or operator 2137
—sections applicable to.....2137
Reciprocal agreements with other States by Governor.2137

Digitized by Google

Sec.

AUTOMOBILES AND MOTOR VEHICLES—Con.
Speed limits 2138
Duties of driver as to horse-drawn vehicles 2139, 2140
Locks for, use of 2141
Brakes, bells, horns, etc....2142
Lights, how used 2142
When driver shall keep to right side of roadway....2143
Laws relative to, enforcement by Highway Commissioner 2144
Penalties 2145
—appeals 2145
Violations of law relative to, civil liability for.....2146
—seizure of machine 2146
—sale of machine 2147
— —notice, publication.....2147
What machines not included in law as to 2148
Machines owned by State, counties and cities, registration of 2148
Damages for negligent operation of 2148
Garages, licenses for. 2149
—fees 2149
—definition 2150
Operation for hire, fees....2151
—where payable 2152
—penalty 2153
License fees, how expended.2154
Turnpike toll on 4083
—on valley turnpike 4083
Unauthorized use of ..... .4480
Hired, injury or damage to, penalty for 4567
—rehiring 4567
—with intent to cheat.....4567
Drinking ardent spirits in, punishment 4631
Used in transporting ardent spirits, seizure 4657
—how disposed of 4658
Running while intoxicated..4722
Lien of keeper of garage....6445
—how enforced 6449

AUTOPSY
By coroner, fee for 4818

AVOIDANCE
Of fraudulent transfer, suit by creditor 5186

BACK BAY
Shooting water fowl in....3347
Unlawful hunting in 3357

BACK RIVER
Use of pound nets in.....3173
—penalty 3175

BAGATELLE TABLES
License for 2373

BAGGAGE
Unclaimed, sale of for charges 3933, 3934
Checking, by railroad 3990
Of person accused of violating prohibition law, examination of 4636
In hotel or boarding house, lien for charges.....6444
—how enforced 6449-6451
Removing from hotel or boarding house, punishment 4464

BAIL
See **"Bail Commissioner"**
Excessive not to be required .....Va. Const., § 9
General Assembly may make provisions as to hearing and determining applications for.....Va. Const., § 109

Sec.

BAIL—Con.
For violations of forestry laws 548
Debt, action of for recovery of, penalty for violation of license or revenue laws...2395
Obligation taken by officer, when void 2824
Violations of law relating to pilots 3621
Person arrested for transporting ardent spirits in vehicle 4657
In proceeding to require recognizance of person intending to commit crime..4792
Allowance by justice, 4828, 4837, 4845
Allowance by court or judge, 4829, 4834
Allowance by bail commissioner 4830, 4834
—of adjoining county..4831, 4834
Allowance where judge of corporation court sick or absent 4832, 4834
Refusal to grant or requirement of excessive, appeal 4829, 4830, 4831, 4832
Increasing amount of..4833, 4836
Surety on taking security from principal 4836
Allowance to accused arrested out of county where offense committed 4837
Bail commissioner, allowance of bail 4830, 4831, 4834
—fees 4835
—certification of recognizance to clerk of court..4847
— —attachment for failure..4847
Recognizance, surety on taking security from principal 4836
—of accused arrested out of county where offense committed 4837
—on examination of accused 4846
—certification to clerk.....4847
—discharge from on compromise 4849
—when required 4972
—terms of 4973
—waiver in 4974
—for insane person or minor 4975
—commitment on failure to give, discharge 4976
—taken out of court, where to be sent 4977
—default, entry 4978
— —proceedings on 4978
—discharge of surety on payment 4979
— —on surrender of principal 4982
— —certificate to surety....4983
— —bailing after surrender.4983
—remission of penalty.....4980
—defects of form not to defeat action on 4981
—action or scire facias on, limitation 5815
—chapter on judgments embraces 6479
Bail-piece, delivery to bail..4838
Where examination or trial adjourned by justice.....4839
By officer making arrest on capias or attachment.....4887
—certificate 4882
When venue changed.....4915

Digitized by Google

Sec.

BAIL—Con.
After conviction of crime..4930
Writ of error to judgment refusing or requiring excessive 4930
On appeal from conviction before justice 4989
In proceeding to extradite fugitive from justice 5063
Motion by surety against principal for money paid, 5777, 5778
In habeas corpus proceeding 5853, 5859
Jurisdiction of courts and judges of city of Richmond 5928
—law and equity court of Richmond 5922
—court of law and chancery of Norfolk 5935
Capias proceedings against debtor about to quit State, 6421-6423

BAIL COMMISSIONER
See "Bail"
United States commissioner may act as 291
Appointment 6188
Allowance of bail..4830, 4831, 4834
Fees 4835
Certification of recognizance to clerk of court 4847
—attachment for failure 4847

BAILEE
Lien of, how enforced..6449-6451

BAILIFF
Juvenile and domestic relations court 1952
Civil and police justice....3110
—appointment, duties, compensation 3110
—powers 3110
State Corporation Commission, appointment 3699
—Va. Const., § 155
—removal 3699
—term 3699
—qualification 3699, 3700
—vacancy 3702
—duties and powers 3706
—bond 3708
—salary 3440
—service of process by.....3730
— —penalty for failing to execute 3730
—fees 3730
— —how accounted for.....3730
—payments of collections to clerk of 3747
— —penalty for failure.....3747

BAIL-PIECE
Delivered to bail, form of..4838

BAKERY
Inspection of by Dairy and Food Commissioner 1160
—penalty for keeping in unsanitary condition 1160
Children, employment of, 1809-1811, 1814-1816
—penalty 1814
—by parent 1815

BALLAST MASTERS
Appointment 3648
—Alexandria, port of 3648
Term 3649
Vacancy 3650
At Fredericksburg, assistants 3651
Penalty for refusal to serve.3652
Penalty for neglect of duty..3653
Duties 3654
Compensation 3654

Sec.

BALLAST MASTERS—Con.
Vessels, notice of discharging ballast 3655
Justice or freeholder to act, when 3656
Certificate, production by master 3657
—penalty for failure 3657

BALLOTS
See "Elections"

BANKS AND BANKING
See "Banks of Circulation"; "Savings Banks"
Checks: See "Negotiable Instruments"
Shares of stock of incorporated bank subject to taxation .....Va. Const., § 182
Weights and measures of, how often proved and sealed 1484
Tender by of gold weighed with weights not sealed..1485
Road bonds for magisterial district, proceeds deposited in 2124
State depository, designation as 2157
—insolvency, notice of to Auditor and Treasurer....4120
Checks and certificates of deposit, payments to State treasury by 2165
Statement to examiner of records 2223
—penalty for failing to make 2223
Payment of funds under order of court, receipt for taxes.2309
Proceedings against by Auditor for violation of revenue laws 2544
How incorporated 4093
Law governing 4093
General powers...4098, 4103, 4111
Limitation on amount to be invested in bank building.4104
Business which may be done by 4111
Capital, minimum required..4099
—subscriptions, how payable.4100
—proportion required to be paid before beginning business 4100
—shares of stock, transfer to foreign personal representative 5348
Branches, when authorized..4101
—name under which operated 4101
—local taxation of branch and capital 4102
—reports to commissioner of revenue 4102
—fees for examination of..4122
Certificate from State Corporation Commission required before commencing business 4105
—publication of certificate..4105
By-laws, how made, altered, repealed 4106
Directors, number, residence of 4107
—discount by of paper refused by bank, prohibited.4108
—election of president and other officers 4109
—meetings 4109
—settlement of cashier's account 4110
—authorizing loans 4110
—must be stockholders 4116

Digitized by Google

Sec.

BANKS AND BANKING—Con.
—oath 4117
—election 4118
—term 4118
—vacancy 4118
—dividends declared by.....4119
President, election 4109
Cashier, settlement of accounts of 4110
Making acceptances 4112
Issuing letters of credit....4112
Discounts 4111
—not considered as money borrowed 4115
Deposits, how used 4113
—of deceased persons and persons under disabilities, payment to personal representative, guardian, &c...4125
—of minors, how held and paid 4126
—in name of two or more persons, or survivor, how discharged 4127
—receiving when insolvent..4132
—regulation as to making or withdrawing 4147
— —printing in pass book..4147
— —posting 4147
—limitation on action to recover 5810
Real estate, purposes for which bank may purchase, hold or convey 4114
Loans, amount to one person, firm, &c.....4115
—on stock 4115
—rate of interest may charge 5553
Dividends 4119
Surplus 4119
Undivided profits 4119
—how ascertained 4119
Statements to State Corporation Commission 4120
—publication of 4120
—form of 4120
Examinations by State Corporation Commission 4120
—application of stockholders or directors for 4120
—expenses of 4120
—duty of officers and directors 4120
—fees for 4122
—refund of fees 4122
Receivers, when State Corporation Commission may apply for 4120
When State Corporation Commission may close 4120
Examiners, appointment 4121
—assistants, salaries 4121
—salary, oath, qualifications.4121
—bond 4121
Definition 4123, 5752
Penalties, violating law as to branches 4101
—investing more than lawful amount in bank building..4104
—certificate from State Corporation Commission, beginning business before obtaining 4105
— —failure to publish.....4105
—failure to file oath of director with State Corporation Commission 4117
—failing to furnish statement of financial condition.4124
— —failing to publish.....4124
—officer refusing assistance to examiner 4124

Sec.

BANKS AND BANKING—Con.
— —making false statement of financial condition 4124
—unlawfully engaging in business of 4131, 4136
—unlawful use of terms "bank," "banker," "banking," &c.....4131
—receiving deposits when insolvent 4132
—failing to furnish statement to examiners of records 2323
Records, reports, &c., not open to public 4124
Safety deposit box hired by two or more persons, right of access to.....4128
Institutions included under laws relating to 4129
Modification of powers and duties of 4129
Who prohibited from engaging in business of....4130
Engaging in business out of State, prohibited 4130
Foreign, prohibited from engaging in business in this State 4130
Unlawful use of terms "bank," "banker," "banking," &c.....4131
Inspection of by General Assembly 4133
Charters, repeal or modification by General Assembly..4134
Permitted to become members of Federal Reserve Bank System 4135
Name, word corporation not necessary 4145
Issuing currency prohibited.4150
Insurance company not to engage in banking 4240
Officer or clerk, fraudulent entry by 4457
Intoxicating liquors, handling drafts in payment for, unlawful, penalty 4610
Rate of interest may charge.5553
Negotiable instrument payable to cashier or officer of, how negotiated 5604
—made payable at bank, equivalent to order to pay.5649
—payable at bank, presentment of 5637
Checks, defined 5747
—law applicable to 5747
—when must be presented for payment, effect of delay..5748
— —death of drawer, payment 5748
—certification of 5749, 5750
—not an assignment 5751
—bank not liable on until acceptance or certification.5751
Cashier and tellers exempt from jury service 5985
Payment of tax on court funds deposited in.....6310

BANKS OF CIRCULATION
Prohibition of 4150
Contracts for forming, void.4150
Contracts and securities originating from, void 4151
—recovery of money paid under 4151
Capital stock, forfeiture of..4152
—suit to enforce 4152
Members of company personally liable 4153

Digitized by Google

Sec.

BANK NOTES
Larceny of 4442, 4443
Forgery of, punishment.....4487
Uttering forged 4487
—having in possession.....4490
Instruments for forging, having in possession, making, mending, &c.....4488
Forged, search warrant for, 4820-4822
Embezzlement or fraudulent conversion of, sufficiency of indictment 4870
Levy of execution on.....6485
—how accounted for 6487
—delivered to officer.....6504
— —disposition of .. .6507, 6509

BANKING HOUSE
Burning or destroying, punishment 4430
Entry with intent to commit murder, rape or robbery..4438
—with intent to commit other crime 4439

BANKRUPTCY
Notice to bankrupt of dishonor of negotiable instrument 5662
Of drawee of bill of exchange, presentment to for acceptance 5707
Of acceptor of bill of exchange, protest for better security 5720
Effect of on mechanic's lien.6442
Discharge, proceeding to note on judgment docket.....6467

BAR EXAMINATION
See **"Attorneys at Law"**

BARGAIN AND SALE
Deed of, transfer by of possession to use 5155

BARLEY
Bushel, standard measure....1470

BARN
Burning or destroying, punishment 4431
—containing live stock.....4428

BARREL
For inspection, flour, meal and bread 1407, 1408
—fish 1409
—beef and pork 1410
—pitch, tar, turpentine ...1411
—salt 1412
Apples, standard 1477
Agricultural products, truck, standard 1479
Flour, standard 1474

BARYTES
Adulteration of drugs or food with 1702

BASEBALL PARK
City police, authority at....3005

BASS
When unlawful to take.....3195
—buying, selling, using.....3195
—penalty 3196
Fishing for in Potomac River 3205, 3305
Size of that may be taken, 3172, 3207
Manner of taking 3206
Time of taking 3206
Number taken in one day or possessed at one time.3208
Penalty for violation of law as to taking 3210

Sec.

BASS—Con.
Counties to which law not applicable 3210

BASTARDS
Inheritance from mother....5268
Children of slaves, inheritance by 5268
Marriage legitimizes 5269
Issue of null marriage deemed legitimate 5270

BATH COUNTY
Commonwealth's attorney, fee 3505

BATHING GROUNDS
Assignment of location for.3230

BATTERY
See **"Assault and Battery"**

BAYLOR SURVEY
See **"Oysters"**
Re-establishment of lines of.3163
—application, bond, cost....3163
Re-survey of 3257

BEACONS
Interference with or destruction of, punishment 4756

BEANS
Navy and soja, bushel.....1470

BEARS
Leading, driving or transporting along street or road, punishment 4737

BEAR CREEK
Obstructing navigation of, punishment 4752

BEARER
See **"Negotiable Instruments"**
When negotiable instrument is payable to 5570
—indorsed in blank 5596
—negotiation of..5592, 5596, 5602
—definition of 5752

BEAVER
Hunting for on land of another 3338

BEDFORD COUNTY
Commonwealth's attorney, fees 3505

BEEF
See **"Inspectors"; "Inspection"**
Inspectors of 1400, 1401, 1402
How packed for inspection..1410
Owner to mark weight and tare 1415
—penalty 1417
Brand 1420
How marked when unfit to pass 1428

BEER
See **"Intoxicating Liquors"**
As ardent spirits 4581

BELLS
On railroad locomotive, signals by 3958
—penalty for failing to give..3960
—effect of failure to give in actions for damages 3959
Buying or receiving with intent to defraud 4449

BELL FIXTURES
Buying or receiving with intent to defraud 4449

BELLADONNA
Sale, label 1691

BENEFICIAL OWNER
Actions by, on choses in action 5768-5770

Digitized by Google

Sec.

BENEFICIARY
Of death benefits in fraternal benefit society 4278

BENEFIT OF CLERGY
Not allowed ..... 4761.

BENEVOLENT ASSOCIATIONS
See "Insurance"; "Fraternal Benefit Society"; "Corporations"
Property of 47
Land 48
Books and furniture 49
Trustees of 49
Exemption of property of from taxation 2272, 2301
—Va. Const., § 183
Inheritance tax on gifts to 2272
Incorporation 3872-3880

BENEVOLENT INSTITUTION
Fraternal benefit society as....4303

BEQUESTS
See "Wills"
For educational or literary purposes 587
—how taken and held 588
—how will probated 589
—trustees 590
—power of General Assembly to suspend or repeal 593
For school purposes vested in school board 648
To school boards 671
To retired teachers' fund..... 792
To University of Virginia 823
To Virginia Normal and Industrial Institute 957
To educational institution, investment in State bonds..... 994
—irrevocable 995
Satisfaction by advancement....5237
Extent of operation of 5241

BETTERMENTS
See also "Ejectment"
Allowance for...5483-5485, 5491-5505

BETTING
See also "Gaming"
Or games in public place..4679, 4681
—bookmaking, pool selling, 4682, 4683
Punishment for 4686
On election 4692
On horse race run on road, bridge, landing or street....4741
Contract for void 5553

BEVERAGES
See "Intoxicating Liquors"
When considered ardent spirits.4581

BICYCLE
Care in overtaking and passing other vehicles, &c.....4736
—penalty 4736
Riding on sidewalk in town or village 4733

BIDS
For public printing 382
—appeal of bidder 382
To furnish paper 383
—appeal of bidder 383
Construction of drainage works.1761
Maintenance, construction or improvement of roads, 2028, 2029, 2030, 2031, 2034
—with State aid 2102
—with proceeds of bond issue..2120
Construction of bridges with State aid 2109
Surrender of bonds for cancellation 2625
Franchise, sale of by city or town 3016, 3018, 3019, 3020

Sec.

BIDS—Con.
—Va. Const., § 125
Printing records on appeals, advertising for 6358-6360

BIGAMY
Defined and punished.....4538
When not 4539

BIG SANDY RIVER
Obstructing navigation of prongs of, punishment 4752

BILLS
Legislative, see "General Assembly"
To circulate as money, corporation not to issue 3782
Embezzlement of 4451

BILL OF ATTAINDER
Prohibited .....Va. Const., § 58

BILL OF DISCOVERY
To recover money or property lost in gaming 5560
Interrogatories to adverse party 6236
Production of books and writings 6237
Election between interrogatories and discovery 6238

BILL IN EQUITY
See "Equity"

BILL OF EXCEPTIONS
See "Exceptions, Bill of"

BILL OF EXCHANGE
See "Negotiable Instruments"

BILL OF LADING
See also "Carriers"
Transportation company, to issue 3915
—penalty for failure 3915
When deemed contract for carriage to ultimate destination over connecting carrier, 3926, 3929
Limitations of liability in.....3926
Embezzlement of 4451

BILL OF PARTICULARS
Action of debt for recovery of penalty for violation of license or revenue laws 3295
Before civil and police justice..3105
In prosecution for embezzlement 4451
Notice of motion for judgment.6046
Court may require 6091
Declaration alleging negligence.6115

BILL OF REVIEW
Filing in clerk's office 6305
Time for 6316
Injunction to decree 6316
Leave of court 6316
Appeals 6317
—time for 6355

BILL OF RIGHTS
Equality and rights of men, Va. Const., § 1
Source of power.....Va. Const., § 2
Government for common benefit, Va. Const., § 3
Exclusive emoluments or privileges prohibited....Va. Const., § 4
Hereditary office prohibited, Va. Const., § 5
Separation of legislative, judicial and executive departments .....Va. Const., § 5
Elections to be free..Va. Const., § 6
Laws not to be suspended, Va. Const., § 7
Criminal prosecutions, nature of accusation .....Va. Const., § 8

Digitized by Google

Sec.
BILL OF RIGHTS—Con.
—accused not compelled to give evidence against himself, Va. Const., § 8
—not to be put twice in jeopardy for same offense..Va. Const., § 8
—appeals by Commonwealth in revenue cases.....Va. Const., § 8
—right to be confronted with accusers and witnesses, Va. Const., § 8
—evidence in favor of accused, Va. Const., § 8
—speedy trial .....Va. Const., § 8
—jury trial .....Va. Const., § 8
—impartial jury of vicinage, Va. Const., § 8
—when jury trial may be waived, ...Va. Const., § 8
—unanimous consent of jury, Va. Const., § 8
—due process of law, Va. Const., § 8
—plea of guilty .....Va. Const., § 8
—justice of peace, trial without jury .....Va. Const., § 8
—appeal from justice, trial by jury .....Va. Const., § 8
—number of jurors..Va. Const., § 8
Excessive bail or fines prohibited .....Va. Const., § 9
Cruel and unusual punishments prohibited .....Va. Const., § 9
General warrants of searches and seizures prohibited, Va. Const., § 10
Due process of law..Va. Const., § 11
Trial by jury .....Va. Const., § 11
Freedom of the press and of speech .....Va. Const., § 12
Militia .....Va. Const., § 13
Standing armies ....Va. Const., § 13
Subordination of military to civil power .....Va. Const., § 13
Uniform government, Va. Const., § 14
Preservation of free government .....Va. Const., § 15
Religious freedom..Va. Const., § 16
Construction .....Va. Const., § 17

BILL OF SALE
Book recorded in 3393

BILLIARD ROOM
License for tables 2373
Revocation of license for violation of prohibition law 4653

BINIODE OF MERCURY
Sale of, label 1691

BIRDS
Preservation of, etc., powers of supervisors 2743
Laws relating to, publication of 3317
Killing, destroying nests, etc., other than game birds, penalty 3364
—offering plumage for sale....3364
Laws relating to designated county continued in force....3365
Shooting for amusement, etc., punishment 4566
—renting premises for 4566

BIRTHS AND DEATHS
See also **"Vital Statistics"; "State Board of Health"**
Records, false entries in.....4491
—giving false information for..4492
Foreign register of, as evidence.6207

BITTER ALMONDS
Oil, sale of 1691

Sec.
BLACKBIRDS
Killing 3364

BLACKJACK
Selling, furnishing, etc., punishment 4535

BLACKMAIL
Punishment 4406

BLAND COUNTY
Commonwealth's attorney, fee..3505

BLANKS
In negotiable instruments, when may be filled 5576
—in incomplete instrument not delivered 5577

BLIGHT
Chestnut trees 1287, 1288

BLOCK SYSTEM
To regulate movement of trains.3989

BLIND
See **"Deaf, Dumb and Blind"**

BLOOD HOUNDS
Keeping at State prison farm..5048
—furnishing to sheriffs and sergeants 5048

BLUEFISH
License to catch 3166-3169
Size of that may be caught....3172

BLUE GRASS
Seed, bushel, standard 1470

BLUESTONE
Sale of 1681

BOARD OF AGRICULTURE AND IMMIGRATION
See also **"Commissioner of Agriculture and Immigration"**
Composition 1099
—Va. Const., § 143
Appointment, term 1099
—Va. Const., § 143
Powers and duties 1102
—Va. Const., § 144
Compensation 1103
To prescribe duties of Commissioner of Agriculture and Immigration .....Va. Const., § 145
Meetings 1100
President, election 1101
—Va. Const., § 146
—ex officio visitor of Virginia Polytechnic Institute ....., 859
— —Va. Const., § 146
—conference with Governor on county demonstration work.. 925
Secretary 1101
Executive officer 1106
Employees, salaries 1106
—State Chemist 1106
—Assistant State Chemist 1106
Warrants for expenditures.....1106
Report of commissioner 1109
Fertilizer inspectors 1119
Rules and regulations as to fertilizers 1119, 1121
Appeal to from commissioner's assessment of damages 1120
Bulk shipments of fertilizer...1122
Fertilizer Fund, warrants.1110, 1123
—vouchers 1123
Report of commissioner.....1124
Fees for registration brands of lime 1134
Weeds, designation of 1139
Rules and regulations as to agricultural seeds 1147
Salaries and expenses 1153
Dairy and Food Commissioner.1155
—assistants 1158
—office room, &c., for.....1158
—audit accounts of 1158

Digitized by Google

Sec.

BOARD OF AGRICULTURE AND IMMIGRATION—Con.
—chemical work for 1159
—annual report 1228
—expenses of 1243
Food, rules for analysis of, 1176, 1178
—assistants 1176
—notice, hearing 1178
—standards of variability of...1185
Measuring utensils for milk, testing and marking 1206-1214
Disposition of fees 1212
Milk laws, expense of enforcing.1212
"Person" or "holder" defined....1214
Sanitation of slaughter houses..1221
—rules and regulations 1222
Feeding stuffs, rules and regulations 1229, 1238
—appointments of assistants in analysis 1229
—violation of laws as to..1230, 1231
—definition of 1233
—printed statement required, 1233, 1234, 1235, 1236
— inspection tax 1239
— —tax tags 1239
—analysis 1241
— —penalty for hindering inspector 1242
Analyses at request of dealer..1244
Condimental stock and poultry food, analysis 1245
—assistants for, compensation.1245
—registration of brands 1246
— penalties for violating laws..1249
Division of Markets, director....1250
—assistants, compensation 1250
—powers and duties 1251
—rules and regulations 1251
—information, dissemination of.1252
—bulletins 1252
—improper practices, investigation and correction of 1253
—United States Department of Agriculture, co-operation with, 1254
—reports of work done 1255
—payment of expenses 1256
—definition of terms 1257
Rules and regulations for collection fees, &c., from commission merchants 1265
Expenses of carrying out laws as to commission merchants..1265
Assaying minerals for owners..1281
Hog cholera, serum for....1283-1285
—receipts from sale of 1285
Supervision, appropriation 1286
Blight in chestnut trees, prevention of spread of 1287
—experts, powers, duties, appropriation 1288
Drugs, adulterated or misbranded, analysis of 1660

BOARD OF BAR EXAMINERS
See also **"Attorneys at Law"**
Appointment 3410
Term 3410
Vacancies 3410
Examinations by, time and place 3411
—licenses issued 3411
—certified list of licenses to Supreme Court of Appeals....3411
—rules and regulations 3413
—preservation of papers 3414
—re-examinations 3415
—fees, disposition of 3417
—preliminary certificate..3418, 3419
Secretary and treasurer 3412
—pay 3416
President 3413
Quorum 3413

Sec.

BOARD OF BAR EXAMINERS—Con.
Pay of members 3416
Licenses, issuance 3411
—revocation 3420

BOARD OF CHARITIES AND CORRECTIONS
Continuation 1888
Members, appointment, term....1888
—who excluded from membership 1888
—vacancies 1888
—removal 1889
—failure to attend meetings...1889
—compensation 1890
Office 1890
Meetings 1890
Rules and regulations 1890
Secretary, appointment 1891
—salary, travelling expenses...1891
—who ineligible 1891
—assistant, appointment, salary. 1892
— —bond, removal 1893
—oath 1892
—bond 1892
—removal 1893
—when to make report of prisoners in jail 2871
Oath of members 1893
Duties 1894
Institutions visited and supervised by 1894
Reports 1894
Distribution of literature 1894
Plans of new jails, reformatories and almshouses 1896
Reports to by officials of institutions 1895
—by supervisors and councils of condition of jails 2862
—by sheriff or jailer, prisoners in jail 2871
— —procedure when not made..2871
Local boards of visitors, appointment 1897
—duties 1897
—reports 1897
—compensation 1897
Statistics of defectives and delinquents 1898
Annual report, what to contain.1899
—distribution of 1899
Officer interfering with or refusing to furnish information to 1900
—penalty 1900
Chairman, election of 1901
—payment of salaries and expenses, orders for 1901
—printing for board, orders for.1901
Investigations ordered by Governor 1902
—summoning witnesses, taking testimony, &c.....1902
—expenses, compensation 1902
Board of Poor Commissioners, organization, members 1904
—officers 1904
—meetings, reports, form of....1904
—penalties 1904
—notice of failure to report....1904
Children, dependent, delinquent, neglected, care and custody of 1905
—commitment to board or institution 1906, 1908
—disposition of after commitment 1906
—definition of 1906
—expenses of conveyance.....1907
—probation officers, appointment 1911
— —reports to board 1912

Digitized by Google

Sec.

BOARD OF CHARITIES AND CORRECTIONS—Con.
—inspection of societies and associations receiving 1918
— —reports to board 1918
— —certificate .....191.
—paroled by reformatories, visitation of 1919
— —record, report 1919
—liberal construction of law relative to 1922
Maternity hospitals, license for.1925
—reports of 1928-1930
Children placed out, visiting and investigating 1931
—access to records of 1932
—notification of placing 1933
—for gain or without due inquiry as to home, penalty...1934
Feeble-minded, approval of private institution for 1080
—copies of orders committing furnished to 1081
—register and history 1903
—protection of 1903
—commitment of 1903
—private institutions for, licensing and inspection..of.1903
—children, custody of 1903
Non-residents, deportation of...1903
Mentally defective children, instruction to parents of.....1903

BOARD OF DRAINAGE COMMISSIONERS
See **"Drainage District"**

BOARD OF FIRE COMMISSIONERS
Investigations by 2985
Compelling attendance of witnesses, production of books, etc. 2985

BOARD OF FISHERIES
See also **"Fish and Fishing"; "Commission of Fisheries"**
Definition 3270
Copies of records of as evidence.6197

BOARD OF HARBOR COMMISSIONERS OF NORFOLK, PORTSMOUTH AND NORFOLK COUNTY
Appointment 3665
Term 3666
Quorum 3666
President, officers, election 3666
Vacancy 3666
Jurisdiction 3667
Navigation, removal of obstructions 3668
Wharves and docks, removal...3668
—unauthorized, penalty 3675
Employment of engineer 3670
Designating dredging dump....3671
Preservation of harbor 3672
Appointment and removal of harbor masters 3673
Expenses, compensation 3674
Permit for building wharves, &c. 3675
Prosecutions by 3675
Examination and repair of docks 3676
Annual report 3677
Nothing in chapter one hundred and twenty-eight to effect rights of 3236

BOARD OF HEALTH
See **"Local Board of Health"; "State Board of Health"**

BOARD OF INDEMNITY
Determination and allowance of loss to officer collecting taxes.261?
—to Auditor 2620

Sec.

BOARD OF MEDICAL EXAMINERS
See also **"Physicians and Surgeons"**
Members, term, qualifications..1608
How and when appointed.....1609
Vacancy, removal 1609
Oath 1610
President 1610
Vice-president 1610
Secretary 1610
Meetings 1610
Quorum 1610
Rules and regulations 1610
Examination of candidates for practice of medicine 1610
Powers 1610
Records 1611
—copies to Superintendent of Public Instruction 1611
License to practice medicine, ...1611, 1613
Reciprocity with other States..1613
—fee 1613
Duplicate certificates 1613
—fee 1613
Violations of laws relative to practice of medicine 1614
Refusal to admit candidate to examination 1614
Refusal to grant certificate....1614
Revocation of certificates.....1614
Proceedings against board 1614
Investigation of person practicing 1614
Re-issuing license 1614
Admission to examination 1615
—fee 1615
—requirements 1615
Physician practicing before....1615
Certificate to 1615
Expenditure of funds 1616
Compensation of members 1616
Examinations, conduct of 1617
Issuance of certificates.....1617
—form 1617
Licenses, when not required....1618
Chiropody, certificate to practice, ...1620
—examination of applicants....1621
—fee 1621
Report of violations of law to..1623
—annulment of license 1623

BOARD OF PENSION COMMISSIONERS
See also **"Pensions"**
List of applications for pensions furnished to 2655
Appointment, members 2657
Compensation 2657
Application for pensions, examination of 2657
—report on 2657
Meetings 2657
Pension roll, examination of....2657
—report on 2657
—erasure of names from.....2657

BOARD OF PHARMACY
See also **"Pharmacy"; "Virginia Pharmaceutical Association"**
Rules and regulations 1658, 1671
Specimens 1658
—examination 1660
—report to Commonwealth's attorney 1660
Members, appointment, term....1666
Oath 1666
Vacancies 1666
President 1667
Secretary 1667
Treasurer 1667
—bond 1667

Digitized by Google

Sec.

BOARD OF PHARMACY—Con.
Quorum 1667
Meetings 1668
Expenses 1669, 1670
Salaries 1670
By-laws, rules and regulations..1671
Enforcement of law 1671
Practice of pharmacy, regulation 1672
—sale of poisons 1672
—complaints 1672
Examination of applicants for registration 1673
—certificates 1673
Annual registration of pharmacists, &c.....1674
—fee 1674
—renewals, fee 1674
Investigation of alleged violations of law 1675
—testimony before 1675
—prosecutions, suits 1675
Recognition and recordation of licenses 1676
Refusal to grant license 1677
Revocation of license 1677
—notice of proceeding 1677
—hearing 1677
—notification of revocation....1678
—surrender of certificate 1678
Annual report 1679
Licenses issued without examination 1680
—fee 1680
Insecticides and poisons, permits for sale of 1381
Pharmacist, application for registration 1684
—qualifications 1685
—examination 1685
—fee 1687
—issue of certificate 1688
Assistant pharmacist, application for registration 1684
—qualifications 1686
—examination 1686
—fee 1687
—issue of certificate 1688
Apprentice 1689
—application for registration..1689
—blanks for 1689
—qualifications 1689
—certificate 1689
—fee 1689
Fines and fees, disposition of..1699
Registered pharmacist practicing in adjoining State, certificate to 1700
—residing in Virginia, practicing in adjoining State, license....1700

BOARD OF POLICE COMMISSIONERS
investigations by 2985
—compelling attendance of witnesses, production of books, etc. 2985

BOARD OF POOR COMMISSIONERS
See **"Poor"**

BOARD OF PUBLIC WORKS
State Corporation Commission to perform duties of,
Va. Const., cl. a, k, § 156
Records and papers, copies as evidence 6197

BOARD OF SINKING FUND COMMISSIONERS
See **"Commissioners of the Sinking Fund"**

BOARD OF STATE CANVASSERS
See **"Elections"**
How constituted 188
Election returns, how canvassed by 191

Sec.

BOARD OF STATE CANVASSERS—Con.
Certificates of election 191
To determine tie 192
To canvass abstract of votes cast at primary election 242

BOARD OF SUPERVISORS
How constituted 2710
May sue and be sued.....2710
Seal 2710
Meetings 2711, 2714
—special, how called.....2715
Chairman 2712
Quorum 2714
Parties to petition to incorporate town 2863
Judgment against, no execution on 2764
Mandamus against to compel erection of jail, repair of jail or courthouse 2865-2867
—defendant going out of office, revival 2866
Mandamus to by circuit courts.5890
Records and papers, copies as evidence 6197

Chairman
Presence of at meeting of electoral board 158
Ballots opened in presence of.. 158
Member of board of health.....1492
Election 2712
May administer oaths.....2713
To countersign warrants.....2713
Contract signed by 2730
Bonds signed by 2740
To certify statement of clerk..2775
Fire escapes, notice to by commissioner of labor 3141
Penalty for failure of duty relating to assessment of railroads, etc., by Corporation Commission 3704

Clerk.
Compensation 2002
To furnish to State Tax Board copy of order fixing county levies 2217
Calling special meeting of board 2715
Recordation of votes.....2717
Bonds countersigned by.....2740
Notice of disallowance of claim by supervisors 2761
Notice of appeals served on. 2759, 2761
Appeals from order for levy, duties as to 2762
To keep books and records of board 2766
General duties 2770
Warrants signed by.....2770
Fee for copies of claims allowed 2771
Salary 2772
Statement filed with Auditor...2775
Filing statements and reports of treasurer 2780
—certificate to grand jury as to 2780

Meetings.
Annual, semi-annual 2711
—adjournments 2711
—powers and duties 2719
Special 2714
—adjournments 2714
—how called 2715
Open doors 2717
Who may attend 2717
Sheriff to attend, pay.....2717
Mode of procedure 2717
Majority decides 2717
Tie votes 2717
—recordation of votes.....2717

Digitized by Google

Sec.

BOARD OF STATE CANVASSERS—Con.

—commissioner in chancery to decide, when 2717
— —appointment 2718
Powers 2722
When treasurer to attend.....2774
When Commonwealth's attorney to attend 2759

Members.

Election 127
—Va. Const., § 111
Term 127
What United States officers not disqualified as 291
Acts of Assembly furnished to.. 388
Disqualified as division superintendent of schools 624
Not be district school trustees. 637
Removal for failure to repay loan from literary fund..... 761
Bond 2698
Member not to hold other office 2702
—office vacated thereby.....2702
—Va. Const., § 111
Not to be interested in contracts with county 2707
—in claim against, effect of....2707
—in sale of county property....2723
Commissioner in chancery as...2717
Indictment for failing to publish statement 2768
Compensation 2769

Powers and Duties.

Powers and duties in general—
—Va. Const., § 111
Local and special legislation by, General Assembly may authorize .....Va. Const., § 65
To pay electoral board..... 89
To furnish stationery, etc..... 89
Providing ballot boxes..... 171
To pay expense of special messenger in primary election, 241, 243
May request State Accountant to perform services for county.. 565
—reports of 565
May supplement salary of superintendent of schools 626
Compensation of inspector appointed by State Entomologist 881
Acceptance of provisions relative to diseased cedar trees.. 893
Vote to put in force provisions relating to orchard inspectors 904
To recommend county survey... 126
Provision for compensation of drainage engineer and assistants, board of viewers.....1739
Establishment of drainage district, ascertainment of benefit accruing to highways 1764
Issuing process and compelling attendance of witnesses 2001
County treasurers to make settlement with 2201, 2719
—requiring increase of bond of.1774
—judgments against, settlement 2737
—statements furnished by.2780, 2785
—discharge of, certificate.....2792
—rule against 2792
Proceedings to indemnify owners of sheep or other stock killed by dogs 2319-2323
List of delinquent taxes certified to 2429
—publication 2429
Delinquent tax sale, treasurer's report submitted to 2471
—treasurer charged 2471
List of State purchases of delinquent lands furnished to...2489

Sec.

BOARD OF STATE CANVASSERS—Con.

—credit to treasurer.....2489
Fines collected by clerk or justice, statement of.....2546
—verification and correction....2546
—transmission to Auditor.....2546
—report of delinquency to Commonwealth's attorney 2546
County surveyor recommended by 2716
At annual meeting.....2717
Sale or exchange of county property 2723
—notice, approval 2723
Purchase of real estate.....2723
Control of property of county, 2723, 2728
Building and repairing county buildings 2725
Insurance on county buildings..2726
Providing temporary offices....2726
Fixing allowances to officers...2726
—sheriff 2726
—clerks 2726
—Commonwealth's attorney ...2726
Raising money for county purposes 2727
Employment of counsel to assist Commonwealth's attorney.2727
Awarding premiums for scalps..2729
Providing subsistence in time of want 2730
Providing for armories.....2731
Appropriation for advertising resources of county 2732
Offering rewards in felony cases.2733
Expenditure for promoting agriculture 2734
Loans for courthouses, etc.....2738
—approval by court.....2738
—election for 2738, 2739
—issue of bonds.....2740, 2741
Confederate monuments, authority to erect 2742
—appropriation for 2742
Records, provision for signing where chairman incapacitated.2744
Removal of courthouse, acquirement of land, erection of building 2747
—certifying completion to court.2747
Compensation of auditors.....2756
Sewers, establishment and maintenance of 2757
Preventing destruction of game and fish 2743
Preventing trespass by persons, animals, fowls 2743
Making ordinances and by-laws.2748
Prescribing fines and punishment 2748
Result of election on removal of courthouse certified to.....2747
Judgment against county, provision for payment.....2764
To provide stationery, etc., for officers 2767
—seals 2767
Statement of receipts, disbursements, estimates 2768
—form 2768
To have meridian line established 2847
— cost 2847
—location, marking 2848
To provide courthouse, jail, clerk's office 2854
—purchase of land for.....2854
—offices for treasurer, etc.....2854
—renting rooms in 2854
Town becoming city of second class, adjustment of debt with county 2902, 2903
Notice to, proceeding by city or town to annex territory.....2957

Digitized by Google

Sec.

BOARD OF SUPERVISORS—Con.
Copy of ordinance contracting corporate limits furnished to. 2969
Not to require license of newspaper 3062
Duty as to fire escapes on buildings 3141
Inspection by, fishways in dams. 3194
Fishing for trout, regulation of. 3195
Trapping animals, adoption of law relative to 3355
Game; shortening open season, regulations to protect..... 8356
To provide books for clerks' offices 3400
Increase of salary of circuit judge 3470
Proceedings for declaring lawful fences 3547
Lists of public service corporations and assessments thereon furnished to by State Corporation Commission 3704
—duty with respect to..... 3704
Complaint to State Corporation Commission for examination of transportation or transmission line 3721
Prohibiting excursions and picnic parties 4008-4010
Power of eminent domain..... 4385
Appointment of police for religious meeting 4580

Accounts
Of orchard inspector, examination of 897
Assessors, approval of..... 2250
Of county, auditing..... 2719
Of officers, auditing, settlement with 2719
—sheriff 2719
—county treasurer 2719
—superintendent of poor..... 2719
Against county 2724
—allowance 2724
Audited upon court order, report to 2756
Accounts before, itemized..... 2759
—appeal from allowance..... 2759
—disallowance 2760, 2761
—notice of disallowance..... 2761
—when disallowance final..... 2764
—failure to act upon..... 2764
—action against county allowed, 2764, 2765
—duties of clerk..... 2770, 2771
—allowance indorsed on..... 2771
Of county treasurer, settlement 2786

Appeals
From disapproval by attorney of title to real estate purchased by county or school board.... 2709
By county from allowance of claim 2759
From disallowance of claim by 2760
From order for levy, supersedeas 2762

Appropriations
For fire protection..... 542
For agricultural high schools... 718
For schools 741
For county demonstration work 924
Aid for indigent consumptives..1506
For person bitten by animal having rabies 1552
For salary of judge of circuit court 3466

Bonds
Bond issue for school purposes. 765

Sec.

BOARD OF SUPERVISORS—Con.
—election, expenses 770
—report of result to..... 771
—annual report to 773
Bond issue for roads, petition for 2110
—contested election 2115
—issuance 2116
—sinking fund, levy for..... 2117
—use of sinking fund..... 2118
—by magisterial districts. 2123, 2124
County bonds, retirement..... 2735
—issue of new bonds..... 2735
—amount which may be issued..2736
Erection of public buildings, 2738-2741
—sinking fund for 2741
Removal of courthouse, acquirement of land for and erection of new 2750

Health
Report to by owner of diseased domestic animals 913
—investigation, quarantine, report 914
Quarantine of diseased animals. 914
To fix compensation secretary board of health 1498
Tuberculosis sanatorium, establishment without referendum. 1514
Vaccination, provision for compulsory 1530
Quarantine ground, establishment of 1533
Plumbing and sewers, regulation 1544
—inspector, appointment, duties. 1544
Adoption of law relative to burial of animal or fowl dying of disease 1554
Hospital, establishment by..... 1555
—temporary, for contagious diseases 1557
—pest house, location 1560
Adoption of quarantine regulations 2743
Regulations to prevent spread of contagious diseases 2743
Provision against pollution of water 2743

Jails
Heating, beds and bedding furnished for 2857
Rules for government of 2859
Inspection record of jailer..... 2861
Report to State Board of Charities as to condition of 2862
Inspection of 2862
—reports 2863
Payment of cost of guard for..4955

Poor
Superintendent of poor recommended 126, 2716
—reports by 2794
—salary 2799
Levy for support of poor. 2795, 2805
Provision of farm for 2723
Appointment of physician for poor 2796
—compensation 2796
To pay expense of removing poor person to place of last settlement 2803, 2804
Consent to provision for outside of poorhouse 2805
Provision for payment of fee of attorney appointed to defend poor person 3515

Roads
Control and supervision of roads, causeways, bridges, landings, wharves 1974

Digitized by Google

Sec.

BOARD OF SUPERVISORS—Con.
Establishing or altering of, 1977-1984
—right of way, grade, widths..1977
—viewers, report 1977, 1978
— —compensation 1981, 1983
—surveyor 1977
—examination, location, map...1978
—report 1978
—consent of landowner, effect of 1978
—proceedings on report of viewers 1979
—process, summons, publication, posting 1979
—defense allowed 1980
—commissioners to assess damages 1980
— —compensation 1983
—proceedings on report of commissioners 1989
—appeal 1980
—what land not to be condemned for 1981
Discontinuance of 1984
—appointment viewers 1984
—action on report of 1984
Tax levy 1986, 1987
Plans, specifications, &c., for repairing roads 1988
Contract for building or repairing bridges or causeways... 1990
Between two counties ...1991, 1992
—mandamus to compel supervisors to do their part in constructing 1992
—appeal 1992
Macadamizing 1993
Keeping abandoned turnpike in order 2000
Time for performance of acts under law as to 2005
Construction and maintenance of tramways and railway across 2006, 2007
Removal of gates across public highways 2011
—damages 2012
—appeal 2012
Enactment of special and local legislation 2013
—notice 2014
—effect of chapters 84 and 85..2004
—to what extent repealed.....2018
Superintendent of roads, appointment by.....2019, 2020, 2039
—removal 2023
—compensation 2021
—reports to board by.. 2021, 2027
Road supervisor, appointment. 2038, 2039
—compensation 2039
Division into classes, first class, second class 2026
Division of when forming dividing lines between districts...2027
Reports to by superintendent of roads 2021, 2027, 2037
Warrant for work and material on 2027
Measurement of 2028
Bids for maintenance, etc..2028, 2029
—control or rejection of.....2030
—payment of contractor 2034
—amount of bond of foreman fixed 2032
—bond of contractor, approval..2035
—failure of contractor to comply with contract 2036
Road engineer, employment of..2120
Letting contract for building..2120
—advertising for bids 2120

Sec.

BOARD OF SUPERVISORS—Con.
—co-operation with Highway Commissioner 2120
—bond of contractor 2120
—payments on work 2120
Road machinery, supplies, &c., purchase of 2121
—co-operation with Highway Commissioner 2121
Tolls, establishment or abolition of 2743
Proceeding for transfer of State's interest in road to county 3758
Crossing or changing course of public service corporation, railroad, etc., proceedings 3885
Running county road across railroad 3886
Grade crossing by railroad, proceeding for elimination of....3974
Consent to use of by telegraph and telephone companies for lines, conduits, etc.....4037
—regulations of 4037
Control of road abandoned by turnpike company 4074
Turnpike, extension of 4092
—financial aid to 4092, 4093
—levy for 4093
—apportionment to districts....4093
—grant to of right to use county road 4094
Public roads, notice to person obstructing or encroaching on..4731

Taxation
Levy of capitation taxes by, Va. Const., § 175
School tax, levy 740, 2721
—reference to voters 740
—Va. Const., § 136
—interest on school bonds....2721
Road tax 1986, 1987
To establish sanatorium for tuberculosis 1510
For retirement of road bonds..2117
For upkeep of roads 2117
On intangible personal property for roads 2209
—classification 2210
—rate 2209, 2210
Of dogs 2326
Exemption from taxation, bonds of county, district, municipality 2307
Compensation of commissioner for extending levies 2387
List of delinquent taxes, examination of 2417
Report to by clerk of delinquent taxes collected 2418
—payment 2419
For pension fund 2662
—collection and disbursement..2662
County levies, fixing and ordering 2720
For sinking fund for bonds....2741
—for interest on bonds 2741
For Confederate monuments....2742
For court allowances 2753
Appeal from order for levy....2762
For expense of installing general index in clerk's office.. 3389

Warrants
Road tax 1986, 1987
For work and labor on roads..2027
To contractor for road maintenance 2034
Countersigned by chairman....2717
Issuing, amount 2724
Premiums for scalps 2729
Signed by clerk 2770
Record of 2770

Digitized by Google

Sec.

BOARD OF SUPERVISORS—Con.
Paid, list to supervisors by treasurer 2780
Record of by treasurer....2781
How paid 2782
—receivable for levies 2782
—time of presentment 2783
For support of poor 2795

BOARD OF VISITORS
See titles of the various institutions

BOARD OF VETERINARY EXAMINERS
Members, term, appointment....1274
—vacancies 1274
—qualification 1275
Officers, selection of....1275
Meeting, quorum 1275
Regulation of proceedings....1275
Rules for examination of candidates for practice of veterinary medicine and surgery...1275
Candidates for practice of veterinary medicine and surgery, 1275, 1276
—examination of 1276
—certificate 1276
—fee 1276
Application of fees 1277
Records of secretary 1278
Penalties for violations of law..1279

BOARD OF VIEWERS
See **"Drainage District"**

BOARDING HOUSE
See **"Hotels"**
Use or sale of oleomargarine, sign 1199
Ice cream or milk, not meeting standard, service of, sign, 1216, 1217
Warnings and directions as to use of gas, posting 1607
Lien for charges 6444
—how enforced 6449-6451
Keeping or sale of ardent spirits in, penalty 4652
—revocation of license 4653
Room of guest not a home within meaning of prohibition law.4662
Obtaining accommodation at by false pretenses 4464
Removal of baggage without paying bill 4464

BOATS
See also **"Adrift Property"; "Vessels"**
Of Commission of Fisheries....3151
—captains and crews 3154
— —arrests and seizure by....3155
— —authority to compromise..3155
— —not to have interest in fisheries 3158
Seizure for violation of law....3155
—of oyster laws....3266, 3287
—of law relating to fishing in Potomac River 3302
—of law as to hunting....3356
Display of license to take fish, etc. 3168
—penalty for concealing number or name 3177
— —for carrying on board scrape, dredge or patent tongs 3177
Forfeiture, of non-resident taking fish for, or manufacturing into oil or manure 3184
—violating law as to taking fish for or manufacturing into oil or manure 3190
—for unlawful fishing 3195

Sec.

BOATS—Con.
— —in Mattaponi, Pamunkey, Elizabeth Rivers 3202
— —in Back Bay 3203
—for carrying seed oysters out of State without permit....3249
—for violating oyster laws, 3262, 3275
— —distribution of proceeds...3275
— —warrant 3277
— —procedure 3279
—for unlawfully taking oysters in Potomac River 3299
—for taking terrapins out of season 3297
Used in taking oysters, registration of 3241
—display of mark on....3241
—penalty for failing to register 3241
Used in taking oysters with scrapes and dredges....3246-3248
—license 3246, 3247
—display of number 3246, 3248
—forfeiture of 3246
Engaged in fishing, name and number to be kept in view..3263
Used for catching crabs, license.3292
—number of license marked on.3292
Taking without permission of owner, penalty 3562
Adrift, proceedings as to...3564-3568
Pilot boat 3618
—how marked 3619
Burning or destroying, penalty 4428
Used in violating prohibition law, nuisance 4622
—injunction against 4639
Drinking ardent spirits in passenger boats 4631
Injury to by timber cast into stream, penalty 4746

BONDS
See also **"Forthcoming Bonds"; "Indemnifying Bonds"; "State Debt"**
Definition ....Va. Const., § 153
Surety company as surety on.. 282
—expense of bonds 283
—estoppel of company 284
—signing by attorney in fact.. 285
—how sued on 286
Given in actions and suits, how payable 287
Of dealers selling State publications 358
Of claimant given possession in petition for redress against escheat 500
Of purchasers of escheated land. 509
Capital and income of literary fund invested in 614
By districts for school purposes 765
Of University of Virginia 818
Of State cadet at Virginia Military Institute 849
Gifts to educational institutions, investment of in State bonds. 994
Of voluntary patient in insane hospital 1031
Of commission merchant...1258, 1259
For delivery of goods when warehouse receipt is lost or destroyed 1303
Of owner of house of prostitution 1527
Of tuberculosis patient, menacing health of others 1516
Person obtaining dead bodies from anatomical board 1734
Drainage district, issued by, 1772-1774, 1777

Digitized by Google

Sec.

BONDS—Con.
Proprietor of ferry across Chesapeake Bay 2041
—penalty for failing to give....2042
Of agent or lessee operating ferries across Elizabeth River.2048
Lessee of Norfolk county ferries.2050
Person to whom duplicate warrant on State Treasurer issued.2184
Person doing business without license 2369
Of person licensed 2377
—increase of 2370
Bail, in action of debt for penalty for violation of license or revenue laws 2395
Person arrested for transporting ardent spirits in vehicle..4657
Of purchaser of land sold on execution for debt due State, 2522, 2523
—to have force of judgment, 2525, 2526
—execution on 2525
Fine, security for 2549
—execution on 2549
Of applicant for issue of new State bond or certificate when old lost 2639
Of vagrant 2809
Of person using scrape or dredge on oyster planting ground....3248
Clerk of court to prepare....3390
Bond book, what recorded in..3393
Of pilot 3615
—for good behavior when suspended 3644
For reissue of lost stock certificate 3818, 3819
Of employee of common carrier 3935
Guaranty company as surety on, allowance of expense of in settlement of accounts 4347
Embezzlement of 4451
Fraudulent sale of, punishment.4465
Intoxicating liquors, of person licensed to manufacture, buy, sell, etc. 4602
—of hotels licensed to use....4603
Intoxicating liquors, prosecution, bond of accused not to violate law 4613
Of owner of building, &c., declared nuisance under prohibition law 4622
When required of person convicted of violating prohibition law 4643
Of hirer of prisoners....4951
Minister authorized to celebrate marriage 5070
—of other person 5080
For payment for services of apprentice 5303, 5304, 5305
Discount, rate 5553
Payable to dead person, validity of 5761
Liability of personal representative of joint obligor 5762
Joint, compromise with co-obligor 5763, 5764
—contribution 5766
Notice by surety to creditor to sue principal debtor 5774
To indemnify surety on bond given under decree or order of court 5776
Voluntary, set-off to 6147
Subject to condition action on 6261, 6262
On contract to print records on appeal 6360

Sec.

BONDS—Con.
Having force of judgments, embraced in chapter on judgments 6479
Waiver of homestead in 6548
—enforcing claims 6549
—judgment, execution 6551

Actions on bonds

On official bonds 286
—suit in name of dead obligee..6100
Of person doing business without license 2369
Of county and city treasurers..2432
For debts due State....2512, 2513
Of purchaser of real estate at sale on execution on judgment for debt due State....2525, 2526
Of officers of State Corporation Commission 3708
On suspending bond on appeal from State Corporation Commission 3735
—for payment of costs before..3735
By State Corporation Commission against officer to recover fine for neglect of duty 3747
Action on, by assignee....5768
—by assignee against assignor..5769
—jurisdiction of equtiy 5770
Taken by officers, motion for judgment on 6045
Inquiry of damages, when not necessary 6132
On lost bonds 6242
With condition for payment of money 6261
Annuity bond, bond payable in installments or subject to condition 6362
Jurisdiction, how determined....6374
Penal, scire facias for further breach, limitation 6478

In actions, proceedings, etc

With petition for establishment of drainage district 1738
In proceeding to commit inebriate or drug addict to private hospital 1070
On appeal from disallowance of claim by supervisors 2761
—filing 2763
Of appeal from decision of mayor of town 3011
Required when franchise granted by city or town 3020
Appeal from civil and police justice 3106
For cost of establishing lines of Baylor survey 3163
Oyster planting ground, application for resurvey 3257
Claimant of property forfeited, for violation of game, fish and oyster laws 3368
—judgment and execution on..3372
By non-resident as security for costs 3519
—judgment on 3519
—to indemnify obligor on....3520
In proceeding to prevent waste by tenant pending action to recover or charge land 5511
In action of detinue, of plaintiff, for order to seize goods.5797
—of defendant, for return of goods 5798
—exceptions to 5799
—filing 5797, 5804
Of petitioner in quo warranto proceedings 5843
—information in nature of....5844
—of defendant to re-open judgment 5846

Digitized by Google

BONDS—Con. Sec.

Of petitioner, in habeas corpus proceeding 5850
Suspending, on appeal from State Corporation Commission 3735
—for payment of costs before..3735
—in interpleader proceedings...6156
Forthcoming bond, property levied on or distrained 5157
Indemnifying bond, goods distrained or levied on.....6154, 6155
—action on lost instrument....6242
On appeal from judgment of justice 6027
In injunction proceedings..6323, 6324
—against railroad for violation of law relating to transportation of live stock 4006
On appeal, writ of error or supersedeas 6351-6353
—to suspend execution of judgment 6338
—motion of surety for indemnity 6352
Attachments, of plaintiff..6384, 6385
—of defendant when property levied on or seized.....6394, 6395
—on sale of property.....6397, 6406
—by garnishee 6398
—on appeal 6413
—by whom given 6414
For writ or order, who may execute 6375
On suing out capias 6420
—of defendant 6421
— —taken and filed 6422
—quashing 6423
On order staying execution on motion to quash 6499
In action to recover property subject to lien of judgment or execution 6514

Of agents, fiduciaries, trustees, etc

Committee, of insane person....1053
—of inebriate or drug addict...1074
—of feeble-minded person 1080
—of convict's estate 4998
Of contractor for gas, oils or minerals on public land..... 531
Of contractor for public printing 382
—recordation and filing 382
Of contractor to furnish paper.. 383
—recordation and filing 383
Curator, for minor 5319
—for estate of decedent..5248, 5249
Of custodian of retired teachers' fund 795
—of insane person 1020, 1040
—of feeble-minded person 1091
Depository of school funds..... 734
—of State hospitals 1013
Distributees of estate of person presumed to be dead 5365
Of fiscal agent, etc., promoting organization of insurance company 4238
Of guardian 5318
Of fiduciaries, new bonds, 5416, 5417
—in which fiduciaries may invest 5431
—limitation of actions on.....5811
Receiver of estate of infant married woman 5136
Refunding, of legatee or distributee 5437, 5438
Of executor 5357
Of administrator, 5358, 5359, 5369, 5370
—penalty 5370
—when security not required...5371

BONDS—Con. Sec.

Of personal representative, action on when execution against returned unsatisfied..5388
Extent of liability on 5389
Of trustee, court may require..6301
—of substituted trustee.....6304
Voluntary patient in institution for feeble-minded 1088
Treasurer, Virginia Military Institute 840
Treasurer, Virginia Polytechnic Institute 866
Treasurer, Hampton Normal and Agricultural Institute 928
Treasurer, Virginia Normal and Agricultural Institute 950

Corporate bonds

Issuance .....Va. Const., § 167
Of corporation secured by lien, issue 3783
Of corporation when holder may vote 3808
—when may inspect books of...3808
Of corporation, railroad corporation becoming surety for....3828
Of steamboat company, guarantee of by railroad 3957
Issue of by non-stock corporation 3876
Investment of funds of savings bank in 4143
Deposited with State Treasurer, by foreign express company..4028
—by fire insurance company....4201
—by life insurance company..4201
—by insurance and guaranty companies 4210-4218, 4233
—by mutual life insurance company reincorporated as stock company 4255
—by fraternal benefit society...4284
—by underwriters' agency.....4313

State, county, city and town bonds

Of counties, cities, towns, exemption from taxation 2302
—Va. Const., § 183
Of county, retirement and issuance of new bonds by supervisors 2730
—term of new bonds 2735
—for eighteen per cent of assessed value of real estate..2730
Of counties, for erecting or improving courthouse, jail, clerk's office or poorhouse, 2733-2741
—election 2738, 2739
—issue 2740, 2741
—for removal of courthouse....2751
Construction and improvement of roads, election on petition for issue 2110-2115
—issue of, form, sale 2116
—levy of road tax for redemption 2117
—payment of, sinking fund....2118
—redemption, notice of 2119
—of contractor 2120
—magisterial districts, issued for 2123
— —issuance, form, sale of....2124
Of cities and towns, issue of, 3079-3091
—limitation on bonded indebtedness of 3079, 3080, 3090
—Va. Const., § 127
Of towns for funds to induce removal of courthouse 2749, 2750
Of State, exempt from taxation.2301
—Va. Const., § 183
—payment of interest on to colleges, etc. 990

Digitized by Google

Sec.

BONDS—Con.

—held on behalf of colleges, etc., exchange of 991
—cancellation 992
—received in settlement of claims delivered to commissioners of sinking fund and cancelled 2191
—who deemed owner 2634
—sale of, transfer, title 2635

Official bonds

Of officers handling public funds .....Va. Const., § 85
Of officer, additional security required on .....Va. Const., § 113
—requiring new ....Va. Const., § 113
Taken by courts and officers, provisions and conditions of.. 279
—waiver in 279
—new or additional, when required 280
—effect of new or additional bond 281
Public officers and clerks....325-329
—cost, when paid by Commonwealth 326
—new or additional 327
—effect where of failure to give. 327
—when filed 328
Of agents employed by Auditor to secure satisfaction of judgment for taxes 2596
Of agent of State Board of Education 603
Of assessors of land for taxation 2233, 2241
Of attorney employed by Auditor to collect taxes 2533
Of Auditor of Public Accounts...325
—clerks 325
Of bank examiners 4121
—clerks 4121
Of city treasurer 2699
Of county treasurer 2698
—deputy 2776
Of county treasurer, liability for default in payment bonds of drainage district 1774
Of county treasurer, additional, State money for roads.....2106
Of county treasurer, liability on for funds received on sale of road bonds 2116
Of county or city treasurer, when school warrant lost 2185
—liability for proceeds of tax sales 2471
—liability on for failure to perform duty relating to delinquent land 2503
—examination 2777
— —new bond 2777
—recovery on for treasurer's using or lending public money 2788
— —venue of actions on.....2789
—liability on for judge's salary, 3466, 3468
Of civil and police justice 3099
Of clerks of Supreme Court of Appeals 3384
—where taken 5870
Of clerk, court of law and chancery of Norfolk 5944
Of clerk, court of law and chancery of Roanoke 5956
Of clerk of court of civil justice 3118
Of collector of city or town....3034
Of collector of delinquent taxes, 2421, 2437
Of Commissioner of Agriculture. 325
—clerks 325

Sec.

BONDS—Con.

Of Commissioner of Agriculture and Immigration 1105
Of Commissioner of Fisheries...3146
Of Commissioner of Game and Inland Fisheries 3309
Of Commissioner of Insurance...4171
—deputy 4171
Of Commissioner of Prohibition.4626
Of Commissioner of State Hospitals 1011
Of Commissioner of Wrecks....3597
Of constable, motion for judgment on 6045
Of contractor with board of drainage commissioners 1761
—action on 1763, 1776
Of contractor for improvement on roads with proceeds of bond issue 2102, 2120
Of contractor for maintenance of road 2035
Of coroner 2818
Of crier 2821
Of Dairy and Food Commissioner 1157
Of depository, funds Virginia Normal and Industrial Institute 955
Of Deputy Treasurer 2776
Of Examiner of Records 2219
Of escheators 490
—increase or reduction of penalty 491
—effect of failure to give..... 491
Of Game Warden 3322
Of general receiver of court funds 6285, 6287
—new bond 6290
Of harbor masters, cities of Richmond and Alexandria....3664
Of notary 2350
Officer failing to give, penalty.. 288
Of officers of county, district, city or town 2696-2700, 2988
—recordation of 2696
Of officers and fiduciaries, book recorded in 3393
Of officers, guaranty or fidelity company as surety on 4346
—when accepted 4350
Of officer, petition of surety to be relieved from 5771
—new bond required 5771
—removal for failure to give..5773
Officers, liability on for failure to collect or account for fines.2554
Of officers, Society for Prevention of Cruelty to Animals...4555
Of oyster inspector 3219
Of Register of the Land Office.. 325
Of road foreman employed by road superintendent 2032
Of sergeant, liability on when acting as committee of convict's estate 5003
—motion for judgment on 6045
Of Second Auditor 325
—clerks 325
Of Secretary of the Commonwealth 325, 2134
—clerks 325
Of secretary and assistant, Board of Charities and Corrections.1893
Of secretary, State Board of Embalming 1719
Of Shellfish Commissioner 3146
Of sheriff, motion for judgment on 6045
—liability on when acting as committee of convict's estate.5003
Of sheriff, city of Richmond....2814

Digitized by Google

Sec.

BONDS—Con.
Of person appointed to vacancy in public office 331
Of person appointed to perform duties of suspended treasurer. 2201
Of person appointed by Governor to act in place of suspended treasurer or collector 2791
Of person appointed to act in place of sheriff or sergeant. 2821
Of special commissioners. 6266, 6269
—person receiving proceeds of sale 6272
Of special police for counties. 4800
—for watering place, college, university, manufacturing plant 4805
Of State Accountant 550
State Corporation Commission, clerk 3708
—first assistant clerk 3708
—bailiff 3708
Of State depositories 2158
—new bond, when required. 2160
—investigation as to sufficiency of 2161
—remedy on 2161
Of State Librarian 348
Of doorkeeper of State Library. 348
Of State Treasurer 325
—clerks 325
—liability on for donations to University of Virginia 326
Of Superintendent of Construction, drainage 1760
Of Superintendent of Public Instruction 325
—clerks 325
Of Superintendent of Public Printing 325
Of superintendent of roads. 2019
—recovery on for benefit road fund 2019
Of surveyor's liability on for improper delivery of plat. 441
Of tobacco sampler. 1352, 1353
Of treasurer, State Board of Examiners of Graduate Nurses, 1704
Of Treasurer, Board of Pharmacy 1667

BOND BOOK
What recorded in 3393

BONDING COMPANY
See **"Surety Company"**
Surety, bond of bank examiner. 4121
—clerk 4121

BOOK MAKING
On races, etc., punishment. 4682, 4683

BOOKS
See also **"Books and Maps"; "Books and Papers"; "Deed Books"; "Land Books"**
Poll books, see **"Elections"**
Registration books, see **"Elections"**
Tax books, see **"Taxation"**
Text-books, see **"Education"**
Auditor and treasurer to compare 2189
Of auditor, balancing 2190
—ledger 2190
Of board of supervisors. 2767, 2768
Of recordation in clerk's office. 3393
—index of 3394
Used in clerk's offices, quality of 3399
—how provided 3400
Process book, what to contain. 3403
Kept by commissioner of accounts 5401, 5408, 5412

Sec.

BOOKS—Con.
Of corporation for transfer of stock 3797
—transfer of stock on. 3837, 3839
—who deemed owner of stock. 3838
—inspection by bondholders. 3808
Of county treasurer. 2767, 2785
Fee books 3494
Furnished civil and police justice 3109
Of inspectors of commodities. 1442
To be kept by junk dealers. 4711
Library board may sell or exchange duplicates 351
Of oyster inspector 3222
Subpoena to produce 6219, 6220
Summons to compel production of by adverse party 6237
—bill in equity 6238
To be kept by Superintendent of Public Printing 331

BOOKS AND MAPS
Sale of for library fund. 349
Account of sale of by Secretary of the Commonwealth 357

BOOKS AND PAPERS
See also **"Books"**
Of co-operative life insurance or casualty company 4265
Of commissioners of sinking fund, where kept 2621
Not taken from office of Auditor or Treasurer to be used in evidence 2618
Of treasurers, delivery to successor 2779, 2786
Larceny of 4442, 4443
Of transportation or transmission company, inspection of by State Corporation Commission 3710
Of predecessor of commissioner of revenue 2266
Production of, before State Accountant 559, 565
—before school trustee electoral board 632
—proceeding before board of health relative to water supply 1791
—in investigation by Board of Charities and Corrections. 1902
—before State Corporation Commission 2239, 3722
—required by councils of cities and towns 2952
—before city council, fire and police commissioners 2985
—in prosecution of bank, employee, etc., receiving deposit when bank is insolvent 4132
—in suit by State to recover capital stock of company acting as bank of circulation. 4152

BOOKKEEPING
State Accountant to devise system of for public officers. 552, 553
—mandamus to compel adoption of 555

BOOMS
Special laws authorizing construction of prohibited. Va. Const., § 63

BOTETOURT COUNTY
Commonwealth's attorney, fees. 3565

BOULEVARDS
Establishment and maintenance in cities and towns 3632

Digitized by Google

Sec.

BOUNDARY
Of land, special laws affecting prohibited .....Va. Const., § 63
Between Virginia and North Carolina 12
—Virginia and Tennessee 12
—Virginia and Kentucky 13
—Virginia and Maryland 14
Of election districts, change of, 101, 144
duty of registrars 102
Of drainage district, establishment of 1746
Of school districts 668
—record of 667
—change of 655
— —effect on gifts 671
in cities and towns 776
Of towns, in order incorporating, 2881, 2883
Of cities and towns, how changed 2956-2971
contraction of 2969-2971
Of city lots, streets, etc., evidence of 2977
Of villages and unincorporated communities, establishment by court 3549-3551
Of new county, survey.....2680
Between counties, disputed, how settled 2685
Of real estate, petition to establish 5490
Lawful fence 3539, 3547
—stream as 3547, 3553
—canal as 3553
Statutes declaring boundaries to be lawful fences continued in force 3562
Of city wards, change of.....2978
—Va. Const., § 121
Segregated districts for white and colored persons in cities and towns 3043, 3044
—map of 3045-3049
Of shellfish grounds, penalty for removing 3235
Injury to or destruction of monument or tree, punishment.....4479
Working mine near, penalty for 5287
Appeals in controversies concerning 6336
—Va. Const., § 88

BOUNTY LAND
Certificate of allowance of..... 418

BOWIE KNIFE
Carrying concealed, punishment.4534
—permit to carry 4534
—on Sunday or to religious meeting, punishment 4578
Furnishing to minor 4695

BOWLING ALLEYS
License for 2373
Revocation of license for violation of prohibition law 4653

BRAN
Adulterated, sale or manufacture 1196
Bushel, standard 1470

BRANCHES
Establishment of branch banks, 4101, 4102

BRANDS
See "Trade Marks"; "Timber"; "Timber Dealers"
Bread 1416, 1417, 1419
Corn meal....1195, 1416, 1417, 1419
Cider 1192

Sec.

BRANDS—Con.
Oleomargarine, process or renovated butter 1200-1203
Commercial feeding stuffs, 1230, 1231, 1234, 1240
Commodities unfit to pass.....1428
Drugs, false 1657, 1659, 1664
False, liability of manufacturer or packer 1440
False, liability of inspector.....1441
Fertilizers 1110, 1111, 1126, 1132
—registration 1110
—penalties 1118, 1131
Agricultural lime....1132, 1133, 1134
—registration 1134
Seed containers.1139, 1140, 1141, 1151
—penalty 1151
Cider vinegar 1191
Fish, pork, beef 1420
Tar, pitch, turpentine.....1420
Butter and lard 1425
Lumber 1426
Flour.....1194, 1416, 1417, 1419
Imitating or altering, penalty..1438
Oil for illuminating purposes...1881
Sale of articles with false brand..1439
Salt 1416, 1417, 1421
—alum salt 1422
Saw-logs floated in Louisa river.3579
—recording brand 3580
—penalty for injury to brand...3581
Sheep driven along road without, penalty 4742
Stock and poultry foods.....1246
Tobacco 1354, 1358, 1359
Tobacco falsely marked.....1389
Timber.....1444, 1445, 1449, 1450

BRANDY
See also "Intoxicating Liquors."
As ardent spirits.....4581
Sale of by druggist.....4588
—for medicinal purposes.....4591
License to druggist to sell.....4599
—to wholesale druggist.....4600

BRASS
Buying or receiving with intent to defraud 4450

BRASS KNUCKS
Selling or furnishing, punishment 4535

BREACH OF PEACE
Member or clerk of General Assembly not privileged from arrest for 300
—Va. Cont., § 48
Action for words tending to cause 5781

BREAD
See "Inspection"; "Inspectors."
Inspectors of.....1400, 1401, 1402
Barrels for 1407
Owner to mark weight and tare 1415
—penalty 1417
Brand 1416, 1419
—penalty 1417
How marked when unfit to pass.1428

BREAKING AND ENTERING
Officer executing writ of possession 6483
—executing fieri facias.....6490

BRIBERY
Disfranchisement for 82
—Va. Cont., § 23
Exclusion from registration for. 93
Of election officer 195
Of executive, legislative or judicial officers 4496
—acceptance of 4497
Forfeiture of and disqualification to hold office, on conviction 4497

Digitized by Google

Sec.

BRIBERY—Con.
—impeachment of witness, immunity to witness 4498
Lobbying with General Assembly 4498-4501
Of officer to prevent service of process 4502, 4510
Of commissioner, auditor, juror, etc. 4503
Of voter, punishment 4727
Conviction of disqualifies as juror 5984

BRICK YARD
Children, employment of, 1809-1811, 1814-1816
—penalty 1814
—by parent 1815

BRIDGES
See also **"Board of Supervisors"; "Public Utilities Companies"; "State Highway Commission"; "Roads"**
Sale of rights of city or town in—Va. Cont., § 124.
Establishing or altering location of 1977-1983
—viewers 1977
— —examination, location, map, report 1978
— —pay 1983
Report of viewers 1978
—proceedings on, process to summon proprietors 1979
—service, publication, posting..1979
—non-resident or unknown owners 1979
—defenses, compensation, damages 1980
Commissioners, appointment....1980
—meeting, notice, report.....1980
—pay 1983
—report, proceedings on.....1980
— —confirmation 1980
— —appeal to circuit court....1980
— —hearing, judgment 1980
—costs and damages 1981
Pay, viewers, commissioners, surveyor 1983
Across highway, repair or construction of by drainage district, maintenance of 1764
Control of in counties.....1976
Over pier-heads, flood-gates and cuts in dams, owner's duty to maintain 1985
Supervision of use of by board of supervisors 1988
Superintendent of roads to provide 1989
Board of supervisors to contract for 1990
Between two counties, building 1991, 1992, 2109
—mandamus 1992
County, loading or unloading vessel from, depositing property on 1994
—penalty 1995
Special and local legislation by supervisors 2013
—violation of 2013
—notice 2014
Contribution to building by cities and towns 2016
Toll-bridges, when privilege ceases 2067
—obstruction of navigation or fish 2068
—tolls, how right to demand established 2069
— —viewers, report 2069
— —fixed by State Corporation Commission 2069
— —on troops, arms, munitions, etc. 2070

Sec.

BRIDGES—Con.
—toll, may be required in advance 2071
— —illegal, penalty 2071
— —failure to pay, penalty....2071
—penalties, demanding more than lawful toll.....2071
—failing to pay toll.....2071
—not giving passage in reasonable time 2072
Passage across, failure to give in reasonable time, penalty...2072
State aid for construction of....2109
—joint bridge between counties.2109
Bonds for building issued for magisterial district 2123
Across canals of mills.....3588
Warning signals of approach to railroad to provide.....3970
On turnpikes, made and maintained 4075
Injury to or destruction of, punishment 4730
Burning or destroying, punishment 4433
Care required of bicycles in overtaking or passing other vehicles, etc. 4736
Vehicles on, passing to right...4739
Fast riding or driving on, penalty 4740
Horse racing on, penalty.....4741
Driving animals on at dangerous speed 4741
Injury to by timber cast into stream, penalty 4746

BRIDGE COMPANY
See also **"Bridges."**
Incorporation 3865
Use of street 3014, 3865
—Va Cont., § 124
Powers of 4058
Tolls, when fixed by State Corporation Commission 3771

BRISTOL
Boundary between Virginia and Tennessee 12
Clerk of the court, election, term 129
Commonwealth's attorney, fees..3505
Corporation court 5905
—judge, qualification, election..5905
—term 5906

BROAD CREEK
Fishing in 3204

BROKERS
Definition 2614
Deposits, receiving when insolvent, penalty 4132
Rate of interest may charge....5553
Negotiating instrument without endorsement, liability 5631

BRUNSWICK COUNTY
Commonwealth's attorney, fees.3507

BUBONIC PLAGUE
Report, quarantine..1497, 1500, 1505

BUCHANAN COUNTY
Commonwealth's attorney, fees.3506
Effect of prohibition law on law relating to sale of ardent spirits in 4673

BUCKET SHOPS
Definitions 4714
Keeping, penalty 4715
—second offense 4715
Quotation of prices, etc., to induce making prohibited contracts 4716
Effect of failure to furnish information on demand as to sales and purchases 4717
Effect of payment of license or other tax 4719

Digitized by Google

Sec.

BUCKINGHAM COUNTY
Commonwealth's attorney, fees.3505
Lawful fence, boundary line of low ground on James river as.3539

BUCKWHEAT
Bushel, standard 1470

BUENA VISTA
Clerk of the court, election, term 129
Commonwealth's attorney, fees.3505
Corporation court 5905
—judge, qualification and election 5905
—term 5906

BUGGERY
Punishment 4551

BUGGY
Used in transporting ardent spirits, seizure 4657
—how disposed of 4658

BUILDINGS
See also "Courthouses"; "Mechanic's Liens." .....
County buildings, see "Counties."
Schoolhouses, see "Education."
Limitation to amount banks, trust companies, may invest in 1404
Taxation, exempted from.....2272
—assessment, valuation, 2289, 2294, 2295, 2296, 2297
—new or unfinished.....2289, 2295
—repairs and additions.....2296
—reduction for loss or destruction 2297
Municipal regulations of.....3032
Firemen may enter.....3130
Destruction to prevent spread of fire 3133
—damages recovered by owner for 3134, 3135
Fire escape 3141
—penalty 3141
Attaching telegraph or telephone wires to 4038
Entry of by Commissioner of Insurance examining into origin of fire 4187
Entry for purpose of examining inflammable condition 4190
—penalty for failure to remedy.4190
Burning, or destroying by explosives..4423, 4429, 4430, 4431, 4432
—with intent to injure insurer..4436
Used in violating prohibition law, nuisance 4622
—closing up 4622
—bond of owner 4622
Revocation of license to business in, for violation of prohibition law 4653
—issue of to new lessee.....4653
Included in deed conveying land..5168
Destruction, effect of covenant to pay rent 5180
—covenant to keep or leave premises in repair 5180
—reduction of rent 5180
Assessment for damages to in ejectment 5481, 5482
Breaking to levy execution.....6490

BUILDING AND LOAN ASSOCIATION
Formation, incorporation 4154
General powers 4154
Property 4154
Branches 4154
Premiums, bonus 4154
Loans 4154
—ordinances of cities and towns applicable to 4154
—payment of 1156

Sec.

BUILDING AND LOAN ASSOCIATIONS—Con.
—proportion required to be secured by real estate.....4166
Dues, interest, fines 4155
By-laws 4157
Supervision by State Corporation Commission 4163
Statements to State Corporation Commission 4163, 4164
—what to show.....4163
—failure to make, penalty.....4164
—false, penalty 4165
License to transact business, revocation of 4166
Trustees, election, term.....4167
—successors, powers and duties.4167
—sales or conveyances by.....4167
Franchise tax, exemption from.4168
Foreign, right to do business in State 4158
—charter filed with State Corporation Commission 4159
—certificate of compliance with law 4160
—report of assets and liabilities filed with State Corporation Commission 4161
—deposit of securities with treasurer 4161
—engaging in business without authority, penalty on officer, agent, or employee.....4162

BULKHEAD
See also "Wharves."
Erection of by land owner.....1996
—abatement of 1997
Erected by riparian owner over oyster grounds 3269
Examination and repair of at direction of harbor commissioners 3676

BULK SALES
Of stock of merchandise, when fraudulent 5187
Inventory, notice, etc. 5187

BULL
Larceny of 4440
Restraint of 4744
—when forfeited 4744
License tax on 6447
Liens on 6447

BULL BATS
Killing 3364

BULL FIGHT
Punishment 4426

BUOY
Interference with or destruction of, punishment 4756

BURDEN OF PROOF
Prosecutions for bringing diseased animals in State..... 915
Physician, proceeding to test right to practice 1614
Prosecution of non-resident for unlawful fishing 3212
Prosecution of non-resident for engaging in fish or oyster business 3254
Prosecution for catching, buying or selling oysters under size..3244
Action to recover value of adrift property 3572
Proceeding against telegraph or telephone company for penalty, when message relayed out of State 4045
Possession of intoxicating liquors for personal use.....4584
Prosecution for grinding malt to be used in manufacture of ardent spirits 4671

Digitized by Google

Sec.

BURDEN OF PROOF—Con.
Cancellation of negotiable instrument by mistake or without authority 5685

BUREAU OF ANIMAL INDUSTRY
Inspection, etc., of diseased animals 1289
Inspectors, powers 1289
—entry by 1289
Expense 1289

BUREAU OF INSURANCE
See also "Commissioner of Insurance"; "Insurance"; "Insurance Companies."
Establishment 4169
Offices for 4170
Duties and powers 4169
Official designation of 4170
Salary and expenses 4172
Seal 4174
Printing for 4172
Records, papers, etc., in custody of 4173
State Accountant to devise system of accounting for.....552, 554
—mandamus to compel adoption 555
Inspection of accounts of....557, 558
—duty and penalty 558
Supervision of industrial sick benefit company 4356
Furnished with particulars of promotion of insurance company 4237
Report to by insurance companies of gross premiums.....4196
Fees for licenses to agents credited to fund for.....4235

BUREAU OF LABOR AND INDUSTRIAL STATISTICS
See also "Commissioner of Labor."
General Assembly may establish and maintain—Va. Const., § 86.
Continuation 1797
Duty, collection of statistics....1797
—annual reports 1797, 1836
Supervision by Commissioner of Labor 1799
—chief factory inspector.....1799
Appropriations for 1801
Compensation of persons performing service for 1801
Department of Mines, control of.1835
Maps of coal mines, kept by....1838

BUREAU OF VITAL STATISTICS
See "State Board of Health"; "Vital Statistics."

BURGLAR'S TOOLS
Possession of with intent to commit burglary, robbery, or larceny 4437

BURGLARY
Defined and punished.....4437-4439
—possession of tools with intent to commit 4437
Homicide in attempt to commit.4393

BURIAL
See "Dead Bodies."

BURNING
See also "Arson."
Dwelling house, railroad car, boat, jail, etc., punishment, 4428, 4429
Other houses 4330, 4431, 4432
Lumber, haystack, etc.....4431
Bridge, lock, or dam.....4433
Woods, fence, grass 4434, 4435
Property with intent to injure insurer 4436

Sec.

BURNING—Con.
Incendiary, report of by Commissioner of Insurance to Commonwealth's attorney 4188
Escaping from jail by setting fire to 4509

BURYING GROUND
Exemption from taxation—Va. Const., § 183.
Exempt from taxation.....2272
Gifts to, inheritance tax on....2272

BUSHEL
Standard measure 1470
—for fertilizer 1126
—for oysters 3252

BUTTER
See "Inspection"; "Inspectors."
Inspectors of.....1400, 1401, 1402
—brand 1425
—how marked when unfit to pass 1428
Process or renovated, how kept and sold 1198-1203

BUTTON
Trades union, etc., wearing when not entitled to.....4719

BY-LAWS
Of bank or banking institution.4106
Of board of medical examiners..1610
Of board of veterinary examiners 1275
Of building and loan associations 4157
Cases involving validity of, jurisdiction of circuit court.....5890
Of cities and towns, councils may make 3034
—effect on of changing form of government 2934
Of city, jurisdiction of appeal from justice of case involving.6037, 778
Of city school board.....
Of co-operative life insurance or casualty company 4265
Corporation may make.....3777, 3787
—of non-stock corporation.....3878
Of fire company 3126
Of fraternal benefit society.....4284
Of savings banks.....4141
Of supervisors 2743
Of State board of dental examiners 1642
Of State Board of Education.....609
Of State board of embalming...1719
Of State Board of Health.....1456
Of board of pharmacy 1671
Of town, trial by mayor of violations 3011
—appeal 3011
Of Virginia Military Institute.. 837

BYSTANDERS
Calling for service on jury.....5999

CABOOSE CAR
See also "Railroads."
Use of by railroad.....4012
Repairs to 4013
Number of 4011
Penalty for violation of law relating to 4015
Venue of prosecutions 4016
Railroads not applicable to.....4017

CALENDAR MONTH
Month construed to mean....cl. 7, 5

CALENDAR YEAR
Year construed to mean.....cl. 7, 5

CALF
Larceny of 4440

CALL
See also "Corporations."
On stock subscription, action by receiver or trustee to recover.3843

Digitized by Google

Sec.

CALOMEL
Sale of 1681

CAMPBELL COUNTY
Commonwealth's attorney, fees 3505

CANALS
See also "Canal Companies."
As lawful fence..... 3553
Mills, leave to cut or enlarge, 3582-3593
—application 3582
—notice 3583, 3586
—commissioners 3584-3587
—title to lands 3589
—vested rights 3590
—time for cutting, etc.....3591
—reversion 3591, 3592
—unforeseen damages, action for 3593
In which State interested, sale of under mortgage, etc.....3889
—dividends 3890
—annual report to State Corporation Commission 3892
Crossing private lands, wagon ways over 3883
Crossing by railroad.....3999
Mill, trunks or culverts under to drain adjoining land, procedure 5297
Obstructing, removing or injuring, punishment 4468

CANAL COMPANY
See also "Canals"; "Public Service Corporations."
Taxation, reassessment of real estate—Va. Const., § 171.
—assessment for—Va. Const., § 176.
—franchise tax—Va. Const., §§ 177, 178, 181.
—reports—Va. Const., § 179.
—application to court for relief from—Va. Const., § 180.
Examination of by State Corporation Commission....3717, 3721
—works and equipment.....3718
—notice to of violation of law..3719
Tolls, when fixed by State Corporation Commission 3771
—right to collect 4020
—ascertaining value of vessel, merchandise, etc., subject to..4020
—collectors, duties 4020
—passing without paying, penalty 4020
—receiving more than lawful, penalty 4021
Crossing public road or changing course of 3885
Connecting with works of another 3887
Liens of employees.....6438-6442
—of persons furnishing supplies to 6438-6442
Extending works into other States 3867
—branches of lines.....3869

CANCELLATION
By Auditor, of bonds and reissue 2637
Of coupon bonds of colleges.... 992
Of bonds issued for roads.....2118
Of State bonds received by Auditor of Public Accounts.....2191
Of bonds of State, redeemed....2594
—certificates 2594
—bonds refunded 2594
—bonds exchanged 2602
Of bonds purchased by commissioners of sinking fund.....2625
—of coupons 2629, 2680
Of tax deed, bill in equity for..2498

Sec.

CANCELLATION—Con.
—limitation 2488
Of warehouse receipt on delivery of goods.....1300, 1301
Discharge of negotiable instrument by 5681
—of person secondarily liable on 5682
—unintentional, burden of proof.5685

CANDY
Adulteration of 1193
Penalty, forfeiture 1193

CANNABIS INDICA
Sale, label 1664

CANTHARIDES
Sale, label 1691

CAPIAS
Pro fine, when issued.....2559, 2560
—to whom directed 2561
—commissions to officer.....2561
—for prisoner failing to comply with contract of hiring 4951
Ad respondendum, issuing, form.6419
—bond required before writ....6420
—commitment, bond 6421, 6422
—quashing 6423
—examination of defendant....6424
—interrogatories 6421, 6424, 6425
—conveyance, sale 6425
—release 6423, 6424
On indictment, presentment or information 4881
—how awarded, directed, returned and executed 4882
—when issued 4889
—to whom accused delivered... 4886
—mailing to officer in other county 4884
—execution throughout State...4885
—to hear judgment for misdemeanor 4883
—person arrested or bailed by officer 4882, 4887
—failure to issue not to cause discontinuance 4890
In proceedings for violation of revenue or license laws.....2396
Ad satisfaciendum, abolished...6480

CAPITAL
Merchants, taxation, segregation 2205, 2206
Listing for taxation.....2306

CAPITATION TAX
See also "Poll Taxes."
Omitted, assessment of 116, 2420
Person becoming of age after February 116, 2420
Delinquent, list of.....2414, 2423
—disposition of 2423, 2425
—payment to clerk.....2419
—collector of...2421, 2422, 2423, 2425
Lien on real estate.....2455
—Va. Const., § 173.
Proportion for school funds.... 739
List of when city of second class formed 2900

CAPITOL
When flag raised over..... 33
Care of 402
Police and employees..... 402
—duties 411, 413
—salaries 3446
Purchase of furniture for..... 403
Sale of old furniture..... 403
Contract for water for..... 406
Care of rooms 407
Fuel and lights 408
Hall of House of Delegates, use of 409
Senate chamber, use of..... 409
Standard weights and measures, kept in 1464

Digitized by Google

Sec.

CAPITOL—Con.
Offices, State Corporation Commission in 3695
Wilful or malicious injury to.. 4482
—trees, shrubbery, fences..... 4483

CAPITOL SQUARE
Control of 410
Powers, duties and functions of Capitol police 411, 413
Dogs not permitted in..... 412
—penalty 412
Jurisdiction of offences committed in 413
Wilful and malicious injuries to property in 4482
—to grounds, trees, shrubbery.. 4483

CARBOLIC ACID
Sale of 1681
Label 1691

CAROLINE COUNTY
Commonwealth's attorney, fee.. 3505

CARRIAGES
See **"Vehicles."**

CARRIERS
See **"Common Carriers"; "Railroads"; "Passengers"**

CARROLL COUNTY
Limitation of entry on or action for land in 5805
Dams, exception from act relating to 4747
Commonwealth's attorney, fees. 3505

CARROTS
Bushel, standard 1470

CASE
See **"Trespass on the Case."**

CASHIER
Negotiation of instrument payable to 5604

CASTOR BEANS
Bushel, standard 1470

CATAMOUNT
Premium on scalp 2729

CASUALTY COMPANY
See also **"Bureau of Insurance"; "Commissioner of Insurance"; "Insurance," and "Insurance Companies."**
Statutes applicable to..... 4265
Assessment or co-operative, prerequisites to commencing business 4259
—membership, payments to company 4259
—statement to commissioner... 4259
—license or certificate..... 4259
Emergency fund 4260
—disposition of 4261
Discontinuance of business..... 4261
—receiver, appointment 4261
Policy or certificate, limitation as to amount of 4270
—lien of 4270
—failure to pay, penalty..... 4270
— —forfeiture of license for... 4270
Assessment, notice of, what to contain 4267
—failure to levy, penalty..... 4262
Officers, failure to levy assessments, penalty 4262
Who deemed to be..... 4264
Annual meetings 4265
By-laws, adoption of..... 4265
Books and papers, inspection of. 4265
Transfer or reinsurance of risks. 4266
—to company not authorized to do business in this State, penalty 4266
Reserve fund 4268

Sec.

CASUALTY COMPANY—Con.
Policy, fraudulent procurement, penalty 4269
False statement as to death or disability, perjury 4269
Alien, deposit required of..... 4326

CATAWBA SANITARIUM
Stationery to be furnished to.. 384

CATTLE
See also **"Animals"; "Brands"; "Live Stock."**
Running at large, special laws prohibited—Va. Const., § 63.
Killed or injured by railroad, appraisal of value..... 3994, 3997
—fee 3996
—suit to recover..... 3995
Turnpike tolls 4083
—on valley turnpike 4083
Registration, obtaining by false pretenses, punishment 4460
Giving false pedigree of..... 4460
Poisoning, punishment 4467
Shooting, stabbing, cutting, punishment 4467

CATTLE GUARDS
Construction and maintenance by railroads 3946, 3950
Request of land owner for construction of 3950
Procedure to enforce construction of 3950
When discontinued 3951
—appeals 3954
Liability of railroad for injury to stock when maintained ... 3997

CAUSEWAYS
See also **"Roads."**
Contract for by board of supervisors 1990

CAVEAT
See **"Land Office."**

CEMETERIES
See also **"Burying Ground."**
Exemption from taxation..... 2272
—Va. Const., § 183.
Conveyances for 38, 50
Gifts, etc., of property for maintenance of 59
—who may hold title to..... 59
Condemnation of land for..... 53
Restrictions on burials in..... 56
Damages to adjacent land by establishment of 56
Proceedings to vacate and sell land 58
Removal of remains 58
Burials may be prohibited by city of Richmond in certain cemeteries therein 57
Location and quantity of land for 56
—perpetuities 38, 59
Abandoned, condemned by city or town 54
—procedure 54, 55
Trustees 50, 59
—appointment 51
—powers 52, 53
Superintendent of, powers of constable 2820
Provided by cities and towns... 3030
Malicious injuries to, punishment 4553
Sexton, indorsement and return of burial permit 1571
—interment or removal of body without permit 1581

CEMETERY COMPANY
See also **"Corporations."**
Incorporation 3872-3880

Digitized by Google

Sec.

CENSUS
Enumerator, who may hold office of 291
By district school board....653, 656
—of deaf and blind persons.... 654
When boundaries of school districts are changed 655
In city schools 786
Of school children in State colony for epileptics and feebleminded 1077
Of school children in colony for feeble-minded colored persons.1092
In territory annexed to city or town 2968

CENTRAL STATE HOSPITAL
See also **"Commissioner of State Hospitals"; "General Board of Hospital Directors"; "Insane Hospitals"; "Insane Persons."**
Management, location.....1004, 1005
Establishment at of colony for feeble-minded colored persons.1092
—who received as patients.....1092
—education of children.....1092
—commitment of patients.....1093
—provisions relating to insane to apply to 1094
—special duties of board and superintendent 1095

CERTIFICATE
Of debt, issues by State—Va. Const., § 184.
Of treasurer, of payment of poll tax on transfer of voter..... 115
Of assessment of capitation tax for years omitted..... 116
Of judge of election when ballots delivered to 159
Of election 184
—how made out and delivered.. 186
—clerk's fee for 196
—Secretary of the Commonwealth to give.....191, 344
—of board of State canvassers.. 191
—not to issue until candidate's statement of expenses and oath filed 254
—open to public inspection..... 256
—copies furnished 256
Of registration of absent voter, form of 209
Of member of General Assembly as counsel in suit, for continuance 298
Of oath taken by officer..... 277
—delivered for record where... 277
To records, for use in other States 345
Of Superintendent of Public Printing for salary of assistants 398
Of Register of Land Office, to copy of unsigned land grant.. 417
—filed and preserved by..... 416
Lodged in land office for warrant 418
By court, of proof of loss of land warrant 419
When land warrant not fully satisfied by entry 425
Of survey by surveyor, what to show 438
—trial, examination and entry of 439
—filed in clerk's office..... 443
By court on resurvey of land grant 476
Of notice of application to locate surplus in grant..... 472
Of court in suit to supply link in title 482
By clerk of court to Governor of escheator's inquest 502

Sec.

CERTIFICATE—Con.
Of escheator, to Register of Land Office 503
—publication of 504
Of sale by escheator..... 506
Of treasurer that price of escheated land has been paid... 507
To practice as certified public accountant 567
—revocation of 570
Of oath of member of State Board of Education 598
Of claims payable out of literary fund 615
Of oath of division superintendent of schools 625
Of school teacher.....659, 688
Of State entomologist relative to nursery stock 874
With nursery stock delivered or given away 879
Of registration of dealer in nursery stock 882
For conveyance of insane person to hospital 1027
On discharge of patient from insane hospital 1028, 1046
For admission of patient to insane hospital without commitment 1032, 1033
Of superintendent of insane hospital of expenditure of funds appropriated by committee....1050
Of authority to manufacture or sell fertilizer 1114
Of damages, assessment by Commissioner of Agriculture against dealer 1120
Registration of brand, etc., agricultural lime 1134
State chemist, of analysis of food and dairy products.....1163
Analysis of food 1178
—evidence, effect as 1178
Of analysis of feeding stuffs, effect as evidence 1231
Of operator of milk testing machine 1207, 1208
—revocation 1208
To sell condimental stock and poultry food 1246, 1248
Of registration of commission merchant 1258, 1261
For practice of veterinary medicine and surgery 1276
Of tobacco sampler 1360
Of inspector of salt 1424
Of inspector of lumber.....1426
Registry of trade-mark.....1457
—of registry 1458
Of vaccination of teachers and pupils in schools 1529
Of birth 1573, 1574, 1575
—stillborn child 1566
—effect as evidence 1580
—penalty for altering 1581
Of death, what to contain.....1567
—when no medical attendance..1568
—by coroner 1568
—duties of undertaker 1569
—effect as evidence 1580
—penalty for altering 1581
—when body is transported....1728
To hotel keeper by health commissioner 1590
Of license to practice medicine, 1612, 1613, 1615, 1617
—effect as evidence 1612
—registration 1612, 1613
—duplicate 1613
—revocation, when not to be issued 1614
Chiropody, for practice of.....1620
—display of 1620

Digitized by Google

Sec.

CERTIFICATE—Con.
To practice optometry, 1629, 1633-1635
—issuance 1629
—filing, recording 1633
—display and use of....1634
—revocation of 1635
To practice dentistry 1644
Of chemists, analyzing adulterated or misbranded drugs....1660
For expenses, board of pharmacy 1669
Of pharmacist 1673, 1688
—assistant 1673, 1688
—apprentice 1673, 1688
—display of 1683
Of graduate nurse 1706
—of other State....1714
State board of embalming, of appointment to 1718
For payment of compensation to board of reviewers in proceeding to establish drainage district 1738, 1739
Of age of infant employees....1811
Of inspector of mines....1837
Of Board of Charities and Corrections to institution receiving delinquent children 1918
State aid for roads, of Highway Commissioner for payment of assistants 2103
—of Highway Commissioner for payment to county treasurer.2105
— —for payment by county treasurer 2106
— —partial payments to contractor 2102
Improvement of roads with proceeds of bond issue, certificate of commissioner or engineer for payments to contractor...2120
Automobile, motorcycle, etc., of registration and license..2126, 2127
—form, issuance 2127, 2132
—of manufacturer or dealer....2128
—chauffeur 2129
—loss of, reports, duplicate....2135
That money due State treasury has been placed in depository.2155
Of allowances made by court, to Auditor of Public Accounts..2187
Of qualification of assessor of land for taxation 2241
To interrogatories of taxpayer..2254
Of local board of review to land books 2299
Of assessment of license tax against person doing business without license 2369
Of court for obtaining license..2373
Of court when license assigned.2377
Of commissioner examining clerk's record of taxes collected 2405
To delinquent tax list....2417
Of assessment of capitation taxes 2420
Of payment, taxes on real estate in advance 2438
Of sale of property for delinquent town taxes 2457
—recordation 2458
—as evidence 2458
Of redemption of property sold for town taxes 2458
By surveyor of land sold for delinquent taxes 2480
By clerk to commissioner, redemption of delinquent land purchased by State 2491
By Auditor to purchaser of waste and unappropriated land 2504
By justice, fines imposed....2550

Sec.

CERTIFICATE—Con.
Of court in proceeding for remission of fine 2569, 2572, 2574
Of facts in suit to enforce claim against State 2581
For share of State debt owed by West Virginia 2589, 2641
—recordation 2590
By judge of election on bond issue by town 2750, 3087
By judge of election for removal of courthouse 2752
Produced by treasurer in proceeding for discharge from liability after end of term....2782
By clerk, of death of Confederate pensioner 2646
Pension, with application for...2648
—of removal from roll....2657
—to application for artificial limb 2667
Of qualification of district, county, city, town officer....2696
—return and entry of....2696
Of acknowledgment by commissioner of deeds 2853
To Secretary of the Commonwealth that city has attained population of ten thousand or more 2911
Of clerk, petition for change in form of government of city..2926
Of publication of notice and ordinance in proceeding by city to annex territory, effect as evidence 2957
Election on bond issue by city or town, of judge of election..3087
Civil and police justice as to disposition of cases for payment of salary 3100
To members Commission of Fisheries 3146
Authorizing obtaining license to manufacture fish into oil or fertilizer 3165
Authorizing person to obtain license to take fish for manufacture into oil or fertilizer..3167
Of stock of non-resident in corporation engaged in fish business, forfeiture of 3254
Sale, reissue 3254
Oysters, costs and expenses of execution of law 3265
Recordation of by clerk of the court 3292
—re-delivery 3292
—indexing 3292
Of allowance by courts, duplicates 3404
To practice law, attorney from another State 3409
—teacher in law school....3409
Bar examination, of applicant to take 3418, 3419
Of Governor, payment of salary of secretary, assistant secretary, messenger 3432
For payment of fees to witnesses 3539
—who not to become interested in 3539
Of justice to oath of purchaser of trespassing animal of non-resident 3546
Of freeholders to view and appraise estray or adrift property 3565
Of clerk, of log brand....3589
Of applicant for examination as pilot 3615
Of ballast unladen from vessel.3664
Of transportation of convicts and insane persons 3740

Digitized by Google

Sec.

CERTIFICATE—Con.
Of incorporation 3349, 3850
—execution 3851
—acknowledgment 3851
—certificate of judge 3851
—recordation 3851
—of amendment 3779, 3780
—decreasing capital stock.....3781
Of dissolution of corporation before payment of capital.....3809
For new charter of corporation after dissolution 3811
For consolidation of corporations 3822
Of incorporation of non-stock corporation 3873
—signature 3874
—acknowledgment 3874
—certificate of judge 3874
—recordation 3874
—for amendment of.....3875
Of incorporation, insurance company 4202
—guaranty company 4202
—indemnity company 4202
—fidelity company 4202
—security company 4202
—mutual company 4202
—assessment company 4202
Stock certificate 3793
—delivery when stock transferred 3839
—power of attorney 3839
—lost, reissue 3818, 3819
To foreign corporation giving authority to do business in State 3847
Of State Corporation Commission to schedule of rates of transportation company 3920
—to rules for transportation of explosives 3922
To bank or trust company authorizing it to commence business 4105
Of deposit, issued by banks....4141
—recovery on when not paid...4142
Of foreign building and loan association doing business in State 4159, 4160
Insurance company, of authority to do business.....4181, 4203, 4205
—revocation 4181, 4195
—to be filed in other State, how furnished 4183
—renewal 4210
—registration of agent—.....4235
Of Commissioner of Insurance as evidence 4175
—for payment of fee for report of fires 4185
Of treasurer, deposit of bonds by fire and life insurance company 4201
To guaranty company to do business 4203, 4205
—renewal 4210
To indemnity insurance company to do business 4272
To accident insurance company, to do business 4272
To life insurance company, to do business 4272
Fraternal benefit society, to do business 4284
—of membership in 4280
—for merger or transfer of funds or membership.....4286
Of oath of commissioners in condemnation proceedings..4367, 4376
Forgery, punishment 4484
Of marriage, birth or death, false entry in 4491
—giving false information for..4492

Sec.

CERTIFICATE—Con.
By justice, appeal from sentence for contempt 4523
Of officer of Society for Prevention of Cruelty to Animals...4555
—for destruction of animal.....4558
Of payment of revenue tax as evidence in prosecution for violating prohibition law, 4618, 4620
By justice, of examination and commitment or recognizance of accused 4846, 4847
By judge, bail commissioner, justice, of recognizance for felony 4847
Of execution of death penalty..4943
By State Corporation Commission for transportation of convict to penitentiary 4948
Of allowance of fees to officers, 4961, 4962
To surety on recognizance on surrender of principal 4983
Of marriage, return of to clerk's office 5074
—registration and filing, 5075, 5076, 5077
—as evidence 5074
Of debt, how transferred to personal representative of non-resident 5348, 5349
Of written act of re-entry on land 5536
Of acknowledgment 5205-5210
—by commissioner of deeds....2853
Of proof of signature by witnesses 5205
Of protest of negotiable instrument 5680
Of acceptance of check, effect of, 5749, 5750
For payment of fees to jury commmissioner 5986
With list of allowances to jurors 6010
Of clerk, of posting and mailing order of publication.....6070
Of Auditor of Public Accounts as evidence 6197
Of records and proceedings of courts of another State.....6205
—of public office of another State 6206
Of publisher of newspaper.....6224
In lieu of bill of exception.....6253
That special commissioner has given bond 6269
—penalty for false 6271
—selling or renting property without 6271
Of deposit of court funds.....6310
Of facts proved, given by judge.6331
—part of record 6331
Of notice of application for transcript of record 6339
Of order to mark judgment satisfied, or discharged by bankruptcy 6467
Of auditor, garnishment of salary of State employee.....6559
—effect as evidence 6559

CERTIFICATES OF DEPOSIT
Payments to State treasury by.2165
Issued by banks 4141
—recovery on when not paid..4142

CERTIFIED PUBLIC ACCOUNTANT
See also **"State Board of Accountancy"**
Who may become 567
Certificate 567
—revocation of 567
Others forbidden to assume title. 567

Digitized by Google

Sec.

CERTIFIED PUBLIC ACCOUNTANT—Con.
Examination of applicant for.. 568
—when waived 569
—fee for 571
—penalties 571
Audit of accounts of officers on order of court 2756
—report, compensation 2756

CERTIORARI
Jurisdiction 5890
Venue 6053
To supply part of record on appeal 6345
To diminish record on writ of error in criminal case.....4933

CHAIN GANG
Prisoners sentenced to....2075, 2096
..—appeal 2075
—how long may be held to labor in 2094
—rate at which prisoner required to work out fine and costs 2095
In cities 3061
Clothing for prisoners on, how allowance for paid 4956

CHAIR CAR
Exclusion from 4007

CHALLENGE
To fight duel, disfranchisement for 82
—Va. Const., § 23
—exclusion from registration for 93
—General Assembly may remove disability.....Va. Const., § 57
Of voters 174
—how tried 175
Of jurors, in criminal case, 4898, 4900, 4904
—how tried 4898
—person opposed to capital punishment 4899
—in civil cases 6000

CHAMBERLAIN
Of city or town, who to perform duties of 2987

CHANCERY
See also "Equity"
Jurisdiction of circuit courts....5890
—of hustings court of Richmond, Part II 5914
—of chancery court of Richmond 5920
—of law and equity court of Richmond 5922
—of court of law and chancery of Norfolk 5923
—of court of law and chancery of Roanoke 5947

CHANCERY COURTS
See "Equity"; "Hustings Court of Richmond, Part II"; "Chancery Court of Richmond"; "Law and Equity Court of Richmond"; "Court of Law and Chancery of Norfolk"; "Court of Law and Chancery of Roanoke"; "Courts"; "Circuit Courts"; "Corporation Courts"
Power over guardian 5326

CHANCERY COURT OF CITY OF RICHMOND
Establishment ..... .5912
Jurisdiction 5920, 5928
Terms 5921
Removal of cases to or from other courts of city of Richmond 5927
Appeals from 5929

Sec.

CHANCERY COURT OF CITY OF RICHMOND—Con.
Chancery docket 6245
Probate of wills 5247
Appointment of guardians, 5316, 5317, 5318
—of curator 5319
Records of, as notice to purchasers of land south of James river 5932
Writings admitted to record by 5204
—on certificate of acknowledgment 5205-5208
—on certificate of proof by witnesses 5205
—of copy, when original lost..5212
Order to mark lien satisfied on record 6456
Order requiring clerk to give new or additional bond 280
Judge, salary 3468
—increase 3469
—decrease 3469
—liability for failure to require bond of guardian 5318
Clerk, election 129, 5930
—term 129, 5930
—compensation 5930
—qualification 2696
—bond 2696
— —new or additional 280
—vacancy, how filled 136, 138
— —when appointee to qualify.. 139
—fees 5925
—to record copies of report, orders, etc., in condemnation proceedings 4381
— —indexing 4381
— —fee 4381
—to keep register of securities under control of court 5925
—judgment docket 6461-6464
—recordation, appointment of agent, proceeding to purchase delinquent land 2495
—plan of city 2977
—contracts reserving title to or lien on chattels for purchase price 6139
—of judgment or decree for partition, assignment of dower or recovery of land 5216
—mechanic's lien 6427
—labor and supply liens.....6439
—memorandum of lis pendens..6469
— —of attachment 6469
Sheriff, fees paid from treasury.3503
—deputy 3503

CHANGE OF PARTIES
See also "Parties"
Procedure 6164-6171

CHANGE OF VENUE
See "Venue"

CHARGE
Meaning of term 3693
—Va. Const., § 153
To grand jury 4855
Voluntary, limitation on suit to set aside 5829

CHARGE d'AFFAIRES
Acknowledgments before 5206
Depositions before 6226

CHARITABLE ASSOCIATIONS
See also "Charitable Institution"; "Charities"; "Corporations"
Exemption from taxation..2272, 2301
—Va. Const., § 183
Incorporation 3872-3880
Appropriations to by cities and towns 3034

Digitized by Google

Sec.

CHARITABLE INSTITUTION
See also "Charitable Associations"; "Charities"; "Corporations"
Inmate, residence for purpose of voting .....Va. Const., § 24
State appropriations to, limitations on .....Va. Const., § 66
General Assembly may relieve from payment of registration fee .....Va. Const., § 157
Disqualification of members of as voters 82
Inspection by Board of Charities and Corrections 1894
—information and statistics furnished to 1894
Exemption from taxation..2272, 2301
—Va. Const., § 183
Appropriations to by cities and towns 3034
Fraternal benefit society as....4303
Inmate disqualified to serve as juror 5984

CHARITABLE TRUSTS
See also "Charitable Associations"; "Charitable Institutions"
Not to fail for insufficient description, etc. 38
—perpetuity 59
Disposition of when undefined and uncertain 38
Validity of 587
How taken and held 588
Trustees 590
When General Assembly may suspend or repeal 593

CHARITIES
See also "Charitable Associations", "Charitable Institutions," "Charitable Trusts"
Appropriations to by cities and towns 3034
Property dedicated to by recording plat of city or town lots. 5219-5222

CHARLES CITY COUNTY
Terrapin season 3297
—forfeiture of boats, nets, etc..3297
Fees of Commonwealth's attorney 3505

CHARLOTTE COUNTY
Commonwealth's attorney, fees.3505

CHARLOTTESVILLE
Jail, jailer 2868
Commonwealth's attorney, fees.3505
Circuit court 5887
City of first class 5905
Courts in continued 5905

CHARTER COMMISSION
See also "Cities and Towns"
Election 2925
Organization 2927
Special charter and form of government prepared by.....2925

CHARTER PARTY
Foreign, admissibility in evidence 6207

CHARTERS
See also "Articles of Association"; "Corporations"; "State Corporation Commission"
Not to be granted to church or religious denomination, Va. Const., § 59
Cities and towns
Not repealed by constitution, Va. Const., §§ 116, 117

Sec.

CHARTERS—Con.
Effect on, when town becomes city of second class 2908
—city of second class becoming city of first class 2917
—of change of form of government 2934
—of law relating to segregation of races 3053
—of prohibition law 4673
—of law relating to civil and police justices 3111
—of Code, chapter 73 1796
— —chapter 96 2400
— —chapter 110 2793
— —chapter 117 .....2885, 2909
— —chapter 118 2924
— —chapter 122 3091
Corporations
Special laws amending, renewing or extending, prohibited, Va. Const., §§ 63, 154
—remitting forfeiture of, Va. Const., § 63
Provision for surrender or forfeiture .....Va. Const., § 104
May be repealed by special act, Va. Const., § 154
Fee upon granting, amending or extending .....Va. Const., § 157
—revocation for failure to pay fees .....Va. Const., § 157
Amendment, surrender of exemptions and privileges by, Va. Const., § 158
Meaning of term 3693
—Va. Const., § 153
Issuance 3849-3851
—by State Corporation Commission 3746
— —amendments, extensions, renewals 3746
How new charter obtained after dissolution of corporation....3811
Amendment 3779, 3780
—surrender of exemptions and privileges by....Va. Const., § 158
Of bank, not to issue if capital stock is less than ten thousand dollars 4099
—repeal or modification of.....4134
Of building and loan association 4154
—foreign 4158-4161
Of guaranty company 4201
—of foreign or alien, filing with Commissioner of Insurance...4208
Of industrial sick benefit company 4357
Of insurance company 4201
—revocation for failure to obtain license 4236
—of foreign or alien company filing with Commissioner of Insurance 4208
Of non-stock corporation..3872-3874
—amendment 3875
Of public service corporations, 3865, 3866
—amendment 3868, 3871
—repeal 3891
Of railroad company, issuance, 3856, 3857
—amendment 3859, 3864
Of savings bank 4137
—amendment 4144
—not to issue if capital stock is less than ten thousand dollars 4099
Of trust company 4145
Taxes or fees on, no recovery of from State 2583

Digitized by Google

Sec.

CHARTERS—Con.
—revocation for failure to pay, Va. Const., § 157
—forfeiture for failure to pay in other than currency.....2616, 2617
Forfeiture charter of turnpike company 4077
—for payment of taxes in other than currency 2616, 2617
—of corporation engaged in fish business, failing to file list of officers and stockholders.....3254

CHARTERED ACCOUNTANT
See "Certified Public Accountant"; "State Board of Accountancy"

CHATTEL MORTGAGE
See also "Deeds of Trust"; "Mortgages"; "Recordation"
No bar to distress for taxes....2443

CHATTEL REAL
Interest in oyster grounds as..3227
Definition, cl. 10 5
Personal estate includes, cl. 10.. 5

CHAUFFEUR
Automobile, license 2129
—badge 2129

CHEATING
Obtaining money or other property by false token 4459

CHECKS
See "Negotiable Instruments"
Defined 5747
Certified, payments to State treasury by 2165
Of State Treasurer for payment of State funds 2165
—unpresented, when charged off.2194
— —warrant for 2194
Deposit by infant 4126
Larceny of 4442, 4443
Embezzlement of 4451

CHEESE
See "Dairies"
Manufacturer, improperly disposing of cream, penalty 1197

CHEMICAL LABORATORY
Ordering, purchasing, receiving, ardent spirits 4601
—license 4601
—sale of 4601
—reports 4601
—bond 4602

CHEMIST
See "Board of Agriculture"; "State Chemist"
Making analysis in criminal case, allowance to 4956

CHESAPEAKE BAY
Compact between Virginia and Maryland 14
Crimes committed in 14
Planting oysters or placing stakes in between Cape Henry and Norfolk county line.....3173
Oyster planting grounds in, number of acres that may be assigned 3225
—application for assignment...3225
Use of scrapes and dredges taking oysters in 3246-3248
Planting oysters or placing stakes within limits of fishery, penalty 3191
Ferries, continued 2040
—bond of proprietor 2041
— —penalty for failing to give.2042
—rates of ferriage 2043
—notice of time of leaving....2044

Sec.

CHESAPEAKE BAY—Con.
—boats, how manned and provided 2044

CHESTERFIELD COUNTY
Commonwealth's attorney, fees.3505

CHESTNUTS
bushel, standard 1470

CHESTNUT TREES
Blight 1287, 1288

CHICKAHOMINY RIVER
Use of pound nets in 3173
—penalty 3173

CHIEF INSPECTOR OF ORCHARDS
See "State Entomologist"

CHIEF OF POLICE
When to act as probation officer, 1912, 1943, 1944

CHILD LABOR LAWS
See "Children"; "Employers and Employees"
In general 1809-1816
Release of children from operation of 1816

CHILDREN
See also "Board of Charities and Corrections"; "Desertion and Non-Support"; "Guardian and Ward"; "Infants"; "Minors"; "Parent and Child"; "Prison Association of Virginia"
Adoption of 5333
—deduction for adopted child in assessment of income tax....2303
Carnal knowledge of female, punishment 4414
Citizenship of 62
Commitment to Prison Association of Virginia 1954
—age of, indeterminate sentence.1955
—discharge 1955
—taking to, expenses 1956
—escape, arrest 1957
—habeas corpus to test detention 1958
—pardon by Governor 1959
Custody of 5329
—on separation of parents, 5327-5329
—order for custody or maintenance of pending divorce suit 5107
— —final decree as to 5111
Damages recoverable by in action for death by wrongful act 5787, 5788
Delivered in lying-in asylum, placing out 1926, 1927
—report 1928-1934
Earnings of, who entitled to....5329
Employment of, in general, 1809-1816
—by parents 1816
—in coal ming 1871
—violation of laws relating to employment of, penalty.....1814
— —prima facie evidence 1815
—petition for release of from operation of child labor laws.1816
Sale of newspapers by boys under ten or girls under sixteen prohibited 1813
—penalty 1813
Guardians for 5314-5319
To seize, take or secrete illegally, penalty 4409
Inducing to commit misdemeanor or to frequent gambling place, house of prostitution, etc., penalty 1923
Inheritance, by children of slave marriage 5263

Digitized by Google

Sec.

CHILDREN—Con.
—Va. Const., § 195
—bastards, from mother.....5268
—by posthumous children.....5271
Juvenile and domestic relations court, jurisdiction 1950
Legitimacy, children of slave marriages 5091
—children of void marriage....5270
—marriage legitimates 5269
Negro Reformatory Association.1961
Parent deserting or failing to support, proceeding against. 1909, 1936-1944
Placed in homes, investigation by Board of Charities.....1932
—notice to Board of Charities and Corrections 1933
—for gain or without due inquiry 1934
— —penalty 1934, 1935
Provisions for pretermitted. 5242, 5243
Rights as to homestead....6536-6543
—when to cease 6550
Rights as to property exempt from levy 6562
Feeble-minded, custody and control of by Board of Charities and Corrections 1903
Offenses by and against, jurisdiction of juvenile and domestic relations court 1950
Juvenile offenders, not treated as criminals 1906
Under 16 years of age, convicted of misdemeanor, corporal punishment of 1924
Delinquent, under 18 years of age, convicted of offense, not sentenced to jail or penitentiary 1908
—charged with offense, disposition of case 1914
—commitment of to Board of Charities and Corrections. 1908, 1914
Delinquent child, dependent child, neglected child, meaning of terms 1906
—commission of to care of Board of Charities or institution 1905
—term of commitment 1905
—placing in homes 1905
—physical and mental examination of 1910
—treatment in hospital 1910
—probation officer, appointment, powers 1911, 1912
—put on probation 1913
—appeal of 1914, 1917
—petition of probate officer or other person for disposition of 1915
—penalty for concealing or removing 1916
—institutions to which may be committed 1918
—paroled from reformatories, visitation of by Board of Charities and Corrections....1919
—investigations of violations of law relating to 1920
—incidental powers of courts, judges and officers 1921
—law relating to, liberal construction of 1922

CHINCOTEAGUE ISLAND
Citizens of exempt from jury service 5985

Sec.

CHIROPODY
Laws relative to practice of medicine, when applicable to..1618
Definition of 1619
License, examination for 1621
—qualification 1621
—fee 1621
—certificate to practice 1620
—annulment for violation of law 1623
Practice of in violation of law, penalty 1623

CHIROPRACTIC
Laws relative to practice of medicine, when applicable to..1618

CHLORAL HYDRATE
Label on drug containing.....1664
Sale of, label 1691

CHLOROFORM
Label on drug containing.....1664
Sale of, label 1691

CHOLERA
Report, quarantine..1497, 1500, 1503
Hospital for, location 1560
Bodies dead of, transportation, rules for 1728

CHOSE IN ACTION
Action on by assignee.....5768-5770
Suit on by beneficial equitable owner 5144
Larceny of 4442
—estimation of value of.....4443
Lien of attachment on 6393
Lien of execution on.....6501, 6502
Delivery to officer in proceeding on interrogatories.....6504
—how payment of enforced....6508

CHRISTIAN SCIENCE
Laws relative to practice of medicine not applicable to....1618

CHURCHES AND CHURCH PROPERTY
Taxation for support of prohibited .....Va. Const., § 58
Charter not to be granted to, Va. Const., § 59
Title to property of, Va. Const., § 59
State appropriations to prohibited .....Va. Const., § 67
Property of exempt from taxation .....Va. Const., § 183
Glebe lands, appropriation of.... 36
Charitable donations 37
Gift to, not to fail for insufficient description 38
Conveyances, devises and dedications to, when valid 38
Trustees of, undefined charitable trust enures to 38
—appointment 39
—legal title to land vested in.. 39
—division of, disposition of property 40
—books and furniture, how held 41
—suits by and against 42-44
—real estate, quantity may hold. 43
—personal estate, quantity may hold 43
—sale or mortgage of property, 45, 46
—may hold title to cemetery.. 59
Property applied to education.. 586
Ministration to sick, not practice of medicine 1618
Property of, exempt from taxation 2272, 2301
—Va. Const., § 183

Digitized by Google

Sec.

CHURCHES AND CHURCH PROPERTY—Con.
—gifts to, inheritance tax on..2272
Disturbance of religious worship, punishment 4573
Carrying dangerous weapon to..4578
Wilful or malicious injury to..4482

CIDER
Labelling 1192
Manufacture and sale of.....4588

CIDER VINEGAR
Adulterated, sale or manufacture of 1191
—brand 1191
"Cider vinegar," construction of words 1191

CIGARETTES
Furnishing to minor 4695
Opium, use of in manufacture prohibited 4696

CIRCUITS
See **"Circuit Courts"; "Judicial Circuits"**

CIRCUIT COURT OF APPEALS
See **"United States Courts"**
Docketing judgments of 6462

CIRCUIT COURT OF HENRICO COUNTY
Payment of compensation to officers of Prison Association of Virginia on certificate of judge of 1954

CIRCUIT COURT OF LANCASTER COUNTY
Letting to contract ferry across Curotoman river 2052

CIRCUIT COURT OF NORFOLK COUNTY
Leasing out or appointing agent to operate ferries across Elizabeth river 2048

CIRCUIT COURT OF CITY OF RICHMOND
Establishment 5912
Jurisdiction 5926
Removal of cases to or from other courts of city of Richmond 5927
Docket 6243
—chancery docket 6245
Judge, salary 3466
—Va. Const., § 98
—qualification of State Accountant before 550
—petition to for seizure and destruction of forged State bonds 2613
—approval by of adjustment of debt due State 2532
Clerk, salary 3465
Sheriff of city of Richmond, qualification, bond 2814
Jurisdiction, powers and procedure
Relief of railroad or canal corporation from assessment of taxes .....Va. Const., § 180
Contested primary election of United States senator and State officers 247
Attorney General to represent State of Virginia in 376
Proceedings in for recovery of fine from escheator for failure to perform duty 511
Petition by person entitled to recover proceeds of derelict or escheated property 521
Qualification of State Accountant before 550
Proceedings before for recovery of money due literary fund... 603

Sec.

CIRCUIT COURT OF CITY OF RICHMOND—Con.
Commission merchant, appeals from, refusal or revocation of certificate of 1262
Habeas corpus to test right of Prison Association to retain custody of minor 1958
Certification by of accounts of superintendent of penitentiary 2077
Motion to recover from clerks, penalty for failing to remit State funds 2406
Motion for judgment against delinquent treasurer and surety.2432
Enforcement payment of debt due State 2511
Proceedings by Auditor against officers, etc., for violation of revenue laws 2544
Claims against the Commonwealth 2578
—jury 2580
—judgment 2580
—facts certified 2581
Petition for seizure and destruction of forged State bonds....2613
Actions and motions on bonds of treasurers 2739
Petition by officer claiming salary withheld for debt due State 3476
—procedure, judgment 3476
Proceeding to recover money forfeited to State Corporation Commission 3766
—money due State from internal improvement 3766
Proceeding to recover assessment against insurance company, expense of Bureau of Insurance 4195
Suit by policyholders to enforce lien on bonds deposited by insurance companies, guaranty companies, etc. 4214
Suit by Commissioner of Insurance to administer assets.....4215
Insurance company, liquidation of 4242-4244
Suit to enforce penalty against fire insurance company entering into contract to fix pay of agents 4312
Trial of sanity of convict.....5007
Criminal proceedings against convicts 5053
—second sentence, proceedings 5054
Special term, for trial of convict 5056
Petition of surety on official bond for relief 5771
Proceedings for change of name of person 5963
Commonwealth's cases....6049, 6051
Cases against State officers. 6049, 6051
—transfer of cases to 6051
Jurisdiction of quo warranto proceeding 6052
Office judgment, when becomes final 6134

CIRCUIT COURTS
See also **"City Courts"; "Clerks of Courts"; "Corporation Court"; "Courts"; "Judges"**; and titles of particular courts.
Establishment 5887
In cities—Va. Const., §§ 97, 98.
Circuits 5888
—Va. Const., §§ 94, 95.
Court docket 6243

Digitized by Google

Sec.

CIRCUIT COURTS—Con.

—criminal cases 6245
—chancery cases 6246
Of county, jurisdiction over cities of second class 2896
Application of that officer be furnished with Acts of Assembly 372
Mandamus and prohibition to by Supreme Court of Appeals....5864

Terms and Sessions.

Terms, commencement, number 5893
—Va. Const., § 97.
Special terms, when, how, by whom appointed 5894
—adjournment 5895, 5896
—cases tried at 5896
—presiding judge 5896
Death of judge, when not to end term 5902
Adjournment 5959
—from day to day.....5970
Place of holding 5964
—change of 5965-5968
—acts at other places confirmed.5969
—not to cause discontinuance..5971
Continuance of cause, not determined without order for...5972
Ending during trial, trial to go on until concluded.....5973
Grand juries, regular at.....4851
—special 4851
County treasurer to attend.....2774
Officer attending 5963

Clerks and Other Officers.

Clerk, election 124
—term 124
—clerk's office, where to be kept 3385
— —when to be kept open.....3388
—allowances in cities of first class 5903
—General Assembly may confer power on to probate wills and appoint fiduciaries—Va. Const., § 101.
—appointment of curator..5248, 5249
—appointment of executor, administrator and appraisers...5249
—filing papers relating to appointment of orchard inspector 895
— —annual report, Board of Charities and Corrections.....1899
— —certificate of qualification and bond of sheriff.....2814
—drawing jury 5992
— —summoning 5993, 5994
—judgment docket 6461-6464
—abstracts of judgments to clerks of corporation courts, 6461, 6463
— —payment certified to.....6465
—to send copy of order changing commencement of terms of court to clerk of House of Delegates 5893
—petition for establishment of drainage district, filing.....1735
— —when land is in two or more counties 1739
— —approval of bond 1738
— —process 1738
— —report of reviewers, filing..1755
— —notice of order to contribute 1756
— —drainage record 1758
—publication of notice of election for issuance of school bonds 769
— —compensation 769

Sec.

CIRCUIT COURTS—Con.

—qualification of city school trustee before 786
—oath before of member, State board of embalming 1718
—recordation, certificate of oath of assessor of land 2241
— —petition, order, maps, etc., in proceeding to establish drainage district 1732
— —report of boundaries of school districts in cities..... 776
—special term, notifying Commonwealth's attorney, sheriff, sergeant, of appointment of...5894
— —posting order 5894
— —process 5894
— —to enter warrant adjourning 5895
—to certify delinquent tax list..2417
— —preservation of 2417
—probate of will by.....5247, 5249
— —Va. Const., § 101.
— —of copy of will proved without State 5251
— —order book 5249
— —process summoning interested persons 5253
— —order of publication 5255
— —guardian ad litem for infant or insane person.....5255
— —appeal from order on probate 5249
— —bill in equity to impeach or establish will 5259-5261
Sheriff, attending court.....5962
—fee for, payment 3503
— —deputy 3503
—Crier, appointment, bond, duties 2821

Judge.

Election, qualification, term—Va. Const., § 96.
Salary 3466
—Va. Const., § 103.
—increase, by city 3469
— —by county 3470
Mileage 3467
Vacancies 5889
For new circuit.....5889
At special terms.....5896
Residence 5897, 5977
Power to hold courts other than their own 5898
—pay 5898
—Va. Const., § 97.
Member of special court of appeals 5872
—pay 5876
—Va. Const., § 89.
Not to practice law.....5975
—Va. Const., § 105.
Not to hold other office.....5976
—Va. Const., § 105.
Fixing terms, adjournment, etc...5893
Powers during recess 5893
Absence, other judges to act...5898
Pro tempore for judges disqualified to act 5899
—appointment, oath, powers....5900
—compensation, mileage 5901
Death, when term not to end...5902
Changing place of holding court.5965
Removal to vacate office.....5977
When to qualify 5978
—failure vacates office.....5978
Interested in case, where action brought 6049
Abatement of nuisance.....1520
Appeal from decision of orchard inspector 900
Appointment, assessor of land for taxation 2233

Digitized by Google

Sec.

CIRCUIT COURTS—Con.
—of attorney to examine title to real estate purchased by county or school board.....2709
—compensation 2709
—appeal to from disapproval of title 2709
—of substitute civil and police justice 3101
—of Auditor for accounts of officers 2756
—of successor to commissioner of revenue 2315
—of board of drainage commissioners 1759
—of delinquent tax collector....2421
—of commissioner to vote in meeting of supervisors in case of tie 2718
—of coroners 2315
—of electoral board for city of second class 2897
—of jury commissioners 5986
— —certificate for payment of..5986
— —jury drawn in presence of.5992
— —order for greater number of jurors 5993
—of local board of review.....2226
—of orchard inspector..... 895
—of receiver for co-operative life insurance company or casualty company 4261
—of surveyor, land sold for delinquent taxes 2480, 2481
—of member of school trustee electoral board 629
—of trial justices 4988
Appraisal of value of stock, stockholder dissenting from consolidation 3822
Approval of bond of person obtaining dead bodies from anatomical board 1734
Approval of investment by supervisors, sinking fund for road bonds 2118
Approval of appointment of officers of Society for Prevention of Cruelty to Animals...4555
—record 4555
—bond 4555
Approval of loan for erection of public buildings by county....2738
—order for election.....2739
Automobiles, seizure and sale of for violations of law....2146, 2147
May issue process for arrest of person 4823
—when to issue, how directed and returned 4824
Allowance of bail.....4829-4837
Bond of depository before..... 734
To cause treatment prescribed by crop pest commissioners to be executed 877
To set criminal cases for trial..4967
Charging grand jury with reference to discounting warrants 684
—school officer having interest in contracts 684
—relative to annual statement of school boards..... 751
—with respect to violations of pure food laws 1190
—violations of tobacco laws....1399
—violations of revenue laws, 2355-2357
—to examine books of assessment of taxes 2397
—regarding statements by board of supervisers.....2768

Sec.

CIRCUIT COURTS—Con.
Putting jail prisoners on State convict road force 2075
—chain-gang or public works..2075
—appeal of prisoner 2075
Canvass of votes, election on bond issue by town, filed with.2749
Certificate of returns, election for removal of county courthouse, filed with 2753
Extension of time for report and survey by reviewers in proceeding to establish drainage district 1754
Petition to have person declared feeble-minded.....1078, 1079, 1085
—committee, guardian 1084
—commitment 1085
—order 1081
—when to direct 1083
Order for sale of property, proceeding for enforcement of forfeiture 3369, 3377
Liability for failure to require bond of guardian 5318
Proceedings to test legality of detention of person adjudged insane 1029
Search warrant for violations of prohibition law 4612
Warrant for arrest of person bringing ardent spirits into State 4634
Hearing petition to reopen coal mine closed by inspector.....1870
Marriage, when to issue license for 5072
—when to authorize issue of license to minor 5073
—authorizing minister to celebrate 5079
— —other person 5080
Trial of charges against orchard inspector 902
Oath of division superintendent of schools before 625
Special police for counties, appointment 4797
—removal 4798
—for watering place, university, college, manufacturing plant, 4804, 4805
Qualification of city school trustee before 734
—of district, county, city, town officers 2696
— —certificate of 2696
—of civil and police justice....3099
Quarantine of prisoner in jail..1543
Removal of coroner 2315
—of commissioner of revenue..2315
—of office of county treasurer..2774
—of deputies to offices 2761
—of special police 4798
Entry that city has attained ten thousand or more of population 2911
—certificate of Secretary of the Commonwealth 2911
—appeals 2912
Rule against clerk for failing to furnish list of conveyances to Auditor, etc. 2276
Proceedings before to sell or exchange school property 649
Copy of order changing depository of school funds delivered to 733
Sale of property for delinquent town taxes 2457
Delinquent tax list certified to.2417
List of delinquent lands, correction of errors in.....2473

Digitized by Google

Sec.

CIRCUIT COURTS—Con.
Adjustment of judgment against treasurer, approval 2737
—entry of order 2738
Requiring treasurer to give new bond 2737
Turnpike, repairs, proceedings to compel 4078-4082
To fill vacancies on board of reviewers in proceeding to establish drainage district.....1738
—appointment guardian for infant or insane person.....1741
Filling vacancy in town council.3003
Jurisdiction, Powers, and Procedure.
General jurisdiction 5890, 6051
Of county courts vested in.....5891
Transfer of proceedings from county courts 5892
Special terms 5896
Concurrent jurisdiction with corporation courts 5910, 5911
—Va. Const., § 98.
Over rivers, water courses, bays.5952
Criminal jurisdiction of.....4893
Over waters adjacent to counties 3213
Concurrent jurisdiction of misdemeanors with justices.....4987
Exclusive jurisdiction of cases arising under prohibition law.4614
Change of venue in criminal case 4914-4916
Violations of law relating to separate railroad cars for white and colored passengers.3969
Offences against game laws....3345
Punishment of person placing child in home for gain or without due inquiry 1934
Prosecution of husband or parent deserting or failing to support wife or child....1937-1944
Prosecutions for violation of mining law 1886
Criminal proceedings against convicts 5053
Abatement of wharf, pier, or bulkhead 1997
—of nuisance 1520
Caveats, trial of 447-450
Proceeding for adoption of child 5333
Trespassing animals of non-resident, order of sale of.....3544
Petition for audit of accounts of officers 2756
To provide for additional justices of the peace and constables 128
Of city, allowance to constables, sergeants and policemen.....3511
Allowance to counsel appointed to defend poor person.....3518
Approval of investment by supervisors, sinking fund for road bonds 2118
Attachments 6380
—injunctions, receivers 6389
—for rent 6417
Automobiles, seizure and sale of for violations of law....2146, 2147
Allowance of bail....4829-4832, 4837
—procedure 4834
—increase 4833, 4836
—new sureties 4836
—when arrested out of county in which offence was committed 4837
—person convicted before justice 4989
Bond of depository given before 734

Sec.

CIRCUIT COURTS—Con.
—of assessor of land for taxation 2241
Order requiring new or additional bond by officer..... 280
Proceeding to enforce construction of cattle guards by railroad 5950
Forfeiture and destruction of adulterated candy 1193
Suit to vacate cemetery..... 58
Census, of town, etc.....2973-2975
—of city 2976
Certiorari 6055
Relinquishment of citizenship... 65
Petition for release of child from operation of child labor law..1816
Delinquent children, appointment of probation officers for.1912
—delivery of children to probation officer 1913
—report, proceedings 1913
Orders as to custody of children, when parents separated..5327-5330
Incorporation of town, petition for 2881, 2883
—publication, posting 2881
—board of supervisors as parties 2883
—order incorporating, costs, 2881, 2883
—name of 2881
—election 2882
—appeal 2884
—charters not affected by.....2885
—adjustment of debt when town becomes city of second class..2903
—expense of, proportion borne by city of second class.....2904
Annexation of territory to city or town, petition 2956
—notice of motion, service, publication 2957
—hearing 2958
—what judge to preside.....2958
—order 2958
—consolidation of causes 2958
—appeal 2961
— —order on 2962
Confirmation of ordinance contracting corporate limits.....2970
—order 2971
Correction of map of segregated districts in cities and towns..3048
Proceeding by city or town for leave to erect dam in water course 3054-3060
—application, notice, publication 3054
—defense 3055
—appointment of commissioners 3056
— —report to court 3057
—hearing, leave 3058
— —restrictions 3059
—appeal 3060
Bond issue by city or town. 3082-308
—copy of ordinance 3082
—order for election 3083
— —following election 3085
Establishment of boundaries of village or unincorporated community 3549
—petition, order 3550
—costs 3551
Violation of rules of crop pest commissioners 871
Proceedings to enforce treatment prescribed by State crop pest commissioners 877
Commissioner in chancery, appointment 6178

Digitized by Google

Sec.

CIRCUIT COURTS—Con.
—confirming or rejecting report. 6179
—publication of notice to take account 6180
—instructions to 6182
Commissioner of revenue, change in district of..... 2252
Suit by Commonwealth to repeal grant 486, 487, 488
Condemnation proceedings 4361
Confederate monuments, authority to erect 2741
Coroner's inquest, inquisition, testimony and recognizances returned to court 4812
Courthouse, mandamus to compel repair of 2865
Disputed boundary between counties, appointment of commissioners to settle..... 2685
—plat, survey, report, recordation, compensation 2686
Approval of division of church property 40
—proceeding to sell or mortgage 45, 46
To cause fishways to be constructed and maintained in dams 3192
—reports to of inspection..... 3193
Dams, application for leave to erect 3582
—appointment of commissioners, 3584, 3587
—leave refused or granted, terms 3588
Motion by officer against deputy for default 2838
Suit for divorce 5105
—to annul or affirm marriage.. 5105
Proceeding for release of dower of insane wife 5346, 5347
—curtesy of insane husband, 5346, 5347
Establishment of drainage district 1737, 1739
—petition to issue additional bonds 1777
Proceedings to drain lands through lands of another, 5293-5297
Elections, change of election districts 144
—destruction of poll books and ballots 181
—primary, enforcing law relating to 224
—contested 267, 268
— —primary 247
—special for issue of school bonds 769
—for establishment tuberculosis sanatorium 1507
—issue of bonds for roads..... 2110
—order requiring supervisors to proceed with bond issue..... 2114
— —contested election 2115
— —order 2115
—for bond issue by county, erection public buildings, report of commissioners to..... 2739
— —order authorizing issue.... 2739
—removal of courthouse, petition 2745
— —writ of election 2745
— —how held and conducted.... 2746
— —certificate to court of completion of building 2747
— —publication, posting 2747
— —order directing court to be held in new location 2747
— —certificate of judge..... 2752
— —contests 2754

Sec.

CIRCUIT COURTS—Con.
—on bond issue by town to raise funds for removal of county courthouse, petition 2749
— —writ of election 2749
— —posting 2749
— —how held and conducted... 2749
— —certificate 2749
—on proposed change of government by cities and towns..... 2930
Escheats, petition for relief against 497-499
—fining juror for failing to attend inquest 495
Bill to subject escheated land to decedent's debts 516-520
Execution, motion to quash.... 6499
To prescribe terms and conditions upon which school property shall vest in school boards 648
Proceeding to sell or exchange school property 649
Proceedings for recovery of money paid on void school contract 655
Petition to have person declared feeble-minded. 1078, 1079, 1080, 1085
—committee, guardian 1080
—commitment 1080
—order 1081
—when to direct 1085
Approval of fees of counsel for county school board..... 648
Fixing fees for keeping person in jail or live stock levied on. 3487
Quashing officers' fee bill..... 3496
Lawful fence, declaring stream or canal to be 3553
—petition, order 3553
—revocation of order 3554
Ferry proprietor, bond of..... 2041
—failure to give, procedure.... 2042
Granting leave to ferry from Accomac or Northampton to Norfolk 2046
—proceeding to establish ferry, 2055-2057
—forfeiture of 2059, 2060
— —changing order as to..... 2061
Ferriage, increasing or decreasing rates of 2058
Fine, proceeding to recover.... 2544
—against officer failing to collect or account for..... 2546, 2554
—petition for remission of..... 2570
— —notice of 2570
— —procedure.. 2571, 2572, 2573, 2574
— —certificate 2569, 2572, 2574
— —entry on order book..... 2574
Release of prisoner confined for failure to pay fine and costs.. 4952
Forfeitures, enforcement of, 3366-3377
—of charter of corporation for misuse or non-use 3531
Fugitive from justice, extradition of 5063, 5065
Grand jury, selection 4851
—terms for 4851
—when special grand jury may be ordered 4854
—how deficiency supplied 4855
—selection of foreman, oath, 4856, 4857
—charge to 4858
—imposing fine on officer failing to summon or juror failing to attend 4862
Guardians, appointment... 5316-5318
—powers over 5320
—sale of personal estate.. 5321, 5322
—sale of real estate..... 5326

Digitized by Google

Sec.

CIRCUIT COURTS—Con.
Habeas corpus 5848-5861
—to test legality of detention of alleged lunatic, inebriate, etc.1029
Setting aside homestead for widow and children 6537
—sale ..... .6542
Inebriates, drug addicts, report to of commitment of.....1074
—committee 1074
—report, release 1074
Proceeding for surrender or renewal of lease by or on behalf of infant or insane person....5334
—for sale or lease of real estate of 5335-5347
—to transfer property of out of State 5350-5356
—trust estates 5351-5356
To dispose of infant of convict mother 5008
Injunctions 6312
—against railroad for violation of law relating to transportation of live stock.....4006
—against nuisance under prohibition law 4630
Interpleader 3152
—sale of property pending.6153, 6157
Intoxicating liquors, revoking or suspending license of physician for unlawfully prescribing 4598
—issuing license to druggist, 4599, 4600
— —to hospitals 4601
— —to laboratories 4601
— —to hotels 4602
— —to manufacture alcohol....4600
— —bonds required 4602, 4603
—exclusive jurisdiction 4614
—abatement of nuisance, closing room, building, etc.....4622
— —bond of owner 4622
— —suit to abate 4630
— —injunction 4630
— —penalty for contempt.....4630
—when bond required of person convicted 4642
—seizure of vehicle and arrest of person transporting ardent spirits, bail, release 4657
— —order of sale 4658
— —how proceeds disposed of..4658
— —ardent spirits destroyed...4658
—persons convicted of violation of put to work on road.....4669
Trial, of issue out of chancery..6246
—of issues 6247
—inquiry of damages 6247, 6249
Jail, mandamus to compel erection or repair 2865, 2866
—adoption of jail of another county or city 2872
— —prisoner conveyed to.....2873
— — —return of 2874
—to allow compensation to guard for jail 4954
— —how paid 4955
—appointment of jail physician.4956
—compensation for 4956
—to direct jailor to provide prisoner with clothing, medicine, etc. 4956
To allow compensation for analysis of poison in criminal case 4956
To cause land books to be bound 5979
Land grants, correction of error, 475, 476
—trial of caveat.....447-450

Sec.

CIRCUIT COURTS—Con.
—recording plat for one in possession 457
—providing books for entry of plats 439
When to require clerk to take charge of law library 373
Rules for government of law library 373, 374
Proceeding against person doing business without license.....2369
Debt, action of for recovery of penalty for violation of license or revenue laws.....2395
Revocation of license.....2378
Certificate for obtaining license, when given 2373
—when license assigned.....2377
License for sale of soft drinks..4665
—revocation of 4665
License to catch fish for manufacture into oil or fertilizer, certificate 3186
—application for 3186
— —how contested 3188
—issuance of certificate.....3188
—license 3167, 3168, 3189
—transfer of 3189
License to manufacture oil or manure from fish 3185
—application for, how contested 3188
—issuance of certificate.....3188
—license 3186, 3189
— —transfer of 3189
Granting license to commissioner of revenue 2363
Order to mark lien satisfied on record 6456
Magisterial districts, rearrangement, or change in number of, 2688, 2693
Mandamus 6053
—to establish roads and bridges between counties 1992
—to compel erection or repair of jail or courthouse 2865, 2866
—to enforce compliance with law relating to franchises granted by cities and towns 3023
Marriage, authorizing minister to celebrate 5079
—authorizing other person.....5080
Master and apprentice....5298-5311
Mill, exemption from grinding other grain than wheat.....3595
Petition to reopen coal mine closed by inspector 1870
Proceeding to abate nuisance...1520
Proceedings for change of name of person 5983
Oath before, of division superintendent of schools 625
—board of veterinary examiners 1275
Office judgment, when becomes final 6134
Officers, proceeding for removal of 2705, 2706
—proceeding against for illegal interest in contract with city.2708
— —with county 2707
—compensation in criminal cases unprovided for 4960
—certificate of allowance of fees 4961-4963
Orchard inspector, charges against 902
—ratifying action of supervisors putting law into effect..... 904
Certificate to Auditor for payment of cost and expenses of executing oyster laws 3268

Digitized by Google

Sec.

CIRCUIT COURTS—Con.
—approval of police designated by inspector 3276
Pension, application, hearing on 2656
—certificate to Auditor 2656
—entry on minute book.....2656
—appointment of pension commissioners 2657
— —report by 2657
—rule against pensioner ... .2657
—certificate to Auditor of death or removal 2657
—local levy for, committee, 2664, 2665
—report of committee, 2664, 2665, 2666
—order for payment from.....2664
—certificate for artificial limb..2668
Physician, proceeding to test right to practice 1614
Pilots, violations of law relating to 3621
—certificate to applicant for examination 3615
Poor persons, relief to.....2801
Process returned to.....2825
Prohibition 6053
Qualification of city school trustee before 786
—of board of medical examiners 1610
—of district, county, city, town officers 2696
— —penalty of bond 2698
—of civil and police justice before 3099
— —of substitute 3101
—of oyster inspector 3219
—entry in order book.....2696
Quo warranto 5842-5847, 6052
Discharge of person committed to jail for failure to give recognizance 4794
Records, transcribing and rebinding 5980-5982
—faith given to transcribed records 5980
Proceeding to prove lost records, 6203, 6204
Order compelling supervisors to issue bonds for roads for magisterial district 2124
Order book, entry in, approval of loans of sinking fund for retirement of road bonds....2118
—qualification of officer 2696
—permission to carry concealed weapon 4534
—appointment of jury commissioners 5986
Regulations for crossing highway by tramway or railroad 2006, 2007, 2009
Proceeding for recovery of rent not payable in money 5529
Removal of causes, motion for..6175
—when improper for judge to try case 6176
Public road, permission to change line of 4731
Receiver, appointment of for cooperative life insurance company or casualty company....4261
—for estate of infant married woman 5136
— —suit to sell 5137
Reports to, by Auditor whether treasurer has settled with State 2201
—of clerk or other officer who has failed to settle 2201

Sec.

CIRCUIT COURTS—Con.
—of malfeasance, etc., of boards of review and tax officers....2215
—confirmation, treasurer's report, delinquent tax sale.....2429
—correction 2472
—by clerks, fines reported by justices 2551
—by sheriff, prisoners in jail..2870
Approval and ratification of sale of county property 2723
Proceeding for sale of fee simple on bill by life tenant against remainderman 5161
—by remainderman against life tenant 5161
Petition to sell personal property to enforce lien 6449
—defense 6450
—appeal 6451
Scire facias on judgment of justice 6040
Transfer of stock and certificates to foreign personal representative 5343
Petition of surety on officer's bond, to be relieved 5771
Proceeding by Commonwealth's attorney on allowance of illegal claim by supervisors..2759
Suspension of clerk or other officer for failing to settle with State 2201
—rule against 2201
—appointment of person to perform duties of 2201
Correction of list of paid poll taxes 110
—Va. Const., § 38
Correction of erroneous assessment of taxes, 2227, 2236, 2237, 2240, 2248, 2385-2391
Assessment of minerals, disagreement between assessor and commissioner of revenue, referred to 2223
To certify account of assessor..2259
Petition against person filing false list of property for taxation 2324
—judgment 2325
— —satisfaction of 2329
Delinquent tax list certified to..2417
Garnishment for taxes.....2444-2446
Apportionment of taxes when property partitioned 2449
Proceeding to forfeit land for failure to put on land book..2452
Petition to ascertain delinquent taxes on real estate 2456
Sale of property for delinquent town taxes 2457
Sale of delinquent land, relief against 2474
—application for deed 2482
— —compelling execution of...2485
— —to heirs or assigns...2484, 2486
—purchased by State, confirmation of 2489
—application to redeem part of.2493
—report of survey 2495
—deed ordered 2495
—contest of application of purchaser 2495, 2496
Suit to supply records or papers forming links in title 479-482
Proceeding to establish toll bridge rates 2069
Tobacco warehouse, establishment 1345
Ratification of adoption of provisions of law relative to diseased cedar trees 893

Digitized by Google

Sec.

CIRCUIT COURTS—Con.
Treasurer, suspension 2201
—appointment of person to perform duties of.....2201
—bond, examination of 2777
—statement required of 2785
—motion against, failing to pay warrant 2787
—discharge, after expiration of term 2792
Turnpike, placing road abandoned by turnpike company under control of board of supervisors 4074
—order on completion of road or section thereof 4077
—appointment of freeholder....4077
— —report of 4077
—toll, proceeding to obtain permission to charge 4077
—opening road to public for failure to complete 4077
—repairs, proceeding to compel.4078
—appointment of viewers.....4078
—procedure 4078-4082
—costs 4078, 4082
—viewers, inspection of repairs.4082
— —appeal to court from report 4078, 4082
—compelling repair of portion within half mile of city.....4089
—changes in alignment of.....4090
—proceeding to recover forfeiture for receiving more than lawful toll 4087
Proceeding to sell land and buildings of tuberculosis sanatorium 1510
—to restrain tuberculosis patient from injuring health of others.1516
Vacancies in offices filled by, 136, 138, 139
—in city council 2933
—in town council 3003
Warrants, when to be presented to treasurer 2783
—removed from justice.....6017
—how tried 6017, 6018
—appeals from justices, 6019, 6027, 6037, 6039
Water course, clearing obstructions from 3575
To grant permission to carry concealed weapon 4534
Weights and measures, application for 1467
—keeping 1468, 1469
—appointment, sealer of weights and measures 1469
Wharf at county landing, petition to erect 1998
—regulation of 1999
—revocation of privilege 1999
Probate of wills 5247
—copy of will proved out of State 5251
—compelling production of will, 5250, 5257
—summoning persons interested, 5253, 5254
—order of publication 5255
—guardian ad litem for infant or insane person 5255
—hearing motion 5256
—requiring all testamentary papers to be produced.....5257
—jury trial 5257, 5259
—order 5257
—effect of judgment 5258

Sec.

CIRCUIT COURTS—Con.
—ex parte probate 5259
—suit to establish or impeach will 5259-5261
Compelling attendance of witness 6220
Writings admitted to record by on acknowledgment or proof of signature 5204
—on certificate of acknowledgment 5206-5208
—on certificate of proof by witnesses 5205
—copy, when original lost 5212

Appeals and removals

Jurisdiction 5890
Assessment of damages by coast survey 23-25
—to abutting owner when street graded 3038
Violations of automobile law....2145
Proceedings under law relating to cruelty to animals 4562
From refusal of Board of Charities and Corrections to license private institution for care of feeble-minded 1903
From order Board of Health relative to water supply 1792
From Board of Embalming, refusal to renew license of embalmer 1721
—suspension 1721
From rulings of Commissioner of Labor 1831
From judgment of conservators of peace requiring recognizance 4792, 4795
—judgment on 4793
—when may discharge from imprisonment 4794
From appointment by clerk of executor, administrator, curator or appraisors 5249
—order probating will 5249
Proceedings to condemn adulterated, misbranded or substituted food 1165
Inebriate or drug addict, proceeding to commit to hospital, 1071, 1072
Civil warrants from justices, 6019, 6027, 6037, 6038, 6039
—removals 6017
From conviction before justice.4990
—bail 4989
—amendment of warrant 4989
—new warrant 4989
—continuance 4989
—how tried 4990
—proceeding to recover penalty from railroad failing to construct cattle guard 3954
Judgment of justice in unlawful detainer proceedings 5449
By prisoner in jail sentenced to chain gang or public works..2075
Proceeding to sell personal property to enforce lien 6451
From decision of mayor of town.3011
Prosecution for violations of mining laws 1886
Of officer of city or town or member of fire or police department, removed from office.3010
—Va. Const., § 120
Roads, proceedings to establish 1980
—proceeding to compel establishment of roads and bridges between counties 1992
—for removal of gate on.....2012

Digitized by Google

Sec.

CIRCUIT COURTS—Con.
By voter, from denial of registration 103
—Va. Const., § 19
From supervisors, allowing claim against county 2759
—disallowing 2761
—how tried 2763
—from levy by 2762
From order of State Entomologist regarding destruction of diseased trees 891, 892
From assessment for local improvement 3070, 3071
From board of review decreasing merchants' taxes 2366
From local board of review correcting assessment 2263
From proceeding to correct assessment of land divided among different owners 2285
From disapproval by attorney of title to real estate purchased by county or school board....2709
Removal to, civil cases from trial justice 4988
—from justice 6017
—motion for judgment on forthcoming bond 6526
From report of viewers in proceeding to compel repair of turnpike 4078, 4082
Appointments and removals
Of person to perform duties of suspended treasurer 2201
—to perform duties of suspended clerk or other officer 2201
Of person to act in place of sheriff or sergeant 2821
Of assessors of land for taxation 2233
Of bail commissioners 6188
Of ballast masters 3648
—vacancy 3650
Of board of drainage commissioners 1759
Of board for tuberculosis sanatarium 1513
Of board of viewers, proceeding to establish drainage district.1738
—representative for unknown owners 1740
—guardian for infant or insane person 1741
Of commissioner to execute deed conveying delinquent land sold 2483
Of commissioners to rearrange magisterial districts 2691
Of commissioner to vote in meeting of supervisors in case of tie 2718
Of commission to fix salaries of councilmen 2951
Of commissioners to designate fishing shores 5290
Of committees for insane persons 1050-1052
Of committee for estate of convict 4998
Of committee to hear applications for aid from local pension fund 2665
Of committee to inquire into necessity for general index in clerk's office 3395
—report, action on 3396
Of conservator of peace at poorhouse 2807
Of curator of estate of decedent 5248
Of curator for minor 5319

Sec.

CIRCUIT COURTS—Con.
Deputies to officers, consent to appointment of 2701
Of examiner of books of surveyor 2843
Of electoral board 84
—Va. Const., § 31
—for city of second class 2897
Of guardians 5316, 5317
Of pension commissioners 2657
Of police agents for steamboat wharf 4025
Of special police for counties..4797
—for watering place, university, college, manufacturing plant, etc. 4804, 4805
Of general receiver 6280
Of special prosecuting attorney..4976
Of sealer of weights and measures 1469, 1473
Of surveyor, land sold for delinquent taxes 2480, 2481
Of trustees 6295-6302
—for churches 39
—for gifts, devises, etc., for educational or literary purposes, 588, 59
Removal of commissioner of revenue 2255
—of deputies to officers.....2701
—of town officers 2004
—of special police for counties.4795
—of deputy sheriff 2816

CITIES AND TOWNS
See "Corporation Courts"
See also the titles of the particular cities
Definition of cities and towns. Va. Const., § 116
Incorporated communities, Va. Const., § 116
Classification, General Assembly may make .....Va. Const., § 117
General Assembly to enact laws for government of, Va. Const., § 117
—special laws .....Va. Const., § 117
General Assembly may prescribe forms of government for, Va. Const., § 117
Indebtedness, State not to assume .....Va. Const., § 185
Word "city" construed 5
Word "town" construed 5
Word "council" construed 5
Property religious society or church may hold in..... 43
Cemeteries, land conveyed to for 5
—condemnation of land for....53, 54
—abandoned, condemnation of.. 54
— —procedure 54, 55
To furnish official publications to State Library 353
—penalty for failure 355
Protection of trees, co-operation of State Forester 535
Pupil in William and Mary College 830
Pupils from in State Normal Schools 945
Standard weights and measures furnished 1467
Vital statistics, registration districts 1503
—registrar 1504
Water supply, pollution of, penalty 1733

Digitized by Google

Sec.
CITIES AND TOWNS—Con.
Mandamus against to compel obedience to order of board of health 1794
Automobiles owned by, registration 2148
Local board of review for.....2226
Real estate of exempt from taxation 2272
—Va. Const., § 183
—when leased 2272
—gifts to, inheritance tax.....2272
Personal property of exempt from taxation 2301
—Va. Const., § 183
Wards, organization of annexed territory 2694
—councils may increase, diminish, or change boundaries of .....Va. Const., § 121
—re-apportionment of representation among ....Va. Const., § 121
Survey and plan to be made and recorded 2977
—effect of as evidence 2977
Franchise to public service corporation, powers of State Corporation Commission 3712
—Va. Const., cl. b, § 156
Electric or gas plant of, injury to or destruction of property of, penalty 4478
—interferring with meter.....4478
Writings recorded in 5199
Unlawful detainer for recovery of premises for failure to pay rent 5448
Juries where city or town is party 6006
Execution of process in by sheriff of county 6057
Service of notice or process on..6063

Board of health

See "Public Health"
Appointment 1492
President 1492
Powers and duties 1493
—contagious diseases, quarantine 1493
—vaccination 1493
—compensation of agents.....1493
Secretary, term, removal.....1492
—duties and compensation.....1498
Quarantine or vaccination regulations, penalty for violation..1505
Public aid to indigent consumptives 1506
Establishment tuberculosis sanatorium 1510, 1513
—management, &c. 1510
—advice of State Board 1511
—admission, care and treatment of patients 1512
Rules and regulations 1494
—publication 1494
—penalties 1495
When State Board to perform duties of 1496, 1497
—expenses, how paid 1496
Reports to State Board 1497
—vital statistics 1501
Report by physician of person having contagious disease....1515
—penalty for failure 1515
Restraining tubercular patient from menacing health of others 1516
Nuisance, source of filth, cause of sickness, proceeding to remove 1518
—expense, how paid 1519
Quarantine of vessel and cargo..1536

Sec.
CITIES AND TOWNS—Con.
—refusal of master to answer inquiries, penalty 1537
—master to deliver bills of health, &c 1538
— —penalty 1538
—expenses 1541
Quarantine of travellers 1540
—violation, penalty 1540
Plumbing and sewers, inspection 1544
Laundries and wash houses, regulation and inspection 1545
Tuberculosis patient, disinfecting apartment 1548
Registrar vital statistics, executive officer of as 1564, 1579
—burial or removal permit for dead bodies..1565, 1566, 1569, 1571
—registry of stillborn children 1566
certificate of death 1565-1569
— —what to contain 1567
— —death without medical attendance 1568
—registration of births....1572-1575
— —certificate, form 1574
—forms supplied by 1578
—records 1578
—transmission of certificates to State Registrar 1578
—fees 1580
—neglect of duty, penalty 1581
—enforcement of law 1582
License to practice embalming, registration of 1720
Permit for transportation of dead body 1728
Enforcement of laws relative to sanitary facilities for employees 1824
Maternity hospitals, license for..1925
—report, of 1928-1930

Bond issues

Exemption of bonds from taxation 2302
—Va. Const., § 183
Purposes for which authorized, 3079, 3091
Limitation as to amount..3079, 3090
—Va Const., § 127
—what indebtedness not included 3080
Procedure for issue.....3082-3088
—ordinance 3082
—copy to court 3082
—order of court for election....3082
—ballots 3085
—how election held 3086
—returns, canvass, certificate..3087
—order entered by judge.....3088
How bonds signed and attested.3084
Rate of interest, maturity.....3084
For improvements from which city or town to derive revenue 3081
—how negotiated 3089
—contract with purchasers.....3090
Charter not affected by provisions as to 3091

Buildings

Courthouse 2854
—offices in, renting, etc.....2854
—mandamus to compel repair of 2865
Clerk's office 2854
—fireproof 2855
Jails, how provided 2854
—use of county jail 2856
—mandamus to compel erection or repair of 2865

Digitized by Google

Sec.

CITIES AND TOWNS—Con.
Public buildings, injuries to, punishment 4482
—to trees, shrubbery, fences....4483
—burning or destroying by explosives 4430

Change in government of

Of cities of over 50,000 inhabitants, how made 2925
—petition to council..2925, 2928, 2955
— —certificate of clerk 2926
—ordinance for election.....2925
—election 2925
—charter commission 2925, 2928
—election for adoption of charter 2925
—request to General Assembly..2925
Of cities of under 50,000 population, and towns, how made. 2929-2935
—petition 2930
—order for election 2930
—election, contest 2930
—towns, officers, election and terms 2931
—cities, council, election, term, 2932, 2933
— —vacancy 2933
2938-2941
— —division of administrative duties 2939
— —appointive officers 2940
— —powers and duties of mayor 2941
—city manager plan 2942-2945
— —administrative and executive powers 2943
— —general duties of manager.2944
— —officers and employees, appointment 2945
—effect on existing laws and ordinances 2934
—towns, councils, how constituted 2935
—general councilmanic plan. 2936, 2937
Mayor, election, term.....2946
—powers and duties.....2948, 2950
—salary 2951
Council, powers and duties. 2947, 2948
—election of manager 2949
—salaries 2951
—investigations 2952
—definition 2953
Justices of the peace, election..2948
Commission to fix salaries.....2951
Abandonment of form of government adopted 2954
—petition, election 2954
Petitions, requirements as to...2955

Charters

See also "Charter Commission"
Not repealed by Constitution. Va. Const., § 117
Provisions in conflict with chapter 73 repealed 1796
Not affected by failure to adopt law as to segregation of races.3053
Effect of chapter 122 on 3091
Effect on of prohibition law....4673

Cities

What are .....Va. Const., § 116
Construction of word "city"....5
To pay cost of registration....93
To pay registrar's fees for registering votes 98
Cost of making, certifying and posting list of paid poll taxes to be paid by 112

Sec.

CITIES AND TOWNS—Con.
School board, gifts to 671
Tuberculosis sanatorium, established jointly with another city or county 1514
Taxation on intangible personal property 2209
—apportionment when land divided 2494
—levy for pension fund....2662-2667
Commissioner of revenue, duties, compensation, liabilities 2265
—additional compensation 2269
Public wharves and docks, not subject to taxation 2272
Terminals of, not subject to taxation 2272
Charter, effect on of chapter 96.2400
—not affected by provisions of chapter 110 2793
—effect on of chapter 117.....2990
—provisions conflicting with chapter 124 repealed 3111
Not included in magisterial districts 2691
Auditor, statement of receipts and disbursements to Auditor of Public Accounts 2775
Mayor to certify statement of city auditor 2775
Definition 2972
Enumeration of population 2976
—application to court 2976
—enumerators, appointment....2976
—report 2976
Wards, number, how changed..2978
—commissioners to revise registration books 2978
—representation on council....2979
— —reapportionment 2980
Ordinances for borrowing or appropriating money, time required for passage 2986
—recorded vote on 3013
—passage over veto 3013
Election of clerk of court of city 3007
—of Commonwealth's attorney..3008
—of mayor 3010, 3012
—of council 3012
—of officers 3012
—of sergeant 3026
Fire department, suspension and removal of members 3010
—pensions for members.....3035
Acquiring property of water works company, act relating to continue in force 3042
Establishment of chain gang..3061
—who liable to work in.....3061
—effect of failure to establish..3061
Justices of the peace 3092, 3093
Police justice 3094-3096
—salary, how paid 3507
Civil and police justices...3097-3111
Civil justices 3112-3120
Corporation courts, judges, salaries 3468, 3471
—proportion paid by city..3468, 3471
—increase of 3469
Expense of maintaining toll road within half mile of corporate limits 4089
Terms of circuit courts 5893

COUNCIL

Removal for failure to repay loan from literary fund..... 761
Additional compensation provided for commissioner of revenue 2269

Digitized by Google

Sec.

CITIES AND TOWNS—Con.
Establishing and changing wards 2978
—mandamus to compel....2978, 2981
Common council, number 2979
Board of aldermen, number....2979
Members 2979
—qualification 2979
—apportionment among wards.2979
—election 3012
—term 2979
—vacancies 2979, 2983
—ineligible for office to be filled by council 2982
—compelling attendance 2985
—expulsion 2985
When two branches provided..2979
To reapportion representation among wards 2980
—mandamus to compel 2981
Provision for additional compensation of clerk of court....2990
Passage of ordinance over mayor's veto 3013
Meeting, how called 2984
—presiding officer 2984
—quorum 2986
—to be open 2985
Rules 2985
Officers and clerks 2985
Journal 2985
Attendance of witnesses....2985
Passage of ordinance appropriating or borrowing money, time required 2986
Officers chosen by....2987, 2988
—removal, compensation 2988
Joint meetings 2987
—presiding officer 2987
Provision of pensions for members of police and fire departments 3035
Establishment of chain gangs..3061
Not to require license of newspapers 3062
Preventing annoyance of female pupils 3063
Election of police justice....3094
Fixing salary of civil and police justice 3100
Fixing compensation of bailiff, civil and police justices....3110
Levy for expense of installing general index in clerk's office.3398
To provide books for clerk's offices 3400
To provide for payment of salary of judge of circuit court 3466
—of city courts 3468
—increase, decrease 3469
Lists of public service corporations and assessments thereon furnished to by State Corporation Commission 3704
—duty with respect to 3704
President, penalty for failure of duty relating to assessment of railroads, etc., by Corporation Commission 3704

OFFICERS

Commissioner of revenue, election, term, Va. Const., §§ 119, 122
Change in ward boundaries, continuance in office 2980
Suspension, removal 3010
—notice, appeal 3010
Election, when terms begin....3012
Matron of jail, appointment, term, salary 3027

Sec.

CITIES AND TOWNS—Con.
Clerk of court, duties, fees, liability 2989, 2990
—Va. Const., §§ 118, 122
—election, term 3007, 3012
Commonwealth's attorney, duties, fees, liability....2989
—election, term 3008
— —Va. Const., §§ 119, 122
Sergeant, powers, duties, compensation, liability 2992
—allowance to by city court....2993
—election, term, duties....3026
Mayor, election, term 3010, 3012
—duties, powers 3010
—appeals from decisions of....3010
—removal 3010
—vacancy 3010
—investigations, administering oath 3010
—veto power 3013

Cities of the first class

Cities included ....Va. Const., § 98
Courts for ....Va. Const., § 98
When cities of second class become 2910
—census 2911
—certificate 2911
—proclamation 2911
—appeal 2912
—effect on charter 2917
Court 2913, 2914
—establishment by General Assembly 2914
—judge, salary 3468
Council, upper and lower chambers 2915
—number of members 2916
—special election of 2918, 2920
— —notice 2919
—term 2920
—qualification 2920
—vacancy 2920
—powers 2920
—allowance to clerk of circuit court 5903
First regular election 2921
Provision for regular elections.2921
Old officers to act until successors qualify 2922
Offices filled by council 2923
Application of chapter 118....2924

Cities of the second class

Separate circuit court for, when established ....Va. Const., § 97
Cities included ....Va. Const., § 98
Courts for ....Va. Const., § 98
When corporation or city court to cease to exist..Va. Const., § 98
Formation 2886, 2973-2975
—enumeration of population of town 2973, 2974
—order of court 2975
—privileges, duties, liabilities..2886
—mayor 2887
—council 2888, 2975
— —increase in number of members of 2888
—treasurer 2889, 2897
— —vacancy 2889
— —bond, qualification, duties.2889
—sergeant 2891, 2893, 2896, 2897
—other officers 2895
Commonwealth's attorney, clerk, sheriff, powers and duties in..2894
—citizens may vote for....2894
Courts 2896
—circuit court, jurisdiction....2896
Electoral board, appointment..2897
Division into wards....2898
Division of council into classes.2898
Assessment of real estate....2899

Digitized by Google

Sec.

CITIES AND TOWNS—Con.
Capitation taxes 2900
Election and terms of officers, 2892, 2893
—mayor 2892
—councilman 2892
—treasurer 2893
—commissioner of revenue, 2890, 2893, 2897
—justice of the peace 2893
State, county and district.....2901
Assumption of proportion of debt, county and district....2902
—adjustment with supervisors and district school board.....2902
—proceedings when adjustment not reached 2902
Costs and expenses of courts, &c., adjusted 2904
Registrars, duties, fees.....2905
Provision for water, light, heat and fuel, purchase, condemnation 2906
Taxes 2907
Charters of cities hereafter in conflict with general law repealed 2908, 2917
Charter, &c., of city heretofore established not affected 2909
Part of congressional, senatorial, legislative district, and judicial circuit 2909
Procedure to become city of first class 2910-2912

Corporate limits

Expansion and contraction, General Assembly may provide for, Va. Const., § 126
Extension of 2956
—ordinance 2956
—petition 2956
—vote of council 2956
—notice 2957
—parties defendant 2957
—hearing 2958
—order 2958
—fees and costs 2957
—terms and conditions 2958
—tax rate in annexed territory..2958
—expenditures on annexed territory 2958
—apportionment of bond issue..2958
—county levies, payment.....2960
—list of real estate certified to commissioner of revenue of city 2960
—appeals, how heard 2961
— —costs 2961
— —order 2962
—dismissal of motion for 2961
—by annexation of town.....2962
—by consolidation of city.....2962
—copy of proceedings certified to county clerks 2963
—organization of annexed territory 2964
—mandamus, prohibition 2965
—officers resident in annexed territory, continuance in office.2967
—property not to be included..2968
To remain as established 2966
Contraction of 2969
—ordinance, publication 2969
—application to court 2970
— —who may appear against..2970
—order 2971

Council

Local and special legislation by, General Assembly may authorize .....Va. Const., § 65

Sec.

CITIES AND TOWNS—Con.
Composition, power and duties, Va. Const., § 121
Election .....Va. Const., §§ 121, 122
Term .....Va. Const., § 122
Mandamus against to compel reapportionment of representation to wards ....Va. Const., § 121
Procedure as to ordinances, Va. Const., § 123
—passage over mayor's veto, Va. Const., § 123
Levy of capitation tax by, Va. Const., § 173
Construction of term "council" 5, 2953
—Va. Const., § 117
Donations to vestries managed by 37
To pay electoral board 59
To furnish stationery, etc..... 59
Duties of members, when to begin 132
Holding over 132
Election districts, establishment of by 145
To provide ballot boxes..... 171
To pay expenses of special messenger in primary election, 241, 242
Clerk, oath or affidavit before.. 274
—report to by jailer of prisoner put on State convict road force 2076
Members, what United States officers may be 291
—eligibility for other office, Va. Const., § 121
—ineligible to office of superintendent of schools or clerk... 779
—ineligible as city school trustee 786
—interest in contract with or claim against city or town prohibited 2748
—ineligible to office to be filled by council 2982
—on committee to inspect buildings as to exits 3142
May request State Accountant to perform services for city or town 565
—cost of 565
May supplement salary of superintendent of schools 626
School tax levy by 740, 781
—Va. Const., § 136
—appropriation of 781
—estimates for submitted to.... 782
Fixing number and boundaries of school districts 776
Appointment school trustees.... 789
Compensation of inspector appointed by State Entomologist. 851
To fix compensation secretary board of health 1498
Appropriation for aid for indigent consumptives 1506
—for person bitten by animal having rabies 1553
Tuberculosis sanitarium, levy of tax for 1510
—establishment without referendum 1514
Vaccination provision for compulsory 1530
Quarantine ground, establishment 1533
Vessels, quarantine regulations for 1534
—extent of, penalty 1535

Digitized by Google

Sec.

CITIES AND TOWNS—Con.
Plumbing and sewers, regulation 1544
—inspector, appointment, &c....1544
Justice of juvenile and domestic relations court, election of 1945
—term 1953
—salary 1947
—court room, books, stationery.1951
—clerk, bailiff, compensation, duties 1952
Hospital, establishment of.....1555
—temporary, for contagious and infectious diseases 1557
—removal of persons to 1559
—pest house, location 1560
Registrar vital statistics, fixing compensation of 1579
Poor committee, member of Board of Poor Commissioners.1904
Account to by superintendent of penitentiary of prisoners on convict road force 2077
Classification for taxation adopted by 2210
Tax levy allowed 2212
Approval of accounts of assessors 2250
Increase in compensation of assessors 2250
Exemption of county, district, municipal bonds from taxation 2302
Adoption of municipal dog tax law 2326
Compensation to commissioner of revenue for extending and recapitulating tax books.....2337
Delinquent tax lists, examination and correction of 2417
Report and payment by clerk of delinquent taxes collected....2419
Publication of delinquent tax list 2429
Delinquent tax sale, treasurers report submitted to 2471
—treasurer charged 2471
List of State purchases of delinquent lands furnished to.....2489
—credit to treasurer 2489
Fines collected by clerk or justice, statement to 2546
—verification and correction....2546
—transmission to Auditor.....2546
—report of delinquency to Commonwealth's attorney 2546
Levy of tax for pension fund. 2662-2667
Discharge of treasurer, certificate 2692
—rule 2792
Assistance to poor.....2800, 2801
To provide courthouse, clerk's office, jail 2854
—purchase of land for 2854
—offices for treasurer, &c. 2854
—renting rooms in 2854
Jails, heating, beds and bedding furnished for 2857
—rules for government of....2859
—inspection records of jailer...2861
—report to State Board of Charities as to condition of 2862
—inspection of 2863
— —reports 2863
Mandamus against to compel erection or repair of jail or courthouse 2865-2867
—defendant going out of office, revival 2866
City of second class 2888

Sec.

CITIES AND TOWNS—Con.
—election, term 2892
—division into classes 2898
Cities of first class.....2915, 2916
Form of government changed. 2932, 2933, 2935
General councilmanic plan.....2936
Modified commission plan.2938-2941
City manager plan 2942-2945
Cities and towns changing form of government, powers and duties 2947
—salary 2936, 2951
Investigations by 2952
—witnesses, oaths, contempt, books and papers 2952
Organization of annexed territory into wards 2964
Proceeding for contraction of city limits 2969-2971
To cause survey and plan to be made 2977
Officers chosen by 2987, 2988
—removal, compensation 2988
Franchises, restrictions, &c., as to grant of 3016, 3018-3024
—mandamus 3023
Acquirement and control of public utilities 3031
—condemnation 3031
Water supply, prevention of pollution 3031
—purchase, condemnation 3031
Regulation of construction of buildings 3032
Establishment of parks, &c....3032
Powers as to weights and measures 3033
Regulation of transportation through streets 3033
Protection of property 3033
Authorizing fire department to give aid beyond corporate limits 3033
General powers 3034
—making ordinances, providing fines, &c. 3034
—appointing and compensating officers 3034
—appropriations to institutions.3034
—condemnation of property, restrictions 3034
Grading streets 3036-3039
—abutting owners, determination of damages to 3036
—notice, obligation, &c....3037-3039
—report, confirmation 3039
— —effect as judgment 3039
Segregation of races.....3043-3053
Preventing annoyance of pupils in female school 3063
Assessments for local improvements 3067-3071
Levy of assessments.....3073-3077
Establishment of public libraries and reading rooms 3074
Disbursement of moneys 3078
—statement, posting 3078
Bond issues 3079-3091
Fires, fire department, &c.. 3121-3142
—regulations as to exits of theatres, &c.....3143
Reports by of inspection of fishways in dams 3194
To provide for payment of fees of attorney appointed to defend poor person 3518
Complaint to State Corporation Commission for examination of transportation or transmission line 3721

Digitized by Google

Sec.

CITIES AND TOWNS—Con.

Railroad crossings, requiring gates and flagmen at 3998
Prohibiting excursions and picnic parties 4008-4010
Consent to use of streets, parks, etc., by telegraph and telephone companies for lines, conduits, etc.....4037
—regulations 4037
Power of eminent domain 4385
Payment of expense of guards for jail 4955

Education

See also "Education"

Establishment of schools....594, 774
Classification of cities 775
Number and bounds of school districts 776
Trustees, officers 774
School boards, State Accountant may devise system of accounting and inspect accounts for.. 565
—reports 565
—to prescribe school districts.. 776
—a body corporate 777
—property 777, 786
— —sale or exchange of..... 649
—jurisdiction, quorum, by-laws. 778
—clerk 786
— —who ineligible 779
—appointment of trustees..... 780
—vacancies 780
—estimates submitted to council 782, 786
—disbursements 783
—powers and duties 786
—warrants 786
—chairman to certify statement of city auditor 2775
—discharge of treasurer, certificate 2792
— —rule 2792
School divisions 604, 606
—Va. Const., § 132
Teachers 774
—employment 786
—dismissal 786
—pay 786
Superintendent, who ineligible.. 779
—pay 627, 784
—may teach, when 785
School trustees, appointment, term 780
—vacancy 780
—qualification 786
—vacancy 786
—oath 786
—who disqualified 786
School taxes 781
Appropriations 781
—for industrial or technical schools 664
School funds, estimates submitted to council 782
—apportionment of State funds. 783
—deposit and disbursement.... 783
Pupils, admission of 786
—regulation of conduct..... 786
—suspension or expulsion 786

Elections

See also "Elections"; "Primary Elections"

General Assembly may prescribe property qualification, Va. Const., § 30
To adopt form of government, Va. Const., § 117
Treasurer, sergeant, mayor, Va. Const., §§ 120, 122

Sec.

CITIES AND TOWNS—Con.

Council .....Va. Const., §§ 121, 122
Provisions applicable to in general 168
Cost of 170
Expenses and fees, how paid.198-201
Primary, declaration of candidacy 229
To abandon changed form of government 2954, 2955
Electors in annexed territory, transfer to poll books 2964
On bond issues.....3082-3088

Fire department

Suspension and removal of members .....Va. Const., § 120
Rendering aid outside of corporate limits 3032
How constituted, by-laws 3126
Right to enter building or premises where fire in progress 3130
Chief, as member of committee to inspect buildings as to exits 3142
Fire companies, formation.....3121
—organization 3122
—members, duties 3123
—meetings 3124
—engineer and wardens, appointment 3125
— —to attend fires 3128
— —penalty for disobeying....3132
—ordinances regulating 3127
—engineer, authority at fire....3129
—warden acting as 3131
—wardens, grades, duties.....3131
—destruction of property to prevent spread of fire.....3133-3135
—dissolution 3136
—fire marshal, appointment 3137
— —duties 3138-3140
— —oath 3140
— —assistants 3140
Report of fire to commissioner of insurance 4185
—assistance to commissioner making examination 4186
Examination into inflammable condition of premises.....4195
—order for remedy of 4196
Officers, penalty for failure to perform duty under insurance law 4197
Members exempt from jury service 5985

Lots

Fraudulent sale of, promotion of, &c., punishment 4465
Plat 5217
—description of lots on in conveyances 5217
—attested by clerk, evidence....5217
—what plat to contain....5217, 5218
— —signature, acknowledgment.5218
—effect of recording 5219
—alteration and vacation of streets 5220, 5221
— —of plat in whole or in part. 5221, 5222

Mayor

Powers and duties.Va. Const., § 120
Ordinances presented to and signed by .....Va. Const., § 123
Veto power .....Va. Const., § 123
Election, term 129
—Va. Const., §§ 120, 122
Duties, when to begin 132
Holding over 132

Digitized by Google

Sec.

CITIES ..... TOWNS—Con.
Not eligible to office of superintendent of schools or clerk.... 779
Member board of health 1492
City of second class, election, term 2892
When form of government changed 2931, 2935
Of city adopting commission form of government 2941
—changing form of government.2946
—powers and duties.....2950, 2951
—salary 2951
As member of committee to inspect buildings as to exits..3143
Fees, criminal cases, payment from treasury 3504
Complaint to State Corporation Commission for examination of transportation or transmission line 3721
Approval of appointment of officers of Society for Prevention of Cruelty to Animals.....4555
—record 4555
—requiring bond 4555
Intoxicating liquor laws, search warrant for violation of 4612
—jurisdiction of cases arising under 4614
—appeal 4614
—under city ordinances 4615
—territorial extent of 4615
—notice to Commissioner of Prohibition 4615
—recognizance of accused to answer indictment 4613
— —of witnesses 4613
—bond of accused not to violate law 4613
—commitment to jail 4613
—warrant for arrest of person bringing ardent spirits into State 4636
—duty to enforce 4655
— —failure as misfeasance.....4655
— —fees 4655
Service of notice or process on..6063

Officers and employees

See "County and City Treasurers"; "Sergeants"
Ineligible to serve on electoral board or as registrar or judge of election—Va. Const., § 31.
Eligibility—Va. Const., § 32.
General Assembly may provide for examination of books of—Va. Const., § 115.
Passes, free transportation, etc., to prohibited—Va. Const., § 161.
Election of 129
—Va. Const., § 120, 122.
—when held 130
—primary, abstract of votes, to whom forwarded 241
—contested 267
Clerk of the court, election, term 129
Treasurer, election, term..... 129
—in city of second class.....2893
—appointment by court 2897
—list of capitation taxes furnished to 2900
Sergeant, election, term....129, 3026
—in city of second class.....2893
—appointment by court 2897
Attorney for the Commonwealth, election, term 129
Commissioner of revenue, election, term 129
—in city of second class.....2893
—appointment by court...2890, 2897

Sec.

CITIES AND TOWNS—Con.
Duties, when to begin..... 132
Holding over 132
Vacancies, how filled 136, 138
—when and how appointees to qualify 139
Disqualified to act as judge or clerk of election 149
—as city school trustee..... 786
Disqualification of 289-293
—holding office under United States 290
Acts of Assembly furnished to.. 372
Not to purchase warrants at discount 484
Sealer of weights and measures, appointment 1469, 1478
To furnish information to Commissioner of Labor 1800
Auditor, account to of jail prisoners on State convict road force 2077
City attorney, notice to of motion for apportionment of taxes when property partitioned....2449
—copy of order to.....2449
—notice to, apportionment of taxes when land divided.....2495
Surveyor, to survey land sold for delinquent taxes 2480
Engineer, report of metes and bounds of land sold for delinquent taxes 2495
Qualification, oath, bond...2696, 2697
—vacancy for failure to qualify.2697
Residence 2703
—removal, vacating office.....2704
Removal, cause for, procedure, 2705, 2706
Interest in contract with or claim against city prohibited.2708
Offices for 2854
Justice, city of second class....2893
—when form of government changed 2948
Form of government changed, election, terms, etc. 2931
City manager 2943
—duties 2944
City or town manager.....2949
Register, who to perform duties of 2987
Chamberlain 2987
Assessor 2987
Elected by council...2987, 2988, 3034
—removal, compensation...2988, 3034
—bond 2988, 3034
Appointed by mayor or head of department 2988
Constables, sergeants and policemen, allowance to in lieu of fees 3511
Officers, penalty for failure to perform duty under insurance law 4192
Garnishment of wages and salaries of 6560, 6561

Ordinances.

Imposing taxes, jurisdiction of Supreme Court of Appeals in controversies concerning—Va. Const., § 88.
Enactment—Va. Const., § 123.
How passed over veto of mayor —Va. Const., § 123.
Appropriation—Va. Const., § 123.
For granting franchise or selling property of city or town—Va. Const., § 125.
Of city, for election to adopt special form of charter.....2925
City or town changing plan of government, effect on 2934

Digitized by Google

Sec.

CITIES AND TOWNS—Con.
For annexation of territory....2956
—publication 2957
For contraction of corporation limits 2969
Fixing voting place in town....2999
Permitting awnings, fire escapes, etc., over street 3015
Granting franchises..3016, 3018-3021
—Va. Const., § 125.
—amending franchise 3022
General power to pass, provision of punishment 3034
For grading streets 3036
For segregation of races...3043-3053
For sewerage or water purification 3064
As to fires, fire companies, etc., 3121-3143
—fire escapes 3141-3143
Intoxicating liquor, jurisdiction for enforcement 4615
—territory contiguous to city or town 4615
—regulating sale, etc., authority to enact 4617
Effect of prohibition law on...4673
Offence against two or more, proceeding on one as bar to others .....4...
Cases involving validity of, jurisdiction of circuit court.....5890
Jurisdiction of appeals involving 6037
—Va. Const., § 88.
Copies of as evidence.....6193

Police.

See also "Police."
Chief as probation officer, 1912, 1943, 1944
—as member of committee to inspect buildings as to exits...3143
—to furnish form for reports by junk dealers 4711
Powers and duties 2991
Compensation 2991
Fee, as witness 2991
Expenses 2991
Reward, right to receive.....2991
At race courses, fair grounds, etc. 3005
Suspension and removal.....3010
—Va. Const., § 120.
Duty to enforce prohibition laws 4655
—fees 4655
Warrant of arrest directed to. 4824
When person arrested by tried without warrant 4992
Exempt from jury service.....5985

Poor.

See also "Poor."
Board of poor commissioners...1904
Poor persons, legal settlement in 2800
Overseer, placing minor in institution or binding as apprentice 5299, 5300
—bond 5303, 5304

Powers and Liabilities.

Appropriations to charitable institutions—Va. Const., § 67.
Proportion of salaries of judges paid by—Va. Const., § 103.
—increase of salary—Va. Const., § 103.
Appropriations to schools by—Va. Const., § 141.
Credit of not to be granted to aid person, association, or corporation—Va. Const., § 185.
Not to subscribe to stock or obligations of corporation—Va. Const., § 186.
Debts to aid Civil War, not to be paid—Va. Const., § 186.
Payment of proportional expense for maintaining prisoners on State convict road force 2077
Vagrants, how dealt with..2809, 2810
Jurisdiction of corporate authorities 3006
Franchises, restrictions on grant of 3016
—Va. Const., § 125.
—regulating grant of 3018
—advertisement for bids..3016, 3019
—bids 3020
—ordinance, what to show.....3021
—amendments to, notice.....3022
—mandamus to compel compliance with law 3023
—purchase of by city.....3017
Powers of enumerated 3030
—streets, walks, etc. 3030
—public grounds and buildings.3030
—markets 3030
—nuisances 3030
—powder and combustibles.....3030
—cemeteries 3030
May use waters of Lake Drummond 3040
Erection of dam in water course.3054
—application to court 3054
—notice 3054
—parties defendant 3055
—commissioners 3056
— —report 3057
—hearing 3058
—restrictions on diversion of water 3059
—appeal 3060
Sewerage or water purification, making contracts for 3064
Property adjoining parks, monuments, etc., acquisition and disposition of 3065
Streets, acquisition of property abutting on 3065
Fixing penalties for non-payment of taxes 3066
Bond issues 3089-3091
Liability for property destroyed to prevent spread of fire.3134, 3135
When to pay expense of guard for jail 4955

Roads and Bridges.

Contribution to cost of by counties 1976
Contribution by to cost of county roads 2016
Incorporated town as separate road district 2017

Segregation of Races.

Districts, ordinance for.....3042
—what to comprise 3044
Map, designation of districts residents 3045
—certified 3048
—corrections, how made.....3048
—as evidence 3049
When unlawful for white and colored persons to reside in certain districts 3046
When person occupying room considered resident 3047
Punishment for residing in prohibited district 3050
Where servants may reside.....3051
Moving into segregated district after segregation adopted....3052
Charters of cities and towns not adopting, unaffected 3053

Digitized by Google

Sec.

CITIES AND TOWNS—Con.

Streets.

Sale of rights in—Va. Const., § 125.
Consent to use of by street railway, gas companies, etc..3014, 3884
—Va. Const., § 124.
Awnings, fire escapes, etc., on..3015
Using contrary to law, penalty..3024
Grading, order for by council..3036
—adjustment of damage to abutting owner 3036-3039
Through land belonging to the Commonwealth, prohibited ...3041
Property abutting on, acquisition by city or town.....3065
Telegraph and telephone lines..4035
—consent of council.....4037, 4038
—restrictions in use of....4037, 4038
Obstruction of by railroads, penalty 4734
Shooting in or along, penalty...4738
Driving vehicles on at excessive speed, penalty 4741
Driving animals on at excessive speed, penalty 4741
Horse racing on, penalty.....4741
Leaving sick or disabled animals in 4743
Dedication of by recording plat of city or town lots.....5219
—alteration or vacation of, 5220-5222

Taxation.

See also **"Taxation."**

School taxes—Va. Const., § 136.
Rates, discrimination as to property added to corporate limits —Va. Const., § 169.
Of abutting land owners for street improvement, etc.—Va. Const., § 170.
Rolling stock of electric railways 2208
—ascertainment of value.....2208
Classification of property for...2210
Not to exceed legal rate.....2210
Additional levy allowed.....2212
Assessors 2233
—compensation 2250
Property of not subject to.....2272
—leased 2272
Exemption from, property of, let to another 2272
Exemption of county, district, municipal bonds 2302
Law as to taxing dogs applicable to 2825
—adoption of 2326
Fees, commissioner of revenue, provided by law, not to be altered 2347
In cities of second class.....2906
Assessment 3025
—Va. Const., § 128.
—correction 2227, 2263, 2389
—made by State Corporation Commission, correction 2392
—of omitted property or persons 2332, 2333
— —limitation 2334
Penalties for non-payment 3066
Assessment for local improvement 3067
—order by council 3067
—petition for 3067
—report to collector 3067
—notice to land owners...3068, 3069
—appeal 3070, 3071
—lien, how enforced, when effective 3071
License taxes 3072

Sec.

CITIES AND TOWNS—Con.

—not to be imposed on sale of farm or domestic products....3072
Levy 3073
—on persons 3073
—on property 3073
— —segregated 3073
—rate 3073
—for public libraries and reading rooms 3074
Distress for 3075
Delinquent lists 3076
—examination, allowance, posting 3077
—copy to Auditor 3077
Banks, branches 4102
—stock, deposits 4102
Appeals 6336

Towns.

What are—Va. Const., § 116.
Construction of terms "town," "council," etc. 5
List of residents who have paid poll taxes furnished by treasurer of county to clerk of the circuit court 114
—how prepared and posted..... 114
System of public free schools to be established in 594
—how administered 595
School districts 668
School trustees 668
—term 668
As separate road districts.....2017
Taxation on intangible personal property for roads 2209
—property in liable to road tax.2117
—delinquent, sale of property for 2457-2459
Acquiring title to property delinquent for non-payment of town taxes 2458
Removal of county courthouse, donations for 2748
—bond issue for.....2749-2750
—elections 2749
Incorporation 2881
—petition to court.....2881, 2883
—publication of petition.....2881
—order of court 2881
—name of 2881
—first election, how held.....2882
—board of supervisors as parties 2883
—appeal 2884
—charter not affected.....2885
Charter, effect on of becoming city of second class.....2968
Definition 2972
Becoming city of second class, 2886, 2973-2976
—enumeration of population, application 2973
— —enumerators 2973, 2974
— —report 2974
—order of court 2975
—copy to Secretary of Commonwealth 2975
Ordinances, prosecution for violation of 3011
Preventing annoyance of pupils of female schools.....3063
Forbidding animals to run at large 3538
Riding or driving vehicle, bicycle, etc., on sidewalk, penalty 4733

COUNCIL

School districts, constitution of town as 668
Appointment of school trustees. 668

Digitized by Google

Sec.

CITIES AND TOWNS—Con.
Removal for failure to repay loan from literary fund..... 761
Sale of property delinquent for non-payment of taxes 2457
Bond issue for removal of county courthouse 2750
To pay expense of removing poor to place of last settlement, 2803, 2804
Of town becoming city of second class 2888
—increase of 2888
Officers chosen by.....2987, 2988
—removal, compensation 2988
Proceedings, rule for.....3028
Presiding officer 3028
Journal 3028
Members, number, election.....2994
—mayor as 2994
—qualification 3001
—oath 3002
—fines imposed on, expulsion...3003
—vacancies 3003
—ineligible for office to be filled by council 2982
Judge of qualification of members 3003
Returns of elections to, recordation 2998
Filling vacancy in office of mayor 3003
Suspension and removal of officers 3004
Levying taxes, contracting debt, majority required 3028
Fixing salary of mayor.....3028
How convened 3029

ELECTIONS

On bond issue for roads in counties, voters in 2111
First, how held 2882
When held, officers chosen.....2994
Notice of 2999
Voting place 2999
Appointment of registrars and judges of election 2995
Manner of holding 2996
Who may vote 2997
Returns 2998
To fill vacancy in council.....3003

OFFICERS

Sergeant, election, term, duties.3026
—of town becoming city of second class 2891
Mayor, salary, fees 3028
—to preside over council.....3028
—of town becoming city of second class 2886
—election, term 2994
—member of council 2994
—oath 3002
—qualification 3001
—vacancy 3003
—has powers of justice.....3011
— —appeals 3011
Suspension and removal.....3004
—notice, defense 3004
Chosen by election.....3009
Treasurer of town becoming city of second class.....2889
Commissioner of revenue of town becoming city of second class.2890
—appointment of, qualification.2890

CITIZENSHIP
See also "Aliens."
What constitutes 62
Relinquishment 63
Suspension 64
—when not allowed 65

Sec.

CITY ATTORNEY
Notice to of motion for apportionment of taxes when property partitioned 2449, 2494

CITY CHARTERS
See "Charters"; "Cities and Towns."

CITY COUNCIL
See "Cities and Towns."

CITY COURTS
See also "Circuit Courts"; "Clerks of Courts"; "Corporation Courts"; "Courts"; "Judges"; and titles of particular courts.
In city of first class—Va. Const., § 98.
In city of second class—Va. Const., § 98.
Terms 5908, 5909
Attachments 6380
—for rent 6417
—injunctions, receivers 6389
Mandamus and prohibition to by Supreme Court of Appeals....5864
Injunctions 6318, 6389
Commissioners in chancery, appointment 6178
—report, confirming or rejecting 6179
—publication of notice to take account 6180
—instructions to 6182
Receivers 6389
General receiver of 6280
—order to settle accounts of...6289
—report, recordation 6290
—new bond 6290
Removal of causes, motion for..6175
—when improper for judge to try case 6176
Setting aside homestead for widow and children 6537
—sale of 6542
Judge, chosen by General Assembly—Va. Const., § 99.
—qualification, residence, term—Va. Const., § 99.
—salary 3468, 3471
— —Va. Const., § 103.
—not to practice law.....5975
— —Va. Const., § 105.
—not to hold other office.....5976
— —Va. Const., § 105.
—where to reside.....5977
— —Va. Const., § 99.
—removal to vacate office.....5977
—when to qualify 5978
— —failure vacates office.....5978
—holding other court.....5898
— —Va. Const., § 99.
— —compensation, mileage 5898
—pro tempore judge 5899
— —appointment, powers 5900
— —compensation 5901
—terms of court, may omit.....5908
—designation of terms 5909
—changing day of commencement of 5909
—member of special court of appeals 5873
— —Va. Const., § 89.
—pay 5873
—appointment of jury commissioners 5986
— —certificate for payment of.5986
— —jury drawn in presence of.5992
— —order for greater number of jurors 5993
Clerks, election, term, number—Va. Const., § 118.
—abstracts of judgments certified to clerk of corporation court 6461, 6463

Digitized by Google

Sec.

CITY COURTS—Con.
—payment of certified to.....6465
Drawing jury 5992
—summoning.....5993, 5994, 5999

CITY HALL
Wilful or malicious injury to..4482

CITY LOTS
Fraudulent sale, promotion, etc., of 4465

CITY ORDINANCES
See "Cities and Towns"; "Ordinances."

CITY POINT
Harbor master at, duties.....3682

CITY SCHOOL BOARD
See "Cities and Towns"; "Education."

CITY SCHOOL TRUSTEES
See "Cities and Towns"; "Education."

CITY SERGEANT
See "Sergeants."

CIVIL CONTINGENT FUND
Payments from 318

CIVIL JUSTICE
See also "Civil and Police Justice."
Election, term, salary 3112
—beginning of term 3115
Provisions applicable to.....3113
Jurisdiction 3114
Proceedings upon interrogatories 3116
—appeals 3116
Powers in matters of contempt.3117
—appeals 3117
Costs, payment into treasury...3119
Summons and other process, to whom directed 3120
State reports furnished to..... 347
Clerk, appointment 3118
—duties, term, compensation...3118
—qualification, oath, bond 3118

CIVIL AND POLICE JUSTICE
See also "Civil Justice."
Election 3097
Term 3097
Qualification 3098
Oath, bond 3099
Salary 3100
—certificate for 3100
When court open for business..3101
Substitute justice, appointment, powers 3101
—compensation 3101
Vacation 3101
Jurisdiction 3102
Warrants 3103
Costs, fees 3104
—payment into treasury.....3104
Procedure 3105
—bill of particulars and grounds of defense 3105
—guardian ad litem 3105
Executions 3105
Appeals 3106
—bond 3106
—dismissal of 3106
Dismissal of claim 3107
Papers, preservation of, indexing 3107
—fee for 3107
Rules of practice 3108
Court-room, books, stationery..3109
Bailiff, appointment, duties, compensation 3110
Charter provisions, effect 3111
Contempts before 3117
Vacating office by holding certain other public offices.....3093

Sec.

CIVIL WAR
Veterans, payment of poll tax not prerequisite to right to vote—Va. Const., § 22.
Debts, no appropriation to be made for—Va. Const., § 186.

CLAIMANT
See also "Claims."
To property in proceeding to enforce forfeiture 3368
—bond of, delivery of property to 3368
—judgment on bond 3372
—appraisers 3368
—execution 3372
To property levied on, how claim tried 6152-6156
—bonds 6156, 6157
In proceeding to sell personal property to enforce lien 6451
In attachment proceedings. 6407, 6402, 6403

CLAIMS
See also "Claimant"; "Warrants for Small Claims."
Against Counties, see "Counties."
Against State, see "State."
Against common carrier for goods lost or damaged.....3928
—filing 3928
—penalty for failing to pay....3928
Jurisdiction of justice of the peace 6015
Disallowance, for failure to answer interrogatories.....6236
—for failure to produce books, writings, etc. 6237
Unclaimed court funds....6310-6314

CLAMS
See also "Commission of Fisheries"; "Oysters."
Clamming grounds 3295
—application for designation of.3295
—designation, stakes 3295
—plat, recordation 3295
—costs 3295
Bed not to be assigned 3234
—not to be staked off.....3232
— —penalty 3232, 3234
—examination and analysis by Dairy and Food Commissioner.3281
—designation of polluted area..3282
—removal of shellfish 3283
— —from private grounds.....3284
— —from public grounds.....3285
—unlawful to store or sell clams unlawfully removed from contaminated beds 3286
—penalty for violation of law..3286
—payment of fine 3288
—who to enforce law.....3289
Taking, regulations as to.....3293
—tax 3293
Buying, marketing and shipping, license for 3294
—penalty for violation of law relating to 3294
—presumption from possession of oysters 3294
Operating device for taking between Lynnhaven inlet and Willoughby Spit 3173
—penalty 3173
Taking with rakes and scrapes in Accomac and Northampton counties, penalty 3238
Taking with drag-box, penalty.3245
Catching at night 3251
—on Sunday 3251
—penalty 3251
Dredging for on public grounds unlawful 3292

Digitized by Google

Sec.

CLAMS—Con.
Falsely designating as Lynnhaven, penalty 3291
Non-resident catching, penalty.3254
—who deemed non-resident.....3255
—citizen interested with, prohibited 3253

CLARKE COUNTY
Fees of Commonwealth's attorney 3505

CLERKS
Of circuit courts, see "Circuit Court"; "Clerks of Courts"; "Courts."
Of courts, see "Clerks of Courts."
Of House of Delegates, see "General Assembly."
Of Senate, see "General Assembly."
Of various offices, commissions, etc., see particular titles.
For court of civil justice.....3118
Of juvenile and domestic relations courts 1952
Exempt from jury service.....5985

CLERK'S OFFICE
See "Clerks of Courts."

CLERKS OF COURTS
Election 124
—Va. Const., §§ 110, 112.
—in cities 129, 3007, 3012
— —Va. Const., §§ 118, 122.
Vacancies 136
Term 124
—Va. Const., § 112.
—in cities 129, 307, 3012
— —Va. Const., §§ 118, 122.
Not to hold other office—Va. Const., § 113.
Disqualification for office of surveyor 2839
May not practice law in court of which he is officer.....3426
Ineligible as member of General Assembly—Va. Const., § 44.
For court of civil justice.....3118
Acts of Assembly furnished to.. 388
System of accounting for established by State Accountant... 565
Of circuit court of county, powers, duties, in city of second class 2894, 2896
Of cities, duties, compensation, 2989, 2990
Of circuit court, city of first class, allowance to by council.5903
Salary, proportion borne by city of second class.....2904
As clerk, local board of review.2226
Bond 2696, 2698
—new or additional 280
Removal, cause for, procedure, 2705, 2706
—for giving false certificate to special commissioner 6271
—vacancy, how filed 136, 138
—when and how appointee to qualify 139
Deputies, appointment 2701
—powers, oath 2701
—consent of court to 2701
—removal 2701
—admission of writings to record by 5204, 5207
— —on cetificate of acknowledgment 5205-5208
— —on certificate of acknowl- witnesses 5205, 5207
— —on acknowledgment outside of United States.....5206

Sec.

CLERKS OF COURTS—Con.
—may not practice law in court of which he is officer.....3426
Clerk's office, how provided for.2854
—to be fireproof 2855
—building for, erecting or repairing 2738
—approval of court, order for election 2738
—election 2739
—bond issue 2740-2741
—where kept 3385
—preservation of papers in....3386
—when to be kept open.....3385
—examination of 3383
—report of examiners 3383
Books and stationery, board of supervisors to provide.....2767
—furniture, seal, etc. 2767
Proceeding against by Auditor for violation of revenue laws.2544
Failing to settle with State, report of 2201
—suspension .....
—appointment of person to perform duties of 2207
Copies of records or papers in office, attested by as evidence.6197
Attestation of plats of lots, effect as evidence 5217
Forgery of certificate or attestation of 4484

Compensation.
Allowance by supervisors.....2726
In cities 2989, 2990
—circuit courts 5903
—proportion borne by city of second class 2904

FEES.
Fee book 3494
—inspection of 3494
General provisions 3485
—in chancery cases 3506
In criminal cases 3504
—payment from treasury.....3504
— —when not paid from.....3492
Services not to charge for.....3491
For acting as clerk to trial justice 4988
Fee bills of deceased clerk.3496-3497
Furnishing books and papers to commissioner of revenue.....2267
For services relating to elections 197
—copying registration book.... 108
—copying and certifying poll tax list 112, 114
Collecting transfer fee on conveyances, wills, etc. 2348
Attesting satisfaction of mechanic's lien 6441
Satisfying lien on record.....6456
Services with respect to records of district courts 6370
Endorsing forthcoming bond, 6527, 6529
Issuing hunting licenses, remitting, etc. 3333
Certifying copies of accounts of fiduciaries 5411
—recording 5411
In proceedings by guardian to spend more than income of ward's estate 5321
Filing and recording survey and plat of assigned oyster ground 3225
Furnishing list of plats of oyster ground and marking abandoned parcels 3271
Filing certificate of adoption of mark for timber 1445

Digitized by Google

Sec.

CLERKS OF COURTS—Con.
Filing report, appraiser of stock killed or injured by railroad..3994
Filing power of attorney of agent on whom process against corporation may be served 3854
Filing list of officers and directors of corporation 3854
Filing papers, recordation, copies, etc., relating to corporations 3836
Entering fines reported by justice 2552, 2553
Report to Auditor of fines.....2566
Docketing executions issued by justice 6030
Filing abstracts of judgments of 6030
For marriages reported to.....5099
Keeping register of persons convicted of felony 4787
Services rearrangement magisterial district 2694
List of county and city officers to Secretary of Commonwealth 3407
Recordation of order annexing territory to city or town.....2963
Recording log brand 3580
Recording report, orders, etc., in condemnation proceeding 4381
Recording contracts reserving title to chattels 5189
—attesting, when satisfied.....5191
Recording written act of re-entry on land 5537
Recording reports on accounts of general receiver 6295
Recording lien on colt 6446
—lien on calf 6447
Recording lien on crop 6452
Enforcement of prohibition law.4655
For collecting taxes 2405
Furnishing list of land grants and conveyances to assessors.2242
Furnishing copies of order apportioning taxes 2449
Proceeding to ascertain delinquent taxes due on real estate 2456
Entries in record of delinquent town taxes 2458
Reporting sales of delinquent land to Auditor 2471
Endorsement on delinquent land book when land redeemed, 2476, 2493
Deed for delinquent land.....2482
Recording sales to State in delinquent land book 2489
Redemption of land sold to State for taxes, reports, etc., of....2491
Entry in delinquent land book, order redeeming land 2493
Copy of order, apportioning city taxes 2494
Proceeding to purchase delinquent land 2495
State purchases of delinquent land 2501

Powers and Duties.

Actions and suits, when dismissed for failure to file declaration or bill 6079
Annexation of territory by city or town, copy of order certified to county 2963
—recordation, fee 2963
Appeal, record for 6339-6342
—bond taken 6352
— —endorsement on summons..6352

Sec.

CLERKS OF COURTS—Con.
—entering decision of court of appeals 6369, 6372
—from civil and police justice, papers sent to 3106
— —docketing 3106
— —return of papers 3106
Appointment of executor, administrators, and appraisers..5249
—Va. Const., § 101.
—of curator 5248, 5249
—of jury commissioners entered..5986
Guardian ad litem 4365, 6098
Approval, bond of person obtaining dead bodies from anatomical board 1734
Attachment, filing petition.....6383
—endorsement of bond 6384
—notice to plaintiff of affidavit of defense 6385
—issuance 6386
—payment of writ tax.....6387
—other attachments 6388, 6401
—bond filed with.....6386, 6395
—for rent 6416
Attestation, writing releasing part of judgment or decree...6333
—of extension of time of lien of deed of trust, mortgage or lien 5827
—indexing 5827
Bail, in action of debt for recovery of penalty for violation of license or revenue laws....2395
—certified to by judge, bail commissioner or justice 4847
—recognizance taken out of court sent to 4977
Bonds, prepared by 3390
—taken before, provisions and conditions of 279
—new or additional bonds..... 280
—of tobacco sampler.....1351
—of person obtaining bodies from anatomical board, approval of 1734
—of purchaser, land sold on execution for debt due State, endorsement on 2522
—of officer, recordation 2696
— —copies to Auditor 2700
—of notary 2850
—of game warden 3322
—of pilot 3615
—by non-resident, security for costs 3519
—of policeman for watering place, manufacturing plant, etc. 4805
—of hirers of prisoners.....4951
—for capias 6420, 6422
Capias, against defendant about to quit State 6419
—approval of bond 6420
—taking bond of defendant....6422
—for fine 2559-2561
Certificate to Auditor of allowances made by court 2187
—of allowances, duplicates.....3404
—of acknowledgment before...5205
—of proof by witnesses before..5205
—to special commissioner 6269
— —penalty for false 6271
—allowance of fee in criminal case 4961, 4962
To certify copy of report, orders, etc., in condemnation proceedings 4381
—allowances to officers in criminal cases 4961, 4964
— —statement of expenses in..4964
— —to issue execution for ..4964

Digitized by Google

Sec.

CLERKS OF COURTS—Con.

Certification to by justice of examination and recognizance of person held for trial....4846, 4847
Delivery of papers in suit to commissioner in chancery 6187
To furnish books to commissioner of accounts 5412
Costs taxed by..3533, 3534, 3535, 3536
Corporations, recordation of charter 3851
—charter of purchasers of corporate franchises 3817
—charter of non-stock corporation 3874
—amendment of charter, 3779, 3780, 3875
—of consolidation, certificate of.3822
—certificate of dissolution of non-stock corporation 3880
—noting dissolution of....3809, 3810
—recording power of attorney appointing agent on whom process may be served.....3854
— —revocation of authority or resignation of 3854
—filing list of officers and directors 3854
—service of process against on clerk 3854
—fees for services relating to..3836
Costs taxed in proceeding for violation of revenue laws....2396
—certified to Auditor 2396
Forming new counties, copy of notice 2675
—poll books 2676
—ballots 2676
—ballot boxes 2676
—penalty for faliure of duty...2678
—copy of polls, etc., sent to clerk of House of Delegates..2679
Court, order changing commencement of term, copies to House of Delegates 5893, 5909
—notice of, special terms.....5894
— —posting order 5894
— —process 5894
— —entering warrant adjourning 5895
—posting order changing place of holding 5966
Decedents' estates, jurisdiction to appoint personal representatives—Va. Const., § 101.
—appointment of administrator 5360, 5373
— —of curator 5248, 5249
— —of appraisers 5376
—when to commit estate to sheriff 5374
— —revocation 5374
—letters of administrator.....5375
—recordation of list of heirs...5379
Dentist, registration of license of 1647
Depositions, filing 6232
—in rape cases, destruction of..4415
Detinue, action of, order to seize property 5797
—bonds 5797, 5804
—charges for keeping property taxed in costs 5803
Distress warrant, return of, 5528, 5529
—entry in execution book.....5528
—venditioni exponas 5528
District courts, duties with respect to records of.....6370
Court dockets, of civil cases...6243
—criminal cases 6244
—chancery cases 6245
Judgment docket 6461-6467

Sec.

CLERKS OF COURTS—Con.

—entry of return of execution on 6491
—remission of fine 2574
Docketing executions issued by justices 6030, 6031
—appeals from justices 6036
—certificate of assessment of damages against dealer in fertilizer by Commissioner of Agriculture 1120
— —indexing 1120
Drainage district, establishment, notice to supervisors of report of benefit accruing to highways 1764
—notice to railroad company...1767
— —recordation of certificate of cost of establishing 1771
— —certification and delivery of assessment roll 1771
— —bonds, recordation of 1774
Elections, roll of registered voters filed with 95
—Va. Const., § 19.
—to distribute registration books to registrars 94
—voters disqualified or dead, names sent to registrar..... 99
—to furnish list of election districts and number of voters.. 150
—notice to clerks of electoral boards of candidates 154
— —elections in towns 168
—to receive and keep ballots... 180
—to send messenger for, when.. 180
—when to destroy poll books and ballots 181
—clerk of commissioners of election, to act as..... 182
— —duties of 182
—abstract of votes 185
—certificates of election 186
—when clerk absent, who to perform duties of 187
—abstract of votes delivered to messenger 190
—to issue subpoenas for witnesses in contested election.. 261
—returns to, town elections....2995
—on bond issue by city or town.3087
— —copy to council or board of control 3088
—primary, receiving and retaining poll books and ballots.... 238
— —when to allow inspection of 238
— —sending messenger for returns 238
— —receiving unused ballots... 238
Embalming, registration of license to practice 1720
Eminent domain, petition filed with 4367
—report of commissioners.4369, 4381
—receipt for damages paid.4369, 4381
—certifying copies of report...4381
Estrays and adrift property, recordation of appraisal.....3565
—posting 3565
Executions, duty to issue.....6480
—receipt for 6480
—for benefit of person other than plaintiff 6482
—entry of officer's return.....6491
—taking bond when execution stayed 6499
— —endorsement of 6499
—summons to debtor to answer interrogatories 6502
—garnishment 6509
—on judgments of justices.....6031
—for fines.2549, 2552, 2553, 2559, 2561

Digitized by Google

Sec.
CLERKS OF COURTS—Con.
—for costs in criminal cases...4964
—on judgment for debt due State, form of 2517
—on judgment for fees of jailor, endorsement on 2878
—venditioni exponas 2527
Extradition proceedings, docketing, notice to judge.....5063
Fee collected from defendant in criminal case, payment to....3513
—how disposed of 3513
—in criminal case, certificate of allowance 4961, 4962
— —effect of failure to present claim for in time.....4965
Felony, register of persons convicted of 4787
—photographs 4787
Fiduciaries, jurisdiction to appoint—Va. Const., § 101.
—furnishing list of to commissioner of accounts 5401
—certifying revocation of authority of 5401
— —copy of account settled in chancery cause 5411
—recording reports of 5428
Fines, receipt for 2546
—penalty for failure to give....2546
—reports of 2546
— —penalty for failure to make..2546
—misappropriation, penalty ...2546
—certified to by justice.....2550
—report to court 2551
— —posting 2551
— —entry 2552
— —execution 2552
— —fee 2552
—payment to clerk.....2562
— —by officer 2562
— —report of default 2568
—execution for, 2549, 2552, 2553, 2559, 2561
—capias for 2559, 2560
— —to whom directed 2561
— —copy of return on in report to Auditor 2564, 2565
—list of returned to Auditor, 2563, 2564
— —statement with 2565
— —copies of return on execution 2564, 2565
— —fee 2566
— —penalty 2567
—in proceeding for violation of revenue laws certified to Auditor of Public Accounts.....3396
—when paid to clerks by justices 2556
—remitted by Governor, entry on judgment docket 2574
Forthcoming bond, endorsement on.....6520, 6527, 6528
— —"no security to be taken," when 6524, 6525
—fee 6527, 6529
—docketing motion on removal from justice 6526
—attesting copy when original withdrawn 6528
Forms for commitment of insane, inebriate and epileptic persons, printing of 1089
Forms used for accounts payable out of State treasury furnished by Auditor 2175
Game laws, report of prosecutions to commissioner.....3342
Garnishment 6509
Guardian ad litem, appointment.6098
—for infant or insane person in eminent domain proceedings..4365

Sec.
CLERKS OF COURTS—Con.
Grand jury, list of furnished by judge 4852
—issue of venire facias for.....4852
Hunting license, application to for county license.....3328
— —amount paid for 3328
—application to for State license 3329
— —amount paid for 3329
—application for license by non-resident 3330, 3331
— —amount paid for 3330
— —by alien 3331
—delivered to clerk by commissioner 3335
—return of 3335
—to issue and sign.....3332
—record kept of 3332
—payment into State treasury..3333
—report of 3333
—fee 3333
Record of lunacy proceeding filed with 1019
Notice to commissioner of State hospitals 1022
To furnish certificate for transportation of patient to insane hospital 1027
Notice to committee of action against insane person 1054
Notice to, insane criminal restored to sanity 1045
To furnish copies of order committing feeble-minded person.1081
Precept for return of prisoner from insane hospital to jail..4912
Injunction, endorsement on summons when bond given.....6324
—entry of dismissal of bill.....6328
Intoxicating liquors, statements by druggists of stock on hand, etc. 4601
—by hospitals and chemical laboratories 4601
—by hotels 4603
Waiver of jointure by widow..5121
Judgment docket 6461
—judgments docketed in..6461, 6462
—contents 6463
—indexing 6464
—entry of payments.....6465-6467
— —of return of execution.....6491
— —when fine remitted 2574
Judgment, confession of, before clerk 6130
—entry of vacation judgments and orders 6308
—of conviction, copies furnished to superintendent of penitentiary 4948
Jury commissioners, appointment certified to clerk.....5986
—entry of 5986
—notice to commissioners of appointment 5987
—oath of before clerk.....5987
Jury list, custody 5989
—delivery to clerk 5989
Jury box, custody 5990
Drawing jury 5992
Venire facias 5992, 5993
Selecting jury from jurors.....5996
Entry of amount due juror.....6009
List of allowances to jurors....6010
Juries, in criminal cases, venire facias for 4893, 4895
—list 4895
—how drawn 4895
—statement of number and names of jurors furnished to.4928
Acting as clerk to trial justice.4988
Land warrant, when lodged with, 426, 427

Digitized by Google

Sec.

CLERKS OF COURTS—Con.
—entry 426, 427
Copy of plat and survey on land warrant filed with 443
To record copy of caveat and issue summons 446
To return list of caveats decided to Register of Land Office... 455
Certificate of notice of application to locate on surplus in grant 472
When to take charge of law library 373
Marriage license, issuance....5072
—certificate 5074
—notice to Commonwealth's attorney of failure to return...5074
—marriage register..5092, 5075, 5076
—filing license and certificate..5076
— —indexing 5076
—recordation of certificate of marriage out of State....5077
—penalty for failure to perform duty 5074, 5094
— —for issuing licenses contrary to law 4541
—copy of register sent to Bureau of Vital Statistics....5096
Fee for marriages reported to..5099
Copy of register as evidence...5098
Notary, bond before 2850
—copy of bond to Secretary of the Commonwealth 2850
—return of commission 2850
—notice of vacancy or death....2850
—report 2850
To notify Commonwealth's attorney of appeal from denial of registration 103
To notify Governor of appeal from escheator's inquest 502
—to certify decision to Governor 502
Notice of election for issue of school bonds 769
Notice of appeal from order of State entomologist filed with. 891
Notice to committee of action against insane person 1054
—of action against convict....4999
Notice of appointment of person to receive proceeds of sale 6272
—to medical examiners of conviction of physician 1623
Oath or affidavit before....274, 3389
—administered to officers.... 273
—of forest warden 540
—of division superintendent of schools before 625
—city school trustee before.... 786
—of assessor to account for compensation, before 2250
—of local board of review, to account for compensation 2226
—of members, State board of embalming 1718
Minute in record book of oath of school trustee 638
Filing oaths of deputies of officers 2701
—of weigher of tobacco....1355
List of county, district, city officers for Secretary of Commonwealth 3407
Optometrist, registration of certificate of 1633
Copies of order, judgment, decree, of partition, assignment or recovery of land 5216
Pensions, certificate of death of veteran 2646
—application 2648, 2650

Sec.

CLERKS OF COURTS—Con.
—forms, rules and regulations..2651
—list of applications, delivery to court 2655
— —posting 2655
—order, copy to Auditor....2656
—copies of pension roll furnished to 2653
—no fee charged for services...2658
Pleading, verification before...6129
Purchase of claims payable from treasury prohibited 3530
Qualification before, of officers.2696
—oyster inspector 3219
—tobacco sampler 1351
—member school trustee electoral board 629
—entry in order book 2696
—recordation of bond 2696
—penalty of bond 2698
— —copy to Auditor 2700
Removal of causes, transfer of papers, copies of orders, etc..6177
—statement of costs 6177
Reports by, to Auditor in proceeding for rendering false tax list 2228
—to court, list of fines reported by justices 2551
—to General Assembly 3405
—as to deposits of court funds.6310
Reports to, of boundaries of school districts in cities.... 776
—list of surveys 440
—by inspector of salt 1443
—of unbranded timber....1454
—by jailer, prisoner put on State convict road force 2076
—misconduct of commissioner of revenue or examiner of records 2265
—by Auditor of delinquent treasurer 2413
— —posting, filing 2413
—by delinquent capitation tax collector 2422
—by justice of fines and costs imposed 2550
Scire facias to revive action....6169
Suit in equity, when to set for hearing 6138
State funds, when to remit....2406
To furnish supervisors with copies of orders and allowances to be paid from county treasury 2758
Turnpikes, report of viewers, notice of to turnpike company.4078
—recordation of 4081
Venditioni exponas, issue of....2527
Duty of on change of venue in criminal case 4916
Vital statistics, record book kept by 1578
Wills, probate of 5247, 5249
—Va. Const., § 101
—of copy of will proved without State 5251
—order book 5249
—process summoning interested persons 5253
—order of publication 5255
—guardian ad litem for infant or insane person 5255
—appeal from order on probate.5249
—bill in equity to impeach or establish will 5259-5261
Witnesses, summons for 6217
—fees, entries of 3529
— —certificate for 3530
— —time for 3532

Digitized by Google

Sec.

CLERKS OF COURTS—Con.
—not to be interested in claim for 3530
—list furnished to Auditor and county or city treasurer....3530
—certificate for payment of fees of witnesses for Commonwealth 3512
AS TO FISH, GAME AND OYSTERS
List of assignments of oyster planting grounds for Commission of Fisheries 3165
Survey and plat of oyster grounds filed with 3225
—recording and indexing.....3225
—recordation of subrenting or assignment 3228
Bond before, of person using scrape or dredge on oyster planting ground 3248
List of plats furnished inspector.3271
Endorsement of abandoned plats 3271
Recordation of plat of crabbing or clamming ground 3295
Forfeiture for violation of law..3367
—warrant 3367
—notice, posting, publishing....3367
—bond for delivery of property to claimant 3368
—appraisers, appointment of....3368
—execution 3372
—return to Auditor, accounting for proceeds 3377
—copy of order of court as to disposition of proceeds certified to Auditor 3275

AS TO PROCESS

To attest writs..Va. Const., § 106
Process to commence suit, alterations in 6061
—new process 6059
—copies 6062
When to issue process without payment of writ tax 6103
Delivery to officer 3403
—mailing 3403
Receipt for 3403
Process book 3403
Against corporation, when served on clerk 3854
Summons or capias issued when indictment or presentment found or information filed, 4881, 4882
—mailed to officers in other counties 4884
Summons to adverse party to produce books, etc.....6237
Interrogatories to adverse party or claimant in action at law, summons 6236
Garnishment 6509
Rule against officer failing to make return on process.....2825
Rule against commissioner, receiver or purchaser for recovery of money due 6274
Order of publication, entering..6069
—publishing and posting 6070
—mailing copy to defendants..6070
—certificate of 6070
—in divorce proceedings 5105
—in proceeding for discharge of county or city treasurer.....2792
Publication of notice of motion for discharge of county or city treasurer 2792
FILING INSTRUMENTS, ETC., WITH
Bonds, taken before 279
—of officers 2693

Sec.

CLERKS OF COURTS—Con.
—when apprentice is bound....5304
Bonds, in attachment proceedings 6384, 6395
Indemnifying bond 6154
Bond of contractor for road maintenance 2035
Bail bond in action of debt for violation of license or revenue laws 2395
Bond of person receiving dead bodies from anatomical board.1734
Plat of land condemned for school building 672
Papers relating to appointment of orchard inspector..... 895
Acceptance of appointment by orchard inspector 898
Record of lunacy proceeding...1019
Certificate of discharge of patient from insane hospital..1028
Certificate of lumber dealer's mark or brand 1444, 1445
Information in contempt proceeding for violation of injunction against house of prostitution 1524
Copy annual report, Board of Charities and Corrections....1899
Report of superintendent of roads 2023
—inventory, recommendation ..2024
Record, local board of review..2226
Copy of assessment 2247
Interrogatories of taxpayer....2261
List of violations of revenue laws 2355, 2356
Report of increase of merchant's purchases by board of review 2366
Receipts for levies collected on delinquent land 2502
Application for pension 2643
Canvass of votes, election on bond issue by town 2749
Certificate returns of elections for removal of county courthouse 2753
Complaint, contested election, removal of courthouse 2754
Papers in appeal from order of levy by supervisors 2763
Report of sheriff of prisoners in jail 2870
List of persons enumerated in city 2976
Notice of assessment of damages when street graded 3038
Petition and plat, proceedng by city to erect dam 3054
Appeal from assessment for local improvement 3071
Survey and plat of assigned oyster ground 3225
Decision of commissioners to establish wagon-way across road, canal, etc., of public service corporation 3883
Report in proceeding to enforce construction of cattle guards by railroad 3950
Report of appraisers of value of stock killed or injured by railroad 3994
List of guaranty companies.....4344
—notice of revocation of authority of 4344
Condemnation proceeding, petition 4367
—report of commissioners 4369
—receipt for damages paid....4369

Digitized by Google

Sec.

CLERKS OF COURTS—Con.
Affidavit by consignees of ardent spirits 4634, 4654
Physicians' prescriptions for intoxicating liquor 4654
Papers, by justice on appeal from conviction before 4989
Writing by which apprentice is bound 5304
—bond 5304
Papers in proceeding to compromise liability for wrongful death 5789
Justice's record book 6024
Abstracts of justices' judgments. 6030
—executions issued by....6029, 6030
Certificate of deposit of court funds 6310
Certificate of facts proved.....6331
Writing, releasing part of judgment or decree 6333
Mutual Assurance Society's lien book 6458

RECORDS AND PAPERS
Preservation 3386
Removal from county or corporation, when prohibited....3387
Copies, how obtained 3388
To be open to public inspection.3388
Books, quality of 3399
—how provided 3400
Custody of 3400
Verification of 3401
For appeal 6339-6342
Deed book, what recorded in..3393
Miscellaneous liens, what recorded in 3393
Bond book, what recorded in....3393
Will book, what recorded in....3393
Judgment docket, what recorded in 3393
Marriage register, what recorded in 3393
Writings partially proved, what recorded in 3393
Execution book, entry of returns in 6491
Receiver's book 6294
Books, &c., of surveyor to be kept in office of 2844
Book for recordation of assignments of oyster ground 3225
Process book 3403
Vital statistics 1575
Of certificates to practice chiropody 1620
Medical register 1612, 1613
Orders in prohibition or mandamus proceedings, in order book 5839
Deposits of court funds 6310
Releases of deed of trust, &c., how recorded 3402
Re-entry of lost, destroyed or illegible records 6201-6204
Indexes 3391-3393
Index, general 3394
—books to be indexed 3394
—what index to show 3394
—committee to inquire into necessity for 3395
— —report, action on 3396
— —adoption and use 3397

RECORDATION
Writings, schedules, plats, etc., 3392, 3393
Writings admitted to record by 5204
—on certificate of acknowledgment 5205-5208

Sec.

CLERKS OF COURTS—Con.
—on certificate of proof by witnesses 5205
—on acknowledgment outside of United States 5206
—on acknowledgment in behalf of corporations and others, 5207, 5208, 5209
—copy of instrument when original lost 5212
Unacknowledged writings 5213
Of deeds, not until taxes paid..2403
—contract 2403
Deeds to United States 19
List of persons who have paid poll taxes 109
—Va. Const., § 38
Judgment on petition to ascertain boundary of real estate..5490
Orders, judgments, decrees for partition, assignment of dower, recovery of land 5216
Written act of re-entry on land.5536
Memorandum of attachment....6469
—lis pendens 6469
Mechanic's lien, memorandum for 6427
—for supplies and labor against transportation or manufacturing company, etc. 6439
—attesting satisfaction of.....6441
List of heirs 5379
—indexing 5379
Contract reserving title to or lien on chattels 5189, 5191
Lien on crop for advances.....6452
Lien on colt 6446
—on calf 6447
Marking lien satisfied on record, attestation, certificate 6456
Transfer of debt secured by lien, attestation on record 6457
Wills 5262
—of copy of in other counties and cities 5262
—indexing 5262
List of surveys 449
Verdict in escheator's inquest.. 496
Name, number and boundaries of school districts 667
Writing adopting trade mark or brand for lumber 1449
Petition and orders in proceeding to establish drainage district 1742, 1758
—certificate of cost 1771
—bonds 1774
Certificate of appointment of assessors 2235
Certificate and oath of assessor of land 2241
Settlement by treasurers of dog tax fund 2322
List of delinquent real estate..2428
Writing designating agent, proceeding to purchase delinquent land 2495
Plat and survey of new county..2650
Order rearranging magisterial districts 2690
—report and map of commissioners 2693
Bonds of officers qualifying....2696
Order annexing territory to city or town 2963
Plan and survey of city or town 2977
Notice of assessment of damages when street graded 3033
Local assessments for improvement to streets, etc.....3077

Digitized by Google

Sec.

CLERKS OF COURTS—Con.
Survey and plat of assigned oyster ground 3225
Sub-renting or assignment of rights in oyster ground.....3228
Plat of crabbing or clamming ground 3295
Bond, clerk, Supreme Court of Appeals 3384
Decision of arbitrators, dispute as to division fence 3560
Certificate of appraisers of astray or adrift property 3565
Log brand 3580
Judgments of State Corporation Commission 3732
Transfer of State's interest in road to county 3758
Report, viewers, proceeding to compel repair of turnpike....4081
Power of attorney to execute bond for surety company.....4349
—indexing 4349
Report, orders and proceedings in condemnation proceedings, 4369, 4381
Certificate of marriage out of State 5077
Writing waiving jointure 5121
Certification of copy of recorded writing where original lost....5212
Rosters of Camps of Confederate Veterans 5214
Plats of city or town lots.....5218
—vacation of 5222
Appointment of agent to conduct mercantile business.....5223
Report, appraisers of decedent's estate 5376
Account of sales by fiduciary....5404
—inventories of 5405
—accounts settled in chancery cause 5411
Reports of commissioners of account, of fiduciaries 5428
Refunding bond of distributee or legatee 5437
Order for change of name of person 5983
Judgment or decree by confession 6130
Of copy, when book of paper in clerk's office is lost or destroyed 6202
Reports of general receiver....6294
—indexing 6294

AS TO TAXATION

Lists of paid poll taxes certified and delivered by 109
—Va. Const.. § 38
—record of 109
—Va. Const., § 38
—copies to judges of election and Auditor 111
—Va. Const.. § 38
Land grants, list of to assessors.2242
List of conveyances 2242
Forms for use of assessors furnished to 2243
To certify to Auditor changes in assessments made by courts..2249
—by local board of review.....2249
—to assessor or commissioner..2249
Interrogatories and answers, filing with 2261
List of conveyances 2274
—to whom furnished 2274
List of judgments for partition of land 2275
—lands devised 2275
List of land grants furnished.. to 2277

Sec.

CLERKS OF COURTS—Con.
Listing funds deposited to credit of suit 2307
—payment of tax on 2307
List to commissioner of revenue of bonds and funds held by commissioner or receiver under authority of court.....2307
Notes, bonds, etc., held subject to order of court, taxed to clerk 2308
Copies land books and personal property books furnished to..2342
—receipt for 2346
Transfer fees, collection of and accounting for 2348
Expense, postage, how paid....2350
Merchant's purchases, report to clerk of increase of by board of review 2366
List of licenses returned to by commissioner of revenue.....2374
Tax on suits paid to 2401
Tax paid to before will probated 2403
—before deed or contract admitted to record 2403
—before grant of administration on estate of decedent 2403
Record kept of taxes collected by 2405
—designation of commissioner to examine 2405
—statement to Auditor 2405
—payment into treasury 2405
—commission 2405
Delinquent taxes, collection 2419
—report of 2419
—distribution 2419
Certify to Auditor, appointment and bond of delinquent capitation tax collector 2421
Payments to by delinquent capitation tax collector 2422
—receipt 2422
List of delinquent capitation taxes 2423
—to whom delivered 2423
—return by collector 2425
—filing 2425
—report to Auditor of amount uncollected 2425
Sealing and delivery of delinquent list 2427
List of delinquent real estate, recording and indexing 2428
List of delinquent taxes, copy to supervisors and city councils 2429
Apportionment of taxes when property partitioned 2449
—copies of order, to whom furnished 2449
— —fee 2449
Order forfeiting land for failure to enter on land book, copy to register of the land office..2453
Book for entry of delinquent town taxes 2457
—record of sale in 2457
— —redemption 2458
—deed for 2458
—fee 2458
Delinquent land book 2469
—corrections 2472
—endorsement on when land redeemed 2476, 2477
Copy of list of delinquent real estate to treasurer 2460
Copy of report of sales, to Auditor 2471
—fee for 2471

Digitized by Google

Sec.

CLERKS OF COURTS—Con.
Delinquent tax list, endorsement of payments on....2465, 2466
Delinquent land sold, when to receive payment of taxes, etc., to redeem 2477
—deed to purchaser 2482
—report of 2482
—fee 2482
—when clerk is purchaser.....2483
—compelled by court to execute 2485
—land purchased by State, furnishing copies of list of.....2489
— —recording in delinquent land book 2489
— —fee 2489
— —redemption 2491
— —certificate to commissioner.2491
— —report to Auditor 2491
— —payment into treasury....2491
— —fees 2491
Delinquent land sold to Auditor, redemption by owner 2495
—deed 2495
—recordation of survey 2495
— —of writing designating agent 2495
—application for purchase of....2495
— —deposit with 2495
— —copies, service 2495
— —order of publication, form, posting 2495
Delinquent land book, endorsement of payment on....2491, 2492
—entry of redemption of part of land 2493
Delinquent sale declared void, taxes received 2492
Order apportioning city taxes..2494
Disposition of levies received on delinquent lands 2502
—receipt for 2502
Posting and publishing statement of disbursements by councils 3073
Marking satisfied when apportionment from judicial sale paid on 6268

FINES, FORFEITURES AND PENALTIES FOR NEGLECT OF DUTIES
For failure to furnish or certify list of paid poll taxes 113
Failing to certify and forward abstract of votes 185
Failing to deliver certificate of election 186
Failing to file and record bonds. 279
For violations of law with reference to insane persons..1060
Failure to transmit copy of bond of tobacco sampler to Auditor.1351
Violating law with reference to registration of certificates of physicians 1612
Failure to furnish lists to assessors 2242
Failure to furnish list of conveyances, judgments for partition of land, devises, etc....2276
Failure to remit funds of State..2406
Fines, failing to receipt or account for 2546
—misappropriation of 2546
Failure to issue capias pro fine..2560
Failing to report fines to Auditor 2567
Failure to perform duty relating to election for formation of new county 2678
Failure to transmit copies of bonds of officers to Auditor..2700

Sec.

CLERKS OF COURTS—Con.
Failure to report prosecutions under game law 3242
Failing to record bond of clerk of Supreme Court of Appeals..3384
Allowing records and papers to be removed from city or county 3387
Failure to record, index, etc., papers, certificates, plats....3392
Failing to verify records.....3401
Failing to note release of deeds of trust, etc. 3402
Issuing duplicate certificate of allowance without order of court 3404
Failure to report to General Assembly 3405
Failing to furnish list of officers to Secretary of Commonwealth 3407
Improperly acting as attorney..3426
Failure to perform duty relating to recordation, etc., of charters of corporations 3851
Failure of duty relating to charter of non-stock corporations 3874
—failing to certify dissolution of non-stock corporation....3880
False entry in record of marriages, births and deaths....4491
Making false entry in or destroying record 4516
—forfeiture of office 4517
—disqualification to hold office for 4517
Issuing marriage license contrary to law 4541
—failing to perform duty under laws relating to marriage, 5074, 5094
Failing to furnish copies of convictions to superintendent of penitentiary 4948
Failure to certify revocation of authority of fiduciary 5401
Failure to notify clerk of House of Delegates of change of commencement of term of court 5893, 5909
False certificate to special commissioner 6271
—removal for 6271
Failure to give notice of appointment of person to receive proceeds of sale 6272

CLERK OF HOUSE OF DELEGATES
See "General Assembly."

CLIFTON FORGE
Commonwealth's attorney, fees..3605
Circuit court 5887

CLINCH RIVER
Act for protection of fish in continued in effect 3218

CLOUD ON TITLE
Tax sale, suit to cancel, 2498, 2488
Suit to remove 6243

CLOVER
Seed, bushel, standard 1470

CLUB
Incorporation 3872
Not a home within meaning of prohibition law 4662

CLUB HOUSE
Keeping, etc., ardent spirits at, punishment 4606
Used in violation of prohibition law, nuisance 4622

Digitized by Google

Sec.

CLUB HOUSE—Con.
—closing up 4622
—bond of owner 4622
COAL
Assessment for taxation 2235
—Va. Const., § 172
Bushel, standard 1470
Weighing, on public scales at request of buyer 1475
—cities and towns may provide for 3033
On lands of infant, insane persons or trustees, suit to sell or lease 5335-5345
COAL MINES
See **"Mines"**
COAST SURVEY
In general 21-26
Removal of fences and trees for. 20
Damages to land and crops, how ascertained 21
—assessors' report 22
—appeals 23
—order of court on report.... 24
—appeal from, how tried.... 25
Penalties for injury to signals, monuments or building 26
COBB'S ISLAND
Citizens of exempt from jury service 5985
COCAINE
Label on drug containing....1664
Sale, label 1694
Prescription of, when unlawful.1694
—form of 1698
—penalty 1695
Selling, furnishing, giving away, etc. 1696
—penalty 1696
Possession with intent to sell, penalty 1697
COCK FIGHTING
Punishment 4550
CODE
Laws embraced in 1
Manner of citing 1
Rules of construction 5
Copies of furnished to law schools 356
Effect on existing rights and remedies 5830
Copies as evidence 6189
Time of taking effect....6567
Repeal of statutes by....6567, 6569
—effect of repeal 6569, 6571
Acts not affected by....6568
Effect on pending causes..6376, 6570
Effect as to persons in office...6571
CODEINE
Habitual user, furnishing or prescribing for 1694
—penalty 1695
CODICIL
See also **"Wills and Administration."**
Word "will" includes....5226
Revocation 5233
—of will by 5233
Revival after revocation 5234
Fraudulently destroying or concealing, penalty 4458
COHABITATION
Within State after bigamy committed outside of State....4538
—after marriage within prohibited degrees or between white and colored persons 4540
—as evidence of marriage....4540
Lewd or lascivious, punishment.4545
As bar to divorce 5103, 5110

Sec.

COIN
Forgery of, punishment 4487
Uttering forged 4487
—having in possession 4490
Instruments for forging, making, mending, having in possession, etc. 4488
Counterfeit, search warrant for, 4820-4822
Levy of execution on, how accounted for 6487
COIN SILVER
Regulation of sales of goods marked "coin" or "coin silver" 4462
COLCHIUM
Sale, label 1691
COLD AIR
See **"Public Utilities Companies."**
COLD STORAGE COMPANIES
Use of street by....3014, 3882
—Va. Const., § 124.
Powers and liabilities of....4058
COLLATERAL
Surety on bail bond taking from principal 4836
COLLATERAL SECURITIES
Provision for sale of not to affect negotiability 5567
COLLECTOR
Of taxes, see **"Taxation."**
Of taxes and levies in city or town 3034
—bond 3034
—distraining for taxes 3075
—oath to delinquent list....3076
Of tolls on canal, forfeiture for failure of duty 4020
—liability of canal company for excessive toll charged by....4021
Of turnpike tolls, duty....4086
—forfeiture for failure to perform 4086
—service of notice on in proceeding against company to recover forfeiture 4087
COLLEGES AND UNIVERSITIES
See also **"University of Virginia"; "Virginia Agricultural and Mechanical College and Polytechnic Institute"; "Virginia Military Institute"; "Virginia Normal and Industrial Institute"; "William and Mary College."**
Students, residence for purpose of voting—Va. Const., § 24.
Incorporation of 3872-3880
State reports, furnished to.... 347
—maps and State publications, 356, 393
—Acts of Assembly 388
To furnish copies of publications to State Library 354
—penalty for failure 355
Reports by 987, 988
—penalty if not made....987, 989
Interest on State bonds paid to. 990
State bonds, exchange of.... 991
Scholarships 993-997
Donations to, investment of.... 994
—appointment of students or cadets by donor 995
—scholarships 993, 996, 997
—irrevocable 994
Property of exempt from taxation 2272, 2301
—Va. Const., § 183.
Real estate of, power to sell....3877
Fire escapes 3141

Digitized by Google

Sec.
COLLEGES AND UNIVERSITIES—Con.
Lands of, not subject to condemnation 4384
Burning or destroying buildings, punishment 4430
Wilful or malicious injury to buildings, punishment for 4482
—trees, shrubbery, fences..... 4483
Unauthorized credit to minor student, penalty 4707
Conservators of peace at..... 4804
Policemen at 4805

COLORED PERSONS
See also **"Central State Hospital"; "Negro Reformatory Association of Virginia"; "Virginia Normal and Industrial Institute"; "Virginia State School for Colored Deaf and Blind Children."**
Who deemed to be..... 67
Lists of persons having paid poll taxes 109
—Va. Const., § 38.
Separate schools for 719
—Va. Const., § 140.
Land assessed against, listed separately in land book..... 2279
Separate assessments of property of in personal property book 2300
Separate waiting rooms for, State Corporation Commission may require 3716
Separate cars for, railroad to furnish 3962
—separate compartment of same car 3967
—persons, cars and trains to which not applicable 3968
—assignment of races to their respective compartments 3965
—ejection from train 3965
—equal accommodations 3963
Failing to take seat assigned in railroad car, penalty 3983
Separation of white and colored passengers in street cars. 3978, 3980
—change of seats 3980
—when provisions not applicable 3982
—penalty for failure to obey conductor 3983
—discriminations prohibited ... 3975
—conductor as judge of race of passenger 3981
Separation of white and colored passengers on steamboats.... 4022
—passengers to which not applicable 4022
—failure to occupy place assigned, penalty 4024
—discriminations prohibited ... 4022
—separate accommodations for white and colored persons at wharves 4026
Segregation of races in cities and towns 3043-3052
Marriages, validation of..... 5091
—with white person, punishment for 4546
—with white person, punishment of person performing ceremony 4547
—with white person, void without divorce 5087
—with white person outside of State, when void 5089
—with white person, leaving State to evade law, punishment 3540
— —evidence of marriage..... 3540

Sec.
COLORED PERSONS—Con.
Children of former slaves, legitimacy 5268
—of slave marriages, inheritance by 5268
—Va. Const., § 195.
Gifts and devises for education of 587
—how taken and held..... 588
—how will probated 589
Curator, Hampton Normal and Agricultural Institute 926
—students 927
Summer Normal School..... 959
Reformatory for negro minors..1961
Insane, hospital for..1004, 1005, 1067
Feeble-minded 1092, 1093
Inciting race riot, penalty.....4392

COMBINATIONS
Prevention of—Va. Const., § 165.

COMMERCIAL AGENT
Acknowledgments before 5206
Depositions before 6226

COMMISSION
See also **"Compensation"; "Fees"; "Salaries."**
By Governor to officers appointed during recess of General Assembly—Va. Const., § 73.
Seal .....Va. Const., § 75
Attestation by Governor—Va. Const., § 75.
To run in name of Commonwealth—Va. Const., § 85.
Judges, commissioned by Governor—Va. Const., § 102.
Governor to commission Attorney General—Va. Const., § 107.
Of escheator in sale of escheated land 512
Of forest wardens by Governor.. 540
Of officers of the Virginia Military Institute 842
Of oyster inspector 3221
Of members, State Corporation Commission 3694
To fix salaries of councilmen when form of government of city or town changed, duties, etc. 2951
To consider compensation of certain officers, act as to continued in force 3516
To take depositions 6227

COMMISSION FORM OF GOVERNMENT
See **"Cities and Towns."**

COMMISSION OF LUNACY
See **"Insane Persons"**

COMMISSION MERCHANT
Definition of term 1257
Farm produce, term includes... 1257
Application for registration.... 1258
—fee, certificate 1258, 1261
— —revocation 1260, 1261
—bond 1258, 1259
—actions against 1259, 1260
—trial of complaints against... 1260
—revocation of certificate 1261
— —publication 1261
— —appeal 1262
Reports of sales 1263
Offences, how punished 1264
Tobacco, storage of in public warehouse 1386
Liens of consignors 6448

COMMISSIONERS
See **"Board of Fire Commissioners"; "Board of Harbor Commissioners of Norfolk and Portsmouth"; "Board of Drain-**

Digitized by Google

Sec.

COMMISSIONERS—Con.
age Commissioners"; "Board of Police Commissioners"; "Commissioner in Chancery"; "Drainage District"; "Special Commissioners"; "State Corporation Commission."
Bail Commissioners, see "Bail."
Board of Poor Commissioners, see "Poor."
In condemnation proceedings, see "Eminent Domain."
Appointed by Governor, oath taken by 272
—who may administer 273
—record of 277
—may administer oaths and take affidavits 274
Reference to, petition to sell, mortgage or lease property of insane person 1056
In proceeding to establish road.1980
Funds, report to examiner of records 2223
Listing property for taxation...2307
—bonds, notes, evidences of debt 2308
—payment of taxes on.....2309
Deed made by to clerk purchasing land at delinquent sale...2483
To execute deed to heirs or assigns of purchaser at tax sale.2486
To settle boundary dispute between counties 2685
—plat, survey, report, recordation, compensation 2685
To rearrange magisterial district, appointment 2691
—survey, map 2691
—report 2692
—recordation of map and report 2693
—pay of commissioners, surveyor and clerk 2694
To revise registration books....2978
On application by city or town to erect dam in water course.3056
—report 3057
Proceedings on interrogatories to execution debtor 3116, 6503
To ascertain damages, erection of dam 3584
—meetings 3584
—oath, duties, report 3585
Establishment of wagon way across road, canal, etc., of public service corporation....3883
—compensation 3883
For distribution of proceeds of land condemned in eminent domain proceedings 4374
Bribery of, punishment 4503
Accepting bribes 4503
To assign dower.....5125, 5480
To convey estate of infant married woman 5137
To designate fishing shores.....5290
—compensation 5290
Proceeding for drainage through lands of another, appointment.5293
—report 5294
—compensation 5296
To execute release of curtesy of insane husband or dower of insane wife 5346
Debts due by, priority of payment from decedent's estate, 5390, 5391, 5395
Bond, petition of surety to be relieved from 5771
—new bond required 5771
—removal for failure to give...5773

Sec.

COMMISSIONERS—Con.
Notice of proceedings before, when not necessary 6071
Proceeding to establish lost record 6203, 6204
To take depositions out of State.6226
Interrogatories to adverse party or claimant 6236
—production of books and writing by 6237
To execute deeds or writings, 6296, 6297

COMMISSIONERS OF ACCOUNTS
Appointment 5401
Removal 5401
Duties 5401
Assistant 5402
—duties 5402
—report 5402
Record of fiduciaries 5401
—index 5401
—entries in 5401
—forfeiture for failure to make entry 5401
Who not disqualified to act as.. 291
Qualification as school trustees. 627
Office for, how provided.....2854
Of law and chancery court of city of Norfolk 5940
Of court of law and chancery of city of Roanoke 5952
Inspection of report of appraisers of estates 5376
Examination and correction of delinquent tax lists 2417
—compensation 2417
Fiduciaries, record of 5401
—revocation of authority certified to 5401
—inventories of, returned to....5403
— —compelling return of 5403
— —delivery to clerk 5403
—report of, as to sales.....5404
— —delivery to clerk 5404
—accounts exhibited before.....5408
— —penalty for failure...5408, 5409
— —how compelled 5410
—settlement of accounts before commissioner in chancery, report to 5415
—receipt for vouchers 5415
—time covered by 5424
—objections 5424
—allowance of expenses and commissions 5425
—reports of 5426
— —filing 5427
— —not to file unless taxes are paid 2309
—return of vouchers 5427
—bonds, examination of 5416
—examination of conduct of....5416
—posting list of 5423
—report on 5416
Examination of bond of treasurer 2777
—report 2777
—fees 2777
—penalty 2778
Proof of debts, proceedings, 5420-5422
—accounts 5421
—how claims proved 5422
Record books, how furnished to.5412
—delivery to successor.....5412
Fees 5414
—affidavit required for payment 5414
Reports by, 5401, 5402, 5408, 5410, 5426
—on bond and conduct of fiduciaries 5416
—filing 5427

Digitized by Google

Sec.
COMMISSIONERS OF ACCOUNTS—Con.
—action on 5428
—recording 5425
—effect of confirmation....5429
—settlment of accounts of school trustees 671
Accounting before by trustee of gifts, devises, etc., for literary or educational purposes.... 590

COMMISSIONER OF AGRICULTURE AND IMMIGRATION
See also "Board of Agriculture"; "Department of Agriculture and Immigration."
Election 118, 1104
—Va. Const., § 145.
—certificate of 191
—how determined in case of tie 192
—contested election 264, 266
Term 118, 1104
—Va. Const., § 145.
Oath, record 277
Salary 1105, 3441
Bond 325, 1105
—submission of to Attorney General 326
—new or additional 327
—effect of failure to give...327, 329
—where filed 328
Vacancy for failure to give bond 329
—additional bond 327
—how filled.....122, 329, 331, 1104
Removal and suspension.....330, 336
Executive officer of Board of Agriculture 1106
Member of board of visitors of Virginia Polytechnic Institute. 859
—Va. Const., § 146.
Member convict lime board.....1266
Business hours 337
Proceedings and vouchers 338
Residence 1105
Conference with Governor, county demonstration work 925
Clerks and employees, appointment 1106
—salary 1106
—bond 325-328
—vacancy 329
—exempt from jury service.....5985
State Accountant to devise system of accounting for....552, 554
—mandamus to compel adoption 555
Inspection of accounts of....557, 558
—duty and penalty 558
Exempt from jury service.....5985
Venue of actions against.....6049
Records and papers, copies as evidence 6197
Meetings, Board of Agriculture, call of 1100
Appointment and removal of employees by 1106
Warrants 1106
Powers and duties 1107
—farmers' institutes 1108
Report 1109
Registration brands of fertilizer with, fee 1110
Tax tags for fertilizers, fee, issue, form 1113
Certificate of authority to manufacture or sell fertilizer....1114
Pulverized hair or leather in fertilizer 1117
Condemnation and seizure of fertilizer, illegally sold or offered for sale 1118
—sale of 1118
Appointment of fertilizer inspectors 1119
—number, term, salaries 1119

Sec
COMMISSIONER OF AGRICULTURE AND IMMIGRATION—Con.
Rules and regulations as to fertilizers 1119, 1121
Analysis of fertilizer 1119
—damages for deficiency, procedure 1120
—certificate 1120
—judgment, how enforced.....1120
—appeal 1120
Fertilizer, assessment of damages against dealers for deficiency 1120
—certificate, docketing 1120
—appeal 1120
Bulk shipments of fertilizer....1122
Fertilizer fund 1110, 1123
Records and report 1124
Agricultural lime, registration of brands, forms 1132
—fees 1134
—certificate 1134
—rules and regulations 1135
—inspection 1136
—analysis 1136
—penalty for deficiency 1137
Weeds, designation of 1139
Rules and regulations as to agricultural seeds 1147
—chemical laboratory, analysts, inspectors 1147
—analysis, procedure, 1148, 1149, 1152
—publication 1149
—seizure 1151
Violations of law as to seeds....1150
Salaries and expenses of Board.1153
—warrants, vouchers 1153
Appointment Deputy Dairy and Food Commissioner 1153
Report to by Dairy and Food Commissioner 1175
—printing and publication 1175
Food, analysis of 1178
—notice, hearing 1178
Foods, standards of variability..1185
Analysis of sample of food forwarded by Commonwealth's attorney 1190
—report 1190
—effect as evidence 1190
Collection of specimens of natural history 1282
Hog cholera, serum for.... 1283-1285
Supervision, appropriation 1286
Prevention of spread of blight in chestnut trees 1287
—experts, powers, duties, appropriation 1288
Tobacco sold, report of amount to 1363
—records 1364
Warrants for expenses of Dairy and Food Commissioner....1243
Condimental stock and poultry food, analysis 1245
Division of markets, director, assistants 1250
—compensation, rules 1250
—report 1255
—warrants for expenses 1256
Feeding stuffs, rules and regulations as to 1229, 1238
—appointment of assistants in analysis 1229
Commission merchants, application for registration 1258
—fee, certificate 1258, 1261
— —revocation 1260, 1261
—bond 1258, 1259
—actions against 1259, 1260
—trial of complaint against....1264
—revocation of certificate....1261

Digitized by Google

Sec.

COMMISSIONER OF AGRICULTURE AND IMMIGRATION—Con.
— —publication 1261
— —appeal 1262
—report of sales 1263
—offenses, how punished 1264
—expenses, enforcement of laws as to 1265
Analysis of mixtures supposed to contain ardent spirits.....4621
—cost, how paid 4621
—use of in evidence 4621

COMMISSIONER IN CHANCERY
See also **"Commissioners"; "Commissioners of Accounts"; "Special Commissioners"**
Appointment 6178
Removal 6178
Accounts referred to 6179
Duties 6179
Depositions taken by 6184
When judge may hold office of, Va. Const., § 105
Qualification of as school trustee 637
United States commissioner not disqualified for 291
For law and equity court of the city of Richmond 5924
For court of law and chancery of city of Norfolk 5940
For court of law and chancery of Roanoke 5952
Acknowledgments before 5205
Notice of account to be taken by, publication, effect of 6180
Witnesses, compelling attendance 6181, 6184
—appeal by witness fined 6181
Asking instruction of court....6182
Adjournment of proceedings...6183
—to other county or corporation 6184
Delivery of original papers or suit to 6187
—receipt for 6187
Appointment as bail commissioner 6188
Production of books and writings by adverse party 6237
Bribery of 4503
As conservator of the peace....4788
—duties as, arrests by 4789
—proceedings to require recognizance of person intending to commit crime 4790-4792
— —of person going armed 4795
— —of person about to commit breach of the peace 4796
Proof of debts against decedent, time and place for.....5420-5422
—accounts 5421
—how claims proved 5422
Fees 3482
Fee book 3494
Fiduciaries, posting list of....5423
Settlement of accounts of fiduciaries 5415
—examination of bonds of fiduciaries 5416
—examination of conduct of....5416
—time covered by 5424
—objections 5424
—allowance of expenses and commissions 5425
—report of 5426
— —filing 5427
—return of vouchers 5427
Interrogatories to adverse party or claimant in action at law..6236

Sec.

COMMISSIONER IN CHANCERY—Con.
Interrogatories to execution debtor 6503
—report 6503, 6505
—commitment of debtor 6506
Jury list drawn in presence of.4895
Drawing jury before.....5992, 5993
Proceeding for sale of real estate of lunatic 1056
Oath or affidavit before 274
Settlement of accounts of general receiver 6289, 6290
—examination of bonds 6289
—report 6289
—fee 6295
Reference to, proceeding for discharge of county or city treasurer 2792
—report 2792
Report of in proceeding to ascertain delinquent taxes.....2456
—fee 2456
Reports 6179
—confirmation or rejection by court 6179
—weight given to 6179
—how made out 6185
—papers, decrees, orders, notices filed with 6185
—improper matter expunged...6185
—recommittal 6185
—costs of corrections or recommittal 6185
—cause heard on 6186
—on accounts of fiduciaries, filing 5427
— —action on 5428
— —recordation 5428
—affidavit of hours, employed on 3482
—fee for, paid before returned..3482
—statement of fees on 3483
Casting vote to decide tie in meeting of supervisors 2718
—designation of commissioner..2719
Depositions of witnesses taken before 6226
Perpetuation of testimony.....6235

COMMISSIONERS OF COURTS
See also **"Commissioners"; "Commissioners of Accounts"; "Commissioners in Chancery"; "Special Commissioners"**
Examination of clerk's record of taxes collected 2405
—certificate 2405
—compensation 2405
Bribery, punishment 4503
Bonds, relief of sureties...5771-5773
Proceedings on interrogatories to adverse party or claimant....6236
Production of books, writings, etc., proceedings for 6237
Interrogatories to defendant in capias proceeding, giving notice of time and place of answering 6421
—examination of defendant....6424
—return of papers 6425

COMMISSIONERS OF DEEDS
Appointment 2853
Commission, fee for 2853
Term 2853
Form of oath 272
—record of 277
May administer oaths and take affidavits 274
Acknowledgments before ..2853, 5205
Depositions of witnesses.....6226

Digitized by Google

Sec.

COMMISSIONER OF ELECTION
See also "Elections"; "Primary Elections"
Appointment 182
Clerk 182
Duties, oath, vacancies 182
Meeting 182
Correcting returns 183
To determine ties 184
Abstract of votes 185
Certificate of election 186
Compensation 200
For primary election, appointment 239
—quorum 239
—secretary 239
—duties 239
—abstract of votes 239
—oath, powers and penalties.... 239
—correcting irregularities in returns 240
—abstract and certificate of vote cast 241
— —to whom forwarded....241, 243
In towns 2995
Election, bond issue for roads, canvass of returns 2113
Penalty for failing to attend..4723

COMMISSION OF FISHERIES
State Accountant to devise system of accounting for....552, 554
—mandamus to compel adoption. 555
Inspection of accounts of....557, 558
—duty and penalty as to..... 558
Members, appointment 3146
—residence 3146
—term 3146
—removal 3146
—oath 3146
—certificate of appointment 3146
—expenses, salaries 3146
Enforcement of law as to fish, oysters, &c., and supervision of employees 3147
Reports 3149
Offices, clerical force, records..3150
Boats, nets and other equipment 3151
Hatcheries 3152
Inspectors, appointment, term..3153
—vacancy, removal 3153
Police force, other employees..3154
Arrest and seizures without warrant, when and how made.....3155
Authority to compromise with person liable to fine for violation of fishery laws 3156
Power to take fish 3157
Members and employees to have no interest in fisheries 3158
Printing, stationery, &c., for..3159
Appropriation for, oyster fund..3160
Definition of terms.....3161
Tidewater Virginia, what constitutes 3162
Surveyors, appointment 3163
—re-surveying lines of Baylor survey 3163
—other duties 3163
—plats 3163
To procure lists of persons holding oyster planting grounds..3164
—notice to of assignment.....3165
—clerk to report 3165
Inspectors charged with rental on assigned oyster ground...3165
Reports to by inspector, violation of law as to fishing with nets 3169
Removal of pound nets across mouths of streams, &c., bordering on Chesapeake Bay...3174
Oyster inspectors, appointment of deputy 3219
—report to 3222
—notice of assignment of oyster ground 3226
Oyster planting grounds...3224-3226
—in Chesapeake Bay 3225
—notice of assignment 3226
Removal of stakes, &c., from natural oyster rock, clamming ground, &c. 3232
To divide State into districts for registration of boats used in taking oysters 3241
Size of oysters that may be taken, permit 3244
—hearing, revocation 3244
Revocation of license to take oysters 3244, 3248
Permit to use oyster scrape or dredge in certain localities..3248
Oath and permit to carry seed oysters filed with 3250
Permit to carry oysters out of James river during closed season 3251
Permit to employ non-resident crew in scraping or dredging oysters 3255
Oyster planting grounds, resurvey of 3257
—Baylor survey 3257
—employment of surveyors....3257
—application for 3257
—costs of survey 3257
Power to compel attendance of witnesses 3258
Taking oysters, wild fowl, etc., for purposes of propagation, etc. 3260
Police fleet 3261
—expenditure of funds for.....3261
—allowance to commanders and crews 3262
Oysters, power to arrest violators of law and make seizures.3265
—penalty for resistance to....3265
—penalty, failure to perform duty 3267
Oyster planting ground, copy of law as to list of renters to be posted by 3271
—inspector and clerk posting list of renters, compensation to allowed by 3271
Shad, keeping open ways for deposit of spawn 3179
—designating passages 3179
—meetings 3179
—notice 3179
—violations of law, penalty, report 3180
Setting aside ground for clamming and crabbing purposes in Pocomoke Sound 3293
Clamming or crabbing grounds, designation of 3295
Members to be ex officio game wardens 3329

Commissioner of Fisheries
Commissioner of Fisheries, appointment 3145
To be chairman of Commission.3146
To be chief inspector 3146
Residence 3146
Term 3146
Certificate of appointment 3146
Expenses, salary 3146
Oath 3146
Bond 3146

Digitized by Google

Sec.
COMMISSION OF FISHERIES—Con.
Removal 3146
Supervision over industries under care of Commission and over inspectors and employees.3147
Investigations relating to migration, &c., of fish.....3148
—oyster cultivation, &c.....3148
List of persons occupying oyster planting grounds 3168
Report by, as to violations of law relative to fishing with nets 3169
—license taxes and forfeitures collected 3169
May authorize use of scrapes and dredges 3246
—on planting grounds 3248
Permit to carry seed oysters out of State 3249
—hearing 3249
Oyster grounds, designation of polluted areas 3282
—permits to remove oysters from 3284
—power to enter premises or boats, make arrests and seizures 3287
—penalty for interfering with..3287
—enforcement of law as to....3289
To be commissioner of game and inland fisheries 3306
Shellfish Commissioner
Appointment 3146
To be assistant commissioner, assistant inspector and secretary of the Commission.....3146
Residence 3146
Term 3146
Certificate of appointment 3146
Expenses, salary 3146
Oath 3146
Bond 3146
Removal 3146
Supervision over industries under care of Commission and over inspectors and employees.3147
Investigations as to migration, &c., of fish 3148
—oyster cultivation, &c.....3148

COMMISSIONER OF FISHERIES
See **"Commission of Fisheries"**

COMMISSIONER OF GAME AND INLAND FISHERIES
See also **"State Department of Game and Inland Fisheries"**
Commissioner of Fisheries to be.3306
Salary, mileage 3307, 3336
Office, clerk 3308
Bond, oath 3309
Seal of office 3310
Statement of receipts and expenditures 3311
Accounts, approval and payment 3312
—auditing 3313
Annual report, publication 3314
Duties 3315
Blanks and printing 3316
Publication of game laws.....3317
Power to serve process 3318
Arrest, search, seizure by.....3320
Game wardens, appointment...3319
—supervision and control.....3321
—fixing salaries of 3325
Hunting licenses, number granted, reported to 3333
—delivery to clerk of court....3335
Game protection fund, warrants on 3336
Prosecutions under game laws reported to 3342

Sec.
COMMISSIONER OF GAME AND INLAND FISHERIES—Con.
—costs and fees of.....3343
Game protection fund, reports on by State Treasurer to 3344

COMMISSIONER OF INSURANCE
See also **"Bureau of Insurance"; "Insurance"; "Insurance Companies"**
Term 4170, 4171
Office, where located 4170
Election 4171
Qualification, oath, bond.....4171
Deputy 4171
Clerical force 4171
Vacancy 122, 4171
Removal 4198
Not to be connected with insurance interests 4171
Duties 4173, 4191
Certificates by, copies of records and papers by, as evidence....4175
—fees for 4175
—seal on, tax for 4175
Issuance of licenses and certificates of authority to transact business 4176, 4177
—renewal of 4210
—appeal from refusal to renew.4210
Register of fire department chiefs and sheriffs kept by....4185
Fires, record of kept by.....4184
—how reported to 4185
—fee for report 4185
—investigation of origin 4186
—expenses of investigation....4186
—right to enter and examine buildings 4187
—crime to be reported to Commonwealth's attorney 4188
To have power of trial justice in certain cases 4189
Examination of buildings as to inflammable conditions 4190
—order for removal of 4190
—appeal from order 4190
—penalty for failure to obey..4190
Foreign company to file copy of charter with 4208
Penalty for failure to perform duty under insurance law. 4192
Salary, how paid 4193
—of clerical force 4193
Assessment of insurance companies 4195
—notice of 4195
—proceeding to collect 4195
—appeal 4195
—forms for report of premiums.4196
Money received by, accounting for, payment into treasury..4197
—report to Auditor 4197
Investigation of excessive rates of insurance 4199
—reports of 4199
Recommendations to General Assembly 4199
To report insolvent companies to State Corporation Commission.4180
Reports to, filing 4182
—open to public inspection....4182
—blanks for 4183
Records and papers kept by...4182
Reports by, what to show. 4183, 4197
Certificates furnished to domestic companies 4183
Accident insurance, forms, etc., filed 4315
—approval of 4315
—review of 4315
—revocation of license 4320

Digitized by Google

Sec.

COMMISSIONER OF INSURANCE—Con.

Bonds deposited by insurance companies, approval of investment of proceeds of 4216
—ordering return to company..4217
Casualty company, on co-operative plan, statement before commencing business 4259
—notice to State Corporation Commission of failure to pay policy 4270
Clerks, appointed to assist in liquidating insurance company 4245
Deputy, appointed to assist in liquidating insurance company 4245
Examination of companies, 4178, 4179, 4206
—access to books and papers, 4178, 4206
—witnesses, administering oath to 4178, 4206
—expenses of 4178
—of foreign company, when dispensed with 4179
—report of to State Corporation Commission 4180, 4206
—records of 4184
Fire insurance company, examination of company assuming excessive risk 4307
—report to State Corporation Commission 4307
—consent to reinsurance 4310
—affidavit that contract to fix pay of agents has not been entered into 4312
—revocation of license for.....4312
Fraternal benefit society, preliminary certificate to solicit members 4284
—statement, list, bond, charter..4284
—certificate of compliance with law 4284
—copy of amended charter filed with 4285
—merger or transfer by, certificate for 4286
—fee for license of 4287
—constitution and laws of filed with 4293
—reports of 4294
—dissolution of 4295
—examination of 4297
— —publications pending 4300
—quo warranto proceedings against 4297, 4298
—foreign society, license to....4288
—charter, statement, etc., filed.4288
—fee 4288
—review by Corporation Commission of refusal to grant..4288
—examination of 4299
—publications pending 4300
—suspension of licenses.....4299
—revocation of license 4295, 4301
—review 4301
Guaranty, fidelity and security companies, list of furnished to clerks of courts 4344
—notice of revocation of authority 4344
Investigation of insurance company charged with doing business illegally 4224
—expenses of 4224, 4225
—notice to company to refrain from 4222
—hearing 4222
—appeal 4223

Sec.

COMMISSIONER OF INSURANCE—Con.

Agents, registration of license..4235
—fee 4235
— —payment into treasury..4235
—revocation, suspension 4235
—appeal 4235
Liquidation of insurance company 4242-4246
—order to show cause 4242
—injunction 4243
—order on application 4243
—how liquidation effected.4243, 4244
—deputies, counsel, clerks 4245
—compensation 4246
—report to State Corporation Commission 4246
Promotion of insurance company, license to stock salesman, broker, etc. 4237
—fee 4237
—contract for sale of stock.....4237
—sale of stock in series 4237
—new issue 4237
—bond of fiscal agent 4238
Legal reserve insurance company, valuation of policies of..4257
—of foreign companies.....4257, 4258
—record 4257
—assessment against 4257
Industrial sick benefit company, license to 4355
—examination of 4355
—qualification of foreign company 4358
Life insurance company, notice of proceeding to revoke license of for deficiency of funds....4250
—order to treasurer to return securities to 4271
Life insurance company on assessment or co-operative plan, statement of before commencing business 4259
—notice to State Corporation Commission of failure to pay policy 4270
—order to treasurer to return securities to 4271
Mutual fire, lighting or storm insurance company, license..4328
—statement 4328
Consent to reinsurance 4311
Report to, by treasurer, sale of bonds of insurance company or guaranty company 4213
—by insurance companies, etc...4229
—extension of time for.....4229
—forms for 4229
—publication of failure to make 4229
Suit by to administer assets of insurance or guaranty company 4215

COMMISSIONER OF LABOR

See also **"Bureau of Labor and Industrial Statistics"**

Appointment 1798
Term 1798
Removal 1798
Investigations by 1799
—testimony, witnesses, oath....1799
—interrogatories 1799
— —penalty for refusing to answer 1802
Supervision Bureau of Labor and Industrial Statistics 1799
Salary 3443
Clerks 3443
—salary 3443
Contingent expenses 3443

Digitized by Google

Sec.

COMMISSIONER OF LABOR—Con.
As chief factory inspector.....1799
—enforcement of laws in factories, &c. 1799
—assistant 1799
—deputies 1799
—inspection of factories 1799
—annual report 1799
Statistical information furnished to 1800
Use of information obtained....1802
Employment agency, register kept by, form 1803
—inspection of 1803
—what prohibited to 1804
—dividing wages with applicant 1805
—enforcement of laws relating to 1806
Requiring factories, etc., to provide sanitary facilities for employees 1823, 1824
—notice to health authorities..1824
—notice to comply with law....1825
—discretion in enforcement of laws 1826
Factories and workshops, stairs and doorways, approval of....1829
—safety appliances, guarding machinery, lighting 1830
—appeals from rulings of.....1831
Foundry, moulding shop, order to provide ventilation for employees 1833
—toilets and washrooms .. 1834
State mine inspector, appointment 1835
—removal 1836
—reports 1836
—maps of coal mines 1839
— —expense of making 1839
Mines, permission to dispense with fans 1857
As State Mine Inspector, closing coal mine 1870
—notice to of petition to reopen 1870
As chief mine inspector, investigation of accidents in mines..1873
Reports to by operator of mine.1874
—forms for 1874
Instructions of, violation 1875
Use of steam locomotives in mines 1877
—oils for illuminating mines, testing 1883
—putting into effect provisions as to oil used in mines..... 1884
Notice to mayor or chairman of supervisors as to fire escapes..3141
—prescribing regulations as to..3141

COMMISSIONER OF PROHIBITION
See also **"Intoxicating Liquors"**
Proceeding for removal of officer, when to represent Commonwealth 2706
—consent to dismissal of complaint 2706
Election 4623
Salary 4623
Term 4623
Suspension 4624
Vacancy 122, 4624
Report to Governor 4625
Bond 4626
Deputies and inspectors, appointment 4627
—removal 4627
—powers 4629
Employment of attorneys by. 4627, 4628

Sec.

COMMISSIONER OF PROHIBITION—Con.
Powers and duties 4628
Notice to of prosecutions for violation of city ordinances..4615
Analysis of mixtures containing ardent spirits, request for....4621
—cost of, payment 4621
Injunction against nuisance, fee allowed to 4630
Examination of prescriptions, affidavits and records by.....4648
Reporting violations of law to Commonwealth's attorney 4648
Report to of vehicles arrested..4657
List of holders of internal revenue tax receipts to be procured by 4660
—report to Commonwealth's attorney 4660
—publication of 4660
Stamps for affidavits and prescriptions to be prepared and sold by 4668

COMMISIONERS FOR THE PROMOTION OF UNIFORMITY OF LEGISLATION
Appointment 322
Duties 322
Term 322
Compensation and traveling expenses 322

COMMISSIONERS OF REVENUE
Election of 123
—Va. Const., §§ 110, 112
—In cities 129
— —Va. Const., § 119
—In cities of second class.....2893
— —appointment by court, 2890, 2897
Term 123
—Va. Const., §§ 110, 112
—In cities 129
— —Va. Const., § 119
—In cities of second class..... 2893
For cities, duties, compensation, liabilities 2208, 2269
Of town, becoming city of second class 2890
Not eligible as member of General Assembly ....Va. Const., § 44
Not to hold other office 2702
—Va. Const., § 113
—office vacated thereby 2702
Removal of 2255, 2315
—appointment of successor 2315
—apportionment of compensation 2853
Death of, apportionment of compensation 2353
Number of in various counties 2252
—districts allotted to 2252
Jurisdiction 2253
Bond 2698
Offices for, how provided.....2854
Deputies, appointment 2701
—powers, oath 2701
—removal 2701
Acts of General Assembly furnished to 388
Enforcing laws relating to automobiles and motor vehicles..2144
To perform duties of assessor..2987
Books and papers of predecessor 2266
—substitutes for, how provided 2267
No book for previous year, how supplied 2331
Book, for income taxes.....2343

Digitized by Google

Sec.

COMMISSIONERS OF REVENUE—Con.

Counties, formation of new, collection of tax 2684
Terms of court to attend.....2373
Expense, postage and express, how paid 2369
Canvassing returns of school bond election 771
Instructions to by Auditor....2264
—expense of 2264
Income taxes, books and returns for, how kept 2343
—publicity of forbidden 2343
List of conveyances furnished to by clerk 2274
—judgments and decrees for partition of land 2275
—lands devised 2275
—of land grants, furnished to by Auditor 2277
— —by individual 2278
—of funds held by receivers and commissioners 2307
—of dogs 2316
— —return of to clerk's office..2316
— —penalty for failure to list..2316
—of delinquent taxes furnished to 2417
— —examined by 2417
—of delinquent lands, assisting judge in correcting 2473
—to Auditor of lands belonging to Commonwealth 2533
Misconduct of, report of to court by Auditor, etc.....2265
Notice to of motion for apportionment of taxes when property partitioned 2449
—copy of order 2449
—of apportionment of city taxes when land divided 2495
When to perform duties of oyster inspector 3296
Certificate of filed with application for Confederate pension 2648
Revenue laws, informing Auditor of violations of 2548
—list of violations furnished to court 2355, 2356
—statement, if no violations..2355
—certificate to Auditor 2355
—charging grand jury as to violations of by commissioner.2357
—proceedings against by Auditor for violation of.....2544
Reports by, annual, to escheator 492
—of owners of apple orchards..892
—to local board of review of commissioner's property 2327
—of violations of law to Commonwealth's attorney 4864
Reports to by examiner of records 2220
—entries and extensions from.2220
—by local board of review....2259
—by clerk of redemption of land sold to State for taxes 2491
—by branch banks 4102
Transfer fees on deeds, etc., collection 2348

Assessment

Assessment of school taxes.... 752
Copy of assessment furnished by assessor 2247
Changes certified to 2247
Assessment, when city of second class formed 2899

Sec.

COMMISSIONERS OF REVENUE—Con.

Interrogatories to taxpayer, 2254, 2310
—if answers not filed how assessment made 2310, 2312
—oath 2310
—with whom left in absence of taxpayer 2311
—delivery to commissioner....2311
—return of to local board of review 2231, 2255
—correction 2255
—removal for neglect of duty relating to 2255
—review of, return of to commissioner of revenue....2256, 2259
—filing 2261
—penalty for abstracting or destroying 2261
— —for receiving answers not sworn to 2315
— —removal for 2315
Of real estate, when to commence 2270
—what exempt from taxation..2272
— —Va. Const., § 183
—town and city lots 2280
— —buildings on 2280
—grants 2282
—land becoming property of different owners 2285
— —how corrected 2286
—of owner dying intestate.....2287
—land devised 2287
—land lying in different counties 2289
—new buildings on 2289, 2295
—when part sold 2291
—land lying in different districts 2290
—buildings and enclosures 2294
—repairs and additions 2296
— —injured or destroyed 2297
—omitted lands 2292, 2293
Mineral lands 2234
—lands and minerals separate.2235
—copy certified to State Corporation Commission 2236
—mineral assessors, assistance by 2238
— —procedure in case of disagreement 2238, 2239
—appeals from 2237, 2240
Timber land, when value reduced 2297
Machinery, mining and manufacturing 2298
—fixtures 2298
— —penalty for failure 2298
Personal property, listing, when to begin 2305
—what persons and property to be listed 2306
—oath to be administered by..2306
— —penalty for failure to administer 2306
—by and to whom listed 2307
—where listed 2307
—notes, bonds, etc., held in court 2308
—personal property, money and income 2312
Capital and deposits of branch bank 4102
Of funds under control of court 6310
—exempt from taxation 2301
— —Va. Const., § 183
—county, district and municipal bonds may be 2302

Digitized by Google

Sec.

COMMISSIONERS OF REVENUE—Con.

Of property of commissioner...2327
Of dogs 2316, 2318, 2325
Of omitted persons or property listing and assessment of, interest 2332
—tax not realized 2332
—forms for 2333
—limitation on 2334, 2336, 2338
—license and occupation tax..2332
Of omitted capitation taxes, 116, 2420
—person becoming of age after February 116, 2420
—certificate 116, 2420
—record 117, 2420
—report to Auditor 117, 2420
Correction of....2237-2239, 2385, 2389
—assessment in wrong locality..2288
—when land divided 2285
—by taxpayer before grand jury 2397
— —notice to Auditor 2397
—commissioner as party to, 2237-2239
— —examined as witness ..2385, 2389
— —when judgment for costs rendered against 2390
—appeals from 2237, 2240
When final notwithstanding omitted taxes 2336
Assessing less than legal tax, deduction from compensation for 2371

Compensation and fees

General fees 2347
—other or additional 2347
In cities 2268
Listing and assessing dogs.....2323
Commissions 2349
Deductions from for omissions..2330
—for assessing less than legal tax for license 2371
For extending and recapitulating tax books 2337
For making books for former year 2352
Apportionment on death or removal 2353
For issuing licenses 2361, 2383
Forfeiture for failing to report licenses issued 2374
Furnishing list to Auditor of lands belonging to Commonwealth 2336
When withheld..2342, 2351, 2355, 2384

Licenses

On dogs 2318
Application for 2360, 2361
—endorsement on 2360, 2361
What constitutes 2360, 2361
Filing 2360, 2361
For three months or less.....2361
Interrogatories to applicants....2366
Certificate to treasurer of amount of tax for 2366
Of merchant 2366
—investigation of purchases....2366
—reports 2366
— —to commissioner 2366
Assessing double tax against person doing business without 2369
—certificate of to treasurer....2369
List of to Auditor and clerks of courts 2374

Sec.

COMMISSIONERS OF REVENUE—Con.

—forfeiture for failure to make 2374
—as evidence to charge officer..2375
Alteration when place of business changed 2379
For manufacture of oil or manure from fish 3186
To druggist to sell ardent spirits 4599
On bull 6447
How commissioner of revenue may obtain 2363

Penalties

For issuing license to practice dentistry to person not complying with law 1648
For abstracting or destroying interrogatories 2261
Failure to exhibit land book to taxpayer 2273
Failure to note changes in land book 2281
Failure to enter grant 2282
Failure to assess omitted lands.2292
For failure to assess buildings, machinery, fixtures 2298
For failing to administer oath..2306
For receiving answers not sworn to 2315
For failure to list dogs.....2316
For failure to assess their own property 2327
For false entries in books 2339
For failure to keep original books or to make copies.....2341
For failure to deliver copies of tax books 2342
For failure to report licenses issued 2374
For making false entry in record of marriages, births and deaths 4491

Tax books

Land book, furnished by Auditor 2254
—examination of by local board of review 2260
—exhibit of to taxpayer, correction of entries 2273
— —penalty for failure of duty.2273
—entry of mineral lands.....2234
— —land and minerals separate.2235
—form, arrangement 2279
—land owned by white and colored persons shown separately on 2279
—town and city lots, buildings.2280
—changes noted in 2281
— —penalty for failure to make 2281
—grants entered in 2282
—penalty for failing to enter..2282
—notation of real estate sold for taxes 2283
—transfers on 2284
—assessment of timber when sold separately 2284
—land divided, assessment.....2285
— —how corrected 2285
—land in different counties, part sold 2291
—omitted lands, entry and assessment 2292, 2293
—mistakes in, correction.2286, 2288
—owner dying intestate or devising land 2287
—assessment in wrong county or district 2288

Digitized by Google

Sec.

COMMISSIONERS OF THE REVENUE —Con.

—copies 2299
—oath to 2299
—examination of 2299
—adding columns 2329
—extensions and recapitulation.2337
—original 2341, 2342
—copies, how disposed of.....2342
— —receipt for 2346
—alteration after delivery to treasurer 2354
—notice to owner to enter land or land book 2452
Personal property book, furnished by Auditor 2254
—forms furnished 2300
—commissioner of revenue to make out 2260
—examination of by local board of review 2260, 2340
—return of 2260
—separate assessment of property of white and colored persons 2300
—what to be entered therein, arrangement, etc. 2300
—poll tax 2300
—entries in from report of examiner of records 2220
— —funds under control of court 6310
—extension of taxes 2256, 2259
—columns added 2329
—extensions and recapitulation 2337
— —form for recapitulation....2337
—copies 2340
— —how disposed of 2342
— —receipt for 2346
— —original retained....2341, 2342
—correction 2340
—oath to 2340
—not to alter after delivery to treasurer 2354

COMMISSIONERS OF SINKING FUND

See also **"Sinking Fund"; "State Debt"**

Composed of 2621
Records, books 2621
—where kept 2621
Bonds, where kept 2621
Report 2621
Meetings 2625
State Accountant to devise system of accounting for 552, 554
—mandamus to compel adoption 555
—inspection of accounts....557, 558
—duty and penalty 558
Treasurer may sell securities of library board to 362
Purchase of bonds 2623
—fractional certificates 2624
—procedure for 2625
—advertisement for offer 2625
—list of bonds purchased 2625
—cancellation of 2625
To authorize payments from sinking fund 2626
Cancellation of coupon bonds in presence of 992
Bonds of State delivered to by Auditor of Public Accounts..2191
—cancellation of 2191
Bonds issued by 2585, 2591, 2601
—form 2586, 2587
—coupons 2587
—redemption, notice 2586

Sec.

COMMISSIONERS OF SINKING FUND —Con.

—denomination 2588
—exchange for old obligations, 2588, 2589
—certificates for share owed by West Virginia 2589
—interest 2591, 2601
—recordation 2592
Order for payment of expenses of refunding State debt.....2599
Bonds deposited with.....2591
—cancellation, list of.....2593
Extension of time for funding..2601
Exchange of coupon bonds into registered bonds 2602
—fee 2602

COMMISSIONER OF STATE HOSPITALS FOR THE INSANE

See also **"General Board of State Hospital Directors"; "Insane Hospitals"; "Insane Persons"**

Appointment, term 1009
—Va. Const., § 152
Chairman of hospital directors.1009
Appointment, term 1009
Powers and duties 1010-1016
—Va. Const., § 152
—accounting 1010
—inspection 1010
—report, estimates, recommendations 1010
—salary, expenses.....1011, 3447
—bond 1011
—removal 1012
—approval of depository of funds for hospitals ... .1012
—examination of bond of depository 1013
—signing checks on depository..1014
—forms for lunacy proceedings..1015
—notice to of commitment of insane 1022
—placing insane persons in hospitals 1023
—attendants for patients transported to hospitals 1027
Care of insane not in hospitals..1037
—expense 1038
Report to on voluntary patient 1031
Record of oath taken by 277
Approval of system of accounting for hospitals....553, 554
Interest in contract prohibited..1059
—penalty 1060
Forms furnished by 1059
Disposition of insane persons convicted of crime when restored to sanity 1045
Charges for treatment of voluntary patients, how fixed....1058

COMMISSIONER OF WRECKS

See also **"Wrecks"**

Appointment, removal 3596
Bond 3597
Summoning aid to vessels..3598, 3599
Preserving property 3601
Disobeying, penalty 3600, 3602
Employing guards 3602
Inventory of property 3603
Pay 3603
Pay of laborers 3604
Interference by others with vessel in distress 3605
Advertisement of wrecks 3606
Sales of property 3607, 3608
—accounting for sales....3609, 3610
Posting law 3611
Penalty for neglect of duty....3612

Digitized by Google

Sec.

COMMITMENT
See also "Arrest"; "Criminal Procedure"
Of accused by justice.4839, 4845, 4846
—for further examination 4841
—certificate of 4846
—discharge from, when.....4849
— —order for 4850
To jail for failure to pay fine and costs 4949-4953
—for failure to give recognizance 4976
To receiver, estate of infant married woman 5136
Of defendant failing to answer interrogatories 6123
Witness refusing to testify... 6221
On capias, debtor about to quit State 6421
Execution debtor failing to answer interrogatories 6506

COMMITTEE
See also "Fiduciaries"; "Personal Representatives"
Term personal representative includes 5
Appointment, jurisdiction of Supreme Court of Appeals in controversy concerning 6336
—Va. Const., § 88
Bond, examination of by commissioner 5416
—when new required 5417
Resignation 5419
Compensation, expenses 5425
Of convict, appointment 4998
—power of clerk of circuit court to appoint .....Va. Const., § 101
—bond 4998
—powers and liabilities 4999
—maintenance of convict's family, wife's portion 5000
—rendering account, compensation 5001
—delivery of estate to convict on discharge 5002
—sheriff or sergeant as 5003
—when and how real estate of convict sold or encumbered..5004
—service of process on in divorce suit 6042
—revival of action for and against 6168-6170
—party to proceeding to substitute trustee 6299
Of feeble-minded person, appointment 1080
—bond 1080
—powers and duties 1080
Of idiot returned from hospital 1039
Of inebriate or drug addict, appointment 1074
—bond 1074
—report 1074
—account, release 1074
Of insane person, appointment, 1050-1052
—power of clerk of circuit court to appoint, Va. Const., § 101
—bond 1053
Provision for insane person and dependents 1050
Of resident, not found 1051
—non-resident 1052
Powers and duties 1054
Custody and care of estate....1054
—proceeding to sell, mortgage or lease real estate 1055-1057, 5335-5347

Sec.

COMMITTEE—Con.
— —not to be interested in purchase or lease of 5341
—liability for expenses 1058
— —non-resident patient 1058
—listing property for taxation 2307
—when proceeds of sale of real estate in partition suit paid to 5281
—petition to transfer property out of State 5350-5356
—proceeds of real estate 5351
—discharge of committee.....5356
—judgment against 5407
—power to submit to arbitration 6163
—revival of action for and against 6168-6170
—party to proceeding to substitute trustee 6299
To regulate and manage Norfolk county ferries 2050
In General Assembly, salaries..3454
—clerks, salaries, duties 3459
—mileage 3455
To hear applications for aid from local levy for Confederate veterans 2664-2666
To inquire into necessity of general index in clerk's office.3396
—report, action on 3396
Payment of bank deposit to....4125
Trust company as 4148
Debts due by, priority of payment from decedent's estate, 5390, 5391. 5395
Order of court for payment to persons entitled 5433
Inventory 5403
—proceeding to compel filing..5403
—penalty for failing to file....5403
—liability for debts lost by negligence or failure to make defense 5406
Judgment against 5407
Accounts, settlement before commissioner 5408, 5410
—penalty for failure to make, 5408-5410

COMMON
Marsh and meadow land to remain 421
No land grant to include 459
Beds of bays, rivers, creeks and shores of sea as 3573

COMMON CARRIER
See also "Corporations"; "Employers and Employees"; "Express Companies"; "Ferries"; "Passengers"; "Railroads"; "State Corporation Commission"
Right of State to control, not to be surrendered or abridged, Va. Const., § 164
Unincorporated, suits against..3931
Process against or notice to, service of 6067
Employees, discharge of for refusal of surety company to become surety for 3930
—acceptance of other surety...3930
—penalty 3935
Duty to receive and receipt for freight 3927
—penalty for failure 3927
Excursions, prohibition of.....4008
—notice 4009
—penalty 4010

Digitized by Google

Sec.

COMMON CARRIER—Con.
Liability for transportation and delivery of unregistered and unbranded fertilizers 1118
—for death of or injury to employee in intrastate commerce, 5791-5796
— —"common carrier" defined..5795
—for loss or injury to goods, 3926, 3929
— —contracts for exemption from liability 3926, 3930
— —evidence of negligence in actions against 3926
—for loss or injury to goods by connecting carrier 3926
— —contract for carriage to destination 3926, 3929
— —when presumed 3929
—for goods delivered to express company 4031
Claims for goods lost or damaged, demurrage, storage.....3928
—when and where filed.....3928
—penalty for failing to pay.....3928
Transportation of dead bodies..1728
—of agricultural seeds, duty with respect to tags and labels on 1144
—of game 3361
—of explosives 3922, 3923
Transportation of intoxicating liquors, to hospitals and chemical laboratories 4601
—to hotels 4602
— —record of shipments to hotels and druggists 4605
—not to receive orders or collect money for 4611
—record kept of, what to show, 4632, 4634, 4638
—effect as evidence 4632
—penalty for failing to keep, 4632, 4634
—regulations for transportation of 4633
—affidavit by consignee, 4634, 4635, 4638
— —in duplicate 4654
— —filing 4634
—delivery to other than consignee 4625
—hours for delivery 4635
—record open to inspection, 4632, 4637
Examination of by State Corporation Commission....3717, 3721
—works and equipment 3719
—notice to of violations of law 3719
Notice of accidents given to State Corporation Commission.3988
Penalty for transportation of uncertified nursery stock..... 874
—for violation of regulations as to quarantine of live stock.... 912
—allowing food to become contaminated in transit 1220
—failure to receive and receipt for freight 3927
—failure to pay claim for loss or injury of goods 3928
—refusing to accept bond of employee 3935
—violations of law relating to excursions 4010

COMMON LAW
Continued in force 2
—Va. Const., Schedule, § 1
English writs, part of..... 3
Offenses, how punished 4760

Sec.

COMMONWEALTH
See also **"State"; "Virginia"**
Extent of territory of 9
Cession of northwest territory.. 10
Great seal of 27
—when used 29
Lesser seal of 28
—when used 30
—tax on 29-30
Writs to run in name of, Va. Const., § 105
Suits in name of on bonds taken by courts or officers 284
Bonds taken by courts and officers, when payable to..... 279
When to pay cost of bond given by officer and clerk 325
Bond of purchaser at escheator's sale payable to 509
Suit in name of for enforcing execution of trust for educational or literary purposes.... 590

COMMONWEALTH'S ATTORNEY
Ineligible as member of General Assembly ....Va. Const., § 44
Election 123
—Va. Const., §§ 110, 112
Term 123
—Va Const., § 112
In cities, election 129, 3008
—Va. Const., §§ 119, 122
—term 129, 3008
—Va. Const., §§ 119, 122.
—duties, compensation, etc.....2989
Vacancy, how filled 136, 138
—when and how appointee to qualify 139
Residence 2703
Not to hold other office.....2702
—Va. Const., § 113
—office vacated thereby 2702
Of county, duties and rights when city of the second class is formed 2894
Office for, how provided 2854
Acts of Assembly furnished to.. 388
Member of school trustee electoral board 622
Proceeding for removal of, who to represent State 2704
Employment of counsel to assist 2728
Special prosecuting attorney, appointment, powers, etc.....4978

Compensation and fees
Compensation in various jurisdictions 3505
—in cities 2989
—proportion borne by city of second class 2904
Annual allowance to by supervisors 2726
Fees in criminal cases....3504, 3505
—payment out of treasury, 3504, 4966
—certificate of allowance..4961, 4962
—when paid from treasury.....4966
—for attending escheator's inquest 513
—for probate of will containing devise for educational trust.. 591
—prosecution for violation of law relating to fertilizers....1118
—proceeding against person rendering false list of property for taxation 2328
—motion for revocation of license 2378
—proceeding for violation of license or revenue laws.....2396

Digitized by Google

Sec.

COMMONWEALTH'S ATTORNEY—Con.

—proceeding for order of court of completion of road or section thereof by turnpike company 4077
—suit to abate nuisance under prohibition law 4630
—enforcement of prohibition laws 4655
—prosecutions for offenses in chapter 185 4705
—In case removed to federal court 4971

Powers and duties

Appeal from denial of registration 103
Application by to require new or additional bond of officers.... 280
Probate of will containing devise or bequest for literary or educational purposes 589
Action by against district school board 659
Motion for appointment of trustees for gifts, etc., for educational purposes 590
—fee 591
—for revocation of license.....2378
— —fee 2378
—against poor commissioner to recover forfeiture 1904
—against officer failing to account for fines 2548
To act as attorney for county school board 650
To prosecute violations of school law 687
Canvassing returns of school bond election 771
Maintaining suit against house of prostitution as nuisance, 1522, 1523
Records of State Anatomical Board open to 1730
Approval by of bond of person receiving dead bodies from anatomical board 1734
Proceeding to establish regulations for crossing highway by tramway or railroad 2006
Approval by of loans of sinking fund for retirement of road bonds 2118
Report to by Auditor, whether treasurers have settled with State 2201
—of clerk or other officer who has failed to settle 2201
—of violations of duty by commissioner of revenue 2384
—of person failing to assist officer serving process 2822
—by officers of violations of law 4864
List of violations of revenue law furnished to 2355
Decrease of merchant's license, appeal to court from 2366
Notice to of motion to apportion taxes on property partitioned 2449
Proceeding to annex territory to city or town 2957
—of seizure of property forfeited for violation of fishing laws 3217
—to mill owner, of dam interfering with commerce 3578
—of default on recognizance...4978
Suit by or against county, service of process on 2686

Sec.

COMMONWEALTH'S ATTORNEY—Con.

To represent State, proceeding for removal of officers.....2706
Advice of in adjustment of judgment against treasurer 2737
Claims against county, to represent county before supervisors 2759
—appeal from allowance of claim 2759
—procedure when illegal claim allowed 2755
—to be present at meetings of board of supervisors 2759
Proceeding to contract corporate limits of town 2970
In cities 2989
Forfeiture of vessel, cargo, etc., for violation of oyster laws..3279
Proceeding for order of court of completion of road or section thereof by turnpike company.4077
—fee 4077
—proceeding for permission to change toll gate, notice.....4077
Application to court to compel repair of turnpike within half mile of city 4089
To represent State Corporation Commission in proceeding to recover examination fee from bank 4122
Evidence of crime of arson furnished to by Commissioner of Insurance 4188
Motion for increase of bail....4823
Issuing summons for witnesses.4969
—before grand jury 6217
Duty to prosecute case removed to federal court 4971
Proceeding against minister failing to return marriage license and certificate 5074
Petition for quo warranto 5842
—for leave to file information in nature of 5844
Drawing jury in presence of, 5992, 5993

CRIMINAL PROSECUTIONS

Notice to of commitment.....4846
Duty to institute prosecutions for violation of penal laws..4861
Prosecutions before grand jury..4864
—when may go before grand jury 4864
—summoning witnesses before..6217
Consent to trial without jury on plea of not guilty 4927
- Va. Const., § 8
—to trial on plea of guilty, 4900, 4927
- —Va. Const., § 8
To prosecute violations of forestry laws 548
—laws relating to fertilizers..1118
—seeds 1150
—pure food, 1167, 1178, 1179, 1190, 1223
— —analysis, fee 1190
—"feeding stuffs" 1223, 1232
—vital statistics 1582
—practice of medicine 1614
—optometry 1637
—sale of adulterated or misbranded drugs 1660
—practice of pharmacy 1661
—factory laws 1799
—oysters in polluted areas 3289
—hunting, fishing and taking oysters 3366
Summoning witnesses 4969

Digitized by Google

Sec.

COMMONWEALTH'S ATTORNEY—Con.
—before grand jury 6217

FINES

Duties 2554
Officer failing to account for reported to 2546
—motion against officer 2546
Rule against officer failing to collect or account for fines....2554
—fee 2554
—penalty for failure 2554
To superintend issuance of executions for 2558, 2559
—proceeding against officer for failing to pay to clerk.....2568
Recovery of fines for refusal to give information as to merchant's purchases 2366
Collection of fine from commissioner for failing to report on treasurer's bond 2778
Notice to of petition for remission of fine 2570
—duty with respect to 2571
Notice to, application for release of prisoner confined for failure to pay fine and costs..4952

INTOXICATING LIQUORS

To enforce prohibition law.....4655
—failure as misfeasance 4655
Violations reported to by Commissioner of Prohibition 4648
—prosecution of 4628, 4648
Association of Commissioner of Prohibition in prosecution....4628
—of counsel with 4644
Dismissal of prosecution 4644
Examinaiton of prescriptions, affidavits and records 4647
Charging and prosecuting second offense 4587
—by druggist 4596
Proceeding against persons holding United States internal revenue tax receipts for sale of ardent spirits 4660
Proceeding against person arrested in charge of vehicle transporting ardent spirits...4657
Change of venue 4663
Filing bill to enjoin violations of law relating to advertisement of intoxicating liquors..4609

TAXATION

Proceedings to correct assessment of mineral land....2236. 2237
—mineral rights 2237
—appeal 2237, 2240
Disagreement between commissioner of revenue and assessor as to assessment of minerals, proceeding to settle 2238
Correction of assessment, notice, defense by 2247
Proceeding to correct erroneous assessment of personal property 2263
—copy of order 2263
—appeal 2263
Proceeding against person rendering false list of property for taxation 2328
—fee 2328
—penalty for failure of duty..2328
To defend application for correction of assessment for taxation 2385, 2389, 2391
Proceeding instituted by to correct assessment by State Corporation Commission 2392

Sec.

COMMONWEALTH'S ATTORNEY—Con.
Notice to of motion to apportion taxes when property partitioned 2449
Proceeding to forfeit real estate not entered in land book....2452
Copy of petition for ascertainment of delinquent taxes served on 2455
Defense of proceeding for relief against sale of lands delinquent for taxes 2474
Notice to of application to redeem part of land sold for delinquent taxes 2493
Appeal by from order of levy by board of supervisors.....2762

COMMUTATION
Of sentence by Governor.....5003
—Va. Const., § 73
Of life estate, dower or curtesy 5131-5133

COMPANIES
See also **"Corporations"**
Definition 3693
—Va. Const., § 153
Word person includes, when....1183
Listing property for taxation..2307
License to, what to contain....2364
—change in members or name..2365

COMPARTMENT CARS
Exclusion from 4007

COMPENSATION
See also **"Fees"; "Mileage"; "Salaries"**
Of agents, State Board of Education .....
—appointed by Auditor to assess license tax 2370
—selling lands of State 2540
—employed by Auditor to secure satisfaction of judgment for taxes 2596
—appointed by State Corporation Commission 2770
Of appraisers of estate of decedent 5376
Of assessors of land for taxation 2250
Of assistant to director, Legislative Reference Bureau..... 574
Of attorney employed by Auditor to collect taxes 2533
Of attorney searching title to real estate to be purchased by county or school board 2709
—appointed to defend poor person 3513
Of Attorney General 3433
—Va. Const., § 107
Of auditing committee of General Assembly 811
—Va. Const., § 68
Of auditor of accounts of officers 2756
Of bailiff, civil and police justice 3119
Of ballast masters 3654
Of Board of Agriculture 1102
Of Board of Bar Examiners....3416
Of Board of Charities and Corrections 1903
Of boards of health, officers and agents 1493
Of board of directors of State Library 617
Of Board of Harbor Commissioners of Norfolk and Portsmouth 3674
Of Board of Pharmacy 1579

Digitized by Google

Sec.

COMPENSATION—Con.
Of board of supervisors 2769
Of Bureau of Labor and Industrial Statistics, persons performing service in 1801
For taking school census..... 653
For taking census of deaf and blind persons 654
—of enumerators 2973, 2976
Of circuit judges on special court of appeals 5876
Of city manager 2943, 2949
Of city sergeant 2992, 2993
—posting list of paid poll taxes 112, 114
—deputy, for attending court..3503
Of clerk, county school board.. 642
Of clerk, district school board.. 658
—of election 200
—of local board of review.....2226
—of State Board of Education.. 608
—of board of supervisors 2002
—of clerk of court 3242
—in cities of first class 5903
—of court of civil justice.....3118
—of courts of city of Richmond 5930
—of court of law and chancery of Roanoke 5956
—for copying registration book. 108
—for copying and certifying poll tax lists 112
—for services in election for issue of school bonds 769
—for furnishing list of grants, conveyances and land book to assessor 2242
—rearrangement of magisterial districts 2694
—furnishing list of plats of oyster ground and marking abandoned parcels 3271
—to successor for making out fee bills of deceased clerk....3497
—for re-entering lost or destroyed records 6201
Of collector, city or town.....3034
Of collector of delinquent taxes, 2422, 2436
Of commissioners of election.... 200
—for the promotion of uniformity of legislation 322
—in proceeding to establish drainage district 1778
—in proceeding to establish road 1983
—for examining clerk's tax book 2405
—of accounts, for examining list of delinquent taxes 2418
—in boundary dispute between counties 2685
—rearrangement of magisterial districts 2694
—to revise registration books..2978
—of wrecks 3603
— —laborers 3604
—establishment of wagon way over road, canal, &c., of public service corporation 3883
—in eminent domain proceedings 4366, 4375
—of prohibition 4623
— —deputies and inspectors....4627
—drainage through lands of another 5296
—for judicial sale 6279
Of commissioner of revenue 2347
—for cities 2268, 2269
—other than fees 2349
—when withheld 2342, 2351, 2355

Sec.

COMPENSATION—Con.
—for making books for a former year 2352
—apportionment on death or removal 2353
—for extending levies 2337
—deduction from 2330, 2371
—forfeiture of 2374
Of committee of legislature....3455
Of committee of convict's estate.5001
Of constable, removing poor person to place of last settlement 2804
Of counsel, appointed to defend poor person 3518
Of assistants to Dairy and Food Commissioner 1176
Of depository of school funds.. 735
Of directors, State Library..... 617
—of division of markets.....1250
— —assistants 1250
Drainage districts, expense of establishing 1738, 1739, 1778
Election, posting notices..... 218
Of electoral board 89
—for printing ballots 156
Of electors 77
Of enumerators of population of town 2973
—of cities 2976
Of escheator 513
Of examiners of office of clerk of the court 3383
Of examiner of records....2224, 2230
Of fiduciaries 5425
Of fire marshal 3132
—assistants 3140
Of forest warden 540
Of game wardens 3324, 3325
Of geologist and assistants for State Geological Survey 829
Of grand jurors 4863
Of guardian ad litem 6098
Of guard for jail 4954, 4955
—penitentiary 5041
—at State prison farm.....5047
Of harbor masters cities of Norfolk and Portsmouth 3673
Of inspector appointed by State Entomologist 881
Of inspectors of jails 2867
Of judges of election 200
Of judge, on special court of appeals 5876
—holding court other than his own 5898
—pro tempore 5901
Of jurors 6007
—grand jurors 4863
—coroner's inquest 4814
—in criminal cases 4922
Of trial justices 4988
Of justice producing receipts for fines ... .2546
Of Library Board 360
Of Lieutenant-Governor, while acting as president of Senate .....Va. Const., § 79
Of local board of review.....2226
Of mayor of town 3028
Of messenger at election....180, 201
—at primary election 238, 243
Of officers, special election for issue of school bonds 770
Of officers and employees of cities and towns 2988
Of officers for service in criminal cases for which compensation not provided 4969
Of officer, provided for by consolidation ordinance of Manchester and Richmond 5931

Digitized by Google

Sec.

COMPENSATION—Con.

Of officer receiving proceeds of execution 6515
Of orchard inspector 897
Of oyster inspector, furnishing list of plats of oyster ground and marking abandoned parcels 3271
Of penitentiary guard 5041
Of physician attending coroner's inquest 4815
Of physician for poor 2796
Of physician to attend prisoners in jail 4956
—for making analysis of poison in criminal case 4956
Of pilots 3626-3633
Of Prison Association of Virginia 1954
By public service corporation to person damaged by occupying streets 3882
By public utilities company for damage to property when right of way is condemned 4063
Of receiver of co-operative life insurance company or casualty company 4261
Of general receiver of court funds 6286
Of registrar of election, 96, 98, 100, 108
Of local registrar of vital statistics 1579
Of reporter of Court of Appeals 5879
In proceeding to establish road, 1980, 1983
Of school trustee electoral board 629
Of secretary, Board of Agriculture 1101
—local board of health 1498
Of sheriff for posting list of paid poll taxes 112, 114
—services in election for issue of school bonds 769
—for attending meetings of supervisors 2718
—deputy for attending court...3503
Of special police for counties..4797
Of special prosecuting officer..6970
Of State Board of Accountancy 571
Of State Board of Examiners and inspectors of schools..... 610
Of State Entomologist 883
Of State Board of Health.....1491
Of State Board of Medical Examiners 1616
Of State Tax Board, assistants..2214
Of State prison farm, surgeon..5047
—superintendent 5047
—guards 5047
Of State Treasurer for keeping bonds deposited by insurance and guaranty companies.....4211
Of superintendent of city schools 784
Of superintendent of roads....2021
—apportionment 2020
Of superintendent at State prison farm 5047
Of surgeon at State prison farm.5047
Of surveyor, proceeding to establish road 1983
—for survey and plat of new county 2680
—boundary dispute between counties 2685
—rearrangement of magisterial districts 2694

Sec.

COMPENSATION—Con.

To tenant for preparation of land for crop 5542
Of treasurer, Hampton Normal and Agricultural Institute... 928
Of treasurer making and certifying poll tax list 112, 114
—for payments for improvement of roads with State aid.....2106
—for services in road bond issue for magisterial district..2124
—for receiving and paying revenue of the State.....2430
— —local revenues 2421
To trustee in deed of trust to secure debts, for making sale.5167
Of viewers, proceeding to establish drainage district, 1738, 1739, 1775
—in proceeding to establish road 1983

COMPLAINT

See also **"Criminal Procedure"; "Declaration"; "Pleading"; "Warrants"**

In contested election for General Assembly 262
—for county, corporation and district officers 267
—where and when filed..... 267
—service of copy 267
In appeal from division school board 666
The circuit court by State Entomologist 877
In proceedings before lunacy commission 1017
In proceeding to commit inebriate or drug addict to private hospital 1070
Condemnation of adulterated, substituted or misbranded food 1164
Sale of unwholesome or deleterious food 1216
Against commission merchant filed with Commissioner of Agriculture 1260
Against tobacco sampler.....1388
By health officen in proceeding to abate nuisance 1520
—by citizens 1521
In proceedings against husband or parents for deserting or failing to support wife or child 1937
Of undue election or false returns, bond issue for roads...2115
Of voters, failure of supervisors to issue bonds for roads for magisterial district 2124
Of failure of commissioner of revenue to comply with law..2315
In proceeding for removal of officer 2705
In contested election for removal of courthouse 2754
For removal of poor person to place of last settlement 2802
Against supervisors or council failing to pay expense of removing poor to place of last settlement 2803
Against vagrant 2809
In prosecution for unlawful fishing 3215
Against attorney for malpractice, etc. 3424
For examination of transportation or transmission line, by mayor, council or supervisors.3721

Digitized by Google

Sec.

COMPLAINT—Con.
To State Corporation Commission, proceeding to revise rates, practices of telephone company 4054
For examination into inflammable condition of premises..4190
In proceeding to require recognizance of person who intends to commit crime 4790
Warrant in criminal case issued on 4824
Information upon 4866
In action on insurance policy..6094
For attachment for rent.....6416

COMPOUND INTEREST
Liability of guardian for.....5323
—recovery for ward 5324

COMPOUNDING OFFENSES
Punishment 4513

COMPRESSED AIR COMPANIES
See **"Public Utility Companies"**
Use of streets by 3014, 3882
—Va. Const., § 124
Powers of 4058

COMPROMISE
See also **"Accord and Satisfaction"**
Of violations of fishery laws....3156
—privilege against using in evidence 3156
Of violations of oyster laws, 3264, 3288
—privilege against using in evidence 3264, 3288
Effect of attorney's lien on....3429
Of misdemeanor 4849, 4850
In behalf of infants or insane person, approval by court....5332
—may be set aside for fraud..5332
By fiduciaries, ratification of...5440
—trustee, mortgagee, receiver of joint stock company 5440
With joint obligors 5763, 5764
Part performance, when extinguishes contract 5765
Right of contribution not affected by 5766
Liability for death by wrongful act 5789
—to bar action for 5787

COMPULSORY EDUCATION
General Assembly may provide for .....Va. Const., § 138

COMPUTATION
See also **"Time"**
Of time, rules for. 5, 5648, 5754, 5755
Of annuities 5132, 5133

CONCEALED WEAPONS
See **"Weapons"**

CONCURRENT JURISDICTION
See also **"Jurisdiction"; "Venue"**
Of circuit courts with city courts .....Va. Const., § 98
Between State and United States over land acquired from State 17, 19
Trial of right of person to practice medicine, circuit courts, corporation courts and justices 1614
Of violations of mining law....1886
Circuit courts, justices and juvenile and domestic relations courts 1950
Of police justice with corporation court 3094
Of civil and police justice with corporation court 3102

Sec.

CONCURRENT JURISDICTION—Con.
Of offenses committed on water.3213
Offenses against law relating to fish and shellfish industry in Potomac river, Virginia and Maryland 3299
Of violations of game laws, justices and circuit courts.....3345
Of State Corporation Commission with courts 3754
Of circuit and corporation courts with justices in prosecution of misdemeanor 4987
Of trial justices and justices of the peace 4988
Of circuit and corporation courts 5911
Over river, water course or bay between counties and cities..5958

CONDEMNATION
See also **"Forfeiture"**; of land, see **"Eminent Domain"**
Of school houses 673
Of animals, by Bureau of Animal Industry 1289
Of feeding stuff, stock food, etc. 1240
Of goods bearing counterfeit trade marks, label, etc.....1460

CONDENSED MILK
See **"Milk"**

CONDITIONAL JUDGMENT
See also **"Default Judgments"; "Judgments"**
Entry in clerk's office.....6131

CONDITIONAL SALES
Validity of 5189
How lien enforced 5190
—released 5191
Book recorded in 3393, 5189
Judgment in action of detinue on contract of 5801

CONDITIONS
Action to recover penalty for non-performance of 6262
Bond subject to, jurisdiction of action on 6374
Of bonds, taken by courts and officers 279
Of bond, in action on lost instrument 6242
—in attachment proceedings, to take property 6384
— —on affidavit of substantial defense 6385
— —when property seized.....6394
— —when property sold 6406
— —on appeal 6413
—for capias 6420
— —of defendant 6421
—of distributees of estate of person presumed to be dead..5365
—in action of detinue given by plaintiff for order of seizure..5797
— —given by defendant for return of goods 5798
—to stay execution 6499
—forthcoming bond, by claimant of property levied on....6157
— —on execution or distress warrant 6518
—of general receiver of court funds 6285, 6287
—in habeas corpus proceedings..5850
—for injunction 6324
— —on restraining removal of property out of State 6323
—of indemnifying bond.....6154
—to indemnify surety on bond given under decree or order of court 5776

Digitized by Google

Sec.

CONDITIONS—Con.
—of printer of records on appeals 6360
—of petitioner in quo warranto proceedings 5843
— —information in nature of..5844
— —bond of defendant to open judgment 5846
—refunding bond of distributee or legatee 5437
—suspending bond 6156
—suspending judgment on appeal 6338
—of special commissioner, to receive money 6266
— —to sell or rent property....6269
—to prevent waste by tenant pending action 5511
—on writ of error, appeal or supersedeas 6351
In insurance policy, type printed in 4227
—when violation of no defense.4227
Interest in taken under instrument by one not a party thereto 5143
In lease, who may take advantage of 5512, 5513
Re-entry for breach of.....5530-5539
Delivery of negotiable instrument on 5578
Of recognizances in criminal cases 4973
Reservation of use or property in chattels by, when void as to creditors 5188, 5189

CONDUCTOR
See also **"Electric Railways"; "Railroads"**
Of electric railway, conservator of the peace 3981
—penalty for failing to separate white and colored passengers.3980
—judge of race of passenger..3981
Of railroad train, powers as conservator of the peace 3944
—assignment of white and colored passengers to separate compartments 3965
—penalty for failure of duty....3966
Excluding passengers from sleeping, dining, parlor car, etc. 4007

CONDUIT COMPANIES
See **"Public Utility Companies"**
Use of streets 3014, 3882
—Va. Const., § 124
Powers of 4058
Laying conduits in roads, streets, alleys, parks, etc.....4059

CONFECTIONER
Inspection of plant by Dairy and Food Commissioner 1160
—penalty for keeping in unsanitary condition 1160
Ice cream or milk not meeting standard, sale of, sign..1216, 1217

CONFEDERATE HOME
Reduced rate of transportation to inmates 3918

CONFEDERATE MEMORIAL ASSOCIATION
Highway or road through land of 3041

CONFEDERATE MEMORIAL DAY
Public holiday 5758

CONFEDERATE MEMORIAL LITERARY SOCIETY
Property of, exempt from taxation 2272, 2301
—Va. Const., § 183

Sec.

CONFEDERATE MONUMENT
Erection of by county 2742

CONFEDERATE VETERANS
R. E. Lee Camp 60
Certificate of filed with application for pension 2648
Camp, appointment by of committee to hear application for aid from local levy 2664
—recordation of rosters of.....5214

CONFESSION
Conviction of felony on.....4776
Indictment for homicide, ascertainment of punishment.....4919

CONFESSION OF JUDGMENT
Provision for not to affect negotiability 5567
By surety, effect of failure to notify principal 5778
In vacation 6130
Release of errors 6330
Docketing 6462
Lien 6470

CONFIRMATION
Of appointments of division superintendents of schools.... 624
Of report of commissioners in proceeding to establish road..1980
Of treasurers' report of sale of land for delinquent taxes....2469
Of deed to purchaser of land at delinquent sale 2482
Of list of delinquent lands purchased by State 2489
Of report of commissioners, eminent domain proceedings.4369
Of assignment of dower.....5125
Of sale of estate of infant married woman 5137
Of reports of fiduciaries..5428, 5429
Of sales of real estate when proceeds not sufficient to pay taxes 6268
When estate invested in or set apart as homestead 6546

CONGRESS
See **"Members of Congress"**

CONGRESSIONAL DISTRICT
Apportionment of State into, Va. Const. § 55
Counties and cities forming.... 70
Representatives from 71
Election of representative from.. 72
City of second class as part of..2909
Agricultural high schools in.... 713
Purchase or lease of land in by Board of Agriculture 1102
Members, Virginia Normal School Board from 941
Member of Board of Agriculture from 1099
Fertilizer inspectors from.....1119
Members, State Board of Health from 1486
Member, Board of Medical Examiners from 1603

CONIUM
Sale, label 1691

CONNECTING CARRIER
See also **"Common Carrier"; "Railroads"**
Liability of initial carrier for loss or injury of goods by....3926
—contract exempting from.....3929

CONSENT
Of Commonwealth's attorney to trial without jury on plea of not guilty 4927
—Va. Const., § 8

Digitized by Google

Sec.

CONSENT—Con.
—to trial on plea of guilty, 4900, 4927
— —Va. Const., § 8
To work mine near dividing line of land of another 5287
To survey of mine by adjoining owner 5288
To adoption of child 5333
To compromise, action for wrongful death 5789
To vacation proceedings.....6308
Of court, to filing bill of review 6316

CONSENT RULE
Abolished in ejectment.....5464

CONSERVATION OF FORESTS
Condemnation of land by United States for 19

CONSERVATORS OF THE PEACE
Who are 4789
Duties of, arrests by 4789
Duty on complaint that crime is intended 4790
—proceeding when accused appears, recognizance, judgment for costs, &c.....4791
—appeal, bail 4792, 4793, 4795
—person going armed 4795
Registrars of election as..... 105
Justice of the peace in city....3092
Police justice 3094
Civil and police justice.....3102
Justices of juvenile and domestic relations courts 1950
Special police for counties as..4797
—for watering place, university, college, manufacturing plant, 4804, 4805
Conductors and motormen of electric railways as 3981
Police agents of railroads.....3944
—conductors of trains 3944
—station agents 3944
Steamboat companies, police agents, captains, &c., as.....4025
Officers of insane hospitals as..1061
For poor house 2807
Arrest of person carrying weapon on Sunday or to place of religious worship 4578
Penalty for failing to obey order of in preservation of peace 4511
Impeding or intimidating, punishment 4525
Restraint by of person disturbing religious worship 4576

CONSIDERATION
Averment and proof of in action on note or writing 5759
Plea of failure of 6145
—proceedings on 6146-6150
Illegal, liability of fiduciary failing to make defense of.....5406
—gaming 5558
—for negotiable instrument....5617
For negotiable instrument, presumption of 5586
—what constitutes 5587
—effect of want or failure of..5590
—in general 5586-5591
—illegal 5617
Transfers not upon valuable consideration, void as to creditors 5185
—upon consideration of marriage 5185

CONSIGNEE
Of ardent spirits, regulations for delivery of 4632-4635, 4638

Sec.

CONSIGNOR
Action by against initial carrier, liability of connecting carrier 3926
Lien of on estate of commission merchant 6448

CONSOLIDATION
Of corporations 3821-3827
Of railroads 3857
Of public service corporations..3866

CONSPIRACY
To commit person to institution for feeble-minded 1084
To incite white against colored persons, punishment 4392
To incite colored against white persons, penalty 4392
To cause wife to commit adultery, punishment 4544
By convicts 5050

CONSTABLE
See also **"Probation Officer"; "Sergeants"; "Sheriffs"**
Election 127
Term 127
Additional, how provided..... 128
—term 134
Appointment of by registrar of election 105
—by judge of primary election.. 250
Designation of to preserve order at election 192
Appointment of as probation officer 1912
Bond of 2698
—motion for judgment on.....6045
—liability on for delinquent taxes collected 2429
Superintendent of cemetery and fairgrounds to have powers of.2820
—police officers 2991
—city sergeants 3026
—Commissioner of Game and Inland Fisheries 3318
—wardens 3318
—game warden 3322
—policeman for watering place, manufacturing plant, etc....4805
Not to be interested in contract with county 2707
When to act in place of coroner.2819
—liability for default 2819
Not to act as grand juror.....4852
Exempt from jury service.... 5985
Impending or intimidating, punishment 4525
Abatement of nuisance by.....1518
Animals or fowls, burial or cremation of, fee 1554
Arrest of person escaping from quarantine 1529
—of person disturbing election.. 196
Assistance to inspector, Bureau of Animal Industry 1289
—to Commissioner of Wrecks..3598
—to Commissioner of Insurance examining into origin of fires 4186
Attachments, directed to..6387, 6415
—how levied 6389, 6390
—return 6391
—bond taken by 6394, 6395, 6397
— —penalty if insufficient....6395
—levy on effects in hands of officer 6408
Enforcing laws relating to [illegible] mobiles and motor vehicles
Indemnifying bond taken by 6154
—suspending bond 6154
—forthcoming bond of claimant 6157
— —not to be taken on execution

Digitized by Google

Sec.

CONSTABLE—Con.
against 6524, 6525
Civil warrant before justice, directed to 6020
—subpoenas for witnesses 6021
—execution 6030, 6031
—writ of possession 6029
—penalty for failure to return..6033
—liability for money collected..6034
— —evidence 6032
Collection of delinquent taxes.... by 2429
—receipt, account, liability for..2429
Collection of taxes by garnishment 2444
Distress for taxes 2439
Distress of trespassing animals.3543
—report to court 3543
—sale 3544
—restored to owner 3545
—surrender to resident purchaser 3546
Distress for rent by.....5522
—levy 5523
Dogs on which tax not paid, duty to kill 2317
—fee 2317
—penalty 2317
—payment of tax to.....2317
Enforcement of decisions, controversy between pilots and masters 3637
—fees 3637
Execution on judgment for debt due State 2518
—levied on real estate.....2519
Execution for fines and costs..2561
—capias 2561
—commission on 2561
—payment of proceeds to clerk..2562
—penalty for default 2562
Execution against, no forthcoming bond to be taken, 6524, 6525
Fee book 3494
Fees, general provisions 3487
—on execution when no levy made or bond taken 3488
—payment from treasury.....3504
—in criminal cases 3505
— —when not paid from treasury 3511
— —allowance to in lieu of fees.3511
— —certificate of allowance, 4961, 4962
— —effect of failure to present claim in time 4965
—for burying or cremating animals or fowls 1554
—on execution for fine and costs.2562
— —capias 2562
—for removing poor person to place of settlement 2804
—on process sent from other jurisdiction 2827
—for failing to serve process after due effort, affidavit.....3489
—for collecting officer's fee bills 3499
—for serving process of State Corporation Commission 3730
—enforcement of decision, controversies between pilots and masters 3637
—for enforcement of prohibition laws 4655
—summoning coroner's jury and witnesses 4818
Fee, [illegible] for preserving record of civil and police justice 3107
Fee bills, collection by.....3498

Sec.

CONSTABLE—Con.
—distress for 3498
—accounting for 3499
—commission 3499
—judgment against for failing to account for 3499
Fee book 3494
Fines, when not to receive....2655
Prosecution for violation of fishing laws, seizure of forfeited property.....3215, 3217
Judgment against for failure to make return of money collected 2835
Levy of execution on judgment for debt due State 2519
—venditioni exponas 2527-2530
—return 2531
—Levy, unreasonable prohibited.2831
—removal of goods 2831
—on horses, live stock, sustenance of 2831
Liability for money received on claim entrusted to for collection 6034
Penalty for failure to deliver goods to sheriff having writ of venditioni exponas 2528
—for failure to make return of process 2825, 2826
— —of money collected 2835
—failing to execute process from State Corporation Commission 3730
— —failing to pay collections to clerk of 3747
—failing to execute and return process for coroner's jury and witnesses 4808
—failure to serve and return notice 6041
—taking insufficient bond in attachment proceeding 6395
—failing to serve and return mechanic's lien 6430
To enforce prohibition law.....4655
—failure as misfeasance.....4655
—fees 4655
To remove advertisement of intoxicating liquor from public place, sign or bill board.....4609
Process, execution, powers.....2822
—where to execute 2822
—summoning assistance 2822
— —penalty for failing to assist 2822
—return on 2825
—forfeiture for failure ..2825, 2826
—rule against 2825
—motion against 2826
—forfeiture credited on judgment 2826
—sent from other jurisdiction, fees and postage 2827
— —return of by mail 2828
—for witnesses out of jurisdiction, service of 6218
—directed to by civil justice ...3120
Service of process of State Corporation Commission 3730
—fees 3731
—payment of collection to clerk of 3747
Service of notice by 6041
Serving notices of mechanic's liens 6430
Warrant in interpleader proceedings before justice directed to 6035
To execute summons issued by Commissioner of Election.... 133

Digitized by Google

Sec.

CONSTABLE—Con.
—fee 183
To serve summons to correct returns in primary election....240
Orders of State Live Stock Sanitary Board executed by.. 918
—fee 918
Removal of poor to place of last settlement 2804
—compensation 2804
To report violations of law to Commonwealth's attorney 4864
Sale of automobile on judgment against owner 2147
—notice, posting 2147
—of fertilizer condemned for violation of law 1118
—fee 1118
—of goods levied on 2832
—notice 2832
—of horses, mules and oxen.....2833
—adjournment 2834
—how surplus disposed of.....6158
—of personal property to enforce lien 6449
—of real estate levied on, execution on judgment for debt due State 2519
— —notice 2520
— —how sales made 2521
— —terms, bond of purchaser..2521
— —purchase money, deed, 2523, 2524
— —venditioni exponas.....2527-2530
—of timber found adrift.....1446
Search warrant directed to.....4821
—disposition of property.....4822
Execution of search warrant, violation of law relating to cruelty to animals 4557
Vagrants, how dealt with.....2809

CONSTITUTION OF VIRGINIA
Official copy, where filed and preserved, Va. Const., Schedule, § 23
Ability to read and understand as qualification of voter..... § 19
Oath to support .....§ 34
Interpretation so as not to conflict with federal Constitution§ 153
Amendments, how made 312
—Va. Const., § 196
—publication of proposed amendment 306
Constitutional Convention, how called .....Va. Const., § 197
Ordinances and by-laws not to be inconsistent with 5
Common and statute laws, how long in force .....Schedule § 1
—effect of ordinances of convention .....Schedule. § 2
—actions, writs and causes of action to continue....Schedule, § 3
—jurisdiction of courts.Schedule § 3
—escheats, fines and forfeitures, Schedule, § 4
—recognizances, obligations, &c., to remain binding and valid, Schedule, § 5
—Supreme Court of Appeals, Schedule, § 6
—county courts .....Schedule, § 7
—clerks of courts ...Schedule, § 8
—governor and State officers, Schedule, § 9
—members of General Assembly, Schedule, § 10
—county officers.....Schedule, § 10
—terms of other officers, Schedule, § 11
—State boards .....Schedule, § 12

Sec.

CONSTITUTION OF VIRGINIA—Con.
—charters .....Schedule, § 13
—city officers ....Schedule, §§ 14, 15
—vacancies in office..Schedule, § 16
—bonds .....Schedule, § 17
—qualifications of voters, Schedule, § 18
—extra session of General Assembly .....Schedule, § 19
—powers, duties, &c., of General Assembly .....Schedule, § 20
—clerks of Senate and House of Delegates .....Schedule, § 21
—oath to support Constitution. Schedule, § 22
—official copy of Constitution, Schedule, § 23
—proclamation of Governor, Schedule, § 24
—when Constitution and schedule take effect.....Schedule, § 25

CONSTITUTIONAL CONVENTION
How called .....Va. Const., § 197

CONSTRUCTION OF STATUTES
Rules for 5
Absent voters, law relating to liberally construed 220
Primary elections, chapter relating to liberally construed.. 221

CONSTRUCTION OF TERMS
See also **"Words and Phrases"**
Acceptance 5694, 5752
Action 1347, 5752
Adulterated food 1131
Affirm, affirmed, cl. 6..... 5
Agent 6066
Agricultural seed 1138
Alien 4200
"Any malpractice or any corrupt or unprofessional conduct" 3424
Ardent spirits 4581
Artificially manufactured fertilizers 1129
Bank 5752
Bearer 5752
Bill 5752
Bill of exchange 5688
Blend 1182
Board of Fisheries 3270
Broker 2614
Bucketing 4714
Bucket-shop 4714
Bucket-shopping 4714
Capital 2302, 3239
Cattle, neat 915
Charge 3693
Charter 3693
Chattels Real, cl. 10..... 5
Check 5747
Chiropody 1619
Cider Vinegar 1191
City, cl. 16 .....5, 2792
Code, headlines of sections, cl. 20. 5
Collector 2450
Colony 1066
Commercial fertilizer or fertilizer material 1125
Commercial manures 1129
Commission 3270
Commissioner 1962, 3270
Commission merchant 1257
Commodities 4714
Common carrier 5795
Concentrated commercial feeding stuffs 1238
Company 3693
Computation of time, cl. 8..... 5
Constructive fees 3495
Contract 4714
Corporation 2822, 3693

Digitized by Google

Sec.

CONSTRUCTION OF TERMS—Con.
Corporation court cl. 17..... 5
Council, cl. 16, 5.....5, 2953
County 2822
County roads 1962
Creditors 5200
Credits 2304
Delinquent child 1906
Delivery 1347, 5752
Dentistry, practice of.....1640,
Dependent child 1906
Devise in general terms 5240
District of Columbia, cl. 1..... 5
Domestic 4200
Drug 1662
—adulterated 1663
—misbranded 1664
Duplicate 1304
Election 221
Electric railway 2209
Epileptic 1066
Farm produce 1257
Feeble-minded person 1075
Felony 4758
Fidelity company 4200
Fine 2577
Fish, fishes, fishing, fisheries..3161
Following, cl. 14..... 5
Food 1180, 1220
—adulterated 1181
—misbranded 1182
Foreign 4200
"For lessee's quiet enjoyment"..5181
Fraternal benefit society.....4273
Free from encumbrances.....5175
Fungible goods 1347
Further assurances 5176
Garage 2150
Gender, cl. 13 5
General contractor 6426
General election 221
Goods 1347
Governor, cl. 2..... 5
Guaranty company 4200
Heirs 5152
Heirs of his body 5152
Hereditaments, cl. 10..... 5
Highways 1962
Holder 1214, 1347, 5752
Home 4662
Horse, cl. 18 5
Hospital 1066
Hotel 1585
Householder 6566
Ice cream, varieties of.....1215
In general 5
In writing, cl. 11..... 5
Incorporated communities 2972
Indemnity company 4200
Indorsement 5752
Industrial sick benefit company.4351
In good faith 1347
Inlet 3181
In negotiable instruments when ambiguous 5579
Insane person, cl. 5 .....5, 1066
Insoluble phosphoric acid.....1130
Instrument 5752
Insurance company 4200
"I promise to pay" 5579
Issue 5152, 5752
Judgments 6459
Justice, justice of the peace, cl. 2 5
Keeper 4714
Laboring man 6566
Land, cl. 10 5
Lawful fence 3538
Limitation contingent on dying without heirs or heirs of the body 5151
Local revenues 2431

Sec.

CONSTRUCTION OF TERMS—Con.
Lodge system 4274
Authority to three or more as authority to majority, cl. 3.. 5
Manipulated fertilizers 1129
Medicine, practice of 1622
Milk, condensed 1215
—evaporated 1215
—concentrated 1215
—sweetened condensed 1215
—condensed skimmed 1215
Misbranded 1182
Misdemeanor 4758
Money 2304
Month, cl. 7 .....5, 3181
Neglected child 1906
Negotiable receipt 1293
No act to encumber 5177
Non-negotiable receipt 1293
Non-resident 3213, 3255
Notary, notary public, cl. 2.... 5
Note 5752
Number, cl. 13..... 5
Oath, cl. 6..... 5
Official publications of cities and towns 353
Officers 3693
Optometry, practice of 1624
Order 1347
Ordinances, cl. 15 5
Overseer, overseers 2813
Owner 1347
Party 221
Per cent, cl. 11 5
Per centum, cl. 11..... 5
Permanent registration rolls or books 168
Person, cl. 13, 5, 1188, 1214, 1347, 1665, 1773, 3693, 4582, 4714, 5752
Person primarily liable 5753
Person secondarily liable.....5753
Personal estate, cl. 10..... 5
Personal representative, cl. 4.... 5
Pharmacy 1681
Pound net 3175
Practice of dentistry 1640
Practice of medicine 1622
Practice of optometry 1624
Preceding, cl. 14..... 5
Primary 221
Promissory note 5746
Public laundry 1545
Public place 4630
Public roads 1962
Public service corporation.3693, 3881
Public utility 4067
Public washhouse 1545
Pugilistic encounter 4426
Purchaser 1347, 5200
Quiet possession 5175
Railroad, cl. 19.... .....5, 3881, 4360
Railroad company 3881
Railway, cl. 19 5
Rate 3693
Real estate, cl. 10..... 5
Reasonable time 5754
Receipt 1347
Regulation 3693
Representative form of government 4275
Revenue of the State.....2430
Right to convey 5174
Road 1962, 4757
Seal, cl. 12..... 5
Second offense 4582
Sectarian society 3694
Securities 4714
Security company 4200
Service 4065
Soft drinks 4664

Digitized by Google

Sec.

CONSTRUCTION OF TERMS—Con.
Soluble phosphoric acid.....1130
Special elections 141
State, cl. 1 5
Stationery 399
Sub-contractor 6426
Sunday, cl. 9.....5, 4573
Swear, sworn, cl. 6 5
Tenements, cl. 10..... 5
That he will leave the premises in good repair 5179, 5180
That he will not assign without leave 5179
That he will warrant generally..5171
That he will warrant specially..5172
The commission 3693
"The lessor may re-enter for default" 5182
"The said—covenants" 5170
Tidewater Virginia 3162
Timber dealers 1448
To pay the rent 5178, 5180
To pay the taxes 5178
To purchase 1347
Town, cl. 16.....5, 2792
Transient guest 1585
Transmission company 3693, 3881
Transportation company..3693, 3881
Trustees 590
Underwriters' agency 4813
United States, cl. 1..... 5
Unreasonable time 5754
Value 1347, 5752
Warehouseman 1347
Water supply 1785
Waterworks 1785
Will 5226
With general warranty 5173
With special warranty 5173
Works of art 583
Written, cl. 11 .....5, 5758
Writing 5752
Year, cl. 7..... 5

CONSTRUCTIVE FEES
See "Fees"
Defined, prohibited 3495

CONSUL
Acknowledgments before 5206

CONSUL GENERAL
Acknowledgments before 5206
Depositions before 6226

CONSUMPTION
See "Tuberculosis"

CONTAGIOUS DISEASES
Publication of list of by board of health 1488
Study of 1491
Local boards of health, duties, 1493, 1497
Vaccination 1493
Quarantine 1493, 1497, 1500
Report of 1497
Disinfection 1500
Infected person, places excluded from, penalty 1503
—going from place to place in State, penalty 1504
Penalty for violating quarantine or vaccination regulations....1505
Report of by physician 1515
Removing person infected with, expense 1519
Schools, persons suffering from excluded 1529
Convict with, quarantine 1543
Person with, employment in public laundry 1545
Hospitals for 1557
—removal to 1559
—location 1560

Sec.

CONTAGIOUS DISEASES—Con.
Notification of to registrars of vital statistics 1577
Regulations by supervisors....2743
Vessel with on board, quarantine of 3645

CONTEMPT OF COURT
General Assembly may regulate power of courts to punish for .....Va. Const., § 63
State Corporation Commission may punish for, Va. Const., cl. c, § 156
Disobeying order in proceeding for disposition of dependent or neglected child 1915
Removing or concealing delinquent or dependent child, or interfering with probation officer 1916
Husband or parent violating order of court to support wife or child 1938
Remission of fine for.....2557
—by Governor 2569
Failing to assist officer.....2822
Jurisdiction of city and town councils to enforce penalty for 2952
Power of civil justice to punish for 3117
—punishment 3117
—appeals 3117
By attorney at law 3425
Fees to officers in proceeds for, not paid from treasury.....3514
Before State Corporation Commission, procedure.....3726, 3728
—writ of error 3728
Summary punishment by courts and judges 4521
—limitation of penalty 4524
—jury trial 4524
Punishment by justice 4522
—appeal from sentence 4523
—bond, certificate, order 4523
Violation of injunction in suit to abate nuisance under prohibition law 4630
Person of intemperate habits or addicted to use of narcotic drugs refusing to disclose from whom ardent spirits were received 4640
Witness in prosecution for unlawful gaming refusing to testify 4780
Judge, bail commissioner, or justice failing to certify examination and recognizance to clerk of court 4847
Writ of error in proceedings for.4932
Proceeding to impose fine on juror, witness or other person 4985
Fiduciary failing to file inventory 5403
—failing to exhibit accounts, 5408, 5410
Waste committed pending suit.5511
Order in mandamus or prohibition proceedings enforced by..5840
Insufficient answer, process of.6137
Vacation proceedings to punish.6309

CONTESTED ELECTION
See "Elections"

CONTINGENT ESTATE
Suit to sell, on bill filed by life tenant 5161

Digitized by Google

Sec.

CONTINGENT EXPENSES
Accounts payable from to be certified and approved by head of department or office.. 339

CONTINGENT REMAINDER
Sale of on bill by life tenant against remainderman 5161
Not to fail for want of particular estate 5153
Not to be defeated by alienation of particular estate or merger 5154
Not prejudiced by default or surrender of life tenant.....5443
Attachment on 6389

CONTINUANCE
When member of General Assembly is counsel in suit.... 298
When indictment or presentment is amended 4876-4878
When warrant for misdemeanor amended or new warrant issued 4989
Motion for, when not deemed part of trial 4894
Failure to enter not to cause discontinuance 4990
Of causes on court docket without order for 5972
Of case at rules, because no clerk to take rules.....6076
When action or suit revived in name of new party 6168

CONTRACTS
Law impairing obligation of prohibited .....Va. Const., § 58
Effect on of repeal of validating law 8
Recordation, payment of tax....2403
—book recorded in.....3393
Under which railroad operated, filing with State Corporation Commission 3993
Fraudulent sale of, scheme for, etc., punishment 4465
Rights of third party in conveyance, &c., made for his benefit 5143
Written evidence required for..5561
Seals 5562
Joint, compromise of 5763, 5764
—right of contribution not affected 5766
Part performance extinguished when 5765
Assignment, remedies of assignee 5767-5770

By or with particular classes of parties
Of public officers, validity of.... 293
By Superintendent of Public Printing, to provide for additional copies of reports..... 393
—printing Supreme Court reports 394
By superintendent of grounds and public buildings, for water for Capitol, &c. 406
—for fuel 408
By State Geological Commission sale or lease of gas, oil or mineral lands 531
With State as disqualification of member of Art Commission.. 584
Officers and teachers not to be interested in school contracts, 682, 683
—recovery of amount paid.... 683
By school teachers 690
By State student, Virginia Normal and Industrial Institute.. 954

Sec.

CONTRACTS—Con.
With State institutions, who forbidden to make 99
With insane hospitals, officers, directors and employers not to be interested in 1059
With Board of Drainage Commissioners for construction, 1761-1763, 1776
Between Board of Drainage Commissioners and railroad company for assessment of benefits 1766
With female employees to work more than ten hours a day, void 1808
With counties, officers not to be interested in 2707
With city or town, interest of officer in prohibited 2708
By county or school board for purchase of real estate 2709
Of supervisors 2730
By city or town, sewerage or water purification 3064
By city with purchaser of bonds for water supply, &c.....3090
By attorney for fees.....3427
By State Corporation Commission for transportation of convicts, insane persons, etc.....373
By common carrier, &c., for exemption from liability for negligence 3926, 3929, 393
By railroad, renting tonnage of freight trains, prohibited.....4032
Between telephone companies, submitted to State Corporation Commission 4053
By public utility company for right of way 4062
Insurance company, guaranty company, etc, not to make before obtaining license or certificate 4203
By telegraph or telephone company for right of way 4039
By fraternal benefit societies, merger or transfer 4286
Of fire insurance companies to fix pay of agents, prohibited..4312
With company condemning land, as covenant running with....4380
With State institution, public trust, etc., interest of officer in, penalty 4706
Of married woman, power to make 5134
—liability of husband on.....5134
—disposing of contingent right of dower 5135

Relating to particular subjects
For public printing 382
—how awarded 382
—where recorded 383
—who disqualified 382
For paper, how awarded 383
—where recorded 393
—who disqualified 383
For sale of unbranded and unregistered fertilizer, illegal .1115
Exonerating seller or manufacturer of fertilizer from liability, invalid 1129
For keeping ferry across Curotoman river 2052
For road maintenance, 2028-2031, 2034-2037
For improvement of road with State aid 2102
For improvement of road with proceeds of bond issue 2120

Digitized by Google

Sec.

CONTRACTS—Con.

—bond of contractor 2120
—payments on 2120
Reserving title, book recorded in 3393
With reference to real estate, recordation of 3393
To install general index in clerk's office 3396
For clearing obstructions from water courses 3575
Against negligence, by telegraph or telephone company....4050, 4051
To lay water pipe lines along road on turnpike, between supervisors, water company and turnpike company.....4060
To form company to carry on business as bank of circulation, void 4150, 4151
Of insurance, by foreign companies, through regularly constituted agents.....4222, 4223
—to be expressed in policy.4222, 4223
For sale of stock, promotion of insurance company 4237
Reinsuring or transferring risks of co-operative life insurance company or casualty company 4266
For purchase of commodities on margin 4714-4718
Reserving title to chattels, recordation of 5189
—how enforced 5190
—when and how lien released..5191
—penalty for failing to release.5191
— —for failing to state to landlord amount due 5191
For sale of goods, possession remaining with seller, void as to creditors and purchasers.....5192
—valid when recorded.....5193-5196
For real estate or goods and chattels in consideration of marriage, void as to creditors and purchasers 5192
—valid when recorded.....5193-5196
To convey real estate, when personal representative to execute deed 5378
For sale of land, defense to vendee in action of ejectment by vendor 5471
For usury, illegal 5552
Gaming, illegal 5558
—recovery of losses.....5559, 5560
For sale of real estate, writing required 5561
Reserving title to chattels, judgment in action of detinue on..5801
Exempting railroad from liability for death or injury of employee, void 5794
For printing records on appeal..6360

Actions on

Judgment for defendant on verdict for plaintiff for less than twenty dollars 3524
By foreign corporation, when not allowed to recover on 3848
By one not a party thereto.....5143
Joint, judgment or decree on, effect of death of joint debtor or creditor 5160
By or against personal representative on contract with decedent 5384
Debt or assumpsit on.....5759, 5760
—when promisee dead at time of making —.....5761

Sec.

CONTRACTS—Con.

—against personal representative of joint obligor 5762
By assignees 5767-5770
Guarantor, surety, &c., requiring creditor to sue 5774
—effect of failure to sue.....5775
Limitation of 5810
—new promise 5812
— —by personal representative or joint contractor 5813
— —effect of will charging estate with payment of debts...5814
—made and to be performed in another State or country....5825
Breach, jurisdiction of justice of claims for 6015
Assumpsit on, pleas in bar and inquiry of damages on, when not allowed 6133
Plea of failure of consideration.6145
—proceedings on 6145-6150
Judgment on, interest 6259
Judgment against less than all defendants 6263
—joint contracts, procedure....6265

CONTRIBUTION

Compromise with joint debtor not to affect 5766
Among wrongdoers, when enforced 5779

CONTRIBUTORY NEGLIGENCE

Of miner in action against mine operator for death or injury..1872
Action against railroad for injury at crossing 3959
In action for death or injury of railroad employee when signal of overhead bridge, tunnel, etc., not provided 3970
In action for death or injury of employee of intrastate railroad 5792
Defense of stated in writing....6092

CONVERSION

By warehouseman 1299
Of marked timber, penalty.....1447

CONVEYANCES

See **"Assignments"; "Deeds"**

For benefit of religious congregation, when valid 38
Of county property by supervisors 2723
Land to pass by deed or will, 5141, 5147
Tortious, effect of 5148
Rule in Shelley's case abolished 5152
Transferring estates to uses, effect 5155
—deed of release effectual without lease 5156
Deed to convey grantor's interest 5163
—buildings, privileges and appurtenances 5168
Deeds good between parties....5169
Vendor's lien void unless expressed in 5183
In fraud of creditors.....5184-5202
Signed by husband and wife, effect on rights of wife.....5211
Of estate of married woman by attorney in fact 5215
Description of property in from plat 5217
Subsequent to will, effect.....5235
Of dower of wife of insane or infant husband 5334
—how proceeds secured to wife..5345

Digitized by Google

Sec.

CONVEYANCES—Con.
Of real estate devised to be sold 5393
Of rent, what powers pass.....5514
—attornment not necessary....5514
— —remainder or reversion....5514
Voluntary, suit to avoid, limitation on 5820
By defendant in capias proceedings 6425
Of real estate of execution debtor by officer 6508
Of real estate set apart as homestead 6535

CONVICTS
See **"Convict Lime Board;" "Penitentiary"; "State Convict Road Force"**
Disqualification as voters..... 82
—Va. Const., § 23
Employment of 2073, 5009
—by convict lime board.....1267
—on roads, procedure of counties to obtain 1971, 1972
—on State convict road force..2073
—in penitentiary 2073
—in quarries 2073
—at State farm 2073
—in repairs, &c., to property of penitentiary 4993
—on public buildings and grounds 5014
—at Hollywood and Oakwood cemeteries 5015
—tasking, compensation for work in excess of task.....5045
Quarantine of 1543
Tubercular, examination of, report 1546
—segregation 1547
Claims of against State, limitation on 2583
Record of kept by jailer.....2860
Deduction for good behavior....2860
Register, violation of rules.....2861
Contracts by State Corporation Commission for transportation of 3738
—routes for 3739
—payment 3740
Importing into State, penalty..4709
Person convicted of perjury or felony competent to testify...4779
Disposition of body when electrocuted 4946
Transportation to penitentiary..4948
—when sentenced to death.....4942
Confinement in penitentiary....4994
Prisoners sentenced in United States courts 4994
—pay for support of 4994
Record of conviction 4997
Register of 4997
Committee, control of estate, etc. 4998-5004
—trust company as 4148
—maintenance of family, wife's portion 5000
—delivery of estate to convict on discharge 5002
—when and how real estate sold or encumbered 5004
—judgment against 5407
—service of process on in divorce suit 6042
—revival of action for and against 6168-6170
—party to proceeding to substitute trustee 6299
—jurisdiction of clerks of courts to appoint .....Va. Const., § 101

Sec.

CONVICTS—Con.
Transportation, expenses of....5005
Treatment of on arrival.....5006
Disposition of clothing.....5006
Subscribing rules 5007
Insane, disposition of 5007
Separation of male and female.5008
Shaving males 5008
Uniform 5008
Infant of convict mother.....5008
Labor of, instruction in mechanical art 5009
Social intercourse, regulation of 5010
Diet of 5011
—change of 5012
Hours of labor, regulation of..5012
Privileges of sick 5013
Hospital steward 5013
Rules and regulations for.....5016
—punishment for violation of..5016
Record of conduct 5017
—submission to Governor 5018
Allowance for good conduct....5017
Register of offenses 5017
When term of confinement to begin 5019
Laws as to punishing and rewarding to be posted in cells.5020
Discharge, allowance on.....5021
—certificate of transportation..5021
—clothing 5021
—when term expires on Sunday or holiday 5046
Visitors, not to converse with..5025
—regulations for 5012
In hospital, reports on 5024
Guard for 5040
—when employed outside of penitentiary 5042
Escape 5049
Escaped, reward for 5043
—how paid 5043
—who entitled to 5044
Crimes by 5049-5052
—what offenses amount to felony 5049, 5050
— —conspiracy 5050
—punishment 5051, 5052
—proceedings on 5053-5058
Previous sentence, proceedings to impose additional punishment for 5054
Pardon of 5069
—power of Governor, Va. Const., § 73
Commutation of death sentence 5069
—power of Governor..Va. Const., § 73
—order for receiving in penitentiary 5069
Divorce suit against, how process served 6042
—guardian ad litem 6042

CONVICT LIME BOARD
Creation, members 1266
Employment of convicts.....1267
Machinery, &c., purchase of....1267
Sales of lime, marl, &c.....1268
—transportation, tags.....1268
Establishment of plants.....1269
Accounts 1270
Moneys, deposit and checking of 1271
Reports to Governor and Auditor 1272

CONVICT ROAD FORCE
See **"State Convict Road Force"**

COON
Hunting for on land of another..3338

Digitized by Google

Sec.

CO-OPERATIVE ASSOCIATIONS
Incorporation of .. .3855
Purposes 3856
Provisions applicable to 3856
Certificate of incorporation, what to contain 4202

COPARCENERS
Apportionment of taxes when property partitioned 2449
Partition 5279
—voluntary, necessity for deed..5141
—homestead exemption 6534
Action of ejectment between....5465
Liability for waste 5507

COPIES
Official copy of Constitution, Va. Const., Schedule, § 23
Of registration books, when made 91, 105
Of list of paid poll taxes posted. 109
—copies retained by clerk of the court 109
Of list of paid poll taxes delivered by clerk of court to judge of election 111
—delivered by clerk of court to Auditor of Public Accounts.. 111
Of candidate's statement of expenses, when furnished 256
Of acts and records of General Assembly, clerk to furnish.... 307
—as evidence 307
Of records by Secretary of the Commonwealth 344
Of Supreme Court reports, distribution of 347
Of State publications furnished to colleges 356
Fees charged by Library Board for 350
Of publications of cities and towns furnished to State Library 352
—penalty for failure 355
Of publications of institutions of learning to be furnished to State Library 354
—penalty for failure 355
Of bills, calendars, &c., furnished by Superintendent of Public Printing 389
—fees and costs for 390
—persons to whom not applicable 392
Of reports of department chiefs. 395
Of reports of State Corporation Commission 393
Of report of Superintendent of Public Instruction 393
Of unsigned land grants furnished by register of land office 417
—effect as evidence 417
Of surveyor's statement and endorsement when land warrant located on land in possession of another 428
Of plat and certificate of survey on land warrant filed in clerk's office 443
—surveyor may take copies.... 443
Of caveat, delivery of to clerk.. 445
—recordation of 446
Of judgment in caveat proceeding delivered to land office, 448, 450
Of order transferring school funds to depository 733
Of charges against orchard inspector 902
Of record of birth or death....1580

COPIES—Con. Sec.
Of proceedings to revoke license of dentist 1650
Of maps of coal mines....1838, 1839
Of assessment of land, disposition of 2247
Of land book 2299
—disposition of 2342
Of personal property book.....2340
—disposition of 2342
Of statement of delinquent treasurers 2413
Of notice of proceeding against delinquent treasurers 2432
Of order of court apportioning taxes on property partitioned..2449
Of order declaring forfeiture of land for failure to enter in land books 2453
Of petition to ascertain delinquent taxes due on real estate 2456
Of list of delinquent real estate 2460
Of order redeeming part of land 2493
Of order apportioning city taxes 2494
Of application to purchase delinquent land 2495
Of return on execution for fines in clerk's report to Auditor, 2564, 2565
Of records in office of Auditor, Second Auditor, Treasurer, as evidence 2618
Of list of applications for pensions 2655
Of order allowing or disallowing pension 2656
Of notice of petition for formation or division of county, 2675, 2676, 2679
—affidavit, certificate.....2676, 2679
—polls 2679
Of entries of land, furnished to surveyors 2681
Of bonds of officers 2700
—order of court on 2700
Of complaint served on officer in proceeding for removal....2705
Of orders and allowances by court, furnished to supervisors 2758
Of records of board of supervisors, furnished by clerk....2771
Of order requiring new bond, service on treasurer 2777
Of order declaring town to have population of five thousand or more, certified to Secretary of the Commonwealth 2975
Of bond of oyster inspector....3219
Of law as to lists of renters of oyster planting grounds.....3271
Of order as to disposition of proceeds of forfeitures under oyster law 3275
Of records in office of clerk of the court, how obtained 3388
Of law as to wrecks, posted....3611
Of report of harbor commissioners 3677
By clerk, State Corporation Commission, effect as evidence....3703
Of power of attorney, Secretary of Commonwealth as agent of foreign corporation 3845
—effect as evidence 3845
Of records of Bureau of Insurance, as evidence 4175

Digitized by Google

Sec.

COPIES—Con.
Of charter of foreign insurance company or guaranty company, etc., filed with Commissioner of Insurance 4208
From records of marriages, births and deaths, false entries in 4491
—giving false information for..4492
Of recognizance, as evidence....4978
Of marriage register, as evidence 5098
—furnished to Bureau of Vital Statistics 5096
Recordation of when original instrument lost 5212
Of will proved without the State, probate of 5251
Of wills, recordation of.....5262
Of justices' record book as evidence 6032
Of certain deeds, as evidence...6195
Of records, as evidence 6197
—use of in different suits.....6199
Of writing, use of in different suit 6199
Of deeds, wills, etc., use of in evidence when original or record of destroyed 6241
Of record, for appeal.....6339-6342
—from State Corporation Commission 6354
Of order staying execution, service of 6499

COPPERAS
Sale of 1681

CORD
Standard measure 1470

CORN
In ear, bushel, standard.....1470
Shelled, bushel, standard 1470

CORN HOUSE
Burning, punishment 4431

CORN MEAL
Inspection of, see **"Inspectors"**

CORONER
Notice of death to by registrar of vital statistics 1568
Certificate, what to contain....1568
Permission of, when necessary before embalming dead body..1727
Appointment 2815
When to act in place of sheriff or sergeant 2817
—liability when so acting.....2817
Bond 2813
Constable, when to act in place of 2819
Execution on judgment for debt due State 2518
—levied on real estate 2519
Execution on judgment for debt due State 2519
—venditioni exponas 2527-2530
—return 2531
Sale, real estate levied on, execution on judgment for debt due State 2519
—notice 2520
—how sale made 2521
—terms, bond of purchaser....2522
—purchase money, deed..2523, 2524
—venditioni exponas 2527-2530
Failure to deliver goods to sheriff having writ of venditioni exponas, penalty.....2528
Fees, general provisions 3487
—fee book 3494
—payment from treasury 3504
—in criminal cases.....3508, 3509

Sec.

CORONER—Con.
— —certificate of allowance. 4961, 4962
— —effect of failure to present claim in time 4965
Assistance to Commissioner of Insurance in examining into origin of fires 4186
Making false entry in record of marriages, births and deaths, punishment 4491
Service of process by in divorce suit 5042
Execution against, no forthcoming bond taken....6524, 6525

Inquests
Inquests by 4806
Warrant 4806
Summons to witnesses 4807
Execution of warrant and summons 4808
Jury, oath 4809
—pay of 4814
Taking evidence 4814
Compelling witnesses to attend..4810
Inquisition, form of 4811
Return of inquisition and evidence to court 4812
Recognizance of witnesses. 4812
Warrant for arrest of accused..4812
Burial of body, costs 4814
Costs, how paid 4814, 4815
Attendance of physician, pay...4815
Failure to perform duty, penalty.4816
Justice may act, when 4816
Holding on Sunday 4817
Fees of coroner, sheriff and constable 4818

CORPORAL PUNISHMENT
Of child under 16 years of age, convicted of misdemeanor....1924

CORPORATIONS
See also **"State Corporation Commission"; "Public Service Corporations"; "Public Utility Companies;"** for matters relating to particular corporations, see the respective titles
Churches and religious denominations not to be incorporated. Va. Const., § 59
Private, special acts as to privileges, &c., prohibited. Va. Const., § 63
Exemption from operation of general act of legislature prohibited .....Va. Const., § 61
Streets, consent to use of by. Va. Const., § 124
Definition .....Va. Const., § 153
Constitution interpreted so as not to conflict with Federal Constitution ....Va. Const., § 152
Police power over..Va. Const., § 159
Taking property and franchise of in eminent domain proceedings .....Va. Const., § 159
Control over common carriers and public service corporations .....Va. Const., § 164
Trusts .....Va. Const., § 165
Lending of credit to or subscribing to stock of by State, county, city, town, prohibited. Va. Const., § 185
Words importing maculine gender may apply to .....
Word persons may include..5, 1198
Affidavit by or for, who may make 276
—presumption of authority of agent 276

Digitized by Google

Sec.

CORPORATIONS—Con.
Gifts or devises to for educational or literary purposes, how held 588
—how will probated 589
—trustees 590
—power of General Assembly to suspend or repeal 593
Practice of medicine by.....1622
Practice of dentistry by.....1652
—sign displayed 1652
— —penalty for failure 1652
—failure to make report, penalty 1652
—report of dentists employed..1653
— —penalty for failure 1653
Preventing discharged employee from obtaining employment..1817
Composed of officers of government, claims against presented to Second Auditor 2177
—allowance 2177
Owned solely by State, accounts of kept by Second Auditor....2192
License to, what to contain 2364, 2367
—when engaged in more than one business 2368
Engaged in oyster business, employment of resident labor...3224
—forfeiture for violation of law 3224
Engaging in fish business, non-resident prohibited from holding stock in 3254
—stock of non-resident forfeited 3254
—duplicate certificate, surrender to sheriff 3254
—list of officers and stockholders filed, penalty for failure 3254
Service of warrant on for violation of game laws 3340
Meaning of term 3693
Powers of State Corporation Commission over 3716
Reports, required of by State Corporation Commission.....3716
Register of, kept by State Corporation Commission 3745
General provisions applicable to 3776, 3848
Office, place of 3784
Books, inspection by bondholders 3808
Annual report to State Corporation Commission 3820
Bonds, railroad corporation guaranteeing or becoming surety for 3828
Appointment of agent upon whom process to be served..3854
—recordation of power of attorney 3854
Engaged in organizing insurance companies, examination of by Commissioner of Insurance 4178, 4179
Acknowledgment of writings on behalf of 5207, 5208
—before officer or stockholder 5209
Deed of, how executed 5208
—how acknowledged.....5207, 5208
—before officers of stockholders, 5209
Oath by, when appointed administrator of will.....5359, 5369
Trustee, receiver, mortgagee of, compromises by 5440
—ratification of 5440

Sec.

CORPORATIONS—Con.
Executions against 6481

Particular corporations

The Library Board 260
The State Board of Education.. 596
County school board 639
—corporate name and powers.. 639
District school board 652
—corporate name, powers 652
City school board 777
—property 777
The rector and visitors of the University of Virginia 806
The Virginia Military Institute. 834
Board of Visitors of Virginia Agricultural and Mechanical College and Polytechnic Institute 860
The College of William and Mary 936
The Virginia Normal School Board 940
The Virginia Normal and Industrial Institute 948, 949
The Virginia School for Deaf and Blind 970
The Board of Visitors of Virginia State School for Colored Deaf and Blind Children..... 982
—powers, seal 982
The Miller Manual Labor School of Albemarle 1000
The Medical College of Virginia.1003
Eastern State Hospital 1005
Western State Hospital 1005
Central State Hospital 1005
Southwestern State Hospital....1005
State Colony for Epileptics and Feeble-minded 1005
Board of Drainage Commissioners 1759
—powers 1759
Internal Improvement Company.3757
Co-operative associations, incorporation of 3855
—purposes of 3855
—provisions applicable to.....3855
Railroads, incorporation, articles of association 3856, 3857
—powers in general 3857
—alteration and amendment of charter 3859
—capital stock, increase of....3863
—time for construction and completion of road 3864

Actions against

Service of warrant on for violation of game laws 3340
Irregularity in organization no defense 3806
Dissolution does not abate.....3815
Summons against to answer indictment, presentation or information 4892
—publication 4892
Limitation on enforcement of deed of trust or mortgage executed by 5827
Writ of quo warranto against, for what causes 5841
—against persons acting as corporation without authority....5841
—jurisdiction 6052
—venue 6052
Venue 6049, 6050
Incorporation averred, when proof of not necessary 6127
How process served 6062
—on whom served 6063, 6066
—where served 6063
—when operated by trustee, lessee or receiver 6065

Digitized by Google

Sec.

CORPORATIONS—Con.
—— —how served 6066
—service on clerk of court.....3854
Answers to interrogatories.....6236
Production of books and writings by 6237
Capital stock and dividends
Issue of stocks and bonds by, General Assembly may regulate .....Va. Const., § 167
—statement of proposed issue filed with State Corporation Commission .....Va. Const., § 167
State, counties, cities, towns not to subscribe to stock or obligations of .....Va. Const., § 185
Decrease of 3781
Subscription for 3788
—how paid 3788
—liability of subscribers.....3788
—issued for property, &c.....3788
—financial plan 3784
Classes 3791, 3792
Preferred, redemption 3792
—dividends 3792
How shares transferred..3794, 3839
—transfer books 3797
Certificate of 3793
—lost, re-issue 3818
—indemnity on 3818, 3819
—application to court.....3818
—order of court for 3819
—forfeiture, non-resident owning stock in corporation engaged in fish business 3254
— —issue of duplicate 3254
Subscriptions, remedy on failure to pay calls 3807
—action at law 3807
—suits by receivers, trustees, assignees, defenses 3843
— —jurisdiction 3843
—sale of shares 3807
—forfeiture of stock 3807
Appraisal on consolidation of companies 3822
Of consolidated companies.....3823
Who deemed owner 3838
Assignment, consent of corporation 3837
—liability of assignee 3837
Dividends declared from capital stock, liability of directors and stockholders for 3840
Transfer to foreign personal representative of non-resident, 5348, 5349
Corporate name, seal, by-laws
Name, special act naming or changing name prohibited, Va. Const., § 63
Name, certificate to set forth..3850
Seal of, includes what..... 5
—penalty for unauthorized use of by another 1463
—affixed to deed 5208
—impression or stamping sufficient 5562
—forging, punishment 4485
— —keeping instrument for....4485
By-laws, power to make 3777
—cases involving validity of, jurisdiction of circuit court...5890
Dissolution and forfeiture of franchise
Voluntary surrender of charter, Va. Const., § 154
Dissolution before payment of capital 3809
Proceedings for 3810
—notice 3810
—resolution 3810

Sec.

CORPORATIONS—Con.
—certificate of dissolution.....3810
Continuation for winding up business 3810
New charter after, how obtained 3811
—creditors' rights 3811
Directors continued in office, 3810, 3812, 3813
Distribution of assets.....3814
Not to abate pending action....3815
—for wrongful death 5790
Creditors' rights not affected by 3810
Powers of courts 3813
Certificate of, not to issue until fees paid 3835
Receivers and trustees, appointment, duties 3813
—suits by for unpaid subscriptions 3843
Forfeiture of charter, failure to elect directors not to work....3803
—for failure to use, or misuse of corporate functions 3831
— —Va. Const., § 154
—failure to file list of officers and directors 3854
—failure to appoint agent on whom process may be served.3854
—remission of by private act prohibited .....Va. Const., § 63
Foreign corporations
License to do business in State, Va. Const., § 157
—fee .....Va. Const., § 157
Registration fee....Va. Const., § 157
Control and regulation, Va. Const., § 163
Discrimination against, Va. Const., § 163
Incorporation in State, Va. Const., § 163
Not permitted to do acts prohibited to domestic corporations .....Va. Const., § 163
Officer, personal liability for fine 1825
Mining and manufacturing corporations, operation in this State 3844
—powers 3844
Secretary of Commonwealth to be statutory agent of....3845, 3847
—service of process on 3845
—mailing process to corporation 3846
Office in this State 3847
Certificate of authority to do business in this State.....3847
—doing business without.....3848
—surrender of 3848
Actions against, where brought, 6049, 6059
Quo warranto proceedings against, jurisdiction 6052
—venue 6052
How process served on....6064, 6066
—order of publication, 6064, 6069, 6070
—in Supreme Court of Appeals 6073
Attachments 6378, 6379
—Va. Const., § 163
Incorporation and organization
Special act creating, prohibited, Va. Const., § 63
—granting special or exclusive right to .....Va. Const., § 63
Incorporators, power before organization 3778
—meetings 3778

Digitized by Google

Sec.

CORPORATIONS—Con.
—may assign interest 3785
Irregularity in, no defense to action by or against 3806
Obtaining new charter after dissolution 3811
By purchasers of corporate franchises and property.....3817
How formed 3849-3851
Fraternal benefit society, 4284, 4285
Mutual fire, lightning or storm insurance company 4327

CERTIFICATE OF INCORPORATION

Powers of signers 3778, 3851
Amendment 3779
Of purchasers of corporate franchises and property 3817
Copy of as evidence 3830
Contents 3850
Execution 3851
Acknowledgment 3851
Endorsements on 3851
Certificate of judge 3851
Presented to State Corporation Commission 3851
Certified to Secretary Commonwealth 3851
Certified to clerk of court.....3851
Recordation 3851

CHARTER

Creation, extension and amendment of charters to be by general laws.....Va. Const., § 154
Repeal by special act, Va. Const., § 154
Provisions in conflict with chapter 73 repealed 1796
Issued by State Corporation Commission 3746
Renewal 3746
Amendment of 3746, 3780
—certificate of, filing, recordation 3780
—fraternal benefit society.....4285
—forfeiture of privileges and immunities by 3852
— —Va. Const., § 158
—by special act prohibited, Va. Const., § 63
to be by general law, Va. Const., § 154
—by special act permitted, when, Va. Const., § 154
Copy of as evidence 3830
Not to issue until fees paid....3835
General statutes to be part of..3841
Recordation 3851

Fees

Issuing charter 3746
—Va. Const., § 157
Amendments to charter 3746
—Va. Const., § 157
For incorporation 3851
—Va. Const., § 157
Of clerk of the court 3836
Of Secretary of Commonwealth, 3836

FEES

When allowed 3821
Manner effected 3822
—agreement of directors.....3822
—dissenting stockholder.....3822
—ratification by stockholders..3822
—certificate filed and recorded..3822
Rights and liabilities of new corporation 3823, 3827
Rights of creditors ... .3823
Establishment of office .. 3824

Sec.

CORPORATIONS—Con.
Suits against consolidated corporations 3825
Continuance of pending actions.3826

Non-stock corporations

Associations included 3872
Number of incorporators 3872
How incorporated 3872, 3874
Name, certificate of incorporation to set forth 3873
Fees for incorporation 3874
Seal 3874
Certificate of incorporation, contents 3873
—execution 3874
—acknowledgment 3874
—certificate of judge 3874
—presentation to State Corporation Commission 3874
—certification to Secretary of Commonwealth 3874
—recordation 3874
Charter, issuance 3874
—amendments, how made 3875
— —certificate filed and recorded 3875
Directors, trustees, &c., names set out in certificate of incorporation 3873
—altering charter 3875
—educational institution, sale of real estate by 3877
—making or altering by-laws..3878
—voting power vested in.....3879
Dissolution 3810
—proceedings for 3880
—distribution of assets 3880
—certificate of to State Corporation Commission 3880
Members, number of.....3872
—consent to amendment of charter 3875
—consent to sale, &c., of property of corporation 3876
—by-laws, power to make or alter 3878
—active, honorary, voting power, 3879
—dissolution of corporation....3880
Powers, in general 3874
—sale, transfer, exchange of property, how made.....3876
— —educational institution, real estate of 3877
—issuing bonds 3876
—making and altering by-laws, 3878

Officers and directors

Officers and agents 3790
Liability for false statement..3805
List of to be certified to clerks of courts 3864
Acknowledgments taken before..5209
Negotiable instrument payable to cashier or officer of, how negotiated 5604
Service of process or notice on..6063
Cashier, affidavit by 276
General manager, affidavit by.. 276
Manager, service of warrant on for violation of game laws....3340
President, affidavit by 276
—service of warrant on for violation of game laws 3340
—election 3789
—vacancy 3789
—to be director 3789
—to execute deeds 5208
—service of process or notice on.6063
Secretary 3789
—to keep register of addresses of stockholders 3829

Digitized by Google

Sec.

CORPORATIONS—Con.
—service of warrant on for violation of game laws 3340
Treasurer, affidavit by 276
Vice-president 3790
—affidavit by 276
—deeds executed by 5208

DIRECTORS

Affidavit by 276
When stock owned by State, 3762, 3763
—term 3764
Number 3789, 3853
Removal 3789
Vacancy 3789
Classification into different terms 3791, 3853
Election 3789, 3798, 3803
—cumulative voting 3798
—failure to elect, effect of.....3803
—ordered by court 3803
—stockholder aggrieved by, remedy 3804
Liability for false statement....3805
Proceedings for dissolution of corporation 3810
Continuance in office after dissolution 3810, 3812, 3813
Suit against, limitation 3816
Proceedings to consolidate corporations 3822
Liability for declaration of dividend from capital stock.....3840
Management of corporation.....3853
Quorum 3853
Executive committee 3853
List of, filing 3854

Penalties

For disobedience of order of State Corporation Commission.3726
—fines imposed for, Va. Const., cl. c, § 156
Unauthorized issue of bonds secured by lien 3783
Failure to file financial plan with Corporation Commission or improperly issuing stock..3788
Failure to make annual report to State Corporation Commission 3820
Failure to file list of officers and directors 3854
Failure to appoint agent upon whom process may be served..3854
Failure to obey rules and regulations 3925

Powers

Purchaser of works of internal improvement company to become 3757
General powers 3776, 3777
Not to issue bills for circulation as money 3782
Bonded indebtedness, creation or increase of 3782
Extension of business outside of State 3784
By-laws, making and altering 3787
Condemnation of property of another corporation 3832
—certificate of State Corporation Commission 3832
—appeal 3832
Rights under existing laws 3824
Not affected by repeal of former laws 3842
Purchaser under deed of trust or mortgage of public service corporation becoming.....3895-3898
Operating sleeping, dining, &c., cars on railroads, right to exclude persons from.....4007
As administrator, who to take oath on behalf of 5359, 5369
Rate of interest may charge, 5555, 5557
Not to plead usury 5556
Indorsement or assignment of negotiable instrument by, effect of 5584
Liability for death caused by wrongful act 5786-5790
—action not to abate by dissolution of corporation.....5790

Public service corporations

Control of Commonwealth over, Va. Const., § 161
Incorporation, articles of association 3865-3867
Powers 3866
Extension into other States....3867
Amendments of charter 3868
Increase of capital stock.....3870
Time for construction of works.3871

Stockholders

Corporation occupying oyster planting ground, resident and non-resident owning stock in.3252
Proxies, stock held by State, 3760, 3761, 3764
Meeting for organization.....3778
—how called, &c.....3786, 3796
—action that may be taken....3786
—notice of 3786, 3796
—proxy for absent stockholder, 3795, 3799
—voting power.....3796, 3799, 3838
—quorum 3796
—cumulative voting 3798
—voting by fiduciary 3800
—voting by pledgor or pledgee..3801
—shares owned by corporation not to be voted 3803
—voting by bondholders 3808
—to decrease capital stock....3781
—to amend charter 3780
—to create or increase bonded indebtedness 3783
—annual, special 3786
—to elect directors 3798, 3803
—to dissolve corporation.....3819
Extent of liability on subscriptions 3788
Certificate of stock 3792
Transfer of stock 3794, 3829
By-laws, making and altering..3787
Failure to pay instalment or call, remedy against 3807
Liability for dividends paid from capital stock 3840
Election of directors, 3789, 3791, 3803
—application to judge for order for 3803
—aggrieved by, remedy 3804
Proceeding for consolidation of corporations 3822
—right of dissenting stockholders 3822
Notices to, how given 3829
Address of be furnished to secretary 3829
Acknowledgment taken by.....5209

Taxation

Act surrendering right of State to tax prohibited, Va. Const., § 64
General Assembly may levy tax on .....Va. Const., § 170

Digitized by Google

Sec.

CORPORATIONS—Con.
General Assembly may levy tax on franchise ....Va. Const., § 170
When shares of stock not to be taxed .....Va. Const., § 170
Listing property of for taxation 2307
Organized but not doing business in State, income or ad valorem tax on stock, bonds etc., of 2313
Assessment by State Corporation Commission, correction of....2392
Taxes and debts due State to be paid in United States currency 2615
—forfeiture of charter for failure 2616
Fee, registration, notice to by State Corporation Commission.3748
—receipt for 3748
Erroneous or excessive charter tax or fee, relief from 3775
—refund by State Corporation Commission 3775

CORPORATION COURTS
See also **"Clerks of Courts"; "Circuit Courts"; "City Courts"; "Courts"; "Judges"**; and titles of particular courts
Constitutional provisions, Va. Const., §§ 97-99
In cities of first and second classes 5905
—Va. Const., § 98
—when to cease to exist. Va. Const., § 98
—statutes concerning continued in force 5907
Courthouse, mandamus to compel repair of 2865, 2866
Clerk's office 3385
Jail, mandamus to compel erection or repair.....2865, 2866
—adoption of jail of another county or city 2872
—prisoner conveyed to 2873
— —return of 2874
Rules 6074-6079
Court docket 6243
—criminal cases 6244
—chancery cases 6245

Terms and sessions
Terms 5908, 5909
—omission of 5908
—judges may change date of commencement of 5909
—regular grand juries at.....4851
—special grand juries. ..4851, 4854
Adjournment 5959
—from day to day 5970
Session, place of holding.....5964
—change of 5965-5968
— —not to cause discontinuance, 5971
—acts at other places confirmed.5969
—effect of failure to open on day appointed 5970, 5971
—ending during trial, trial to go on until concluded 5973
— —postponement of next term, 5973

Clerks and other officers
Clerks, election, term..129, 3007, 3012
—Va. Const., §§ 118, 122
—vacancy 136-138
—ex officio clerk of board of commissioners of election.... 182
—office, where kept 3385
—compensation 2989, 2990

Sec.

CORPORATION COURTS—Con.
—registration books distributed by 94
—to furnish lists of election districts 150
—to issue subpoenas to witnesses in election contest.... 261
—acts of Assembly furnished to 388
—report to of boundaries of school districts in cities, recordation 776
—oath before, of member of State Board of Embalming...1718
— —of city school trustee..... 786
—copy annual report Board of Charities and Corrections filed with 1899
—to record oath of assessor of land 2241
—to certify delinquent tax list to Auditor 2417
— —preservation of 2417
—drawing jury 5992
— —summoning 5993, 5994
Special prosecuting attorney....4970
General receiver of 6280
—order to settle accounts of....6289
—report, recordation 6290
—new bond 6290
—judgment docket 6461-6464

Judge
Election 5905
—Va. Const., § 99
Term, Va. Const., § 99
Salary 3468, 3471
—how paid .....Va. Const., § 103
—increase 3469
Qualification, time for 5978
—failure vacates office.....5978
Not to practice law 5975
—Va. Const., § 105
Not to hold other office.....5976
—exception 5976
—Va. Const. § 105
Residence 5977
—Va. Const., § 99
—removal vacating office.....5977
Holding other court 5898
—Va. Const., § 99
Pro tempore judge 5899
—appointment, powers 5900
—compensation 5901
Terms of court may omit.....5908
Designation of terms 5909
—changing day of commencement of 5909
Member of special court of appeals 5873
—Va. Const., § 89
—pay 5873
Designation of special term for circuit court 5894
Changing place of holding court.5965
Cause removed when improper for judge to sit 6176
State reports furnished to.. ... 347
Acts of Assembly furnished to.. 388
Joint, compromise of 5762, 5764
cery 5976
—Va. Const., § 105
Presence of at meeting of electoral board 158
Ballots opened in presence of.. 158
Allowance to constable, sergeants or policeman in cities, 2993, 3511
Allowance of bail by.....4829-4837
Appointment, of local board of review 2226

Digitized by Google

Sec.

CORPORATION COURTS—Con.
—assessors of land for taxation 2233
—successor to commissioner of revenue 2315
—delinquent tax collector....2421
—surveyor, land sold for delinquent taxes 2480, 2481
—coroner 2815
—matron for jail 3027
—substitute civil and police justice 3101
Approval of bond of person obtaining dead bodies from Anatomical Board 1734
May issue process for arrest of person 4823
—when to issue, how directed and returned 4824
—search warrant for violations of prohibition law 4612
Automobiles, seizure and sale of for violation of law..2146, 2147
Bond of depository of school funds given before 731
Liability for taking insufficient bond of guardian 5318
Requiring treasurer to give new bond 2777
Examination of treasurer's bond, appointment of commissioner for 2777
—report 2777
—new bond 2777
Charging grand jury with reference to discounting warrants 684
—school officer having interest in contract 684
—with respect to pure food law.1190
—violations of tobacco laws....1399
—violations of revenue laws, 2355-2357
—to examine books of assessment 2397
To set criminal case for trial..4967
To cause treatment prescribed by Crop Pest Commission to be executed 877
Delinquent tax list certified to 2417
Correction of errors in list of delinquent lands 2472
To designate person to sit for police justice 3096
Entry that city has attained population of ten thousand or more 2911
—certificate to Secretary of the Commonwealth 2911
—appeals 2912
Injunctions awarded by 6319
Jails, inspection of....2863
—committee 2863
—oath 2863
—report 2863
Putting jail prisoners on State convict road force 2075
—chain-gang or public works..2075
—appeal of prisoner 2075
Marriage, when to issue license for 5072
—when to authorize issue of license to minor 5078
—authorizing minister to celebrate 5079
— —other person 5080
Oath of division superintendent of schools before 625
—of city school trustee before... 786

Sec.

CORPORATION COURTS—Con.
—justice, juvenile and domestic relations court 1946
Copy of order changing depository of school funds delivered to 733
Petition before, to have person declared feeble-minded..1078-1085
Proceeding before, to sell or exchange school property 649
—to test legality of detention of person adjudged insane 1022
—to abate public nuisance....1520
Qualification before, of county, district, city or town officer..2696
—of civil and police justice....3099
Removal by, of commissioner of revenue 2315
—of deputies to officers....2701
—of coroners 2815
Rule against clerk for failing to furnish list of conveyances.2276
Jurisdiction, powers and procedure
Jurisdiction, in general....5910, 6051
—statutes concerning continued in force 5907
—concurrent with circuit courts 5910, 5911
— —Va. Const., § 98
— —with police justices....3094
— —with civil and police justice 3102
— —with justice of the peace of misdemeanor 4987
—exclusive, of cases arising under prohibition law 4614
—over rivers, water courses, bays 5958
Proceeding for adoption of child.5333
Allowance, to be paid out of State treasury, time within which must be presented to Auditor 2180
—to clerk of court for furnishing land book, list of conveyances and grants to assessor.2242
—to counsel appointed to defend poor person 3518
Analysis of poison, allowing compensation for 4956
Application of that officer be furnished with Acts of Assembly 372
Apportionment of taxes when property partitioned 2449
—of city taxes when land divided 2494
Approval of fee of counsel for county school board 643
Assessment of minerals, disagreement between assessor and commissioner of revenue, referred to 2235
Corrections of erroneous assessment of taxes, 2227, 2236, 2237, 2240, 2248, 2385-2391
Certifying account of assessor..2250
Automobiles, seizure and sale of, 2146, 2147
Bail, allowance of....4829-4832, 4837
—of person convicted before justice 4990
—procedure 4834
—increase 4833, 4836
—new sureties 4835
Order requiring new or additional bond by officer.... 280
Bond of depository of school funds given before 734
—of assessor of land for taxation 2241

Digitized by Google

Sec.
CORPORATION COURTS—Con.
—of game warden 3322
—for good behavior of suspended pilot returned to 3644
—of person appointed to fill vacancy in office 139
Bond issue by city or town, 3082-3088
—copy of ordinance 3082
—order for election 3083
— —following election 3088
For feiture and destruction of adulterated candy 1193
Capias in proceeding for violation of revenue or license laws 2396
Suit to vacate cemetery 58
Enumeration of population of city, application 2976
—districts 2976
—enumerators, appointment, oath 2976
— —compensation 2976
— —report 2976
—costs 2976
Certificate of allowance of fees of officers —.....4961-4963
Certiorari 6053
Orders as to custody of children when parents separated..5327-5330
Correction of map of segregated districts in cities and towns..3048
Relinquishment of citizenship.. 63
Filling vacancy in city council 2983
Violations of law relating to separate railroad cars for white and colored passengers 3969
Commissioners in chancery, appointment 6178
—confirming or rejecting report.6179
—publication of notice to take account 6180
—instructions to 6182
Of condemnation proceedings..4361
Continuance of causes not determined, without order for.....5972
To dispose of infant of convict mother 5008
Coroner's inquest, return of inquisition, recognizances, testimony, etc., to court 4812
Violation of rules of crop pest commissioners 871
—enforcing treatment prescribed by 877
Debt, action of, to recover penalty for violation of license or revenue laws 2395
Delinquent children, appointment of probation officers....1912
—delivery to probation officer..1913
—report, proceedings 1913
Suit for divorce 5105
To annul or affirm marriage..5105
Proceedings to drain land through lands of another.5293-5297
Destruction of poll books and ballots on order of 181
Enforcing law relative to primary elections 224
Contested election, trial of, 267, 268
Election to establish tuberculosis sanatorium 1507
—on proposed change of government, city of over fifty thousand inhabitants 2925
—in cities and towns 2930
—special, to fill vacancy, mayor of city 3010

Sec.
CORPORATION COURTS—Con.
—on bond issue by city or town 3082-3088
—of additional justices of the peace 3092
Motion to quash execution 6499
—order staying, bond 6499
Proceeding to extradite fugitive from justice 5063-5065
Fixing fees for keeping person in jail or live stock levied on 3487
Quashing officer's fee bill.....3495
Fees, to officers, certificate of allowance 4961-4963
Release of prisoner confined for failure to pay fine and costs..4952
Recovery of fine 2544
Motion to recover fine, officer failing to account for fines collected 2546
Rule against officer, failing to collect or account for fine....2554
Fines, petition for remission of..2569
—notice of 2570
—procedure 2571, 2572, 2573, 2574
—certificate 2569, 2572, 2574
—entry on order book.....2574
To cause fishways to be constructed and maintained.....3192
—reports to of inspections....3193
Garnishment for collection of taxes 2444, 2445, 2446
Grand jury, terms for.....4851
—selection of 4851
—special grand jury, when ordered 4854
—how deficiency supplied 4855
—foreman, oath 4856, 4857
—charge to 4858
—imposing fine on officer failing to summon or juror failing to attend 4862
Guardians, appointment ...5316-5318
—powers over 5326
—sale of personal estate..5321, 5322
—sale of real estate.....5326
Homestead, petition by widow and children for sale of.....5542
Habeas corpus 5848-5861
—to test legality of detention of alleged lunatic, inebriate, etc. 1029
Prosecution of husband or parent for desertion or non-support, 1937-1944
Proceeding for surrender or renewal of lease by or on behalf of infant or insane person 5334
Suit to sell or lease land of infant, insane person or trust estate 5335-5347
Proceeding to transfer property of infant or insane person out of State 5350-5356
Commitment of estate of infant married woman to receiver...5136
—suit to sell 5137
Proceeding for release of dower of insane wife 5346, 5347
—curtesy of insane husband, 5346, 5347
Injunctions 6318, 6319
—against railroad violating law as to transportation of live stock 4006
—against nuisance under prohibition law 4630
Interpleader 6152
—sale of property pending, 6153, 6157

Digitized by Google

Sec.

CORPORATION COURTS—Con.

Intoxicating liquor, revoking or suspending license of physician for unlawfully prescribing 4598
—license to druggist 4599, 4600
— —petition against 4599
— —to manufacturer 4600
— —to hospitals and chemical laboratories 4601
— —to hotels 4602
— —bonds 4602, 4603
—abatement of nuisance, closing building, etc....4622, 4630
— —bond of owner to open....4622
— —injunction 4630
— —penalty for contempt....4630
—when bond required of person convicted of violation of law..4643
— —when put to work on road.4669
—seizure of vehicle and arrest of person transporting ardent spirits, bail, release 4657
— —order of sale 4658
— —how proceeds disposed of..4658
— —ardent spirits destroyed....4658
To have land books bound....5979
Jail, allowing compensation to guard 4954
—appointment of jail physician..4956
—providing prisoners with clothing, medicine, etc....4956
License, granting to commissioner of revenue 2363
—proceeding against person doing business without....2369
—certificate for 2373
— —when license assigned....2377
—revocation 2378
—for sale of soft drinks 4665
— —revocation 4665
Order to mark lien satisfied on record 6456
Mandamus 6053
—to compel erection or repair of jail or courthouse 2865, 2866
—to enforce compliance with law relating to franchises granted by cities and towns.3023
Marriage, authorizing minister to celebrate 5079
—authorizing other person....5080
Master and apprentice....5298-5313
Mill, exemption from grinding other grain than wheat....3595
Motion to restrain tuberculosis patient from injuring health of others 1516
—for judgment, by officer against deputy 2838
Proceedings for change of name of person 5933
Notary, to give bond in....2850
Proceeding to abate public nuisance 1520
Oath before, of division superintendent of schools 625
—city school trustee 786
—justice, juvenile and domestic relations court 1946
—board of veterinary examiners.1275
Office judgment, when becomes final 6134
Officers, proceeding against for illegal interest in contract or claim 2708
—compensation to in criminal case unprovided for 4960
—certificate of allowance of fees to 4961-4963
Pension, application, hearing...2656
—certificate to Auditor....2656

Sec.

CORPORATION COURTS—Con.

—entry on minute book....2656
—appointment of pension commissioners 2657
— —report by 2657
—certificate to Auditor of death or removal of pensioner....2657
—rule against pensioner 2657
—local levy, committee....2664, 2665
—report of committee....2665, 2666
—order for payment from....2664
—certificate for artificial limb..2668
Transfer of stock and certificates to foreign personal representative 5348
Petition, to have person declared feeble-minded 1078-1085
—of surety for relief from official bond 5771
—to sell personal property to enforce lien 6449-6451
Physician, refused admittance to examination, certificate refused, certificate revoked....1614
Pilots, violation of laws relating to 3621
Order designating person to sit for police justice 3096
Poor persons, relief to....2801
Process returned to 2825
Prohibition 6053
Qualification before, of board of medical examiners 1610
—county, district, city and town officers 2696, 2699
— —appointed to fill vacancy.. 139
—civil and police justice 3099
— —substitute 3101
—oyster inspector 3219
Quo warranto 5842-5847, 6052
Record, transcribing and rebinding 5980-5982
—faith given to transcribed records 5980
—qualification of officer entered in 2696
—order granting permission to carry concealed weapon entered in 4534
—lost, proceeding to prove.6203, 6204
Discharge of person committed to jail for failure to give recognizance 4794
Removal of causes, motion for..6175
—when improper for judge to try case 6176
Proceeding for recovery of rent not payable in money 5529
Reports to, of misfeasance of boards of review and tax officers 2215
—rule to show cause why should not be removed 2215
—by justice of commitment of inebriate or drug addict to private hospital 1074
—by surveyor of land sold for delinquent taxes 2480, 2481
—by clerk of fines reported by justices 2551
—by sheriff of prisoners in jail.2570
— —order directing filing of....2570
Proceeding to sell or exchange school property 649
Suit to supply link in title...479-482
—to repeal grant 486-488
—by life tenant against remainderman for sale of fee simple.5161
—by remainderman against life tenant 5161
Tobacco warehouse, establishment 1348

Digitized by Google

Sec.
CORPORATION COURTS—Con.
Proceeding for discharge of treasurer after expiration of term 4732
Trial, issue out of chancery....6246
—of issues 6247
—inquiry of damages 6247, 6249
Proceedings to transfer trust property out of State 5351-5356
Vacancies in offices filled by..136-139
Change of venue in criminal case 4914-4916
Permission to carry concealed weapon 4534
Standard weights and measures, application for 1467
—keeping 1468, 1469
Appointment sealer of weights and measures 1469
Probate of wills 5247
—copy of will proved out of State 5251
—compelling production of will, 5250, 5257
—summoning persons interested, 5253, 5254
—order of publication 5255
—guardian ad litem for infant or insane person 5255
—hearing motion 5256
—requiring all testamentary papers to be produced 5257
—jury trial 5257, 5259
—order 5257
—effect of judgment 5258
—ex parte probate 5259
—suit to establish or impeach will 5259-5261
Compelling attendance of witnesses 6220
Writings admitted to record....5204
—on certificate of acknowledgment 5205-5208
—on certificate of proof by witnesses 5205
—copy when original lost 5212

APPEALS

From denial of registration as voter 103
—Va. Const., § 19
Proceeding to condemn adulterated, misbranded or substituted food 1165
From State Board of Embalming, refusal to renew license of embalmer 1721
—suspension 1721
From order of board of health relative to water supply....1792
From rulings of Commissioner of Labor 1831
From refusal of Board of Charities and Corrections to license private institution for care of feeble-minded 1903
From juvenile and domestic relations courts 1950
By person in jail sentenced to chain-gang or public works..2075
Violations of automobile law...2145
From local board of review, correcting assessment 2263
From proceeding to correct erroneous assessment of land divided among different owners 2285
Board of review decreasing merchant's license tax 2366
Of witness fined or imprisoned for failing to attend before city council, fire or police commissioner 2985

Sec.
CORPORATION COURTS—Con.
By officer of city or town or member of fire or police department removed or suspended 3010
—Va. Const., § 120
Of abutting owner from assessment of damages when street graded 3038
From assessment for local improvement 3070, 3071
From police justice 3094
From civil and police justice..3106
Proceeding under law relating to cruelty to animals 4562
From judgment of conservator of the peace requiring recognizance 4792-4795
From justices..6019, 6027, 6037-6039
—from convictions before..4989, 4990
—unlawful detainer 5449
—warrants removed from..6017, 6018
— —motion for judgment on forthcoming bond 6526
—proceeding to sell personal property to enforce lien....6451

APPOINTMENTS AND REMOVALS.

Police agent for steamboat wharf 4025
Assessors of land for taxation 2233
Ballast masters 3648
—vacancy 3650
Board, tuberculosis sanatarium..1513
Commission to fix salaries of councilmen 2951
Commissioners in chancery....6178
Committee for insane person, 1050, 1051, 1052
Of inebriate or person addicted to drug habit 1074
To hear applications for aid from local pension fund....2665
To inquire into necessity for general index in clerk's office.3395
—report, action on 3396
For estate of convict....4998
Curator of estate of decedent..5248
—for minor 5319
Deputies, consent to 2701
Electoral board....84, 5910
—Va. Const., § 31
Guardians 5316, 5317, 5318
Jail physician 4956
Substitute justice, juvenile and domestic relations court 1948
Justices of the peace, in city..3092
Pension commissioners 2657
Sealer of weights and measures, 1469, 1478
Surveyor, land sold for delinquent taxes 2480, 2481
Trustee 6298-6302
—requiring bond of 6301
—for churches 39
—for gifts, devises, etc., for educational or literary purposes 588, 590
Filling vacancies in offices..136-138
Removal of commissioner of revenue 2255
—of officers 2705, 2706
—deputies to officers 2701
—deputy sheriff or deputy sergeant 2816

TAXATION

Correction of list of paid poll taxes 110
—Va. Const., § 38
Petition against person filing false list of property for taxation 2328

Digitized by Google

Sec.

COUNSEL—Con.
—by board of medical examiners 1610
—by Auditor in proceeding by officer for salary withheld for debt due State 3476
Clerk, Supreme Court of Appeals acting as 3380
To represent attorney in disbarment proceeding 3424
Assigned by court to represent poor person 3517
—compensation 3518
Appointed by Commissioner of Insurance in proceeding for liquidation of insurance company 4245
In examination by justice of persons accused of crime....4842
In petition to establish boundary, right to open and close 5490
Of non-resident party, notice to take deposition served on....6229
—service on in proceeding to obtain answers to interrogatories 6236
— —to produce books, writings, etc. 6237
Argument before jury 6255
Notice to of application for transcript of record 6339
Records on appeals furnished to.6357
Notice to in proceedings on capias 6421

COUNTERFEITING
Ballots 167
Coupons of State bonds....2612, 2613
Coin and bank notes, punishment 4487
—having in possession 4490
—Instruments for, making, mending, having in possession, &c. 4488
Search warrant for coin, tools, materials, etc. 4820-4822

COUNTS
See also **"Declaration"; "Pleadings"**
Indictment containing faulty, demurrer or motion 4923
—effect of general verdict of guilty on 4923
In declaration in ejectment.....5460
Declaration containing faulty counts, verdict on 6258
—demurrer or motion 6258

COUNTIES
General Assembly may prescribe property qualifications for voting in county elections, Va. Const., § 30
Special act changing or locating county seat prohibited, Va. Const., § 63
Appropriations to charitable institutions .....Va. Const., § 67
Not responsible for acts of sheriff .....Va. Const., § 114
Credit of not to be granted to aid person, association or corporation .....Va. Const., § 185
Not to subscribe to stock or obligations of corporations, Va. Const., § 185
Indebtedness, State not to assume .....Va. Const., § 185
Debts or obligations to aid civil war not to be paid, Va. Const., § 186
Actions by and against 2686

Sec.

COUNTIES—Con.
Actions against on claims, 2764, 2765
—judgments, how paid 2764
Appeal by from allowance of claim by supervisors 2759
Actions by to recover from officers for illegal contracts....2707
Advertising resources and advantages of 2732
Agriculture, amount supervisors may expend to promote.....2734
Allowances by supervisors, to sheriff 2726
—to clerk 2726
—to Commonwealth's attorney..2726
Apportionment of forest reserve funds 743
Appropriations for agricultural high school 718
Armories, appropriation for 2731
Automobiles owned by, registration 2143
Bonds of, exemption from taxation 2302
—Va. Const., § 183
Bonds for erection of public buildings 2738-2741
—power of supervisors 2738
—approval of court 2738
—election 2738, 2739
—how issued 2740
—sinking fund 2741
—retirement and reissue.....2735
—for eighteen per cent of assessed value of real estate..2736
—courthouse, acquirement of land for and erection of.....2751
Bond, of superintendent of roads payable to 2019
—recovery on for benefit of road fund 2019
—of foreman 2032
—of contractor 2035
—of proprietor of ferry across Chesapeake Bay 2041
Boundary disputes, how settled.2685
Buildings, construction and repair by supervisors 2725
—insurance on 2726
Buildings, proportion of expense of borne by city of second class 2904
—furniture, stationery 2904
—clerk's office 2854
— —fireproof 2855
—proportion of expense of borne by city of second class.....2904
—courthouses, provided for.....2854
— —offices in 2854
—removal of, election. 2745-2747, 2753-2755
—donation of land and money for 2748
—bond issue by town for..2749-2750
—bond issue by supervisors....2751
—mandamus to compel repair..2865
—jails, how provided 2854
— —use of by town 2856
—mandamus to compel erection or repair of 2865
Condemnation of land for cemetery in 53, 54
Circuit court, proportion of expense of borne by city of second class 2904
—terms of courts for 5893
Territory stricken from city or town to become part of county 2971
Town becoming city of second class, adjustment of debt.2902, 2903

Digitized by Google

COUNTIES—Con. Sec.

Confederate monuments, erection and care of 2742
Commonwealth's attorney, proportion of salary borne by city of second class 2904
County funds, raised by supervisors 2727
—expenses of orchard inspector, paid from 897
—appropriation for demonstration work 924
Election, cost of 170
—expenses and fees paid by county 198, 199, 200, 201
— —cost of making, certifying and posting list of paid poll taxes 112, 114
— —fees to registrars 98
— —cost of registration 93
—on bond issue for roads, when held 2122
— —for magisterial districts..2123
Supervisors may establish lawful fences in 3547
Ferries, establishment across water course dividing counties.2057
—changing rates 2058
Liability to of person or corporation causing fires.... 547
Division of and formation of new ....Va. Const., § 61
—notice 2674, 2675
—vote, how taken 2676
—elections, voters 2677
— —when another election not to be held 2677
— —penalty on officers failing to perform duty 2678
— —copies of polls, &c., sent to clerk of House of Delegates..2679
—survey, plat 2680
—copies of entries of land delivered to surveyor .... .2681
—jurisdiction of courts and officers of old county 2682
—pending cases, disposition....2683
—taxes, levies, &c., of old county, how collected 2684
Franchise granted by, rights not impaired by power granted to State Corporation Commission, Va. Const., cl. b, § 156
Franchise to public service corporation, powers of State Corporation Commission 3712
Gifts to for removal of courthouse 2748
May take gift or devise for educational or literary purposes. 588
—how will probated 589
—trustees 590
Inspection districts 1405
Payment of expense of guard for jail 4955
Portion of salary of judge of circuit court paid by 3466
—Va. Const., § 103
—increase of salary 3470
—proportion of salary borne by city of second class 2904
Judgment against, no execution on, how paid 2764
Juries where county is party...6006
Jurisdiction of offense committed on water 3213
—of proceedings under laws relating to oysters and other shellfish 3256
—of forfeiture for violation of fish, game and oyster laws...3366
Trial justices for 4988

COUNTIES—Con. Sec.

—jurisdiction 4988
—compensation, paid by county.4988
Use of water of Lake Drummond 3040
Magisterial districts, establishment 2687
—number 2688
—rearrangement 2688
— —petition 2688
— —contest 2689
— —judgment 2690
— —commissioners 2691
— —surveyor 2691
— —map 2691
— —commissioners' report....2692
— —report and map recorded..2693
— —expenses 2694
—cities not included 2691
—surveys 2691
—names published with acts..2695
—school districts 668
— —Va. Const., § 133
—apportionment of forest reserve fund 744
—vital statistics, registration district 1563
— —registrar 1564
Payment of costs of investigation by inspector of accident in coal mine 1373
Not to require license of newspaper 3062
Pauper, legal settlement 2800
Process, service in 3822
Property of, exempt from taxation 2272, 2301
—when leased to another 2272
—Va. Const., § 183
—care of by supervisors 2728
—sale or exchange of by supervisors 2723
— —notice, publication, public auction 2723
— —approval by court 2723
—religious body may hold in.. 43
Purchase of real estate for by supervisors 2723
Pupils from in William and Mary College 938
—in normal schools 945
Quarantine against diseased animals 914
—against other counties.... 914
Appropriation to schools by, Va. Const., § 141
—to manual, industrial or technical school 664
System of free public schools to be established in 594
—how administered 595
Recovery of money paid on void school contract 683
School divisions 604, 606
—Va. Const., § 132
School funds, unexpended, disposition of 730
Standard weights and measures furnished to 1467
Protection of trees, co-operation of State Forester 535
Tuberculosis sanatorium, established jointly with another county or city 1514
Vital statistics, registration districts 1563
Warrants, for payments for improvements of roads with State aid 2102, 2106
—receivable in payment of county levies 2782
—how paid 2782

Digitized by Google

Sec.

COUNTIES—Con.
—proportion of expense to be borne by county 2100, 2103
— —distribution by county....2104
—plans and specifications for roads 2100
— when local authorities may rescind prior action 2101
—bids for work 2102
—bond of contractor 2102
—apportionment among counties 2103, 2104, 2107
—disposition when county does not apply for its share.....2103
—private contributions to roads.2104
—payments to counties by State Treasurer 2105
—expenditures by county treasurer 2102, 2106
— —warrants 2106
— —certificates of highway commissioner 2106
—work to go forward as money available 2107
—not given when convict road force furnished 2108
—use for construction of bridges 2109
Superintendent of 2019-2039
Supervisor of district 2038, 2039
Tax levy for upkeep when built by bond issue 2117
Telegraph and telephone lines on 4035
—consent of supervisors 4037
—restrictions on use of..4037, 4038
Contribution to cost of by towns 1976
Tramway or railway constructed across 2006, 2007
Removal of gates across.....2011
—damages 2012
—appeal 2012
Transfer of State's interest in to county 3758
Transfer by stockholder in turnpike company of interest to county 4088
How turnpikes kept in order...2000
Grant of right to use to turnpike companies 4094

Taxes and levies

See also **"Taxation"**
Levies, fixed and ordered by supervisors 2720, 2721
—copy of order to State tax board 2217
—appeal from 2762
— —to Supreme Court of Appeals 6336, 6337
—for school taxes 2721
—to pay interest on school bonds 2721
—reference to voters on increase in school levy 740
—for fire protection 542
—to reimburse expense of destroying diseased trees 892
—for pension fund 2662-2667
—to create sinking fund to pay bonds issued for loans for erection of buildings, etc....2741
—erection of Confederate monument 2742
—for court allowances 2768
—to pay judgments 2764
—for support of poor.....2795, 2805
—payment of when territory annexed to city or town 2960
—for extension to turnpike....4093
School tax .....Va. Const., § 136
Assessment, of school taxes.... 752

Sec.

COUNTIES—Con.
—correction 2227, 2263, 2389
— —of assessment made by State Corporation Commission.....2392
—of omitted persons and property 2332, 2333
— —limitation on 2334
Assessors 2233
—compensation 2250
Of banks, branches 4102
—stock, deposits 4102
Of dogs 2326
Local board of review for.....2225
Of rolling stock of electric railways 2205
—ascertainment of value.....2206
Road tax 1986, 1987
On intangible personal property for roads 2209
Warrants receivable for 2792

COUNTY AND CITY TREASURERS

Not eligible as member of General Assembly....Va. Const., § 44
Ineligible as division superintendent or clerk fo school board 779
Not to hold other office.....2702
—Va. Const., § 113
Special act refunding money paid to prohibited ....Va. Const., § 63
Election, term 123
—Va. Const., §§ 110, 112
—in cities 129
— —Va. Const., §§ 120, 122
—in cities of second class 2892
— —appointed by court 2897
Of town becoming city of second class 2889
Charters of cities not affected by provisions of chapter one hundred and ten 2793
Bond of county treasurer 2695
—of city treasurer 2699
—of deputy 2776
—new or additional. 2777, 1774, 2106
—examination of 2777
—liability on 2790
— — duties with reference to drainage district 1774
— —for funds received on sale of bonds for improvement of roads 2116, 2124
— —for proceeds of tax sale....2471
— —for failure to perform duty relating to delinquent land..2502
— —for proportion of judge's salary 3466, 3468
—action on.....2788, 2789, 2790
—motion for judgment 2492
Judgment against....2433, 2514, 2789
Execution against 2433, 2785
—no forthcoming bond taken. 6524, 6525
Deputies, appointment 2701
—powers, oath 2701
—removal 2701
—bond 2776
— —liability on 2776
Offices, how provided 2854
—where located 2774
—removal by court 2774
Books and stationery, how provided 2767, 2781
—delivery to successor....2779, 2786
—delivery to clerk of court....2779
—receipt for 2779
—furniture, seals, etc.....2767
Judgment against, adjustment of by supervisors 2737

Digitized by Google

Sec.

COUNTY AND CITY TREASURERS—Con.

City or town treasurer to perform duties of register or chamberlain 2987
—duties with reference to public school system 774
Acts of Assembly furnished to.. 388
Delinquent, statement by Auditor 2413
—list of delivered to Attorney General 2432
—proceeding against treasurer and sureties 2432
— —judgment, execution, lien..2433
Proceeding against for violation of revenue laws 2544
Suspension by Governor.....2791
—successor, bond, duties, etc. .2791
—for failure to settle with State 2201
Removal 2790
—for failure to make statements and payments of taxes collected 2412
Procedure for discharge from liability after expiration of term 2792
Vacancy, for failure to give new bond 2777
—for holding other office.....2702
— —Va. Const., § 113

Powers and duties

Receipts 2774
Disbursements on warrant drawn by board of supervisors.....2774
"Revenue of the State," meaning of term 2430
"Local revenues," meaning of term 2421
To receive and disburse school moneys 726
—school taxes 726
—separate accounts 726
—funds for school libraries.... 755
To receive and account for taxes and levies 2407
Road tax for each district kept separate 1987
Account of receipts and disbursements 2780
—statements to board of supervisors 2780
—inspection 2780
Proceedings against by county school board, settlement of accounts 650
Inspection of accounts of by State Accountant 565
System of accounts for devised by State Accountant 565
Audit of accounts of by supervisors 2719
Settlement, with supervisors....2201
—annual settlement 2786
—with school boards 2201
Exhibiting cash to balance accounts with county levy and school fund 2201
Account and statement when required by circuit court or board of supervisors 2785
Failing to settle with State, report of 2201
—suspension 2201
—appointment of person to perform duties of 2201
— —bond of 2201
Failure to balance account with county levy and school fund..2201
—suspension 2201

Sec.

COUNTY AND CITY TREASURERS—Con.

—appointment of person to perform duties of 2201
Attending courts 2774
—meetings of board of supervisors 2774
Delivery to purchasers of bonds issued for improvement of roads 2116
Road bonds issued for magisterial districts delivered to..2124
—delivery to purchasers 2124
—liability for proceeds 2124
Deputy, using or lending public money 2788
—forfeiture, recovery 2788
Constable to account to for taxes on dogs.....2317
Separate account of dog tax....2318
—payment from ... .2321
—report of 2322
Establishment of drainage district, delivery of assessment roll to 1771
—collection of assessment 1771
—sale of delinquent land..1771, 1776
—payment of bonds and interest 1771
— —penalty for failing to pay. 1771
—payment to by land owner of full amount for which land is liable 1772
—mandamus to enforce payment of bonds 1774
—fees 1775
Fees and compensation, for making poll tax list 112, 114
—for duties with reference to drainage district 1775
—making payments for improvement of roads with State aid 2106
—services, relative to road bonds issued for magisterial district 2124
—on sale to satisfy judgment for rendering false list for taxation 2328
—for receiving and paying revenue of State 2430
—for receiving and disbursing funds of counties, cities, school districts and magisterial districts 2431
—for leasing or distraining property 2439
—for receipt to purchaser at delinquent tax sale 2464
—for sale of delinquent land to Auditor 2501
—proceeds of forfeiture of vessels, &c., violation of oyster law 3275
—forfeiture for failing to pay license tax into treasury 2381
—forfeiture for failing to settle with Auditor 2412
—withholding for failure to report violations of duty by commissioner of revenue 2384
Crediting funds received from forest reserve 743, 744
Interest, when charged with....2435
Jurors, list of allowances to, furnished by clerk 5010
License, on bull 6447
Payment by, of expense of primary election 248
—compensation and mileage of messenger 243

Digitized by Google

Sec.

COUNTY AND CITY TREASURERS—Con.
—special election in city of first class 2919
—cost of services of State Accountant 565
—warrant for school funds..... 726
—warrant on State school tax fund 747
—warrant for State school funds. 753
—warrant by city school board.. 786
—warrants of Board of Drainage Commissioners 1762
—for costs and fees, drainage district 1778
—fund appropriated by State for high schools 707
—failure to pay warrant for school purposes 731, 732
—payment of school funds to depository 732
— —order for 733
— —penalty 737
—loan from literary fund..... 761
—State school funds for cities.. 783
—expense of destruction of diseased cedar trees 891
—to orchard inspector 897
—fees, registrars of vital statistics 1579
—compensation, drainage engineer and board of viewers, 1738, 1739
—State aid for roads 2106
— —warrants 2106
— —certificates of Highway Commissioner 2106
—proceeds of bond issue for magisterial district 2124
—compensation of assessor..... 2250
of review 2226
—compensation of assessor.... 2250
—from license tax on dogs, 2321, 2332
—capitation taxes into State treasury 2420
—pensions 2663, 2664
—for support of poor 2795
—to State treasury, proportion of judge's salary 3466, 3468
—allowances to witnesses for Commonwealth 3512
— —refund 3512
—fee of attorney appointed to defend poor person 3518
—allowance for clothing for prisoners on chain-gang 4956
—fees to jury commissioners... 5986
—of jurors 5991, 6010
—compensation and mileage of judge holding court other than his own 5898
Payments to, fees of candidates at primary election 249
—State appropriation for high schools 707
— —kept separate 707
— —report 707
—State appropriation for normal departments 710
—State school funds..... 746, 749
—State school funds for cities.. 783
—reimbursement for costs and damage of destroying diseased trees 892
— —collection 892
—proceeds sale of unbranded timber 1454
—fines recovered from owners of dams for failing to maintain road or bridge over.... 1985

Sec.

COUNTY AND CITY TREASURERS—Con.
—money appropriated by State for improvement of roads.... 2105
—levies received, sale of delinquent lands 2502
—oyster laws, vessels, etc., seized for violation of, proceeds paid to 3275
— —commission 3275
Penalty for failing to make or certify list of paid poll taxes. 113
—for false certificate of 115
—failing to pay bonds issued by drainage district 1771
—failing to pay license taxes into treasury 2351
—failing to report violations of duty by commissioner of revenue 2384
—failing to furnish dated tax ticket to person paying taxes. 2409
—failing to make taxes by distress 2426
—for false return of delinquent taxes 2426
—for purchasing real estate at delinquent sale 2463
—for failure to perform duty relating to sale of delinquent land 2503
—for dealing in warrants..... 2787
—using or lending public money. 2788
—for violations of law relating to levies, etc..... 2790
Pension fund 2662
—payment 2663, 2664
—settlement with supervisors.. 2662
Using or lending public money.. 2788
—forfeiture, recovery 2788
Report to division superintendent of schools 727
—penalty for failure to make.. 727
—annual report 728
—penalty 729
—of forest reserve 743
—of receipts and disbursements of dog taxes to supervisors.. 2322
—of sale of property on judgment for rendering false list of property for taxation..... 2326
—of violations of duty by commissioner of revenue 2384
Report to of merchant's purchases by local board of review 2366
—assessment of license tax..... 2366
Warrant book 2781
Warrants, list of furnished to board of supervisors 2786
—book for 2781
—paid in order presented 2781
—how paid 2782, 2786
—received for taxes..... 2782
—credit on taxes due 2782, 2784
—time within which to be paid. 2783
Warrants on, by district school board 662
—for expense of destruction of diseased cedar trees 889
— —levy to reimburse county.. 892
—treasurers not to deal in..... 2787
—failure to pay, motion against. 2787
—received for county levies.... 2782
—taxes deducted from 2784
School warrant, loss of by, relief 2185
—bond 2185
Warrant, for arrest of person doing business without license. 2369
List of witness fees certified to by clerk 3530

Digitized by Google

Sec.

COUNTY AND CITY TREASURERS—Con.

AS TO TAXATION

To furnish lists of persons who have paid poll tax 109, 114
—Va. Const., § 38
—notice to of correction of.... 110
— —Va. Const., § 38
—charged to treasurer 111
— —Va. Const., § 38
—certificate of payment on transfer of voter 115
— —penalty for false 115
Collection of omitted capitation taxes 116, 2420
List of paid capitation taxes furnished to treasurer of city of second class 2900
Levy to reimburse county for expense of destroying diseased cedar trees 892
Sale by to satisfy judgment against person filing false list of property for taxation.....2328
—payment of proceeds 2328
Copies, land book and personal property book furnished to...2342
—receipt for 2346
License tax on merchants, assessment 2366
—increase, collection 2366
—against person doing business without license 2369
—certificate to of assessment against person doing business without license 2369
— —collection, levy, distress. 2366, 2369
—arrest and commitment to jail 2369
License tax payable to 2372
When license taxes payable into treasury 2381
Correction of assessment, credit or refund 2387
To receive and account for taxes and levies 2407
Uniform tax tickets 2408
—penalty for failing to furnish to person paying 2409
Distress for taxes, 2410, 2439, 2440, 2441
—land in different counties....2442
—licenses 2366, 2369
Leasing property for collection of 2439
—fee 2439
List of payments of taxes on real estate in advance, sent to....2438
When and where to receive taxes 2410
—advertisement of time and place 2410
When to add penalty 2410
Interest on 2411
Statements to Auditor 2412
—settlements with 2412
Payment into treasury 2412
Delinquent list 2414
—furnished to Auditor 2412
—form, oath to 2415, 2416
—posting 2416
—examined and certified...2417, 2418
—when not to receive taxes included in 2419
—false, penalty 2426
—forwarding to Auditor.....2427
List of income taxes, how kept.2344
—who may inspect.....2343, 2344
Collection, from owner removing to or residing in different county or corporation 2442

Sec.

COUNTY AND CITY TREASURERS—Con.

—by garnishment 2444
Copy of order apportioning taxes on partitioned property furnished to 2449
Delinquent town taxes, list of..2457
—sale 2457
—how redeemed 2458
—when purchased by treasurer.2457
Delinquent taxes, list, posting..2460
—notice of sale 2460
—sale 2461
—how land and lots sold 2462
—treasurer not to purchase....2463
— —penalty for 2463
—receipt to purchaser 2464
— —fee 2464
—report of payments before sale 2465, 2466
—report to court, form 2465
— —oath to 2468
— —confirmation 2469
— —correction 2472
—assisting judge in correcting..2473
—purchase in name of Auditor.2489
— —list of 2489
— —credit for 2489
Charged with amount due State, cities and towns from sale of delinquent land 2471
Notice to, proceeding for relief against delinquent tax sale..2474
Notice of application to redeem part of land sold 2493
Refund of money collected under levy which is rescinded..2762
—proceeding against for failure to refund 2762
County warrants to be received for county levies 2782
Taxes deducted from warrant 2784

COUNTY BOARDS
Of election, see **"Elections"**

COUNTY CLERKS
See **"Clerk of the Court"**
To be clerk of circuit court, Va. Const., § 110
Election, term 124
—Va. Const., §§ 110, 112
Deputy, appointment 2701
—powers, oath 2701
—consent of court to 2701
—removal 2701
Not to hold other office.....2702
—Va. Const., § 113
—office vacated thereby.....2702
Books and stationery, supervisors to provide 2767
—furniture, seal, etc.....2767

COUNTY COURTS
Jurisdiction of vested in circuit courts 5891

COUNTY DEMONSTRATION WORK
Appropriation for 921, 924
—disbursement 921
—use of 922
Agents, demonstrators 923
—salary 924
Boys' clubs, girls' canning clubs 923

COUNTY SEAT
Special act changing or locating prohibited .....Va. Const., § 63

COUNTY SCHOOL BOARD
See **"Education"**

COUPONS
See also **"State Debt"**
Form of 2587

Digitized by Google

Sec.

COUPONS—Con.
Refunding 2591
Tender of for taxes 2596
—certain acts continued in force.2515
—fraudulent use of 2607
—record of 2608
—possession until validity adjudicated 2609
—tendering same coupons twice.2610
—penalty on officer receiving...2611
Tender for debts due State, certain acts continued in force..2515
Purchase or sale of by officers prohibited 2604
Received by officers, record of to be kept 2605
—penalty for failure 2606
Forged or counterfeit, to be destroyed by officers receiving them 2612
—proceedings for seizure of....2613
Register of 2628
—comparison of coupons with.2629
Destruction of 2629
Cancellation of 2629
—when received for taxes.....2630

COURTS
See titles of the particular courts; "Circuit Courts"; "Corporation Courts"; "Contempt of Court"; "Courthouses"; "Supreme Court of Appeals;" "Dockets"; "Judges;" "Judicial Sales"; "Jurisdiction"; "Juvenile and Domestic Relations Court"; "Removal of Causes"
Clerk, see "Clerk of the Court"
Vacation proceedings, see "Vacation"
Privilege of voters from attendance during election, Va. Const., § 29
Contempt, General Assembly may regulate power to punish for, Va. Const., § 63
Powers General Assembly may confer on .....Va. Const., § 63
Special laws regulating practice prohibited .....Va. Const., § 63
General provisions, Va. Const., §§ 87-109
Of land registration, General Assembly may establish, Va. Const., § 100
Seal of construed to include what 5
—forging, punishment 4485
— —keeping instrument for...4485
Reports to by Auditor of delinquent treasurers, clerks and other officers 2201
—whether county and city treasurers have settled with State.2201
—fines reported to clerks by justices 2551
—plat and survey of new county 2680
—by committee to inquire into necessity for general index in clerk's office 3396
Acknowledgments before courts outside of United States.....5206
Jails of 2868
—adoption of other 2872
—jailers, attendance 2869
In cities of first class.....2913, 2914
Appellate, costs in, who to recover 3528
Of city of Richmond 5912-5933
Supreme Court of Appeals to prescribe forms of writs for....5960

Sec.

COURTS—Con.
—regulation of practice 5960
—rules of practice and system of pleading 5960
Ceasing to exist, how judgments, orders and decrees of executed 5974
Dockets, of civil cases 6243
—criminal cases 6244
—chancery cases 6245
—striking causes from for failure to prosecute.....6172
Decisions of Supreme Court of Appeals transmitted to 6367
—how entered 6369

Court funds
Report of to examiner of records 2223
Notes, bonds, etc., held subject to order of court, taxed to clerk 2308
Money paid into, trust company as receiver or trustee of 4148
General receiver 6280-6288
—investment by 6280
Deposit of 6310
Clerk's duties 6310
—copy of record to Auditor....6310
—list to examiner of records....6310
—report of to commissioner of revenue 6310
Assessment for taxation 6310
Payment of tax by bank 6310
—credit for on certificate of deposit 6310
Payment into treasury 6311, 6312
Account of by Auditor.....6313
Payment to person entitled.....6314
—limitation 6314

Jurisdiction, powers and procedure
Abating nuisance, unauthorized use of street, commitment to jail for 3024
Allowances by, expense of securing surety on bonds 283
—of fees of counsel for county school board 643
—list certified to Auditor.....2187
—compensation to commissioner examining clerk's tax book..2405
—order for duplicate certificate of 2404
—of attorney's fee out of funds in court 2430
—for making out fee bills for deceased clerk 2497
—to attorney for poor person..2518
—compensation to guardian ad litem for infant or insane defendant 6098
Appeal to from sentence of justice for contempt 4523
Appointment of person to perform duties of treasurer, clerk or other officer failing to settle accounts 2201
—of person to act in place of sheriff or sergeant 2321
—of commission to fix salaries of councilmen 2951
—of commissioners to revise registration books 2978
—of justices of the peace in city 3092
—of committee to inquire into necessity for general index in clerk's office 3395
—of police agents by railroad company, approbation of.....3944
—of police agent, for steamboat, wharf, approbation of..4025
—of commissioners for assignment of dower 5125

Digitized by Google

Sec.

COURTS—Con.
—how made 5961
—of guardian ad litem for infant or insane defendant 6098
—of trustee 6298-6302
Arbitration under rule of, rule thereon 6159
—submission irrevocable 6160
—power of court over 6160
—award entered as judgment, 6161, 6163
—setting aside 6162
Attachment of party refusing to answer interrogatories 6236
—dismissing suit or entering judgment against 6236
—party refusing to produce writings 6237
—disposition of surplus after sale under 6158
Attorneys, qualification of before 3421
—revocation of license or suspension by 3423
— —procedure for 3424
—certificate to applicant to take bar examination 3418, 3419
Bail, allowance of.....4829-4837
Bills of exception 6252
—certificate in lieu of 6253
Board of supervisors, compelling repayment by of cost of removing poor person to place of last settlement 2803
Bond taken before, provisions and conditions of 279
—new, may require when..... 280
—of non-resident, security for costs 3519, 3520
—required of trustee.....6301
Capias against defendant about to quit State 6419
—taking bond of defendant....6422
—quashing, discharge.....6423, 6424
—order for application of estate 6425
Caveat proceedings, requiring security for costs in..... 451
—dismissal of 454
—issuance of new process..... 454
—order of publication 454
Certificate of loss of land warrant 419
Children committed to Board of Charities by 1905
—under 18 years of age not to be committed to jail.....1908, 1914
— —commitment to Board of Charities and Corrections or institution 1908, 1914
— —appeal 1914, 1917
—dependent, order for support of by parent 1909
—delinquent, dependent, neglected, appointment of physician to examine 1910
— —placing in hospital 1910
—delinquent, appointment of probation officers for....1911, 1912
— —expenses 1911
— —delivery of children to probation officer 1913
— —report, proceedings 1913
—petition of probation officer for disposition of 1915
— —proceedings on 1915
— —contempt 1915, 1916
— —appeal 1917
— —investigation of violations of law relating to 1920
— —incidental powers 1921

Sec.

COURTS—Con.
— —children, report from institutions receiving 1918
—proceeding for adoption of....5333
Compromise of suit of infant or insane person, approval of....5332
—by fiduciaries, ratification of.5440
—by trustee, mortgagee, receiver of joint stock company, ratification of 5440
Contempt, summary punishment of 4521
—limitation of penalty 4524
—jury trial 4524
—General Assembly may regulate power to punish for, Va. Const., § 63
Continuance of causes not determined, without order for..5972
Corporations, order for election of directors of 3803
— —on complaint of stockholder contesting election of 3804
—dissolution of, appointment of trustees or receivers 3813
—proceeding for reissue of lost stock certificate 3818
— —order for, bond 3819
—non-stock, dissolution of.....3880
—public, establishment of wagon-way across road, canal, etc., of 3883
— —appeal 3883
Decedent's estate, appointment of administrator 5360, 5373
— —of estate of person presumed to be dead 5362-5364
— —revocation of authority of female personal representative 5373
— —appointment of administrator de bonis non.....5373
—administration on estate of person presumed to be dead, 5363-5368
— —advertisement 5362, 5363
— —hearing 5363
— —grant of administration...5364
— —distribution of estate.....5365
— —revocation of administration 5366, 5367
— —costs 5368
—when estate committed to sheriff or sergeant 5374
— —revocation 5374
—appointment of appraisers....5376
— —list of heirs furnished to..5379
—to administer real assets of decedent 5396
Distress warrant, disposition of surplus after sale under.....6158
Divorce, jurisdiction of suit for 5105
Dower, assignment of, commissioners for 5125
—confirmation of 5125
Ejectment, assessment of profits and damages in action of.....5482
Eminent domain proceedings, jurisdiction of 4361
—appointment of guardian for infant or insane person.....4365
—appointment of commissioners.4366
— —of other commissioners....4370
—confirmation of report of.....4369
—when no injunction awarded..4371
—distribution of damages.....4374
—appointment of board of commissioners 4375
Execution, disposition of surplus after sale under 6158

Digitized by Google

Sec.

COURTS—Con.
—order allowing issue of during term 6500
—discharge of execution debtor committed for failure to answer interrogatories 6506
Fiduciary, compelling filing of inventory 5403
—compelling accounting..5408, 5410
—requiring commissioner in chancery to settle accounts of 5415
—requiring new bond of..5416, 4517
—revocation of authority of....5417
—appointment of new 5418
—resignation of 5419
—reports, examination and confirmation of 5427-5430
—investing funds, order for....5430
—transfer of securities to successor 5432
—order for payments to persons entitled 5433
—order for payment of debts of decedent 5434-5436
—distribution of estate, order to creditors to show cause against 5439
—compromise of claims by.....5440
— —ratification of 5440
Fines, not to remit except for contempt 2557
—commitment to jail for.....2559
—capias 2559
—execution 2559
—imposed on juror failing to attend inquest 4984
—imposed on juror, witness, or other person for contempt or disobedience of process, procedure, rule 4985
Fish and shellfish industry in Potomac river, jurisdiction of violation of law relating to...3299
Forfeiture of land for breach of covenant or condition, suit to relieve against 5533
Game laws, jurisdiction of violations of 3356
Garnishment, proceedings on, execution 6509-6513
Habeas corpus, may compel member of General Assembly to obey writ of 301
Homestead for widow and children, setting aside 6537
—sale of 6542
Infant, commitment of to prison association 1954-1956
—funds of, when paid to infant, when to parent 5343
Injunction, against counterfeiting or imitating trade mark..1460
—against house of prostitution..1522
— —violation, contempt proceeding 1524
— —approval of bond of owner.1527
—against railroad for violation of law relating to transportation of live stock 4006
—violations of law relating to advertisement of intoxicating liquors 4609
—jurisdiction of 6318
—in attachment proceedings ...6389
Inspection districts, laying off..1405
Interpleader proceedings..6151, 6152
—property levied on.....6152
Intoxicating liquors, license to druggist, revocation for violation of law 4593

Sec.

COURTS—Con.
Investigation of sanity of person accused of crime 4909, 4910
—commitment to hospital or jail 4909, 4910
—sentence or trial when restored to sanity 4912
Judicial notice of signature of Governor or judge 6194
Judicial sales, appointment of special commissioner 6266
—report of taxes 6267
—appointment of person to receive proceeds 6272
—rule against special commissioner or purchaser 6274-6277
Jurisdiction, continuation of when new county formed. 2682, 2683
—concurrent with State Corporation Commission 3754
—over water courses 5953
Jury, trial without on plea of guilty 4900
—Va. Const., § 8
—fine imposed on juror for failure to attend inquest.....4984
— —for contempt or disobedience of process, procedure, rule 4985
—requiring additional number of jurors to be summoned 5993
—discharging or dispensing with attendance 5998
—venire facias to supply deficiency 5999
— —for as many jurors as may be necessary 5999
— —for trial of case against city, town or county 6006
—examination of juror as to interest, prejudice, etc.....6000
—special, how formed.....6005
—apportionment of pay of jurors between State and county or corporation 6007
—trial of civil case without....6012
Justices of peace in city, appointment of 3092
—order for election of additional 3092
Mandamus, vacation proceedings, certified to clerk of court.....5839
Marriage, jurisdiction of suit to annul or affirm 5105
New parties, order bringing in.6139
New trials, granting, number of 6250
—final judgment after 6251
Oath administered to judge.... 272
—to person elected or appointed to office 273
Oath or affidavit before..... 274
Oyster laws, order disposing of proceeds of property forfeited for violation of.....3275
Petition for commitment of feeble-minded person, when to direct to be filed 1095
—by guardian to spend more than income of ward's estate, 5321, 5322
—to establish boundary to real estate 5490
—against tenant committing waste 5511
—by surety on bond given under decree of court for indemnifying bond 5776
—procedure when indemnifying bond not given 5776

Digitized by Google

Sec.

COURTS—Con.
- allowing to be filed in pending chancery suit 6096
Proceeding for delivery of goods when warehouse receipt lost or destroyed 1303
— —costs, fees 1303
—to enforce contract reserving title to chattels 5190
—for recovery of rent when not payable in money.....5529
—to exempt wages from garnishment 6556
Proceedings, entering and signing 5962
—control over in clerk's office..6140
Process, return to.....2825
Prohibition, suspension of proceedings 5838
--vacation order in 5839
Publication of process, order of 6069
—dispensing with publication in newspaper 6070
Punishment on confession of indictment for murder, ascertainment of 4919
Qualification before of examiner of records 2219
—approval of bond of 2219
—receiver, rule against to recover money due from..6274-6277
—in attachment proceedings....6389
Recognizance, what order taking to state 4973
—default recorded 4978
—process on 4978
—remission of penalty 4980
—surrender of principal to....4982
— —certificate to surety.....4983
Removal of deputies to officers..2701
—of trustees 6301
Reports of business in, days in session, etc., to Legislature, 3405, 3406
Reward for arrest of felon, paid from county levy 2733
Rules for decisions and proceedings in, applying to all courts.6373
Sale of perishable goods levied on, order for 2832
—of forfeited property, order for 3377
—of goods seized in action of detinue, order for 5798
— —exception to sufficiency of bond 5799
— —return of property to defendant 5800
—of property taken on distress warrant when expensive to keep, order for 6619
School boards, compelling settlement of accounts of 671
Suspension of clerk or other officer for failing to settle with State 2201
—rule against 2201
—appointment of person to perform duties of 2201
Suspension of treasurer for failing to settle with State.....2201
—failing to exhibit cash to balance account with county levy and school fund.....2201
—rule against 2201
—appointment of person to perform duties of 2201
Suspension of sentence in conviction for larceny, forgery, uttering forged instrument...4486

Sec.

COURTS—Con.
Taxation, directing taxes to be paid when fund is distributed.2309
—correction of erroneous assessment on property or for license 2385, 2389
— —order.....2386, 2389, 2390, 2391
— —appeal from 2391
— —when relief refused.....2390
— —rehearing 2391
—allowances payable from county treasury, levy for.....2758
Trial of criminal case on plea of guilty .....Va. Const., § 8
Trial of misdemeanor on plea of guilty 4927
—on plea of not guilty 4927
Verdict, court not to direct.....6003
Waiver of jointure by widow in 5121
Waste, petition against tenant committing 5511
—order prohibiting 5511
Witnesses, restriction of number of whose fees may be taxed in, costs 3532
—summoning, in jurisdiction in which accused was arrested..4887
—fine imposed on for contempt or disobedience of process, procedure, rule 4985
—ordering officer to serve process for in another jurisdiction 6218
—order for subpoena duces tecum 6219
—compelling attendance 6220
—committing for refusal to testify 6221

Officers

Oath of, where recorded..... 277
Crier, appointment, bond, duties.2821
Intimidating or impeding, punishment 4525
Sheriff or sergeant to attend..5963
Exempt from jury service.....5985
Liability of, homestead exemption not applicable to.....6531
—Va. Const., § 190

Records and papers

Authentication of by Secretary of the Commonwealth ...344, 345
Book showing taxes received by clerk 2405
Order book, qualification of officers entered in 2696
—index 3394
—judgment on writ of error in criminal case certified and entered on 4939
—proceedings entered in, read and signed 5962
Appointment of jury commissioners entered on 5986
Removal from county or city prohibited 3387
Open to public inspection 3388
Copies furnished by clerks.....3388
Rebinding and transcribing records 5980-5982
Faith given to transcribed records 5980
Permitting withdrawal of original paper 6200
Re-entry of lost, destroyed or illegible 6201-6204
Of courts of United States or another State, how authenticated to be used in evidence..6205
—of foreign court 6207
Lost or destroyed, how suit proceeded in 6241

Digitized by Google

Sec.

COURTS—Con.
Terms and sessions
If day of month falls on Sunday proceedings on next day. 5
Adjournment 5959
—from day to day 5970
Place of holding 5964
—change of 5965-5968
— —not to cause discontinuance ... .5971
—acts at other places confirmed 5969
Effect of failure to open on day appointed 5970, 5971
Ending during trial, trial to go on until concluded 5978

COURT DOCKETS
See **"Dockets"**

COURT FUNDS
See **"Courts"**

COURT OF APPEALS
See **"Supreme Court of Appeals"**

COURT OF LAND REGISTRATION
General Assembly may establish, Va. Const., § 100

COURT OF LAW AND CHANCERY OF THE CITY OF NORFOLK
Establishment 5934, 5939
Jurisdiction 5935
—matters excluded from 5936
Terms, rules 5937
Appeals from 5938
Commissioners of 5940
Sergeant of city of Norfolk to attend 5941
Process and orders, execution of.5941
Juries 5942
Provisions applicable to 5942
Clerk, bond, duties.....2696, 5944
Judge 5934
—absence or inability to sit....5943
—salary 3468, 5945
— —increase, decrease 3469
Sergeant, fees, payment from treasury 3503
—deputy 3503
Chancery docket 6245
Office judgment, when becomes final 6134

COURT OF LAW AND EQUITY OF THE CITY OF RICHMOND
See **"Law and Equity Court of the City of Richmond"**

COURT OF LAW AND CHANCERY OF THE CITY OF ROANOKE
Establishment 5946
Jurisdiction 5947, 5951
—matters excluded from.....5948
Terms 5949
Appeals from 5950
Removal to of cases from corporation court 5951
Judge, election, term.....5946
—absence or inability to sit....5955
—salary 3468, 5957
—increase, decrease 3469
Commissioners of 5952
Sergeant of city of Roanoke to attend 5953
Process and orders, execution of.5953
Juries 5954
Provisions applicable to 5954
Clerk, compensation, bond, duties 5956
Sergeant, fees, payment from treasury 3503
—deputy 3503
Office judgment, when becomes final 6134
Chancery docket 6245

Sec.

COURT PAPERS
See **"Courts"**

COURT RECORDS
See **"Courts"**

COURTHOUSES
Condemnation of land by United States for 19
Erecting or repairing, loan for by supervisors 2738
—approval of court, order for election 2738
—election 2739
—bond issue 2740-2741
Removal of, election, 2745-2747, 2753-2755
Donation of land and money for 2748
Bond issue by town for....2749-2750
Bond issue by supervisors for...2751
How provided 2854
Rooms, in, renting, etc.....2854
Mandamus to compel repair of.2865
City of second class 2896
Clerk's office to be kept at....3385
Distance between courthouses of various counties and city of Richmond 3474
Burning or destroying, punishment 4430
Wilful or malicious injury to..4432

COVE
Rights of riparian owner to plant oysters in 3229

COVENANTS
Running with land, contract with company condemning land 4380
Action on by one not a party thereto 5143
To stand seized, effect of.....5155
To stand seized, transfer by of possession to use 5155
"The said—covenants" 5170
Of general warranty 5171, 5172
Of special warranty 5172, 5173
Right to convey 5174
Quiet possession 5175
Free from all encumbrances....5175
For further assurances.....5176
That he has done no act to encumber 5177
To pay the rent 5178, 5180
To pay the taxes 5178
That he will not assign.....5179
That he will leave the premises in good repair 5179, 5180
In leases, effect of destruction of property 5180
For lessee's quiet enjoyment....5181
For re-entry by lessor.....5182
In deed by husband and wife, effect on wife 5211
In lease, rights of assignee of lease in 5512
—of grantee of reversion.....5512
—of lessee against grantee of reversioner 5512
Re-entry for breach of....5530-5539
Assumpsit may be brought where covenant will lie 6033
Action to recover penalty for non-performance of 6262

COW
See **"Dairies"**
Larceny of ..... .4440

CRABS
See **"Commission of Fisheries"**
Setting line for in Lynnhaven river at night 3173
—penalty 3173

Digitized by Google

Sec.

CRABS—Con.
Taking with rakes and scrapes in Northampton and Accomac counties, penalty 3238
Crabbing grounds not to be staked off or used, penalty..3232
Catching at night 3251
—on Sunday 3251
—penalty 3251
Citizen not to be interested with non-resident in catching, penalty 3253
Non-resident catching, penalty.3254
—buying 3256
License to take, buy or market.3292
—tax 3292
Scrapes and dredges 3292
Designation of number on boat..3292
Regulations for taking.....3292
Penalty for violations of law..3292
Crabbing grounds 3295
—application for designation of.3295
—designation, stakes 3295
—plat, recordation 3295
—costs 3295

CRAIG COUNTY
Commonwealth's attorney, fees..3505

CRANE'S NEST RIVER
Obstructing navigation, punishment 4752

CREAM
Cheese manufacturer improperly disposing of, penalty.....1197

CREAM OF TARTAR
Sale of 1681

CREATION AND LIMITATION OF ESTATES
Separate estate of married women 5134-5140
—equitable separate estate....5139
Of inheritance or freehold, when writing necessary 5141
—when deed or will necessary to convey 5141
—voluntary partition, deed 5141
Gifts, necessity for writing....5141
Interest taken under instrument by one not a party thereto..5143
To lie in grant as well as in livery 5146
Disposed of by deed or will....5147
Future creation of by deed or will 5147
Executory limitations, created by deed or will 5147
When power of disposition in life tenant not to defeat remainder 5147
Deed to pass rights of grantor, 5148, 5163
Fee simple, passing by deed or will without words of limitation 5149
Conversion of fee tail into fee simple 5150
Limitation contingent on dying without heirs or heirs of the body, how construed 5151
Rule in Shelley's case abolished, 5152
Contingent remainder not to fail for want of particular estate..5153
Remainder not affected by alienation of particular estate or merger 5154
Transfers to uses 5155
Deed of release effectual without lease 5156
Equitable, liability to debts....5157
—spendthrift trusts 5157

Sec.

CREATION AND LIMITATION OF ESTATES—Con.
Trust estates, dower and curtesy in 5158
Survivorship between joint tenants abolished 5159
—exceptions 5160
Sale of fee simple on bill by life tenant against remainderman 5161
Sale of life tenant on bill by remainderman against life tenant 5161
Deed, form of 5162
—estate conveyed by 5163
—effect of certain words of release 5164
Lease, form of 5165
Deed of trust, form of 5166
—sale under 5167
Estates which may be disposed of by will 5227

CREDIT
Of State, not to be lent to counties, cities or towns, Va. Const., § 185
Of State, county, city, or town, not to be granted to aid person or corporation, Va. Const., § 185
To minor students of colleges, &c., prohibited 4707
Representation as to credit of another, no liability on unless in writing 5561
Presumption of power of agent of mercantile business to buy and sell on 5223

CREDITORS
See also **"Assignment for Benefit of Creditors"; "Fraudulent Conveyances"**
Warehouse receipt, remedies to reach 1315
Suit against directors and stockholders for dividend declared from capital stock 3840
Transfers with intent to defraud 5184
—not upon valuable consideration 5185
—upon consideration of marriage 5185
—suit by to set aside 5186
— —lien 5186
— —of creditor filing petition..5186
—relief, decree against debtor..5186
Sales of merchandise in bulk, when void as to creditors....5187
When loan of goods and chattels void as to.....5188
Reservation of use or property by way of condition, reversion, remainder or otherwise, when void as to 5188
Contracts reserving title or liens on goods and chattels for purchase price, when void as to creditors 5189
—how contract enforced 5190
Contracts in respect to real estate or goods and chattels in consideration of marriage....5192
—for conveyance or sale of real estate, or term therein for more than five years 5192
—sale of chattels, when possession remains with seller, 5192, 5193, 5194
—valid when recorded....5195, 5196

Digitized by Google

Sec.

CREDITORS—Con.
Factors, agents, &c., failing to disclose principal or partner, liability of property to..5194, 5224
Deeds, deeds of trust and mortgages void against until recorded 5194-5197
Word construed 5200
As witnesses for or against will 5244
When may compel partition of real estate 5279
—relief to creditor in 5281
Order in which debts of paid from decedent's estate, 5390, 5391, 5395
Suits against heirs and devisees 5398, 5399
Of decedent, real estate as assets for payment of 5395-5400
Order to show cause against distribution of decedent's estate..5439
Of corporation, consent to compromise of claims 5440
Compromise with joint contractor 5763-5766
Part performance, when to extinguish obligation 5765
Notice to by surety to sue principal debtor 5774
—effect of failure to sue.....5775
Rights against property of infant doing business as trader.6108
Judgment creditor, who deemed to be.....6460
—duty to cause entry of payment or satisfaction 6466
— —penalty for failure.....6466

CREDITOR'S BILL
To subject escheated land to decedent's debts 516
To administer assets of insolvent insurance company or guaranty company 4215
Against corporation, compromise of claims against 5440

CREEKS
See also **"Water Courses"**
Rights of riparian owner to plant oysters in 3229

CREOSOTE
Sale, label 1691

CRIER
Appointment, duties, bond.....2821
Fees 3487
—payment from treasury.....3504
—in criminal cases 3508
—certificate of allowance, 4961, 4962
—effect of failure to present claim for in time 4965
—fee book 3494
Of Supreme Court of Appeals..5877
—of special court of appeals....5877
—compensation 5877
—exempt from jury service....5985

CRIMES
See also **"Criminal Procedure"; "Fines and Penalties"; "Forfeitures"**
Cruel and unusual punishment not to be inflicted, Va. Const., § 9
Conviction, to disqualify voter, Va. Const., § 23
Special legislation punishing prohibited .....Va. Const., § 63
Abduction, for purpose of defilement 4411
—of inmate of State hospital..4412
—evidence 4413

Sec.

CRIMES—Con.
—limitation of prosecution.....4413
Abortion 4401
—encouraging by lecture, advertisement, etc. 4401
Abusive language, use of.....4536
—over telephone.....4569
Accessories, how punished.....4764
Adulteration of drugs and food..1702
Adultery 4543
Agent, employee or servant, corruptly influencing to prejudice of principal, etc.....4712
—receiving reward for 4712
Agricultural lime, selling without certificate 1134
Agricultural seeds, violations of law with reference to.....1150
Anchoring small boats in channels of Norfolk harbor.....3687
Animals, diseased, bringing into State 915
—shipping, selling, giving away. 917
—running at large 917
—and fowls, dying from disease, failure to bury or cremate....1554
—dead, casting into water course 1782
—permitting stallion, jack or bull to run at large 4744
—running at large in villages and unincorporated communities 3550, 3551
—cruelty to 4554
—interfering with officer of Society for Prevention of Cruelty to 4556
—casting dead animal in road..4743
—leaving sick or disabled animal in road or street 4743
Apprentice, enticing away.....5313
Arson 4428-4432
—with intent to injure insurer 4436
Assigning or transferring claim against laborer with intent to defeat exemption 6557
Attempts, how punished.....4767
—to commit rape 4767
—to commit larceny 4767
—to counterfeit ballots..... 167
—to poison 4400
—to produce abortion .....t...4401
— —encouraging by lecture, advertisement, etc.....4401
—to usurp government.....4391
Automobile, operation without license 2132
—using wrong number plate....2133
—violation of laws relating to..2145
—operating for hire without license 2153
—taking without consent of owner 4490
Ballast, vessel unloading without notice 3655
—failing to produce certificate..3657
Ballast master, refusing to serve as 3653
—failure to perform duty.....3653
Bank, failing to furnish statement of financial condition..4124
—failing to publish 4124
—officer refusing assistance to examiner 4124
—officer, making false statement of condition of 4124
—unlawful use of terms bank, banker, trust 4131
—unlawfully engaging in business of 4131, 4136
—receiving deposits when insolvent 4132

Digitized by Google

Sec.

CRIMES—Con.
Bigamy 4538, 4539
Birds, killing, destroying nests, selling plumage 3365
—shooting for amusement....4566
—renting premises for 4566
Board of health, violation of rules of 1487, 1495
Boarding house, defrauding 4464
—removing baggage 4464
Brand, imitating or altering....1437
Bribery, of executive, legislative or judicial officers....4496
—acceptance of bribe 4497
—lobbying with General Assembly 4499-4501
—of officer to prevent service of process 4502
—of commissioner, Auditor, juror, etc....4503
Bridge, fast driving on....4740
—failing to pass to right on..4739
Bucket shops, keeping, etc.4714-4718
—bucketing 4714-4718
Buggery 4551
Building association, foreign, officers and agents failing to comply with law 4162
—officer or agent of making false statement 4165
Burning or destroying dwelling house, jail, vessel, asylum, etc. 4428
—other buildings....4430, 4431, 4432
—lumber, hay stack, etc....4431
—bridge, lock, dam 4433
—woods, fence, grass....4434, 4435
—of property with intent to injure insurer 4436
Burglary 4427
—entering building, etc., with intent to commit rape, robbery or murder 4438
—with intent to commit other crime 4439
—possession of tools with intent to commit 4437
Candy, sale or manufacture of adulterated 1193
Carrier, of passengers, operating excursion when prohibited....4010
Canals, injuring or obstructing..4468
Capitol Square, bringing dogs in 412, 413
—wilful and malicious injuries to Capitol and other public buildings 4482
— —to property in Capitol Square 4482
— —grounds, trees, shrubbery..4483
Cedar trees, failing to treat for rust 887
Cemeteries, graveyards, etc., malicious injuries to 4553
—violations of sepulchre 4552
Certified public accountant, violation of laws with reference to 572
Cheese, selling impure....1171
—keeping dairy in unsanitary condition 1172
In Chesapeake Bay 14
Cider, sale of misbranded....1192
Child labor laws, violations of..1814
Children, selling newspapers, etc. 1813
—inducing child under 18 years of age to commit misdemeanors, etc. 1923
—placing in homes for gain or without due inquiry as to home 1934

Sec.

CRIMES—Con.
— —violations of law relating to placing in home 1935
—desertion or non-support of..1936
—illegally seizing, taking or secreting 4409
Clams, staking in clamming ground 3232
—inspector assigning natural bed 3234
—taking with rakes or scrapes in Accomac or Northampton counties 3238
—taking with drag box....3215
—catching on Sunday 3251
—in night time 3251
—citizen interested with non-resident in catching 3253
—non-resident catching 3254
—falsely designating as Lynnhaven 3291
—violating law relating to taking, etc. 3234
Clerk of board of supervisors failing to certify treasurer's report to grand jury 2780
Clerk of the court, failing to make or certify abstract of votes 185
—failing to make out and deliver certificate of election....186
—failing to verify record....3401
—failing to note release of deed of trust, &c. 3402
—issuing duplicate certificate of allowance without order of court 3404
—failing to report to Legislature 3406
—failing to furnish list of officers to Secretary of the Commonwealth 3407
—improperly acting as attorney 3426
—issuing marriage license contrary to law 1511
—failing to perform duty relating to marriage....5074, 5094
—failing to furnish copies of convictions to superintendent of penitentiary 4948
—false certificate to special commissioner 6271
—failure to give notice of appointment of person to receive proceeds of sale 6272
Coal, dealer refusing to weigh at buyer's request 1475
Cocaine, eucaine, selling or dispensing 1695
—possession of with intent to sell 1697
—prescription for, unlawful signing and filling 1698
Cock fighting 4550
Commission merchant, offenses by 1264
Commissioner of labor, failing to answer questions or interrogatories of 1802
Common carrier, failing to receive and receipt for freight..3927
—refusing to accept bond of employee 3935
Common law offenses, how punished 4760
Compounding offenses 4513
Condimental stock and poultry food, sale of without license..1249
Conspiracy, to cause wife to commit adultery 4544
—by convicts 5050

Digitized by Google

Sec.

CRIMES—Con.
—with seines in Holston and New rivers 3200
—unlawful fishing in Powell's river 3201
—unlawful, in Mattaponi, Pamunkey, York and Elizabeth rivers 3202, 3204
—in Back Bay 3203
—unlawfully taking trout or bass 3195, 3196, 3210
—non-resident fishing without license 3210
—unlawful by non-resident....3211
—non-resident holding stock in corporation engaged in fishing business 3254
—violating laws relating to Potomac river 3303, 3305
Fishing shores, disturbing, 5291, 5292
Flour, adulterated, failure to brand 1194
—sale of in barrels below standard 1474
Food, misbranded or adulterated, selling 1177
—adulterated, selling or manufacturing 1189
—diseased or unwholesome, selling 1218, 1219
—transportation or storage under unsanitary conditions..1220
—adulteration of 1702
—forgery, of public record, certificate, return, etc. 4484
—uttering 4484
—of seal of State, court or corporation 4485
— —keeping instrument for....4485
—coin and bank notes....4487
— —uttering 4487
— —having in possession....4490
—of other writings 4489
—making or having in possession anything designed for forging any writing....4488
Fornication 4543
Foundries, failure to provide ventilation 1833
—toilets, washrooms....1834
Fowls, dying from disease, failing to bury or cremate 1554
—poisoning, wounding, etc....4467
—shooting for amusement 4566
— —renting premises for....4566
Fraternal benefit society, fraud in securing certificate of membership 4304
—fraudulently obtaining money from 4304
—making false statement in report of 4804
—unlicensed, soliciting membership in 4304
—violation of law relating to..4304
Fraudulent sale, removal, etc., of mortgaged chattel 4455
—failure to pay for or return goods delivered on approval..4456
Fraudulent entry by officer, or clerk of bank or joint stock company 4457
Fraudulent sale of goods marked "sterling" or "sterling silver" 4461
—of goods marked "coin" or "coin silver" 4462
—of articles made of gold....4463
Fraudulent sale of stocks, bonds, town lots, etc....4465

Sec.

CRIMES—Con.
—sale or pledge of goods of another and failing to pay over proceeds 4453
—failure to perform promise to deliver crop, etc., in return for advance of money 4454
—buying or receiving railroad iron, brass, pig iron, metal, etc. 4456
—buying or receiving house fixtures 4449
Game, violations of law relating to shipment of 3361
Game laws, officer failing to perform duty 3341
Gambling, keeping gaming table, etc. 4676, 4685
—permitting on premises 4677
—acting as doorkeeper, guard, etc. 4678
—hindering arrest or seizure....4678
—betting or playing at, 4679, 4681, 4686
— —in public place....4679, 4681
— —what is public place 4680
—bookmaking, pool selling, etc. 4682
—on race outside of State....4683
—keeping or exhibiting slot machine 4676, 4685
—betting or wagering 4686
—conducting or being interested in game played for money....4687
—keeper of ordinary permitting at 4688
—letting out-house, etc., for....4690
—winning at by cheat or fraud.4691
—betting on election 4692
—conducting lottery or raffle....4693
—betting on horse race run on road, street, bridge or landing 4741
Gas company, injury to or destruction of property of....4478
—unlawful interference with meter 4478
Gates, leaving open 4480
General Assembly, altering, secreting or destroying bills or resolutions pending in.... 310
Gensing, digging out of season..4710
Goods levied on, removing, destroying, etc. 4447
Grand jury, officer failing to summon 4862
—juror failing to attend....4862
Guaranty company, agent of doing business while company is in default....4209
Harbor master failing to perform duty 3691
Harbor laws, violation of....3690
Hiring horse, automobile, etc., wilfully or negligently injuring 4567
—rehiring 4567
—with intent to cheat 4567
Horse race, entering horse disguised or under false name..4684
House of ill-fame, keeping....4543
House of prostitution, violation of injunction against 1524
—keeping intoxicating liquor in.4687
Hotel, obstructing inspector....1593
—failing to pay fee for inspection 1592
—failing to disinfect rooms.. .1594
—failing to post warnings and directions as to use of gas....1607
—defrauding 4464
—removing baggage 4464
Hunting without license....3337

Digitized by Google

Sec.
CRIMES—Con.
—transferring license 3337
—using another's license.....3337
—on land of another without permission 3338
—procuring license by false statement, altering or changing 3339
—unlawful 3356
Husband or parent, deserting or failing to support wife or child 1936
Hypnotism, mesmerism, practice of 4721
Inciting colored persons against white 4392
—white against colored 4392
Ice cream, failure to sterilize containers for 1204
—below standard, selling and serving 1217
Insane persons, hospitals, etc., violation of law by officers 1060
Insane persons, mistreatment of..1062
—aiding in escape of 1063
—disorderly conduct on hospital grounds 1064
—giving ardent spirits or narcotics to 1065
Insignia of trade's union, society, association, unauthorized wearing or use of 4719
—of Southern cross of honor...4719
Inspection, false marking or branding 1441
Insurance, officer failing to perform duty under law relating to 4192
—agent doing business while company is in default 4209
Insurance company, doing business illegally 4223
—refusing to exhibit books....4223
—officer making false statement in report 4230
—promoter selling stock in violation of law 4239
—false or misleading statement by 4241
Intoxicating liquor, selling, keeping or storing for sale, soliciting or receiving orders for, manufacturing or transporting 4584, 4585
—acting as agent of buyer or seller 4584, 4585
—drinking, giving away..4584, 4585
—violation of law by druggist .4593
—false affidavit to purchase from druggist 4597
—prescription for unlawfully issued by physician 4598
—druggist or hotel keeper, violating law as to shipment of .4605
—keeping, selling, etc., at lodges, fraternity houses, clubs, etc. 4606
— —in house of prostitution....4607
—violations of law relating to advertisement of 4609
—handling draft, etc., in payment for 4610
—common carrier receiving orders or collecting money for 4611
—maintaining nuisance 4623
—drinking in public place 4631
—transportation company, or employee, failing to keep record 4632
— —delivering without affidavit 4634
— —to person other than consignee 4634
—procuring delivery by transportation company by false affidavit 4634, 4638
— —failure to make affidavit in duplicate 4654
—giving to person of intemperate habits, drug addict or minor 4639
—sending minor or female to obtain 4639
—possession by minor 4641
— —as agent for another person 4641
—female ordering, receiving or having in possession 4642
—hotel, employee, assisting guest to obtain 4650
—proprietor of hotel or of house of private entertainment permitting employee to assist guest in procuring 4651
— —failure to discharge convicted employee 4651
—hotel or boarding house, keeping ardent spirits in.....4652
—failure of physician to make prescription in duplicate.....4654
—transporting in vehicle.....4657
—transferring estate to evade law 4670
—grinding malt to be used in manufacture of 4671
Intoxicated person, running automobile, engine, etc.....4722
Junk dealer, failing to keep books 4711
—failing to report to police....4711
—changing form of article bought 4711
Juror, officer corruptly summoning to act partially 4519
—procuring to be summoned....4520
—intimidating or impeding.....4525
—fraud in drawing 4526
—on inquest out of court, penalty for failing to attend 4984
Kidnapping, with intent to extort money 4407
—to sell as slave 4408
—inmate of State hospital.....4412
Larceny of oysters 3233, 3237
—possession of tools with intent to commit 4437
—grand 4440
—petit 4440
—of animals 4440
—sand from banks of Potomac river 4441
—bank notes, checks, account books 4442, 4443
—of things affixed to freehold..4444
—of dogs 4445
—removal, destruction, etc., of goods levied on 4447
—receiving stolen goods as....4448
—embezzlement as 4451
—of public funds by officer....4452
—sale or pledge of goods of another and failing to pay proceeds 4453
—failure to perform promise to deliver crop, etc., in return for advance of money 4454
—fraudulent sale, removal, etc., of mortgaged chattel.....4455
—failure to pay for or return goods delivered on approval..4456
—obtaining money or other property by false pretenses as....4459

Digitized by Google

Sec.

CRIMES—Con.
—when possession of stolen goods by junk dealer is.....4711
Laundry, violation of regulations 1545
Law, practicing without license.3422
Lewd and lascivious cohabitation 4545
License of merchant, refusal to testify in investigation of purchases 2366
License, applicant for failing to answer interrogatories 2366
—doing business without, each day a separate offense.....2380
License laws, violation of.....2393
Life insurance, agent or physician fraudulently causing procurement of policy.....4248
Live stock, poisoning, wounding, etc. 4467
—giving false pedigree 4460
—obtaining registration by false pretenses 4460
Lobbying with General Assembly 4499
—employing persons to lobby with 4500
— —exceptions 4501
Log brand, erasing, altering, etc. 3581
Lynnhaven river, polluting.....3290
Malicious injuries, to capitol and other public buildings.....4482
—to property in Capitol Square..4482
— —grounds, trees, shrubbery..4483
—to cemetery, graveyard, etc.. 4552, 4553
Malicious trespass, dog as subject of 4445
—defacing, injuring, taking, etc., personal or real property....4479
—monument, trees marking boundary, etc. 4479
Manslaughter, voluntary, punishment 4396
—involuntary, punishment 4397
Marriage, within prohibited degrees 4540
—leaving State to evade law..4540
—former husband or wife living.4538
—without license or contrary to law 4542
—clerk of court issuing license contrary to law 4541
— —failing to perform duty, 5074, 5094
—of white and colored person..4546
— —performing ceremony 4547
—failing to return license and certificate to clerk's office....5074
Maternity hospital, violations of law by 1930
Meat, selling unsound 1183
Medicine, violation of laws relative to practice of 1623
—false oath of person licensed to practice 1612
Milk, sale of adulterated.....1197
—cheese manufacturer improperly disposing of 1197
—selling impure 1171
—keeping dairy in unsanitary condition 1172
—failure to sterilize containers for 1204
—selling and serving below standard 1217
Milk fat, improper testing for. 1210, 1211
Millfeed, bran, etc., sale of adulterated 1196

Sec.

CRIMES—Con.
Minors, furnishing cigarettes, tobacco, pistols, etc., to.....4695
—furnishing toy firearms using explosive charges 4697
—student, giving credit to.....4707
Miscegenation 4546, 4547
Misdemeanors, what crimes are.4758
Mines, inspector, failure to perform duty 1837
—failing to warn or instruct employees 1842
—failure to provide proper conditions of labor for 1843
—violations of law relating to machinery, appliances, signals, inspection, etc. 1844
—employment of incompetent engineer 1845
—interfering with engineer or machinery 1846
—failure to provide roadways and refuge holes 1846
—violation of law relating to ventilation of 1850, 1853
—permitting accumulation of coal dust 1850
—explosives in 1851
—violation of law relating to protection of employees from gas 1856, 1860
—fire boss, violations of law relating to 1860
—violations of law relating to safety lamps 1862
—violations of law relating to .1865
—employment of minors or females in, false affidavit ..1871
—employees, doing prohibited acts 1872
—failure to report accident in..1873
—failing to make report to inspector 1874
—violating instructions of inspector 1875
—illegal blasting 1876
—steam locomotive, use in.....1877
—failure to adopt and post rules.1878
—electricity, prohibited voltage, failure to protect wire.....1879
—sale or use of improper illuminating oil in 1882
—refusng to permit inspector to test oil 1883
Monument, tree, boundary marks, etc., injuring or defacing 4479
Morphine, etc., sale of.. 1695
—furnishing to habitual user..1695
Murder, first degree 4393
—punishment 4394
—second degree 4393
— —punishment 4395
—killing in duel out of State by agreement made within... 4416
— —accessories 4417
—death of passenger on railway caused by injuring switch, engine etc. 4469, 4474
— —on railroad train or vessel caused by shooting or throwing stones at 4473
Name of another, unauthorized use of 1463
—unauthorized use of name or portrait of person for advertising purposes 5782
—unlawfully changing or assuming another 5983
Navigation, interference with or destruction of buoy, etc.....4756
—anchoring on range of lights.4757

Digitized by Google

Sec.

CRIMES—Con.
Notes to circulate as money, issuance 4698
—passing or receiving in payment 4699
—issued by bank for less than five dollars, bringing in State or passing 4700
—for less than five dollars, issuing 4701
—scrip 4703
Nursery stock, transportation of uncertified 874
—delivering or giving away uninspected nursery stock..... 879
—selling, &c., nursery stock without having certificate of registration 882
Nursing, violations of law relating to 1710
—false representation in application for license 1712
Obscene literature, printing, publishing, distributing 4549
Obstructing justice, by intimidating or impeding judge, justice, juror, etc. 4525
—fraud in drawing jury.....4526
Officer, of State, failing to produce books and vouchers for inspection 558
—failing to account for fines collected 2546
—receiving other than United States currency for taxes and debts due State ..... .2606
—buying or selling coupons from State bonds 2606
—failing to keep record of coupons received 2606
—failing to perform duty in election for forming new county.2678
—failing to assist officer with process 2822
—failing to assist in preservation of the peace 4511, 4512
—failing to execute process of arrest 4510
—having interest in contract with State institutions, public trust, etc.....4706
—failing to return recognizance or taking insufficient bail....4887
Oleomargarine, unlawfully selling, keeping or using.....1201
—sale of unlabelled or unbranded 1203
Opium, morphine, etc., sale of..1695
—furnishing to habitual user..1695
—use of in manufacture of cigarettes 4696
Optometry, violations of law with reference to practice of, 1636, 1637
Orchard inspector, refusal to obey orders of 901
Oyster inspector, failing to report, account, &c. 3222
—assigning natural oyster rock or clam bed 3234
—failing to perform duty.....3267
—failing to inspect and seal measures 3273
Oysters, staking in natural oyster rock 3232
—larceny of 3233, 3237
—injuring or removing boundary marks on oyster grounds.3235
—taking with rakes or scrapes in Northampton or Accomac counties 3238
—packer, shucker or buyer, dealing without license or making false report 3239
—taking in closed season, or with patent tongs 3240
—failing to register boat used in taking 3241
—taking without license 3243
—taking or selling under size..3244
—taking with drag-box.....3245
—illegally taking with scrapes and dredges 3246, 3248
—carrying seed oysters out of State without permit 3249
—buying or carrying seed oysters without permit 3250
—carrying out of James river during closed season without permit 3251
—catching on Sunday 3251
— —in night time 3251
—using illegal measure for 3252
—citizen interested with non-resident in catching or planting 3253
—non-resident catching 3254
—officers failing to perform duty in enforcement of law 3267
—taking for conversion into lime 3272
—roughing or taking without culling 3274
—having scrape or dredge in Pocomoke Sound 3280
—removal from polluted areas..3287
—falsely designating as Lynnhaven 3291
Pandering 4579
—receiving money for placing female in house of prostitution 4579
—detaining in for debt 4579
Parent failing to support child..1935
Parent or guardian permitting boy under ten or girl under sixteen to sell newspapers, magazines, etc. 1813
Peach trees infected with yellows, selling 905
Pension, purchase of 2658
—perjury in application for....2660
—falsely certifying fact.....2660
Perjury 4493, 4494
—subornation of 4494
—false swearing before State Accountant 559
—false oath of person licensed to practice medicine 1612
—in application for pensions....2660
—of witness before city council, fire or police commissioner 2985
—before State Corporation Commission 3724
—false statement to collector of canal tolls 4020
—false swearing before commissioner of insurance 4189
—by officer, director or incorporator of insurance or guaranty company 4206
—officer of insurance company, false statement in report of..4230
Petit larceny 4440
—second and subsequent convictions of 4785
Petit treason, punished as murder 4761
Pharmacy, violation of law relative to practice of 1657, 1659
Physician, failing to report contagious disease 1515

Digitized by Google

Sec.

CRIMES—Con.
—obstructing commission 4057
Terrapins, citizen interested with non-resident in catching.....3253
—non-resident catching 3254
—taking out of season.....3297
—diamond back, taking out of season or undersize 3298
Threats of bodily injury 4537
Timber, marked, destruction or conversion of 1447
—unauthorized use of brand or trade mark 1450
—branding iron, unlawful use of, counterfeiting, etc. 1451
—fraudulent branding 1452
—conversion of branded 1453
—unmarked, failure to cause sale of 1454
Timber brands, defacing or fraudulently using 1447
Tobacco, falsely marking or branding 1358
—sold, failure to keep account of 1365
—sending to wrong warehouse.1397
Tobacco, sampler dividing fee..1384
—warehouseman giving bonus or rebate 1384
—person receiving 1384
Tobacco inspector or sampler giving false receipt or note..4708
Tolls, ferries and bridges, refusal to pay 2071
Towel, furnishing for common use in public place 1517
Trade marks, counterfeiting, selling goods with false 1456
—fraudulent representation in procuring registry 1459
—displaying without authority..1461
Transportation company, officer or agent, transporting at less than regular rates.....3912, 3918
—discrimination by 3914
—person falsely obtaining transportation for less than regular rates 3913
—failure to obey trackage regulations 3921
—transportation of explosives..3923
—obstructing or hindering State Corporation Commission 3924
—failing to furnish reports to State Corporation Commission.3924
—failing to obey rules and regulations of 3925
Trapping fur-bearing animals, violations of law relating to..3354
Treason, definition and punishment for 4389
—misprision of 4390
— —punishment 4390
—attempting to usurp government 4391
Trespass, dog as subject of....4445
—to cemetery, graveyard, etc., 4552, 4553
—to real or personal property..4479
—monument, tree marking boundary, etc.....4479
Truck barrel, use or sale of, below standard 1472
Trustee, failing to make statement of disbursements, etc....5408
Tuberculosis, suspect in State institution, failure of officer to report 1546
—failure to segregate 1547
—failure to disinfect apartment, 1548, 1549

Sec.

CRIMES—Con.
—letting apartment previously occupied by patient 1549
Turnpike company, violating law relating to tolls 4084
Unlawful assembly, judge or justice failing to suppress 4529
—killing in suppression of....4529
—punishment 4532
Underwriters' agency, violation of law by 4314
Vagrancy 2809
Vessel, making fast to county bridge 1995
—licensed for fishing, concealing name or number of 3177
—having scrape, dredge or patent tongs aboard 3177
—vessel unloading ballast without notice 3655
— —failing to produce certificate 3657
—improperly burying dead bodies from 3659
—landing sick seaman 3660
— —passenger without provision for maintenance 3660
—obstructing ferry-boat 3686
—destroying or injuring vessel or property on.....4466
—shooting at, or throwing missles at 4473
—failing to sound steam whistle on James river 4755
Veterinary medicine and surgery, illegal practice of 1279
Vinegar, sale or manufacture of adulterated 1191
Vital statistics, certificate, failure to make 1581
—false 1581
—altering 1581
—violations of law with reference to 1581
Warehouseman issuing receipt containing false statement, 1340, 1342
—delivering goods without obtaining receipt 1343
—issue of receipt for goods not received 1339
—issue of duplicate receipt not so marked 1341
—depositing another's goods in warehouse or negotiating receipt for mortgaged goods....1344
Warrants, discounting 684
Water courses, pollution of....1782
—obstruction of by dam or other thing 4747
—casting timber into river or creek, injuring bridge or boat, etc. 4746
Obstruction of navigation of Mattaponi or Pamunkey river.4748
—obstructing navigation or fish on Sycamore Mill Creek.....4749
—placing weir or hedge in Rappahannock Creek 4750
—obstructing landings by throwing oyster shells into water 4751
—obstructing navigation of prongs of Big Sandy River..4752
—failure of land owners in Rockingham county to keep streams free from obstructions 4753
—placing dam or obstruction in Sandy river 4754
Water, drinking, pollution of..1784

Digitized by Google

Sec.

CRIMES—Con.
Water supply of cities and towns, pollution of 1783
Water works, failure to obtain permit to supply water 1793
—disobeying orders of board of health 1793
Weapons, carrying concealed...4534
—black-jack, knucks, etc., selling, furnishing, etc.....4535
—carrying on Sunday or to place of religious worship 4578
Weights and measures, superintendent or sealer, neglect of duty 1482
—use of, not sealed 1482
Wharves, building without authority of harbor commissioners 3675
—failure to repair 3676
—failure to provide accommodations for passengers at 4026
—failure to provide separate accommodations for white and colored persons 4026
Wild turkey, buying or selling..3358
Will, fraudulently destroying or concealing 4458
Wrecks, failure to render aid to.3600
—disobeying orders of commissioner 3602
—interfering with.....3605

CRIMINAL PROCEDURE
See also "Crimes"
Accessories, when and where tried 4766
Accused not compelled to give evidence against himself, Va. Const., § 8
—may testify 4778
—effect of failure to testify....4778
—trial for misdemeanor in absence of 4883, 4888, 4889
—presence of in prosecution for felony 4894
Acquittal, when a bar to further prosecution 4773
—when not a bar 4773, 4774
—offense against two or more statutes or ordinances 4775
Adjournment of trial by justice 4839
Amendment, of indictment for misnomer 4875
—of indictment for misdemeanor 4876
—of indictment for treason or felony before plea 4877
— —after plea 4878
—of warrant, on trial of appeal from justice 4989
Appeals, jurisdiction of Supreme Court of Appeals..Va. Const., § 88
—when allowed Commonwealth, Va. Const., §§ 8, 88
—from decision of mayor of town 3011
—from civil and police justice..3106
—from convictions before justices of the peace and police justices 4989, 4990
Approvers, not admitted in any case 4777
Arraignment, on amended indictment 4878
Arrest, warrant, who to issue..4823
—when to issue, how directed, executed and returned 4824
—where executed 4825
— —police to execute 2991
—to carry accused to another county or corporation.....4827

Sec.

CRIMINAL PROCEDURE—Con.
—by city police officer at park, etc., outside city limits.....3005
Arrest of judgment, defects in indictment not sufficient for..4879
—for failure of record to show venire facias 4895
Bail 4828-4837
—excessive not to be required, Va. Const., § 9
—General Assembly may make provisions for ....Va. Const., § 109
—when obligation taken by officer void 2824
—in proceeding against person intending to commit crime....4792
—allowance by justice, 4828, 4837, 4845
—allowance by court or judge, 4829, 4834
—allowance by bail commissioner 4830, 4834
— —of adjoining county..4831, 4834
—allowance where judge of corporation court is sick or absent 4832, 4834
—refusal to grant or requirement of excessive, appeal, 4829, 4830
—increasing amount of....4831, 4832
—surety on taking security from principal 4836
—allowance to accused arrested out of county where offense committed 4837
—bail piece, delivery to bail..4838
—after conviction 4930
—writ of error to judgment refusing or requiring excessive..4930
—on appeal from conviction before justice 4989
—in extradition proceedings....5063
—in habeas corpus proceedings, 5853, 5859
Bail commissioner, allowance of bail by 4830, 4831, 4834
—fees 4835
—certification of recognizance to clerk of court 4847
—attachment for failure 4847
—recognizance required 4972
— —how payable, penalty, condition 4973
— —waiver in 4974
— —for insane person or minor.4975
— —commitment on failure to give, d'scharge 4976
— —where to be sent when taken out of court 4977
—entry of default 4978
— —proceedings on 4978
—discharge of surety on payment 4979
— —on surrender of principal..4982
— —certificate to surety 4983
—bailing again 4983
—remission of penalty 4980
—defects of form not to defeat action on 4981
—of accused by justice 4839
— —procedure when accused fails to appear 4840
— —on commitment for trial, 4845, 4846
— —certificate of to clerk of court 4846, 4847
— —order discharging 4850
—of accused and witnesses when venue changed 4915
Benefit of clergy disallowed...4761
Bill of particulars in prosecution for embezzlement 4451

Digitized by Google

Sec.

CRIMINAL PROCEDURE—Con.
Burden of proof, in prosecution for bringing diseased animals into State 915
—in proceeding to test person's right to practice medicine....1614
—in prosecution of non-resident for unlawful fishing 3212
—in prosecution of non-resident for engaging in fish or oyster business 3254
—possession of intoxicating liquors for personal use 4584
—in prosecution for grinding malt to be used in manufacture of ardent spirits 4671
Capias or summons issued when indictment or presentment found or information filed, 4881, 4882, 4889
—against corporation 4892
Cases, setting for trial 4967
Change of venue 4914-4916
—special laws prohibited, Va. Const., § 63
Commitment of accused by justice 4839, 4841
—order 4841
— —further examination 4841
— —for trial 4845, 4846
— —certificate to clerk of court, 4846, 4847
— —order superceding 4849, 4850
Concurrent jurisdiction, of violations of mining law.....1886
—of circuit courts, justices and juvenile and domestic relations courts 1950
—of police justice with corporation court 3094
—of civil and police justice with corporation court 3102
—of offenses committed on water 3213
—of offenses in Potomac river..3299
—of violations of game laws..3345
—of circuit and corporation courts with justices 4987
—of trial justice and justice of the peace 4988
Continuance when indictment or presentment amended, 4876-4878
Convicts, crimes by, prosecution for 5053-5058
—proceeding to impose additional punishment for second offense 5054
Costs, in prosecution for violation of pure food laws....1190, 1223
—in prosecution of mine operator for refusing to permit test of oil 1883
—in prosecution for violation of revenue or license laws.....2396
—in prosecution for violations of game and fish laws 3343
—witness' fees 4957
— —payment by prosecutor, when 4958
— —payment by Commonwealth in misdemeanor case, when..4959
—allowance to officers in cases unprovided for 4960
—certificate for allowance to officers 4961-4968
—execution for 4964
—failure to present claims for in time 4965
—fees of Commonwealth's attorney, when paid from treasury.4966

Sec.

CRIMINAL PROCEDURE—Con.
—security for costs by prosecutor 4967
— —dismissal for failure to give 4967
—on appeal from conviction before justice 4989
— —when judgment for given by justice against prosecutor....4991
Counsel, allowance to when appointed by court 3518
—opening statements 4905
Demurrer, when filed 4907
Deposition of prosecutrix in rape case 4415
Discharge of accused for failure to indict, present or file information against in time....4880
Discontinuance, failure to award process or enter continuance not to work 4890
Dismissal of prosecution for failure of prosecutor to give security for costs 4967
Docket of cases 6244
—criminal cases disposed of before civil cases 6244
Evidence, of improper test for milk-fat 1210
—certificate of analysis in prosecution for violation of food laws as 1281
— —in prosecution for manufacturing or selling adulterated drugs 1666
—prima facie, possession of cocaine or eucaine in prosecution for having in possession with intent to sell 1697
— —in prosecution for violation of child labor laws 1815
—catching oysters without license 3242
—violation of law relating to size of oysters and shells that may be taken and sold 3244
—prosecutions for illegally taking oysters with scrapes and dredges 3246, 3247
—prosecution for violation of law relating to scrapes and dredges in Pocomoke Sound..3280
—prosecution for taking oysters out of season 3294
—prosecution for violation of game laws 3321, 3356
—violation of banking law, refusing to permit examination of books, accounts, etc.....4131
— —receiving deposits when insolvent 4131
—prosecution for seduction.....4413
— —for abduction 4413
—possession of tools with intent to commit burglary, robbery or larceny 4437
—possession of house fixtures in prosecution for buying or receiving with intent to defraud 4449
—possession in prosecution for fraudulently buying or receiving railroad iron, pig iron, brass, metal, etc. 4450
—embezzlement of public funds by officer, default in payment 4452
—prosecution for fraudulent sale or removal of mortgaged goods, failure to surrender or disclose location of 4455

Digitized by Google

Sec.
CRIMINAL PROCEDURE—Con.
—possession of brass knucks, black-jack, etc., in prosecution for selling 4535
—cohabitation, in prosecution for marriage within prohibited degree or between white and colored persons 4540
—character of house in prosecution for keeping house of ill-fame 4548
—possession of slot machine in prosecution for keeping or exhibiting 4685
—prosecution for keeping bucket shop or bucketing 4717
—statement of accused, when not received as 4781
—sufficiency of proof of allegation of larceny, etc., of currency 4870
—what proof of ownership of property sufficient 4872
—husband and wife as witnesses for or against each other 6211
— —presumption from failure to testify 6211
— —communications between, privileged 6212
—impeachment of witness by prior inconsistent statement in writing 6216
Examination and commitment, bringing person arrested before justice 4826
—commitment 4839, 4841
— —order 4841
— —further examination 4841
— —for trial after examination 4845, 4846
— —certificate to clerk of court 4846, 4847
— —order superceding...4849, 4850
—examination by justice..4842-4846
— —separation of witnesses....4843
— —testimony may be reduced to writing 4844
— —trial and sentence when..4845
— —commitment to answer for offense 4845
— —commitment and recognizance 4846
— —return of proceedings to clerk of court 4847, 4848
—association of other justices, disagreement 4848
— —discharge of person committed by compromise 4849
— —order for 4849
— —payment of costs 4849
— — —judgment for 4850
—discharge of person committed, order 4850
Extradition of fugitives from justice 5059-5070
Felony, conviction of only on confession of guilt or verdict of jury 4776
—how term of imprisonment or fine ascertained 4783
—how punishment ascertained..4784
—trial at term at which indictment was found 4893
—accused to be present 4894
—when court to enter plea of not guilty 4894
Fine, proceeding to recover, 2543-2545
—for refusing to testify in investigation of merchant's purchases 2366

Sec.
CRIMINAL PROCEDURE—Con.
Former acquittal, as bar to further prosecution 4773, 4774
—offenses against two or more statutes or ordinances.....4775
Former jeopardy ....Va. Const., § 8
—in prosecution for duelling or homicide outside of State....4422
Fraudulent sale of stock, bonds, town lots, etc., prosecution of to be by indictment or presentment 4465
Indians, proceedings against...4968
Indictment, how to conclude, Va. Const., § 106
—for fraudulent sale of stock, bonds, town lots, etc.....4465
—allegations in indictment for perjury or subornation of perjury 4869
—sufficient allegation of embezzling or fraudulently converting money 4870
—sufficiency of allegation of forgery or uttering 4871
—omission of unnecessary allegations in indictment 4874
—what defects in not to vitiate 4875
—what defects not sufficient to cause judgment to be arrested or reversed 4879
—capias or summons on, 4881, 4882, 4889
—against corporation 4892
—trial of misdemeanor on.....4889
—for felony, within what time accused must be tried or forever discharged 4926
—discharge for failure to indict 4880
Information, prosecutions by...4865
—when may be filed 4866
—process for appearance of accused 4866
—name of prosecutor to be written on, when 4867
—discharge of accused for failure to file in time 4880
—capias or summons on, 4881, 4882, 4889
—against corporation 4892
— —trial of 4892
—when not necessary on presentment 4888
Insane persons, not to be tried while insane 4908
—trial to determine sanity or insanity 4909
—after conviction 4910
—commitment to hospital, 4909, 4910, 4913
—returned to jail when restored to sanity 4911
—sentence or trial of prisoner when restored to sanity 4912
—verdict of acquittal because of to state the fact.....4913
— —commitment to hospital....4913
—disposition of convicted insane person when restored to sanity 1045
Intent, sufficiency of allegation of 4873
Intoxicating liquors, recognizance of accused to answer indictment 4613
—of witnesses 4613
—bond of accused not to violate law 4613
—United States revenue tax receipt as evidence 4618, 4620

Digitized by Google

Sec.

CRIMINAL PROCEDURE—Con.
— —analysis by commissioner of agriculture as 4621
— —record kept by transportation companies as 4632
—fees to witness and officers....4655
—when possession is evidence of intent to sell 4666
Judge disqualified, designation of another judge to try case....4917
Jurisdiction over crimes committed in Chesapeake Bay 14
—reciprocal between Virginia and Maryland 15
—of misdemeanors on Capitol Square 413
—of prosecutions for transporting or storing food under unsanitary conditions 1220
—of proceeding to recover fines.2544
—of town or city, extends how far 3006
—of justices of the peace.....4987
—of police justice 3094
—of civil and police justice....3102
—of offenses committed on water 3212
—of prosecution for allowing animals to run at large in villages and unincorporated communities 3551
—of prosecution for building wharf without permit from harbor commissioners 3675
—of violations of law relating to separate railroad cars for white and colored passengers..3969
—of violations by railroad of law relating to caboose cars 4016
—of homicide, death outside of State 4398
—of prosecution of homicide committed in duel out of State 4416, 4417
—of duelling out of State.....4421
—of prosecution of railroad company for transportation on Sunday 4574
— —of steamboat company....4575
—of trial of accessories 4766
—of offenses committed wholly or partly outside of State....4769
—of larceny or robbery committed outside of State 4769
—of death without State from injury inflicted within 4770
—of death or injury without State inflicted by one within.4770
—of offenses committed on boundary of two counties....4771
—of death in one county from wound inflicted in another..4772
—of trial of convicts 5053
—of circuit courts 6890
— —special term 5894, 5896
—of corporation courts 5910
—of hustings court of Richmond 5913
—of hustings court of Richmond, Part II 5914, 5933
Jury, unanimous verdict, Va. Const., § 8
—clerk to issue venire facias for 4893
— —in felony case, what to command 4895
— —second writ 4896
— —when may issue 4897
—irregularity in, effect of.....4895
—jury list 4895
—completion of panel 4896

Sec.

CRIMINAL PROCEDURE—Con.
—fine of person summoned for failure to attend 4896
—challenges, number allowed, how tried 4898
—number of jurors, for trial of felony 4900
— —for trial of misdemeanor..4927
— — —Va. Const., § 8
—disqualification for opposition to capital punishment 4899
—selection of panel 4900
— —of jury from.....4900, 4927
—trial without jury upon plea of guilty 4900, 4927
— —Va. Const., § 8
— —on plea of not guilty 4927
— —Va. Const., § 8
—when summoned from another county 4901
—when to be kept together....4902
—expense of boarding.....4902
—swearing new juror, when....4903
—discharge of jury, when unable to agree 4903
—challenges, felony cases where defendants tried jointly.....4904
—opening statement of counsel.4905
—to try sanity or insanity of accused 4909, 4910
—verdict when acquittal because of insanity 4913
Limitation of prosecutions.....4768
—of trial of indictment for felony 4926
—violations of revenue laws....2397
Misdemeanor, jurisdiction of police justice to try.....3094, 4987
—of civil and police justice....3102
—of justices of the peace.....4987
—of circuit and corporation courts 4987
—how punished when no other punishment prescribed 4782
—trial in absence of accused, 4883, 4888, 4889
—trial of on presentment 4888
— —on indictment or presentment 4889
—trial of on warrant.....4987-4991
—trial without warrant 4992
Misnomer, amendment of indictment for 4875
New trial, for irregularities in venire facias, impanelling jury, etc. 4894
—of what crime accused may be convicted on another trial....4913
Opening statement of counsel..4905
Outlawry abolished 4891
Plea of former acquittal as bar to further prosecution..4773, 4774
—in prosecution for violation of revenue laws 4773
—when not bar 4774
—offense against two or more statutes or ordinances 4775
Plea, number of, when filed....4907
—in abatement, when filed and tried 4907
Plea of not guilty, trial by court 4927
—Va. Const., § 8
—when court to cause plea of not guilty to be entered 4894
Plea of guilty, trial on.....4900
—Va. Const., § 8
—in case of misdemeanor.....4927
—conviction on 4776
—to indictment for murder, court to ascertain punishment 4919

Digitized by Google

Sec.

CRIMINAL PROCEDURE—Con.

Presentment, duty of grand jury to make 4859
—how made 4860
—effect of irregularity in selecting grand jurors 4861
—prosecutions to be by.....4865
—process for appearance of accused 4866
—name of prosecutor to be written on, when 4867
—process on, capias or summons 4881
— —how awarded, directed, returned and executed 4882
— —when issued 4889
— —mailing to officers in other counties 4884
— —execution throughout State.4885
— —against corporation 4889
—amendment of 4876
—trial of misdemeanor on 4889
—when information need not be filed on 4888
—discharge of accused for failure to find in time 4880
—for violation of rules of crop pest commissioner 871
—for public nuisance 1520
— —trial, judgment 1520
—to recover fine for refusing to testify in investigation of merchant's purchases 2366
—for recovery of penalty for violation of license or revenue laws 2S94, 2396
—for recovery of fines....2543-2545
—for fraudulent sale of stock, bonds, town lots, etc.....4465
Presumption, of chastity of female in prosecution for seduction 4410
—in prosecution of druggist for unlawful sale of intoxicating liquors 4595
—in prosecution of keeper of ordinary for permitting gambling 4689, 4690
Process, issued when indictment or presentment found or information filed 4881, 4882, 4889
—against corporation 4892
—when not necessary after indictment, presentment or information 4866
—prosecutions, to be by indictment, presentment or information 4865
Prosecutor, name written on indictment, information or presentment 4867
—entered of record 4867
—security for costs 4867
—dismissal for failure to give..4867
—judgment for costs against..4868
Punishment, how ascertained. 4783, 4784
—cruel and unusual punishment not to be inflicted. Va. Const., § 9
—common law offenses, how punished 4760
—for misdemeanor when no other punishment is prescribed 4782
—conviction for two or more offenses, confinement for second, term to commence after previous term expires 4786
—allowance of time accused was confined in insane hospital..4910

Sec.

CRIMINAL PROCEDURE—Con.

—sentence of death, execution, time for 4940
— —who to execute 4941
— —death chamber 4941
— —manner of execution, who to be present 4947, 4942
— —execution, certificate of....4943
—reprieve, writ of error, stay of execution 4944
— —reconveyance to place of trial 4944
—publication of details of execution prohibited 4945
—disposition of body of convict 4946
—confinement for failure to pay fine 4949
— —limitation of 4949, 4953
— —hiring out 4950
— —obligation of hirer 4951
— —release 4952
—fieri facias for fine and costs..4953
—when term of imprisonment to commence 5019
—additional punishment of convict for previous conviction...5054
Recognizance, required when bail given 4972
—how payable, penalty, conditions 4973
—waiver in 4974
—for insane person or minor..4975
—commitment on failure to give, discharge 4976
—where to be sent when taken out of court 4977
—entry of default 4978
— —proceedings on 4978
—discharge of surety on payment 4979
— —on surrender of principal..4982
— —certificate to surety.....4983
— —bailing again 4983
—remission of penalty 4980
—defects of form not to defeat action on 4981
Recognizance of accused by justice 4839
—procedure when accused fails to appear ... .4940
—on commitment for trial, 4845, 4846
—certificate of to clerk of court 4846, 4847
—order discharging 4850
—proceeding to require of person about to commit crime, 4790-4794, 4802
— —of person going armed....4795
— —about to commit breach of peace 4796
—of witnesses when venue changed 4915, 4916
Search warrants 4819-4822
—general warrant for search and seizure prohibited. Va. Const., § 10
—special police may execute...4801
Sentence, suspension of in certain cases 4486, 4930
—judgment not to be suspended 4926
—cruel and unusual punishment not to be inflicted, Va. Const., § 9
—additional sentence of person previously convicted 4785
—on second or subsequent conviction for petit larceny.....4785
—commencement of sentences in

Digitized by Google

Sec.

DAGGER—Con.
worship or on Sunday, punishment 4578

DAIRY
Inspection and assistance by Dairy and Food Commissioner 1170
Warning and punishment for unsanitary conditions, etc.. 1171, 1172
Registration 1173
—fee 1173
Report 1173
Adulterated milk, sale of, penalty 1197
Cheese, manufacturers improperly disposing of cream.. 1197
Receptacles, sterilization of.... 1204
Measuring utensils, testing and marking 1205
Centrifugal machines and scales, inspection 1206, 1209
—fee 1206
—condemnation 1206
—certificate of operator.. 1207, 1208
— —revocation 1207
Milk and cream, standard of measure, samples, improper test, penalty, evidence..... 1210
—exception 1211
Cows, test for tuberculosis. 1224-1227

DAIRY AND FOOD COMMISSIONER
See also **"Adulteration"; "Board of Agriculture"; "Brands"; "Cream"; "Dairies"; "Dairy Products"; "Food"**
Appointment, term 1155
Removal, vacancy 1156
Oath, bond 1157
Salary 1158
Deputy 1158
—appointment, salary 1158
Assistants 1158
—powers and duties, term..... 1158
—salaries 1158
Warrants, audit 1158
Office room and equipment..... 1158
Powers and duties, inspection, penalties 1160
Seizure of food and dairy products 1161
—disposition of 1162
—sample to State Chemist. 1162, 1163
—procedure to condemn... 1164
—judgment, sale, disposition of proceeds 1165, 1166
Bulletins 1168
Penalty for hindering, 1169, 1213, 1218, 1220, 3287
Fostering dairy industry 1170
Warning and punishment of one using or furnishing impure milk 1171
—maintaining unsanitary condition of dairy 1172
Dairy, cheese factory, skimming station, registration 1173
—report of to commissioner.... 1173
—fee, disposition 1173
Adulterated foods, enforcement of laws relative to..... 1174
—books, papers 1174
Report by, annual 1175, 1228
Analysis of food..... 1176, 1178
—rules for 1176, 1178
—report 1176
—assistants 1176
—notice to manufacturers, hearing 1178
—certificate, effect as evidence.. 1178
—samples for 1186
Food, meaning of term 1180
When article deemed adulterated 1181

Sec.

DAIRY AND FOOD COMMISSIONER—Con.
Meaning of "misbranded" 1181
—"blend" 1181
Foods, standards of variability in 1185
Penalties for violation of pure food law..... 1187
Manufacture and sale of adulterated vinegar 1191
Sale of cider 1192
Adulterated candy 1193
Adulterated flour 1194
Deception in sale of meal ground or milled from Indian corn... 1195
Adulterated millfeed, bran, &c.. 1196
Adulterated milk 1197
Oleomargarine, process or renovated butter 1198-1203
Measuring utensils, testing and marking 1205
—fee 1205
Centrifugal machines and scales, inspection of 1206, 1209
—entry for 1209
—fee 1206
—condemnation 1206
—certificate of operator.. 1207, 1208
— —fee 1207
— —revocation 1207, 1208
— —rules and regulations 1208
—improper test, penalty, evidence 1210
—exception 1211
Standards of milk and cream measure 1208
Enforcement of law by 1211
Disposition of fees 1212
Payment of expenses 1212
"Person" or "holder" defined.... 1214
Definition varieties ice-cream and milk 1215
Sale of milk and ice-cream below standard 1216, 1217
Prevention sale of deleterious foods 1218
—seizure and destruction 1218
—penalty 1218
Selling unsound provisions..... 1219
Transportation or storage of food under unsanitary conditions 1220
Sanitation of slaughter houses.. 1222
—rules and regulations 1222
—license 1222
—penalty 1222
"Pure food" and "feeding stuffs" laws 1223
—report of violations 1223
—report to by Commonwealth's attorney 1223
—prosecutions, fees 1223
Cattle, tuberculosis tests..... 1224
—surrender of re-acting animals 1225
— —rules and regulations. 1225, 1227
— —expenses 1227
Feeding stuffs, rules and regulations 1229, 1233
—analysis and examination. 1229, 1231
—appointments 1229
—violations of laws as to..... 1230
—report to Commonwealth's attorney 1231
—definition of 1233
—printed statement required. 1233-1236
—registration of statement of contents, sample 1235, 1237
— —cancellation 1237
—inspection tax 1239
— —tags 1239

Digitized by Google

Sec.
DAIRY AND FOOD COMMISSIONER—Con.
—registration of dealers distributors, millers 1239
— —fee 1239
Violations of feeding stuffs laws.1240
Analysis of feeding stuffs.....1241
—publication of results 1241
—notice to manufacturer.....1241
—hindering or impeding inspector 1242
Expenses, how settled 1243
—warrants 1243
Analysis at request of dealer..1244
Condimental stock and poultry food, analysis 1245
—rules and regulations 1245
—samples 1245
—publication of results 1245
—appointments 1245
Stock and poultry food, registration of brands 1246
—inspection 1246
—fee 1246, 1247
—certificate 1246, 1248
—disposition of fees 1246
—revocation 1248
Stock and poultry foods, violation of laws as to 1249
Oyster ground, oysters, &c., examination and analyses of..3281
—marking polluted areas 3282
—power to enter premises or boats 3287
— —to make arrests and seizures 3287
—enforcement of law as to.....3289

DAIRY PRODUCTS
See also "Dairy and Food Commissioner"
Examination and inspection by Dairy and Food Commissioner 1160
—penalty for unsanitary condition 1160, 1171, 1172
Condemnation of adulterated, misbranded 1164, 1165, 1166

DAMS
Special acts authorizing construction of prohibited, Va. Const., § 63
Condemnation of to establish drainage district 1747
Duty of owner to maintain road or bridge over, penalty.....1985
—railing 1985
Erection by city or town to obtain water supply, procedure, 3054-3060
To be provided with fish-ladder.3192
—penalty for failure to provide 3193
—inspection 3194
Fish dams, erection of in certain rivers prohibited, penalty 3199
Right of State to abate or remove 3576, 3577
Erection, limitation on power of courts to grant leave for....3577
Duty of mill owner as to keeping in order 3578
Mill, interfering with navigation, notice to owner.....3578
—loss of interest and right in for failure to repair 3578
—leave to erect 3585-3593
— —application 3582
— —notice 3583, 3586
— —commissioners 3584-3587
— —title to land on payment of damages 3589
— —vested rights 3590

DAMS—Con. Sec.
— —time to erect 3591
— —reversion 3591, 3592
— —unforeseen damages, action for 3593
Burning or destroying, punishment 4433
Obstructing navigation or passage of fish, deemed a nuisance, penalty 4747
—when not to be rebuilt.....4747
In Louisa fork of Sandy river, punishment for placing 4754

DAMAGES
Private property not to be damaged for public use without compensation ....Va. Const., § 58
On application by corporation for relief from assessment of taxes, failure to pay tax in advance .....Va. Const., § 180
To land and crops, how ascertained by coast survey 21-25
To land by establishment of cemetery 56
For unauthorized delivery of plat by surveyor 441
For causing patentee to resurvey 473
For negligently or wilfully allowing fire to escape 545
For causing fires 547
Failure of treasurer to pay school funds to depository.... 737
Incurred by destruction of cedar trees 891
—levy to reimburse county.... 892
Liability of common carriers violating regulations as to quarantine of live stock 912
Fertilizers, dealer's failure to comply with registered guarantee 1120
—falsely labeled 1128
—deficiency on analysis of agricultural lime 1137
Tobacco stored in public warehouse 1385
Timber, unauthorized use of brand or trade mark 1450
Trade-mark, fraudulent representation in securing registry.1459
—unlawful use of 1460
Establishment of drainage district 1751, 1752
To railroad construction by drainage district 1765
Failure of county treasurer to pay bonds issued by drainage district 1771
Mine employee, death or injury of, liability of operator.....1872
To land-owner, establishment of roads 1930
Automobiles, caused by violation of laws relating to..2146, 2148
Liability of officer's bond for, caused by neglect of duty relating to delinquent land.....2503
In judgment for debt due State..2514
Liability of deputy treasurer for failure to collect or pay over taxes 2776
—other default or misconduct..2776
County treasurer failing to pay warrant 2787
Recoverable from treasurers for violations of law 2790
Assessment of to abutting owner when street graded 3036-3039
For injuries arising from erection of dam by city or town..3059
Recovered for destruction of

Digitized by Google

Sec.

DEATH—Con.
—renewal of action 6168-6171
Of party in equity when parties exceed thirty 6172
Presumption of from absence..6239
Effect of on mechanic's lien....6442
Of grantor in deed of trust, release of, to whom made.....6456
Of officer taking property under execution, writ of venditioni exponas 6494
Of householder, homestead, 6536, 6549, 6550
—exemptions vest in widow and minor children.....6562

DEATH BY WRONGFUL ACT
Action for 5786
—parties, damages 5787
—to whom damages paid.....5788
—compromise 5789
—when right of action not to determine, nor action when brought to abate 5790
Employee of railroad engaged in intrastate commerce.....5791-5796

DEATH PENALTY
Power of Governor to commute .....Va. Const., § 73
Insane criminal, procedure when restored to sanity 1045
Execution, defense to action on life insurance policy.....4228
For treason 4389
Murder in first degree 4394
Abandoning on shore, person sick of smallpox 4399
Robbery 4405
Kidnapping 4407
Rape 4414
—attempt to commit 4767
Arson 4428
Burglary 4437
Crimes for which inflicted.....4759
Attempt to commit crime punished by, how punished 4767
Person opposed to, when disqualified for jury service....4899
Time for execution of 4940
How executed 4941-4947
Reprieve, writ of error, stay of execution 4944
For offenses by convicts 5051
Commutation of 5069

DEBT, ACTION OF
By Board of supervisors for money paid out for fighting fire 542
For assessment against person doing business without license.2369
For recovery of penalty for violations of license or revenue laws 2394
—how and where brought.....2395
—judgment 2395
—arrest, bond, bail 2395
—capias 2396
—costs 2396
For recovery of fine.....2543, 2545
To recover cost of repairing buoy, beacon, etc., injured by vessel or raft 4756
On note or writing.....5759, 5760
—parties, judgment 5760
On negotiable instrument.....5760
Recovery of amount paid on claim transferred out of State to evade exemption laws.....6557

DEBTS
Special laws for collection prohibited .....Va. Const., § 63
State may contract..Va. Const., § 184

Sec.

DEBTS—Con.
Statute creating to provide for sinking fund....Va. Const., § 187
Of husband, wife's property subject to 5134
—of wife, husband not liable for 5134
Liability of estates held in trust to 5157
Certificates of, transfer to personal representative of nonresident 5343
Of decedent, order in which paid, 5390, 5391
—real estate, assets for payment of 5395-5400
—proof of before commissioner, 5420-5422
—payment 5434-5436
—liability of recovery for wrongful death 5788
Antecedent, as consideration for negotiable instrument 5587
Limitation on enforcement of..5810
—effect of devise to pay 5814
Jurisdiction of justice.....6015
Secured by lien, assigned, noting on record 6457
Homestead exemption against, 6531-6566
—Va. Const., §§ 190-193
Waiver of homestead 6548
—order of payment of.....6549
—judgment and execution on....6551

DEBTS DUE STATE
Statute releasing, discharging, or commuting, vote to pass, Va. Const., § 50
Special act relinquishing prohibited .....Va. Const., § 63
Acts relating to tender of coupons continued in force..2515
Currency received for.....2604
By officer, deduction from salary 3476
Order in which paid from decedent's estate....5390, 5391, 5395

Enforcement
Auditor to enforce 2510
—adjustment by 2512
Jurisdiction 2511
Action for, in whose name.....2512
Motion to recover 2513
Judgment, in whose name.....2513
—principal, interest, damages..2514
Mistakes, correction 2516
Execution 2517
—form 2517
—issuance, to whom directed..2518
—levy 2519
—sale of real estate, notice....2520
—how sale made 2521
—terms 2522
—collection and distribution of proceeds 2522
—deed 2523, 2524
—bonds for purchase money, 2522, 2525
— —judgment on 2525, 2526
— —execution on 2525
—levy not made because of prior incumbrance, return....2531
—when land purchased for State 2535
Venditioni exponas, issued to another county.....2527, 2528
—sale 2529
— —of real estate on 2530
—appointment, agents to collect 2534
—by State Corporation Commission 3767

Digitized by Google

Sec.
DEBTS DUE STATE—Con.
—compensation 3770
Proceeds of sale of wrecks and property from, recovery of..3610
Purchase by State Corporation Commission of estate sold for, 3768, 3769
DEBTOR
Appointment as executor, not to extinguish debt 5376
Attachment against 6378, 6379
Absconding, capias against, 6419-6425
Levy of execution on property in possession of 6490
Execution debtor, interrogatories to 6503-6507
—commitment for failure to answer 6506
DECEASED PERSON
Listing property of for taxation 2307
Bank deposit of, payment to representative 4125
Distribution of damages for death of 5787, 5788, 5789
—liability for debts of.....5788
DECEDENT'S ESTATES
Term personal representative includes what..... 5
Personal estate, includes what.. 5
Creditors' bill against escheated land 516, 517, 518
Administration on, not until taxes paid 2403
Curator, appointment, duties, 5248, 5249
Appraisers, appointment by clerk, bond 5249
Certificate of debt or stock, transfer to foreign personal representative 5348, 5349
Administration of estate of person presumed to be dead.5361-5368
—title to property disposed of..5366
When administration committed to sheriff or sergeant 5374
—State tax 5374
Appraisal 5376
Execution of deed by personal representative, land contracted to be sold by decedent.....5378
Sale of property by personal representative 5380-5382
Estate for life of another, to go to personal representative 5383
Contracts, actions on by personal representative 5384
Action against personal representative for trespass by decedent 5385
Trespass or injury to, action by personal representative 5385
Debts, order of paying, 5390, 5391, 5395
—proof of before commissioner, 5420-5422
—payment 5434-5436
Lien on 5392, 5400
Real estate, devised to be sold, sale of by executor.....5393
—payment of proceeds 5394
—rents and profits, when authorized to be received by personal representative 5393
—payment of rents and profits..5394
—as assets for payment of debts 5395
—how administered 5396
—sale by heir or devisee, liability for value 5397

Sec.
DECEDENT'S ESTATES—Con.
—title of purchaser 5397
—suits against heir or devisee, 5398, 5399
—lien 5400
Distribution by personal representative, time for 5437, 5439
—refunding bond of distributee 5437, 5438
Limitation of actions against..5810
—of actions in favor of 5824
—new promise of personal representative 5813
— —will charging estate with payment of debts 5811
Judgment against, action or scire facias on, time for 6477
Claims waiving homestead, order of payment of 6549
Property exempt from levy, disposition of 6562
DECLARATION
See also **"Pleading"**
Not error in to designate railway company as railroad company or vice versa 5
Action of debt for recovery of penalty for violation of license or revenue laws 2395
In action of unlawful entry or detainer 5445
In ejectment, action may be commenced by 5456
—real claimants to be named in 5456
—what to be stated in.....5457-5460
—several counts 5460
—notice 5461
—pleading or demurring to 5463
—claim of profits and damages..5481
—for re-entry on land for non-payment of rent, or breach of condition or covenant.....5530
—how served 5530
—fee, when officer fails to serve 3489
In action to recover for death or injury of employee of railroad may embrace cause of action under act of Congress.5796
Rule to file 6078
—non-suit for failure to file....6078
Account filed with in action of assumpsit 6090
Action on insurance policy 6094
Amendment 6095
—for misnomer 6101
Variance between declaration and writ, plea in abatement for 6104
Averring negligence, bill of particulars 6118
In assumpsit, verification.....6133
Faulty count in, when disregarded 6258
—verdict on 6258
On bond payable on installments 6262
For penalty for breach of condition or covenant 6282
DECREES
See also **"Judgments"; "Judicial Sales"**
Bond required by, condition of.. 279
Of payment of debt of deceased from escheated estate..... 516
In suit to recover derelict or escheated property 520
Allowing sale of land and buildings of tuberculosis sanatorium 1510
Partition of land, list of fur-

Digitized by Google

Sec.

DECREES—Con.
nished by clerk to commissioner of revenue 2275
Distributing funds, directing payment of taxes 2309
Delivery by clerk to officer for service on any person.....3403
For payment of attorney's fee out of funds in court 3430
Disobedience to as contempt....4521
Annulling marriage 5100-5111
Affirming marriage 5102
Divorce 5111
—from bed and board.....5112
— —revocation of 5115
— —merger of into decree from bond of matrimony.....5115
—restraining guilty party from marrying 5114
Joint, effect of death of joint debtor or creditor 5160
Personal decree against debtor in suit by creditor to set aside fraudulent transfer 5186
Recordation of, in partition, assignment of dower or recovery of land 5216
Of partition to vest legal title..5282
For sale, lease, encumbrance, exchange, of real estate of infant, insane person, or trust estate 5240
Scire facias for execution, by administrator de bonis non.....5387
Against fiduciaries 5407
—for costs 5407
For balance between damages to land and claim for improvements 5496
In suit for foreign money.....5550
For surety, for money paid for principal 5777
Of another State, limitation of action on 5819
Court ceasing to exist, how executed 5974
For money, notice of motion for.6044
By confession, entry of in vacation 6130
—lien 6130
Decree nisi, entry of 6131
Award under rule of court entered as 6161, 6163
Change of parties, pending appeal, how decree entered 6167
Reviving action when parties changed 6168
On death of party, when parties exceed thirty 6173
On testimony of party when adverse party is incompetent...6209
Interest on 6259
For sale 6266
Right of infant to show cause against 6305
—time for 6305
Entered in vacation 6307
—lien of 6307
Informality of entry, not ground for reversal 6331
Errors in, for which decree not to be reversed 6331, 6332
—correction in same court, 6329, 6333
— —appellate court 6334
— —motion for correction, necessity for review 6334
On bill taken for confessed, correction of errors in 6333
—in appellate court 6334
Appeals from 6336, 6337
—bond to suspend .....63[illegible]

Sec.

DECREES—Con.
When to have effect of judgment 6459
How carried into execution.....6459
Lien on homestead exemption...6550
On instrument waiving homestead 6551
—demand against which homestead cannot be claimed.....6551

DEEDS
See also "Deeds of Trust"
Tax deeds, see "Taxation"
Relinquishing citizenship 68
Landowner's consent to right of way to have effect of.....1978
—recordation 1978
List of furnished by clerk to Auditor and commissioner of revenue 2274
Land sold for delinquent taxes..2195
Deed book, what to be recorded in 2353
Necessary to convey freehold or estate of inheritance 5141
—voluntary partition by coparceners 5141
Gifts of personal property by..5142
Quit claim 5164
Vendor's lien void unless expressed in 5183
Profert not necessary 6082
Action on, special plea of set-off to 6145
Copies of certain deeds to be evidence 6195
Sales under deed of trust or mortgage, recitals in as evidence 6196
Foreign, admissibility as evidence 6207

Form
In general 5162
Lease 5165
Deed of trust 5166
Deeds good between parties.....5169
Acknowledgments to.....5205-5219

By or to particular persons
To United States, no tax on recordation of 19
By agent of State Board of Education 683
Donations for school purposes to vest in school board 648
School property sold or exchanged by school trustees .. 648
By clerk for land sold for delinquent town taxes 2458
To purchaser of land sold for delinquent taxes 2482, 2483
—special warranty 2485
—to assignee of purchaser.....2494
—to heirs or assigns.....2486
—recordation 2488
—title conveyed by 2483
— —how defeated 2483
—limitation on suit to cancel..2488
To purchaser of land sold on execution for debt due State, 2523, 2524
State lands, to purchaser of, by agent 2541
Gift of land to county when courthouse removed 2743
Of State Corporation Commission, interest conveyed by....3766
By trustee of building and loan associations 4167
Of married woman, disposing of contingent right of dower....5135
—executed and acknowledged by attorney in fact 5215
—recordation of 5215

Digitized by Google

Sec.

DEEDS—Con.
By attorneys in fact, words of conveyance, signature 5145
Of corporation, how executed..5208
—how acknowledged.....5207, 5208
— —before officer or stockholder .....ffl.....5209
By husband and wife, effect on rights of wife 5211
—covenants and warranty in...5211
Executed by personal representative conveying real estate sold by decedent 5378
Execution of by commissioner appointed by court 6296
—reinstatement of suit for appointment of commissioner....6297

Recordation
Transfer fee 2347, 2348
Payment of tax 2403
Tax deed 2488
Conveying real and personal property, index of recordation of 3393
Recorded in deed book.....3393
—homestead 3393
—quit claim 3393
—of release 3393
To real estate, void as to creditors and purchasers unless recorded 5194
—deed of gift 5194
—where to be recorded 5195
When and by whom admitted to record 5204-5208
Authentication for 5204
Copies 5212, 6202, 6241
Unacknowledged 2513
After loss or destruction of original record 6241

Construction
Interest in real estate disposed of by 5147
Creation of future estates.....5147
Power of disposition in life tenant, when not to defeat remainder 5147
Passes rights of grantor, when..5148
Warranty, operation on heirs..5148
Without words of limitation, construction of 5149
Limitation contingent on dying without heirs or heirs of the body, how construed 5151
Rule in Shelley's case abolished.5152
By which possession transferred to use 5155
Of release, effectual without lease 5156
To convey grantor's interest...5163
—buildings, privileges and appurtenances 5168
Words of release, effect of.....5164
Good between parties 5169
Loan of chattels by, when valid..5188
Reservation of property in chattels, by condition, reversion, remainder, &c. 5188
When subsequently acquired title conveyed by 5202

COVENANTS
"The said—covenants" 5170
General warranty 5171, 5173
Special warranty 5172, 5173
Right to convey 5174
Quiet possession 5175
Free from all encumbrances....5175
Further assurances 5176
That he has done no act to encumber 5177
For re-entry by lessor 5182
To pay the rent 5178, 5180

Sec.

DEEDS—Con.
To pay the taxes.....5178
That he will not assign without leave 5179
He will leave the premises in good repair 5179, 5180
For lessee's quiet enjoyment....5181

DEED BOOKS
Recordation in, designation of attorney or agent for service of process on in proceeding to purchase delinquent land....2495
Order rearranging magisterial district recorded in 2690
What recorded in 3393
Index for 3394
Power of attorney to execute bonds for surety company recorded in 4349
—revocation 4349
Report, orders, etc., in condemnation proceeding recorded in 4381
Appointment of agent to conduct mercantile business recorded in 5223
List of heirs recorded in.....5379
Judgment in proceeding to establish boundaries of lands recorded in 5490
Written act of re-entry on land recorded in 5536
—notation of publication 5536
Extension of limitation of right to enforce deed of trust or mortgage endorsed in 5827
Order changing name of person recorded in 5983
Order confirming investment of estate in, or setting apart, homestead recorded in 6546

DEED OF RELEASE
Where to be recorded 5195

DEED OF TRUST
List of furnished by clerk to Auditor 2274
Recordation, transfer fee..2347, 2348
—in deed book 3393
—where recorded 5195
—when and by whom admitted to record 5204-5208
—acknowledgments 5205-5210
No bar to distress for taxes....2443
Release of, memorandum on margin 3402
—to whom made 6456
Of corporation, sale under, purchaser becoming corporation..3817
—of public service corporation..3895
Of non-stock corporation.....3876
On property condemned in eminent domain proceedings..4374
Fraudulent removal of personal property subject to 4455
By life tenant, when to defeat remainder 5147
Form of 5166
Sales under 5167
—account and inventory of to commissioner of accounts....5404
—recitals in conveyance as evidence 6196
Trustees, duties and compensasation 5167
—change of, building and loan association 4167
Void as to purchasers and creditors unless recorded 5194
—where to be recorded.....5195
—when goods removed from county, etc. 5196

Digitized by Google

Sec.

DEEDS OF TRUST—Con.
—when goods removed into State 5197
Satisfaction of as defense to ejectment 5472
—duty of creditor to enter on record 6456
— —penalty for failure.....6456
— —proceeding to enforce.....6456
—presumption of payment.....6456
Property on leased premises, liability for rent 5523-5525
Limitation on 5827
—executed by corporation.....5827
—extension of 5827
Transfer of debt secured by, entry on margin of record....6457
Homestead waived in debt secured by, enforcement 6549
On exempt property void.....6564

DEER
Hunting for on land of another..3338
Unlawful hunting, buying, selling, etc. 3356
Shipment from State.....3361
Tame, damages for killing.....3363

DEFAMATION
Insults actionable 5781
Action for, evidence in mitigation of damages 6240
Plea of truth 6240

DEFAULT
Answering for another's, writing required 5561
By life tenant not to prejudice remainder 5443

DEFAULT JUDGMENT
In action of ejectment 5462
Against surety, effect of failure of surety to notify principal..5778
In quo warranto proceedings....5846
Rehearing as to parties not served 6072
In clerk's office.....6131
—order for inquiry of damages 6131
— —when not necessary 6132
— —action of assumpsit 6133
—when to become final 6134
—when set aside 6135

DEFENSE, GROUNDS OF
Before civil and police justice..3105
Petition to establish boundary of real estate 5490
Notice of motion for judgment..6046
Court may require 6091
In attachment proceedings.....6382

DE HOMINE REPLEGIANDO
Writ of abolished 5869

DELEGATES
See **"General Assembly"**

DELINQUENT TAXES
See **"Taxation"**

DELIVERY
Of negotiable instrument, definition 6752
—when effectual 5578
—when presumed 5578
—warranty 5627
—necessary to negotiation.....5592
Of process, to commence suit..6060

DEMAND
What instruments are payable on demand 5569
—presentment for payment....5633

DEMURRAGE
Rate of, fixed by State Corporation Commission 3774
When claims for paid.....3928

Sec.

DEMURRER
See also **"Pleading"**
Cannot raise objection by that railway company is designated railroad company or vice versa 5
To plea in abatement, costs....3521
In criminal cases 4907
To indictment containing several counts 4923
To declaration in ejectment....5463
In action for insulting words....5781
To petition for mandamus or prohibition 5834
Quo warranto proceedings.....5846
To petition filed in pending chancery suit 6096
Proceeding without joinder in..6112
Form of 6115
Form of joinder in 6115
Amendment 6115
Grounds for 6115
To evidence 6117
—grounds of 6117
—withdrawal 6117
Defects disregarded on 6118
—allegation of negligence.....6118
In equity set down to be argued 6120
After attachment to answer interrogatories 6136
To declaration containing faulty counts 6258
To petition in attachment proceedings 6382

DEMURRER TO EVIDENCE
See also **"Pleading"**
Grounds relied on to be stated..6117
Withdrawal, non-suit 6117

DENNY MARTIN
Proof of Act of Parliament authorizing to take name of Fairfax 414

DENTISTRY
See also **"State Board of Dental Examiners"**
Practitioner, license to practice medicine not required.....1618
—compensation, no recovery when services rendered by person without license 1641
—annual registration certificate 1648
— —fee 1648
—compounding own prescriptions 1681
—prescription for morphine, opium, heroin, etc.....1693
— —for habitual user 1694
— —penalty 1695
—purchase of alcohol by.....4594
Practice of, defined.....1649
—without certificate, penalty..1641
Penalty for practicing without certificate 1641
Certificate to practice 1644, 1645
Licenses, examination for.....1646
—application for 1646
—qualifications of applicant....1646
—fee 1646
—registration 1647, 1648
—revocation, cause for 1649
— —hearing for, notice, witnesses 1650
— —appeal, board of review, affidavit 1651
—separate to members of firm...2368
— —exemption 2368
Practice of by corporation or association, regulations for...1652
—sign displayed 1652
—penalty for failing to display.1652

Digitized by Google

Sec.

DENTISTRY—Con.
—for failure to make required report 1652
—report of dentists employed, penalty 1653

DEPARTMENT OF AGRICULTURE
See **"Board of Agriculture"**
Establishment.....Va. Const., § 143
Powers and duties..Va. Const., § 144
Salaries and expenses.....3441

DEPARTMENT OF MINES
See **"Mines"; "Commissioner of Labor"; "Bureau of Labor and Industrial Statistics"**

DEPENDENTS, DEFECTIVES AND DELINQUENTS
See **"Board of Charities and Corrections"; "Charitable Institutions"; "State Institutions"**

DEPOSITS
See also **"Banks and Banking"**
In banks, how used 4113
—of deceased persons and persons under disabilities, payment to personal representative, guardian, &c.....4125
—of minors, how held and paid.4126
—in name of two or more persons, or survivor, how discharged 4127
—receiving while insolvent.....4132
—regulations as to making or withdrawing 4147
— —printing in pass book.....4147
— —posting 4147
—limitation of action to recover.5810
In savings banks 4141
—investment of 4143
Of securities by insurance companies 4211
—alien casualty insurance company 4826
—industrial sick benefit company 4353
—by underwriters' agency.....4313
Certificate of deposit of court funds 6310

DEPOSITARIES
See also **"State Depositaries"**
Of school funds 732
—order for transfer of funds to 733
—bond of 734
—compensation, duties 735
—delivery of funds to..... 736
—proceedings by against treasurer 737
Of funds for State Hospitals, 1013, 1014
Of State Corporation Commission 3747
—deposits in 3747
—checks on 3747

DEPOSITIONS
Seal of notary on, when no tax charged on 2402
Statement of fees on.....3483
Allowance for, taxed in costs..3535
When notice of taking not necessary 6071
Taken by commissioner in chancery 6184
Of party, when court may exclude 6208
Time for 6225
By whom taken 6225
Of witness residing out of State, by whom taken.....6226
—how certified 6226
Commission not required.....6227
Notice of taking 6228

Sec.

DEPOSITIONS—Con.
—to non-resident 6229
Use of in several suits.....6228
Retaking 6230
Use of in evidence, when allowed 6231
—either party may offer.....6233
Certification 6232
Return 6232
Filing 6232
Taking after judgment.....6234
In particular actions or proceedings
Contested election, 259, 260, 264, 267
—to whom certified 264
—for removal of courthouse....2754
Lunacy proceedings 1017
Auditors, treasurer or employees in litigation on coupons from State bonds 2618
Of prosecutrix in rape case....4415
In divorce suit, when commenced 5108, 5109
Of witness of will, probate of will 5252, 5261
—how taken and certified 5252
In suits against infants or insane persons 5339
On petition in chancery suit...6096
Garnishment of wages of State employee 6559
Of witnesses in mandamus or prohibition before Supreme Court of Appeals 5837

DEPUTIES
See also titles of particular officers
Of officers, disqualification as election officers ..Va. Const., § 31
Of officers intrusted with State funds, bonds.....Va. Const., § 85
Of State Accountant, appointment 551
—term 551
—salary 551
—statements 551
—duties, reports, inspections, 551, 557, 559
—power to administer oath.... 559
Of inspectors 1402
—removal 1404
Of officers, appointment 2701
—powers, oath 2701
—removal 2701
Of sheriffs or sergeants, deceased, powers 2816
—when coroner to act 2817
Process, return on, signing....2825
Motion and judgment against for failure to make return of money collected on process..2835
—judgment against in favor of sheriff, sergeant, etc....2836, 2837
—courts in which motion may be made 2838
When not to practice law.....3426
Of commissioner of insurance..4171
—removal 4198
—liquidation of insurance company 4245
— —report of 4246
Of Commissioner of Prohibition, appointment, compensation, removal 4627
—to have power of sheriff.....4628
—powers of 4629
Execution against, no forthcoming bond taken 6524, 6525

DERELICT PROPERTY
Recovery by suit in name of Commonwealth 518
Proceeds of sale of paid to person entitled 521

Digitized by Google

Sec.

DESCENT AND DISTRIBUTION
Hereditary offices prohibited, Va. Const., § 4
Estate of married woman.....5138
Desertion as bar to rights of husband 5140
Property of deceased, joint tenant 5160, 5161
Purchaser from heir, protection against devisee 5263
Course of in general 5264
Collaterals of half-blood.....5265
Per stirpes and per capita.....5266
Alien, descent through 5267
Bastards inherit from mother..5268
Children of slave marriages, inheritance by 5269
—Va. Const., § 195
Marriage, legitimation of children by 5269
Issue of void marriages 5270
Posthumous children 5271
Infant's real estate 5272
Personal estate, distribution of.5273
—of infants 5273
—of married persons 5273
—escheat of 5275
When homicide a bar 5274
Widow's renunciation of provision in will, effect of.....5276
Adultery of husband or wife, bars as distributee of personal estate of other 5277
Hotchpot, advancements brought into 5278
Adopted child 5333
When funds paid directly to infant 5343
—when paid to parents of.....5343
Estate of person presumed to be dead 5365-5366
—bond of distributee 5365
—title of distributees 5366
Time for distribution by personal representative 5437, 5439
—refunding bond of distributee, 5437, 5438
Right of entry not affected by descent cast 5444
Damages, in action for death by wrongful act, by jury..5787, 5788
—of amount received in compromise for 5789

DESCENT CAST
Right of entry not affected by 5444

DESERTION
Of wife or child 1936
—penalty 1936
—institution of proceeding....1937
—jurisdiction of prosecution, 1937, 1942
—recognizance for support, 1939, 1940
—probation of offender, 1936, 1940, 1944
— —appeal 1937
—extradition of offender.....1942
—when desertion presumed to be wilful 1941
Ground for divorce 5103
—from bed and board 5104
—divorce for merged into divorce from bond of matrimony 5114
By husband as bar to curtesy..5140
—to rights as distributee, &c., of wife's estate 5140
Of apprentice, liability for damages 5311
Of premises by tenant, right of landlord to possession 5518

Sec.

DETINUE
To recover unbranded timber...1454
Affidavit, for possession 5797
Bond for possession 5797
—forthcoming 5798
—exception to sufficiency of....5799
—filed with justice, return of..5804
Possession, taking from defendant 5797
—return to defendant 5798, 5800
—contested 5800
Final judgment 5801
Verdict 5802
—error, what not 5802
Value of goods, determination by jury 5802
Expenses of keeping property..5803
Costs 5803

DEVISEE
See also "Devisees"; "Wills"
Dower, motion for assignment of 5125
—recovery of dower and damages against 5127, 5128
Sale of devised real estate, liability to creditors of decedent 5397
—suit against by creditors.5398, 5399
—judgment against personal representative as evidence against 5398
—title of purchaser from.....5397
Action of ejectment by.....5452
Recovery of rent by.....5520
Liability for rent 5521
Revival of action for and against 6168-6171

DEVISES
See also "Devisees"; "Wills"
For religious purposes, burial place, etc., when valid..... 38
For educational or literary purposes 587
—how taken and held 588
—how will probated 589
—trustees 590
—power of General Assembly to suspend or repeal 593
For school purposes to vest in school board 643
To school boards 671
For retired teachers' fund..... 792
To University of Virginia..... 822
To Virginia Normal and Industrial Institute 957
To educational institutions, investment in State bonds 994
—irrevocable 995
Inheritance tax on, exemptions from 2272
Assessment of 2287
Transfer fee 2247, 2248
Satisfaction by advancement....5257
Devisee dying before testator, issue to take, when 5238
—to several jointly 5238
Lapsed, when included in residuary devise 5239
Construction of, when in general terms 5246
Construction and operation of..5261
When purchaser from heir protected against 5263
Of rent, what powers pass.....5514
—attornment not necessary.....5514
— —of remainder, or reversion.5514

DIAMOND BACK TERRAPINS
See "Terrapins"

DICKENSON COUNTY
Commonwealth's attorney, fees..3546
Effect of prohibition law on law

Digitized by Google

Sec.

DICKENSON COUNTY—Con.
relating to sale of ardent spirits in 4673

DIGITALIS
Sale, label 1691

DINING CARS
Exclusion from 4007

DINWIDDIE COUNTY
Commonwealth's attorney, fees.3505

DIPHTHERIA
Bodies dead of, transportation, rules for.....1728

DIRECTORS
See **"Board of Agriculture"; "Commissioner of Agriculture and Immigration"**
Of penitentiary, see **"Penitentiary"**
State library 617
Corporations, stock owned by State 3762
—appointment 3762, 3763, 3764
—term 3764
—member, term, quorum.....3853
Of penitentiary, salary.....3450

DIRK
Carrying concealed, punishment.4534
—permit from court to carry....4534
Furnishing to minors.....4695

DISABILITIES
See **"Insane persons"; "Infants"; "Married Women"; "Husband and Wife"**
To hold office, see **"Offices and Officers"**
Sale of property of persons under, general assembly may confer power on courts, Va. Const. § 63
Political, power of Governor to remove.....Va. Const., § 73
Persons under, claims against State, limitation of.....2583
—bank deposits of, payment to guardian, committee, etc.....4125
—sale of remainder held by, on bill by life tenant 5161
—debts due by trustees of, priority of payment from decedent's estate 5390, 5391, 5395
—saving in favor of, in action of ejectment 5487
—limitation of entries on or action to recover land by..5807, 5808
— —time excluded 5809
—personal actions 5823

Lands of persons under
Redemption from sale for delinquent taxes 2479
Lease, renewal or surrender of.5334
—bill for 5335
—guardian ad litem.....5337
—decree for 5339
—persons who may not be interested with lessee 5341
Encumbrance of, application of proceeds 5340, 5342
Adverse possession 5807, 5808

SALE
Suit for 5335-5347
—death of ward not to abate....5336
—guardian ad litem.....5337
—validation of certain sales....5338
—depositions 5339
—decree 5340
Purchasers, who may not be....5341
Proceeds, how secured and applied 5342
—payment to infant or parent..5343
—for sale of curtesy or dower, 5344, 5345
—to pass as realty.....5347
Release of curtesy or dower....5346

Sec.

DISABILITIES—Con.
—of dower of wife of insane or infant husband 5344

DISBARMENT
Of attorneys 3423
—for advertising offer to obtain divorce 5116

DISCHARGE
Patient from insane hospital....1046
Of minor from prison association 1955
Convict road force, assistant...2088
—clerks 2088
—guards 2088
Of accused by justice.....4845
Of person in jail for failure to find or file indictment, presentment or information against 4880
Person committed to jail for failure to give recognizance.....4976
Of surety on recognizance, by payment 4979
—on surrender of principal....4982
—certificate to surety.....4983
Of convict, term expiring on Sunday or legal holiday.....5046
Of person detained as fugitive from justice 5065
Of resident guardian, committee or trustee when property tranferred out of State.....5356
Of one of several judgments against joint wrongdoers....6264
Of defendant in capias proceeding 6423, 6424
Of execution debtor committed for failure to answer interrogatories 6506

DISCONTINUANCE
Failure to award process or enter continuance not to work..4890
Court's failing to sit or change of place of holding not to cause 5971
In vacation, reinstatement of cause 6140
Of suit for failure to revive....6171
For failure to prosecute.....6172
Reinstatement 6172
Actions on joint contracts, as to less than all defendants, effect of 6265
Of proceedings on forthcoming bond 6526

DISCOUNTS
By bank 4111
—by director of.....4108
By savings bank 4143
Rate 5551-5553
In action on chose in action by assignee 5768

DISCOVERY
See **"Bill of Discovery"**

DISCRIMINATION
Against foreign corporation, Va. Const., § 163
By transportation company.3905, 3906
—penalty 3912, 3914
—exceptions 3918

DISHONOR
See **"Negotiable Instruments"**

DISMAL SWAMP CANAL COMPANY
Lock keepers, exemption from jury service 5985

DISMISSAL
See also **"Non-Suit"**
Caveat proceeding if summons not returned executed 454
—for failure to give security for costs 451
Of suit to enjoin house of prostitution as nuisance 1523

Digitized by Google

Sec.

DISMISSAL—Con.
Of proceeding for removal of officer 2706
Of claims before civil and police justices 3107
—of appeals from 3106
Of case in supreme court of appeals, failure to pay cost of printing record 3486
Of suit for failure of non-resident to give security for costs....3519
—for failure to give bond to secure surety 3520
Of eminent domain proceedings.4387
Of prosecution for misdemeanor, on compromise 4849
—on failure of prosecutor to secure costs 4867
Of prosecution for violation of prohibition law 4644
Of action for death by wrongful act, effect on limitation.....5787
Civil warrant, for defects, etc. 6018
Appeal from judgment of justice for failure to give security...6027
—failure to pay writ tax.....6028
By clerk for failure to file declaration or bill 6079
Of action or suit for invalid process 6103
—when clerk to issue new process without writ tax.....6103
At rules, when to become final..6134
—reinstatement 6140
Not allowed after set-off filed..6149
For refusal of party to testify..6213
For failure to answer interrogatories 6236
For failure to produce books and papers 6237
Action on joint contracts, as to less than all defendants, effect of 6265
Of injunction bill.....6328
Of appeal or writ of error not presented within time required 6355
—for failure to indemnify surety 6353
—when final 6356
—reinstatement after 6356
Attachment proceedings 6404
—for failure to give bond.....6385
—failure to pay writ tax.....6387
—formal defects not ground for 6409

DISORDERLY CONDUCT
Member of general Assembly, Va. Const., § 47
In car or caboose of railroad train or street car, punishment 4533

DISORDERLY HOUSE
See **"House of Prostitution"**

DISQUALIFICATION
To hold office.....289-293
Of jurors 4495, 5984

DISSOLUTION
Of fire company.....3136
Of corporation 3809, 3810
—payment of fees.....3885
Of non-stock corporation.....3880
Of public service corporation, liability for debts, distribution of property 3899
—when works and property sold under for mortgage or deed of trust 3895
Of fraternal benefit society.....4295
Of injunction, by expiration of time 6317
—on motion 6317

Sec.

DISSOLUTION—Con.
—reinstatement of by Supreme Court of Appeals.....6317, 6320
—in vacation 6326
—damages 6327
—appeals 6336, 6337
— —bond 6338
—motion for judgment for damages after 6377

DISTRESS
See **"Exemption"; "Homestead Exemption"; "Interpleader"**
For taxes.....2410, 2439, 2443
—on decedent's estate.....2287
—property liable.....2439, 2441
—license tax from merchant...2366
—license tax of person doing business without license.....2369
—delinquent 2429
—city and town taxes.....3075
Crops exempt from.....2830
Unreasonable, prohibited 2831
Removal of goods by officer from county or city.....2831
On horses, live stock, sustenance.2831
Sale by officer.....2832
—notice 2832
—horses, mules and oxen.....2833
—suspending bond 6156
—forthcoming bond 6157
—surplus, disposition of.....6158
To collect officers' fees.....3498
—limitation on 3500
Of trespassing animals of non-resident 3543
Payments on insurance policies, when not subject to.....4219
Removal of goods levied on, punishment 4447
For advances on crops....4655, 6454
Power of to pass with conveyance or devise of rent.....5514
Rent recovered by.....5519
—when made 5522
—by whom made.....5522
—goods subject to.....5523, 5526
— —effect of lien on goods.....5523
—entry by force to levy.....5526
—irregularity or unlawful act, effect of 5527
— —action for damages for.....5527
—return of warrants.....5528
—venditioni exponas 5528
—when rent payable in other thing than money 5529
—wrongful, action for 5783
Warrant, jurisdiction of court of law and chancery of Roanoke.5947
—forthcoming bond.....6518-6530
—defense to 6522
—quashing 6523
Interpleader.....6035, 6152-6158
Indemnifying bond 6154
—effect as to purchaser or claimant of property 6155

DISTRIBUTION
See also **"Descent and Distribution"**
Surplus of mutual life insurance companies 4249
Damages paid on condemnation of land 4374
Of estate of person presumed to be dead 5365-5368
Of estate of decedent by personal representative 5437-5439
Of damages for wrongful death.5788
—in case of compromise.....5789

DISTRICTS
See **"Drainage District"**
School districts, see **"Education"**
Election districts, see **"Elections"**
Magisterial, see **"Magisterial Districts"**

Digitized by Google

Sec.

DISTRICTS—Con.
Senate and House, apportionment of State into.....Va. Const., § 43
Congressional, apportionment of State into.....Va. Const., § 55
Appropriations to manual, industrial and technical schools.....664
Recovery of money paid on void school contract..... 683
Officer not to purchase warrant at discount 684
—penalty 684
Reference to voters of increase of school levy 740
Inspection districts 1405
Of sealers of weights and measures 1478
Road 1986
—tax levy 1987
—incorporated town as.....2017
For white and colored persons in cities and towns 3043-3053
Established by Commission of Fisheries 3153
For registration of boats used in taking oysters 3241

DISTRICT COURTS OF UNITED STATES
See also **"United States Courts"**
Clerk, State reports furnished to 347
Attorney General to represent State in 376
Removal of criminal cases from State courts to 4971
Records, custody 6370
—transcripts from 6370
Judgments, docketing.....6461, 6462

DISTRICT OF COLUMBIA
Word State includes..... 5
Words United States include.... 5
Recession of territory to Virginia 16

DISTRICT OFFICERS
Term .....Va. Const., § 112
Passes and free transportation to prohibited.....Va. Const., § 161
Duties, when to begin..... 132
Election 127
—contested 267
—when held.....Va. Const., § 112
Primary election of, abstract of votes cast for, to whom forwarded 241
—fees from candidates, division of 249
Improper expenditures by candidate for 251
—by another in his behalf..... 252
—penalty 252
Statement of expenditures..... 253
—when and where filed..... 253
—what to contain..... 253
—oath to 253
—penalty for failing to file.... 255
—not to qualify until filed..... 256
—nor receive salary..... 256
Qualification 2696, 2697
—oath, bond 2696, 2697
Vacancy 2697
Residence 2703
—removal, vacating office.....2704
Removal, cause for, procedure 2705, 2706
Audit of accounts of by order of court 2756
Territory, annexed to city or town, effect 2967
List of to Secretary of Commonwealth by clerk.....3407

DISTRICT SCHOOL BOARDS
See **"Education"**

DISTRINGAS
Writ abolished 6480

Sec.

DITCH
Superintendent of roads to provide 1989
Along highway, obstruction of, penalty 4730

DIVIDENDS
Internal improvement in which State interested, collection of.3759
—recovery of 3766
On stock owned by State in public service corporations.....3990
—payment to credit of sinking fund 3990
On preferred stock 3792
—cumulative 3792
Declared from capital stock, liability of directors and stockholders 3840
Declared by banks.....4119
On court funds.....6282
Collection by general receiver..6282

DIVISION OF POWER
Departments to be distinct, Va. Const., § 39

DIVISION SUPERINTENDENT OF SCHOOLS
See also **"Education"**
Payment of traveling expenses in attending educational conference 615
Punishment of for neglect of duty 617
Administration of school system by 596
Member of State Board of Education 596
—how selected, powers and duties 596
Removal 607
Appointment.....605, 607, 624
Qualification 624
Who disqualified 624
Holding over 624
When determined by lot..... 624
Publication of statement of qualications of 624
Term 597, 625
Vacancy 625
Oath 625
Salary 604-606, 625
—not increased or diminished during term 626
—how paid 627
Powers and duties..... 628
Member of school trustee electoral board 629
To act as clerk of school trustee electoral board 630
Oath of school trustee before... 638
—certification of 638
With district school trustees to constitute county school board 639
Ex officio president of county school board 640
To submit estimate of expenses to board of supervisors..... 646

DIVORCE
General Assembly may confer on courts power to grant, Va. Const., § 63
Remarriage before end of term at which decree was entered, not bigamy 4539
Conspiracy to cause wife to commit adultery, to procure divorce, punishment 4544
Marriages void without decree, 5087, 5089
—persons under age of consent.5090
Marriages void from time declared or time of conviction..5088

Digitized by Google

Sec.

DIVORCE—Con.
Annulment of marriages.....5100
Suits to annul or affirm marriages 5100-5102
—jurisdiction 5105
—how instituted and conducted.5106
—allowances 5107
A vinculo 5103
—grounds for 5103
A mensa et thoro.... 5104
Grounds for 5104
—decree 5112
—revocation of decree.....5115
—made a vinculo.....5115
Hearing 5106
Costs 5106
Process 5106
—publication 5108, 6043
—by whom served.....6042
—when party a convict.....6042
Evidence 5106
Depositions 5108
Oral testimony 5109
—how certified 5109
—when on same footing as deposition 5109
For adultery, when not granted.5110
—restraining remarriage 5114
Decree 5111
—revision 5111
Children, maintenance pending suit 5107
—final decree as to.....5111
Protection of person.....5107, 5112
Property rights.....5107, 5111-5112
Remarriage 5113, 5114
Reconciliation 5115
Prohibiting advertising offers to procure 5116

DOCKS
Sale of by city or town, Va. Const., § 125
Bond issue by cities and towns for 3079,
Erection by renter of oyster ground 3231
Removal of by harbor commissioners 3668
Examination and repair of.....3676
Richmond, control of vessels, 3688, 3689

DOCKETS
Of State Corporation Commission 3743
Of writs of error in criminal cases 4936
Of justices 6024
—copies, evidence 6032
For cases at rules.....6075
Issue on defendant's pleading, cause put on 6112
Order of revival as to case on docket 6169
When court to strike case from.6172
—reinstatement 6172, 6174
Clerks to make.....6243, 6244
Of civil cases at law.....6243
Of criminal cases.....6244
Of chancery cases.....6245
Of appeals 6350
In Supreme Court of Appeals....6361
Of district courts, custody of....6370
Judgment, clerks of courts to keep ... .6461
—judgments docketed, 6461, 6462, 6468
—of State Corporation Commission 3732
—contents 6463
—index 6464
—entry of payment on.....6465-6467
—of United States courts..6461, 6462

Sec.

DOCKETS—Con.
—noting discharge in bankruptcy on 6467
—necessity as against purchasers 6471
—entry of return of executions on 6491
Motion on forthcoming bond removed from justice.....6526

Docketing
Certificate of damages assessed by Commissioner of Agriculture against dealer in fertilizer 1120
Order for costs and expenses in proceeding to establish drainage district 1756
Judgment on forfeited recognizance 1940
Local assessment for improvements in streets, etc.....3071
Judgments, State Corporation Commission 3732
Executions issued by justices...6031
Notice of motion for judgment..6046
Judgment in favor of State....6468
Lien on crop for advances.....6452
Recognizance 6479
Bond having effect of judgment.6479

DOCTORS
See "Physicians and Surgeons"

DOCUMENTS
Production of in investigation by Board of Charities and Corrections 1902
Subpoena to produce.....6219, 6220
Production of by adverse party.6237
—bill in equity 6238

DOGS
Not permitted in Capitol Square. 412
—jurisdiction 412
Mad, killing 1551
—penalty for concealing.....1552
—burial or cremation 1554
Worrying sheep, ordered killed.1551
—penalty for concealing.....1552
Taxation, listing for 2316
Assessment of tax 2318
—collection 2318
—disposition of 2318
Indemnity to owners of sheep or stock killed or injured by, 2319-2322
—application of law to cities and towns 2325
When deemed personal property 2324
—cities and towns, law applicable to 2325
Taxation by counties.....2326
—by cities and towns 2326
Constable to kill dogs on which license tax not paid.....2317
Report to land owner when caught in trap 2350
Larceny of 4445
Subject of malicious trespass, 2324, 2325, 4445
Poisoning, punishment 4467
Shooting, cutting, stabbing, punishment 4467

DOG FIGHTING
For money, bet, etc., punishment 4550

DOMESTIC ANIMALS
See "State Live Stock Sanitary Board"; "Quarantine"
Diseased, not to run at large.. 917
—sale 917
—disposition of 917
Tuberculosis 920

DOMESTIC ARTS AND SCIENCES
See "Education"; "High Schools"

Digitized by Google

Sec.

DOMESTIC PRODUCTS
Sale of, license in cities and towns 3072

DOMICILE
Qualification of voters 82
Voters, change of 100
Patients at insane hospitals....1047
Parties to suit for divorce or proceeding to annul or affirm marriage 5105
Change, ground for attachment.6379

DONATIONS
See "Gifts"

DOORS
Theatres, halls, etc., to open outwardly 3142
—inspection of 3143
—penalty for failure to provide 3144

DOORKEEPERS
State library, appointment 360
—term 360
—bond 348
—duties 365
General Assembly, salaries.....3461
At gaming house, punishment..4878
Executive, exempt from jury service 5985

DOVES
Unlawful hunting 3356
Killing 3364

DOVER'S POWDER
Sale of 1693

DOWER
Estate subject to 5117, 5118
—surplus over lien on land....5119
—trust estates 5158
Bar by jointure 5120
—by adultery of wife 5123
—by partition sale 5281
—by deed executed by attorney in fact for married woman..5215
When widow deprived of jointure 5122
Jointure as bar to 5120
—election to waive 5121
—loss of, right to dower.....5122
Assignment of 5125
—commissioners for 5125
—rights before 5124
—recordation 5216
Recovery of 5126, 5127
—damages allowed on....5126, 5127
Damages for withholding 5124
Relief of alienees 5128
—interest paid by in lieu of dower 5128
Fraudulent or improper assignment, relief of heir 5129
Effect of judgment against husband or guardian on right of widow or infant heirs.....5129
Crops growing at widow's death 5130
Commutation 5131-5133
—annuity table 5131
—rule of calculation.....5132, 5133
Contingent right, how disposed of 5135
In trust estate 5158
Conveyance of by writing signed by husband and wife 5211
Recordation of order, judgment or decree assigning 5216
Barred by sale of land in partition suit 5281
Judgment for in action of ejectment 5480
—commissioners to assign.....5480
Effect on right to homestead exemption 6538, 6541

Sec.

DOWER—Con.
Release of by wife, sale of lands of infant or insane husband.5344
—disposition of proceeds.....5345
Of insane wife, how released when sale of lands by husband 5346

DRAFT
See also "Negotiable Instruments"
Payment to State treasury by.2165
Embezzlement of.....4451
In payment for intoxicating liquors, penalty for handling.4610

DRAINAGE
See also "Drainage District"
Public benefit, when considered to be 1737
Superintendent of roads to provide ditches for 1939
Through land of another, application for appointment of commissioners 5293
—notice 5293, 5294
—duties of commissioners 5294
—damages, ascertaining ..5294, 5295
— —payment 5296

DRAINAGE DISTRICTS
Condemnation of land for.....1747
Assessment of lands benefitted not heretofore included.....1757
Drainage record 1758
Construction on railroad right of way 1765-1768
Outlet for lateral drains.....1770
Mandamus against to compel payment of bonds 1774
Fees and expenses 1778
Construction of law relating to.1779
Defects in proceedings.....1779
Proceedings to which law applicable 1781
Removal of engineers, &c.....1780
Establishment, jurisdiction of court 1737
—petition for, what to contain, 1738, 1739
— —recordation 1742
— —costs 1742
— —bond 1738
— —dismissal 1744
— —hearing on, notice....1744, 1746
— —district established and designated 1746
—appeal 1748
—process 1738
—publication 1738, 1740
—unknown owners, representative for 1740
—infant or insane person, guardian ad litem for.....1741
Board of viewers, appointment, 1738, 1778
—engineer 1738
— —copies of maps for record..1758
—compensation 1738, 1739, 1778
—examination, report, map, 1743, 1744
—attendance at hearing 1746
—further report by 1746
—complete survey 1749
—complete report, map.....1750
—assessment of damages.....1751
—classification of land benefitted 1752
—cost of survey 1753
—extension of time for report..1754
—final report, hearing, notice, 1755, 1761
— —filing copy for inspection..1755
— —adjudication, appeal.....1756
—report of benefit to highways.1764
—railroads, damage to 1765

Digitized by Google

Sec.

DRAINAGE DISTRICTS—Con.
— —benefit to 1766
— —notice 1767
— —construction on right of way 1768
—removal 1780
Board of drainage commissioners, report to court of lands benefitted not assessed 1757
—appointment 1759
—vacancy 1759
—corporation, name 1759
—organization, officers 1759
—treasurer 1759
—seal 1759
—powers 1759
—superintendent of construction 1760
— —bond 1760
— —estimates by 1762
—letting contract, notice..1761, 1763
—bond of contractor 1761
— —action on 1763, 1776
—monthly estimates 1762
—warrants for work done.....1762
—failure of contractor, re-letting 1763
—repairing or constructing bridges across highways.....1764
—control and repairs, work constructed 1769
— —assessments for 1769, 1776
— —damages by individuals, recovery for 1769
— —lateral drains 1770
—certificate of cost of work....1771
—assessment tax rolls 1771
—action against county treasurer for failing to pay bonds.1771
—notice of proposal to issue bonds 1772
—bond issue 1774, 1777
—default on bonds, action against for 1774
— —mandamus for payment....1774
—compensation 1778
—warrants 1778
—removal 1780
Assessment rolls 1771, 1777
—effect of judgment, lien..1771, 1777
—collection 1771, 1777
—sale of land 1771, 1777
—payment of full amount for which land liable 1772
—defense of land owner, waiver.1773
—fees of county treasurer....1775
—changes in, re-levy.....1776
Bonds, notice of proposal to issue 1772
—issue, amount 1774, 1777
—terms 1774, 1777
—application of proceeds..1774, 1777
—default on 1771, 1774, 1777
—exemption from taxation.....1774
—action, mandamus 1774
—additional issue 1777
Engineer, removal 1780

DREDGE
Vessel fishing for menhaden having on board 3177

DREDGING
See **"Oysters"**

DRINK
Examination and inspection by Dairy and Food Commissioner.1160
Penalty for unsanitary condition of 1160

DRUGS
See also **"Druggists"; "Pharmacy"; "Virginia Pharmaceutical Association"; "Inebriates"**
Adulterated or misbranded, manufacture or sale, penalty, 1657, 1659
Dealer, exemption from liability for adulteration or misbranding by guaranty of manufacturer or wholesaler.....1659
Analysis, by Board of Pharmacy 1660
Drug, meaning of term.....1662
Adulterated, when deemed to be.1663
Misbranded, when deemed to be.1664
Person, meaning of term, in law relative to drugs, pharmacy, etc. 1665
Principal, liability of for act of agent 1665
Character and standard, regulation of by Board of Pharmacy 1672
Dispensing and retailing.....1681
Homeopathic, sale of by homeopathic pharmacist 1681
Dispensing, compounding, retailing, forbidden to whom.....1682
Pharmaceutical preparation, sale of 1690
Patent or proprietary preparations, sale of 1690
Penalty for violation of laws referring to 1692
Opium, morphine, heroin, sale..1693
—prescription for by physician.1693
—proprietary remedies containing 1693
—habitual users, furnishing to..1694
—penalty 1695
—habitual users, prescription for 1694
Cocaine, eucaine, sale or dispensing of 1696
—possession with intent to sell, penalty 1697
—prescription for 1698
Sample, placing in yard, hall, porch, etc., penalty 1701
Adulteration, penalty 1702
Person addicted to use of, giving ardent spirits to, punishment.4639
—required to disclose from whom ardent spirits were obtained 4640
—penalty for refusal 4640

DRUGGIST
See also **"Drugs"; "Pharmacy"; "Board of Pharmacy"**
Sale of preparations containing alcohol 4588, 4589
Sale of alcohol, wine, whisky and brandy 4588
—for medicinal purposes, prescription 4591
— —filing 4591
— —record of 4591
Jamaica ginger, sale of.....4589
Sale of alcohol for scientific and mechanical purposes, affidavit.4592
—filing 4592
—record of 4592
Sale of wine for sacramental purposes, affidavit 4592
—filing, record 4592
Penalty for violations of law by 4593
—revocation of license 4593
—destruction of ardent spirits..4593
Prosecution for unlawful sale of intoxicating liquors, evidence, presumption 4595
—violations of law by clerk....4595
—forfeiture of license as pharmacist for failure to discharge clerk 4595

Digitized by Google

Sec.

DRUGGIST—Con.
—on conviction 4595
License to sell alcohol, whisky, brandy and wine, application for 4599
—posting and publishing notice.4599
—certificate 4599
—investigation by judge 4599
—petition against issuing license 4599
—to wholesale druggist 4600
Selling ardent spirits, monthly statement to clerk of the court 4601
—bond 4602
Receiving intoxicating liquors from transportation company 4605
—record, affidavit 4605
—penalty for failing to comply with law 4605
—counties and cities excepted..4605
Prescription and affidavit for intoxicating liquors to be in duplicate 4654
—originals filed in clerk's office..4654
Identification of person applying to for ardent spirits.....4656
Claims against decedent's estate, 5390, 5391, 5395

DRUNKARDS
See "Inebriates"
Committee, trust company as...4148

DRUNKENNESS
In public, punishment 4568

DUE PROCESS OF LAW
Criminal prosecutions. Va. Const., § 8
Deprivation of property without, prohibited .....Va. Const., § 11

DUELING
General Assembly may remove disability incurred by, Va. Const., § 57
Disfranchisement for 82
—Va. Const., § 23
Exclusion from registration for. 92
Form of oath against by officer. 270
—modification of 271
Disqualification to hold office because of 289
Murder by dueling out of State..4416
—seconds as accessories.....4417
—venue of prosecution.....4418
Fighting or sending challenge..4419
Accepting or bearing challenge 4420
Leaving State to evade law....4421
Plea of former conviction or acquittal 4422
Posting or upbraiding for not fighting 4422
Recognizance to keep the peace.4424
Testimony of seconds, etc.....4425

DUES
Of building and loan association 4155

DUPLICATE
License to practice medicine....1613
Automobile license when certificate lost 2135
—number plate 2135
Warrants for waste and unappropriated land 2504
Certificate of allowance by court to be paid out of treasury....3404
Freight receipts 3915
Key to railroad switch, penalty for making, buying, selling..4019
Prescriptions and affidavits under prohibition law 4654

Sec.

DURESS
Defense to negotiation of warehouse receipt 1336
Negotiable instrument obtained by 5617

DWELLING HOUSE
Entry in eminent domain proceedings 4362
—when may be taken in.....4362
Burning or destroying, punishment 4428
—dwelling-house defined 4429
Entry with intent to commit felony or larceny 4437, 4439
—with intent to commit murder, rape or robbery 4438
Injury to by rioters, punishment 4532

DYNAMITE
Use of to destroy fish.....3195
—penalty 3196
Destroying dwelling house, hotel, vessel, etc., by, punishment..4428
—other houses 4430, 4432
—bridge, lock, or dam.....4433

EAGLE
Killing 3364

EARTH
Condemnation of 4382
—power of railroad corporation.3857

EASEMENT
Acquired by cities of second class 2906
Created by recording plat of city or town lots 5219-5222

EAST RIVER
Taking oysters with patent tongs prohibited 3240

EASTERN SHORE
Marsh and meadow land, when to remain in common..... 421

EASTERN SHORE OF VIRGINIA GAME PROTECTIVE ASSOCIATION
Effect of game laws on powers of 3347

EASTERN STATE HOSPITAL
See "Insane Hospitals"; "Insane Persons"; "General Board of Hospital Directors"; "Commissioners of State Hospitals"

EDUCATION
See also "Cities and Towns"; "Colleges and Universities"; "Educational Institutions"; "State Normal Schools"
See the titles of the particular educational institutions.
Compulsory, General Assembly may provide for..Va. Const., § 138
Appropriations to private educational institutions prohibited, Va. Const., § 141
—exceptions.....Va. Const., § 141
Election for free school purposes 131
Gifts, devises, bequests for, validity of 587
—how taken and held..... 588
—how will probated..... 589
—trustees 590
—power of General Assembly to suspend or repeal 593
Certain statutes continued in force 592
School system, establishment, 594, 774
—public free schools, General Assembly to maintain, Va. Const., § 129
School divisions, State divided into 604, 606

Digitized by Google

Sec.

EDUCATION—Con.
—Va. Const., § 132
State Board of Examiners, selection of 610
—compensation, duty 610
Superintendent of schools, nomination of school inspectors... 610
—duty when treasurer fails to pay warrant 731, 732
Inspectors of schools, appointment of 610
—duties, compensation, expenses of 610
School laws, enforcement of by district school board..... 659
—in cities 786
Contracts, interest of officers in, 682, 683
—recovery of amount paid..... 683
Summer schools, establishment and maintenance 695
—purpose of 696
—how conducted 697
—terms and regulations..... 698
Night schols, establishment.... 721
Compulsory attendance upon schools 722
People's meetings, city schools. 786
University of Virginia.....806-827
Virginia Military Institute ..834-852
Virginia Polytechnic Institute, 853-869
Hampton Normal and Agricultural Institute 926-933
William and Mary College....934-938
State Normal Schools.....939-946
Virginia Normal and Industrial Institute 947-969
Summer Normal School for Colored Persons 959
Virginia School for Deaf and Blind 970-978
Virginia State School for Colored Deaf and Blind Children, 979-985
Annual report, State educational institutions 986
Scholarships 993, 996, 997
Miller Manual Labor School, 1000-1002
Medical College of Virginia....1003

Bond Issues

Authorization 765
Form and denomination.....765, 766
Lien 766
Use of proceeds..... 767
When issued 768
Election for 769
—order, notice, posting 769
—how held, tickets..... 770
—canvass of returns..... 771
—voters 772
Interest, principal, sinking fund. 773
Exemption of bonds from taxation 2302

District School Trustees

Provided for.....Va. Const., § 133
What United States officers not disqualified as..... 291
Management by of glebe lands and church property..... 586
Travelling expenses for attending educational conferences... 615
Appointment, qualification, term, removal 631, 632
Vacancies 632
Notification of appointment..... 634
Appointment by municipal councils 635, 668
Member and term.....636, 668
Residents of district.....639
Oath 632, 639
—certification of 638

Sec.

EDUCATION—Con.
With division superintendent of schools to constitute county school board 639
Expenses 645
Deed for school property executed by 649
Liability for wrongful employment of teacher..... 650
May permit use of school houses out of school hours..... 677
Interest in school contract prohibited 682, 683
—penalty 682, 683
—removal 682, 683
—exceptions 682, 683
—recovery of amount paid under 683
May not purchase warrants at discount 684
—penalty 684
Penalty for malfeasance or neglect 686, 687
Selection by of free student at Virginia Polytechnic Institute. 854
Power of eminent domain.....4385

Division Superintendent of Schools

Acts of Assembly furnished to.. 388
Administration of school system by 595, 774
To be members of State Board of Education 596
—Va. Const., § 132
—how selected 596
—powers and duties 596
—term 597
Removal 607
—Va. Const., § 132
Expenses in attending educational conferences 615
Punishment of for neglect of duty 617
Appointment 605, 607, 624
—Va. Const., § 132
Who disqualified 624
Holding over 624
When determined by lot..... 624
Qualifications 624
Publication of qualifications of.. 624
Term 605, 607, 625
—Va. Const., § 132
Vacancy 625
Oath 625
—certificate and record of..... 625
Salary 604, 605, 626
—not increased or diminished during term 626
—how paid 627
Powers and duties 605, 607, 628
Member ex officio, of school trustee electoral board 629
Oath of school trustee before.... 638
With district school trustees to constitute county school board 639
Ex officio president of county school board 640
To submit estimate of expenses to board of supervisors..... 646
Approval of deputies of clerk of district school board..... 652
School census delivered to..... 653
Census of deaf and blind delivered to 654
Census when boundaries of school district changed 655
Apportionment of school funds.. 656
Reports to by district boards... 663
Appeal to from district school board 666
To number or name school districts 667
Approval of plan for school house 673

Digitized by Google

Sec.

EDUCATION—Con.
—report of 673
Condemnation of unsuitable building 673
When plans not to be approved, 674-676
Interest in school contract prohibited 682, 683
—penalty 682
—exceptions 682
Penalty for malfeasance or neglect 686, 687
Approval of teacher's certificate 688
Regulations for meetings of teachers 694
Appropriation for high schools.. 707
Attendance by pupils from adjoining district 719, 720
—payment for 719
—appeal 719, 720
Report to by county treasurer.. 727
Retaining and destroying cancelled warrants 728
Annual report 729
Annual statement of school boards, posting, publishing.... 750
—penalty for failure..... 751
School libraries 755
Approval of issue of school bonds 769
Approval of sinking fund securities for payment of school bonds 773
In cities 786
—who ineligible 779
—pay 626, 784
—when to teach 785
Nomination of pupils at William and Mary College 938
Selection of State students at Virginia Normal and Industrial Institute 953
—vacancy 954
Office for, how provided.....2854

High Schools

Establishment of 705
Appropriation for.....705, 707, 708
Joint for two or more districts.. 706
—admission to 706
—pupil living in another district 706
Fund, payments from.....707, 708
Appropriation for normal department 709
—fund, payments from 710
Normal departments 711
—courses 711
—teachers 711
—number of 712
Agricultural, established 713
—courses 713
—land acquired for, cultivation of 714
—account of student labor..... 714
—sales of produce 714
—regulations for 714
—buildings 715
—female students 716
— —domestic arts and sciences. 716
—demonstration farm work..... 717
—appropriations for by boards of supervisors 718
In cities 786

Literary Fund

Set apart.....Va. Const., § 134
From what constituted, Va. Const., § 134
Recovery of money due to..... 603
Investment of capital and income of 614, 738
Claims payable out of..... 615
—limitation of 615
Money of paid into treasury..... 615

Sec.

EDUCATION—Con.
Penalties recovered for benefit of 687
State appropriations for high schools credited to.....708, 709
—payments from 710
Creation 738
Income from for school funds, 738, 739
—Va. Const., § 135
Loans from 757
—application for 758
—amount 759
—interest, bonds, notes..... 760
—repayment 761
—expenditure 762
—lien, insurance 764
Payments to retired teachers' fund from 790
Withholding, or enforcing payment for failure of State institution to report 989
Separate account of by treasurer 2195
Receipts and disbursements, report of by treasurer.....2204
Fines credited to 2575
Certificates for West Virginia's share of State debt held by...2641
Fines and penalties recovered from insurance companies paid to 4232

Officers

Not to purchase warrant at discount 684
Records, delivery to successor.. 685
—penalty for failure 685
Penalty for malfeasance or neglect 686, 687
To prosecute violations of school law 687
Interest in school contract prohibited 682, 683
—penalty 682
—exceptions 682

Pupils

Distance required to travel to school 612
Control of 660
Text books furnished, when.... 660
Suspension of 691
Transportation of 700
Admission to joint high schools. 706
—living in another district..... 706
Who admitted 719, 721
Separation of white and colored. 719
From adjoining districts....719, 720
—payment for 719
Indigent children 720
From adjoining State..... 720
Night schools 721
Compulsory attendance 722
Minimum number required..... 723
Testing sight and hearing of.... 724
Schools in cities 786
Contagious diseases, exclusion of those having 1529
Vaccination 1529, 1530
—free 1530

Schools

Educational appliances, board of education to select.Va. Const., § 132
Board of education to make rules for management of, Va. Const., § 132
Inspection of 610
Regulation of number of.....612, 700
Transportation of pupils to..... 612
Manual, industrial or technical, appropriation for 664
—General Assembly may provide for.....Va. Const., § 137

Digitized by Google

Sec.

EDUCATION—Con.
Requirement as to length of term 669
Suspension of pupils 691
Summer schools, establishment and maintenance 695
—purpose of 696
—how conducted 697
—terms and regulations 698
Preference given graded schools 699
Consolidation of 700
Joint schools 701
—property of 701
Subjects to be taught 702
Higher branches 703, 704
—fees for 703
White and colored pupils to be taught in separate schools.... 719
—Va. Const., § 140
Admission to 719-721
—pupils from adjoining districts, 719, 720
—pupils from adjoining States.. 720
—persons between 20 and 25 years of age 721
Night 721
Compulsory attendance 722
—Va. Const., § 138
Minimum number of pupils..... 723
Testing sight and hearing of pupils 724
Libraries 754, 755
—purchase of books for 755
—State aid 755
—management 754-756
Free students at Virginia Polytechnic Institute from 854
County demonstration work in.. 923
Towels for common use prohibited 1517
Exclusion of persons having contagious diseases 1529
Vaccination of pupils 1529
Taxation for 2205
—rate of 2205
—apportionment of 2205

School Boards

System of accounting for by State accountant 565
Glebe land and church property applied to education..... 586
Deduction from salaries of teachers for retired teachers' fund 790

CITY SCHOOL BOARDS

Sale or exchange of property by 649
Duty when treasurer fails to pay warrant 732
—minute 733
Loans to from literary fund..757, 758
—application for 758
—interest, bonds 760
—tax to repay 761
—removal for failure to repay.. 761
Disbursement of funds 783
Powers and duties 786
Vaccination of pupils 1529

COUNTY SCHOOL BOARDS

Glebe land and church property applied to education 586
Administration of school system by 595
How constituted 639
A corporation 639
—powers 639
Division superintendent of schools ex-officio president of. 640
Vice-president 640
Vacancy 640
Meetings 640, 641
—annual 643
By-laws, records 642

Sec.

EDUCATION—Con.
Clerk 642
—compensation and expenses... 642
—fines entered by 729
Annual report 644
Payment of expenses of trustees 645
To file estimate of expenses with division superintendent of schools 646
Apportionment of school funds. 647
—grammar schools and schools of higher grade 647
Property vested in and managed by 648
To examine manner in which trusts for purposes of common school education are administered 648, 650
—institution of proceedings..648, 650
May receive and apply donations for education of poor..... 648
May employ counsel and provide payment of fees 648
Sale or exchange of property by. 649
Apportionment of school fund... 656
Estimates submitted to 661
School census submitted to..... 653
Appropriation by to manual, industrial or technical schools... 664
When to provide for management of gifts to school boards..... 671
Loans to district school boards.. 681
—obligation for 681
To encourage teachers' meetings 694
Provision for intermediate grades of instruction.....703, 704
—fees for 703
Fine on county treasurer for failure to report on school funds 727, 729
Report of county treasurer and district clerk to 728
Cancellation and delivery of warrants 728
Duty when treasurer fails to pay warrant 732
—minute 733
Warrant on treasurer for payment of funds to depositary.. 736
Petition for reference to voters of increase of levy for school purposes 740
To compare warrants 748
—report 748
Annual statement of receipts and disbursements 750
—form 750
—penalty 751
Vaccination of pupils 1529
County treasurers to make settlement with 2201
Bonds of, exempted from taxation 2302
Real estate purchased by, examination of title of.....2769
Chairman to certify statement of clerk of board of supervisors.2775
Discharge of city or county treasurer, certificate 2792
—rule 2792

DISTRICT SCHOOL BOARDS

Glebe land and church property applied to education 586
Administration of school system by 595
Payment of expenses of trustees 645
Property vested in and managed by 648, 652
—donations 648

Digitized by Google

Sec.

EDUCATION—Con.
Sale or exchange of property.... 649
Proceedings against by county school board 650
Appointment 651
Quorum 651
Chairman 651
Constitution of 652
—a corporation 652
Powers 652
Clerk 651
—census taken by.....653, 654, 656
—compensation 653, 654
—records, accounts, inspection.. 657
—duties, compensation 658
—signature to warrants 670
—pay 670
—report to county school board. 728
—production of records and papers 728
— —penalty for failure 729
—posting statement of school board ..... 7[illegible]
— —penalty for failure 751
—order for books for school libraries 755
—bonds for loans from literary fund 760
Enforcement of laws 659
Employment and dismissal of teachers 659
—review 659
Action against for refund of public funds 659
Suspension or expulsion of pupils 660
Text books 660
Census 660
Meetings 660
To call meetings of the people.. 661
To prepare and return to county school board estimates of money needed 661
To provide schoolhouses, furniture, etc. 661
To care for, manage and control school property 661
To visit schools 662
To provide pay of teachers, text books for indigent children ... 662
To examine claims against district and issue warrants for... 662
Day and evening classes..... 663
Reports 664
—annual 664
Appropriations 664
Introduction of manual or industrial training in public schools 664
Other duties 665
Appropriation by to manual, technical or industrial schools. 664
Appeals from 666
—record of 666
Statement of before State money paid 669
Payment of claims against district 670
Donations vested in 671
Condemnation of land for schoolhouses 672
Use of district schoolhouses out of school hours 677
—appeal from decision 677
Flags on school buildings..... 678
Loans to by county board..... 681
—obligation for 681
—expenditure 681
Contracts with teachers 690
Report to of suspension of pupils 691
To encourage teachers' metings. 694
Consolidation of schools and transportation of pupils 700

Sec.

EDUCATION—Con.
Establishment of joint schools.. 701
—property of ..... 70[illegible]
Provision for intermediate grades of instruction.....703, 704
—fees for 703
Establishment of high schools.. 705
—appropriation for 705
Establishment of joint high schools 706
Disbursements for high schools, 707, 71[illegible]
Regulations for agricultural high schools 714
Attendance by pupils from adjoining district 719, 720
—payment for 719
—appeal 719, 720
Attendance by pupils from adjoining State 720
Admission of persons between 20 and 25 years of age..... 721
Establishment of night schools. 721
Order changing depositary of school funds delivered to..... 733
Warrant on treasurer for payment of funds to depositary.. 736
School libraries 754, 755
Loans to from literary fund, 757, 758
—applications for 758
—interest, bonds 760
—tax to repay 761
—removal for failure to repay.. 761
Bond issue 765
—report of to board of supervisors 773
Real estate purchased by, examination of title of 2709
—compensation 2709
Adjustment of debts when town becomes city of second class, 2902, 2903
Disposition of compensation received for school property in territory annexed to city or town 2959

SCHOOL TRUSTEE ELECTORAL BOARD
Creation 629
Members 629
—appointment 629
Compensation 629
Term 629
Duties 629
Qualification 629
Vacancy 629
Clerk 630
—duties, reports 634
Chairman 630
—oath to witnesses 632
Appointment of school trustees, 631, 632
—vacancies 632
—removals 632
Appeals to 632
—summonsing witnesses and production of papers 632
—from district school boards, 659, 666
— —summoning witnesses 666
— —decision 666
— —record of 666
—with reference to use of schoolhouses out of school hours 677
—from decision of superintendent of schools with reference to attendance in schools of adjoining district 719, 720
Meetings and quorum 633
Warrant for expenses 634
Appointment of trustees for towns 668

Digitized by Google

Sec.

EDUCATION—Con.
Regulations for demonstrating farm work 717
—pupils attending school in adjoining district 719, 720
—appeals to 720
—pupils from adjoining State... 720
—pupils between twenty and twenty-five years of age..... 721
—night schools 721
To prescribe minimum number of pupils for schools 723
Disposition of unexpended school funds 730
Management of literary fund.... 738
Rate of school levy..... 740
Books for school libraries....754, 755
—use and preservation 756
Loans from literary fund....757-764
—applications for 758
—amount of 759
—title 762
—expenditure 762
—regulation 763, 764
Regulations for city schools.... 786
Retiring and pensioning teachers 787, 788
Deduction from teachers' salaries for retired teachers' fund..790, 799
Appropriations for retired teachers' fund turned over to..... 791
—gifts 792
—investment of 793
—warrants 794
—accounts, reports, bond..... 795
Publication list of retired teachers 798
—regulations 800
Removal of teacher from retired list 801, 804
Co-operation in county demonstration work 923
Payments to Hampton Normal and Agricultural Institute.... 929
Removal of visitors, Virginia Normal and Industrial Institute 963
Supervision and control of Virginia Normal and Industrial Institute 968
The Miller Manual Labor Training School of Albemarle.....1000
Appropriation for schools in colony for feeble-minded 1077
—at the Central State Hospital..1092
To keep certificates for West Virginia's share of State debt.2641
Approval of traveling expenses of Superintendent of Public Instruction 3442

Superintendent of Public Instruction
Administration of school system by 595-774
To be member of State Board of Education 596
—Va. Const., § 130
To select members State Board of Education 596
Clerks and employees 608
Appeals from decisions of..... 613
—form of 613
Certification of claims payable out of literary fund 615
Certificate of oath of division superintendent of schools furnished to 625
Plans for apportionment of school funds, approved by State Board of Education..... 616
Contingent expenses of office... 616
—examination of accounts for.. 616
—warrants for payment 616
Election of 621

Sec.

EDUCATION—Con.
—Va. Const., § 131
Term 621
—Va. Const., § 131
Qualification 621
Salary and expenses.....621, 3442
Vacancy 621
—Va. Const., § 131
Oath 621
Ex-officio member of governing board of institutions receiving appropriations from State..... 621
Ex-officio president of State Board of Education 600, 623
—Va. Const., § 131
Duties of 608, 623
—Va. Const., § 131
Reports to, annual, by county school board 644
—of funds applicable for school purposes 746, 749
—of compared warrants..... 748
—of boundaries of school districts in cities, recordation.... 776
—by Hampton Normal and Agricultural Institute 930
—by Virginia Agricultural and Mechanical College 930
—by visitors of Virginia Normal and Industrial Institute 951
—by State educational institutions, annual 986
To provide forms for school census 653
—for oath by school trustees... 634
—to district boards for annual reports 663
—for treasurer's report 727
Number or name of school districts recorded in office of.... 667
To prescribe form of school register 689
—of teacher's contract 690
Supervision of summer schools. 697, 698
To provide for testing sight and hearing of pupils 724
Distributive statement of funds applicable for school purposes. 746, 749
Transmission of scheme of apportionment school funds 753
Approval of plans for school buildings and loans for 759
Notice of failure to pay loan from literary fund 761
Approval of issue of school bonds 769
Annual report, statement of retired teachers' fund included in 795
—annual reports of State educational institutions embodied in 986
Application to for restoration to retired teachers' list 803
Visitor of the University of Virginia 807
—of Virginia Polytechnic Institute 859
—of State normal schools..... 941
—of Virginia Normal and Industrial Institute 948
Virginia Normal and Industrial Institute, salaries of teachers. 966
—use of funds of 967
Board of Medical Examiners, copy of record to 1611

Teachers
Examination of 610
Employment and dismissal..... 659
—appeal 659
Qualification, certificate 659
Who disqualified 659

Digitized by Google

Sec.

EDUCATION—Con.
Duty as to flags on buildings... 679
Interest in school contracts prohibited 682, 683
—penalty 682, 683
—removal 682, 683
—exceptions 682, 683
—recovery of amount paid under 683
Penalty for malfeasance or neglect 686, 687
Certificates 688
Daily register 689
—delivery of at close of term... 689
Contracts with 690
Suspension of pupils 691
—report of 691
Salaries 692, 693
—payment of 670
Meetings of encouraged 694
Duties as to instruction..... 702
Normal departments of high schools 711
Testing sight and hearing of pupils 724
City schools 786
Pensions 787-805
—amount of 794
—who may be retired and pensioned 787, 796, 797
— —classification 797
—deduction for permanent endowment 790-799
—return of 805
Retired teachers' fund 790
—deductions from salaries for.. 790
—appropriations 791
—gifts to 792
—investment of 793
—warrants for payments 794
—accounts, report, bond 795
—regulations 800
Retired, list of published..... 798
Removal from pension list...801, 804
—restoration to list 803
—restoration to standing as teacher 802
Graduates of William and Mary College 937
Graduates of State normal schools 945
Graduates of Virginia Normal and Industrial Institute..... 954
Vaccination 1529
Exclusion of pupils with contagious diseases 1529

Text Books
Selection of 611, 702
—Va. Const., § 132
When furnished to pupils..... 660
To be provided for 662
Officers and teachers not to be interested in contracts for.... 682
Free 725
—when furnished...Va. Const., § 139
City schools 786

EDUCATIONAL INSTITUTIONS
See also **"Education"**
See the titles of the particular educational institutions
Visitors, trustees, appointment, term .....Va. Const., § 142
Systems of accounting for devised by State accountant..553, 554
—mandamus to compel adoption. 555
Inspection of accounts of....557, 558
—duty and penalty 558
Real estate of, power to sell....3877
Property of exempt from taxation 2272, 2301
—Va. Const., § 183

Sec.

EDUCATIONAL PURPOSES
Property dedicated to by recording plat of city or town lots, 5219-5222

EGGS
Of fish, injuring 3195
—penalty 3196

EJECTION
Of riotous or disorderly persons from railroad train or street car 4538

EJECTMENT
Declaration, fee when officer fails to serve 3489
Judgment in unlawful entry or detainer not to bar.....5450
Action retained 5451
When and by whom brought....5452
Venue 5453
What interest plaintiff must have 5454
Parties defendant 5455
—landlord as 5455
How action commenced 5456
Declaration, what stated in.....5457
—description of premises 5458
—statement of interest of plaintiff 5459
—counts 5460
—notice subjoined, service.....5461
Parties plaintiff 5460
Notice to defendant, service....5461
Demurrer 5463
Plea 5463
Between co-tenants 5466
Several defendants 5467
Part possession not possession of whole, when 5470
Judgment by default 5462
—several judgments 5468
—plaintiff's right expired before trial 5479
—for plaintiff, how entered.....5480
—conclusiveness 5486
— —as to persons under disability 5487
—recordation of 5216
Evidence, admissability.....5463
—sufficiency 5464, 5465
—actions between co-tenants....5466
To recover land embraced within boundaries of grant under which plaintiff claims, rule for recovery 5465
Profits, assessment by jury.....5481
Verdict, against several defendants 5467
—for plaintiff 5474
—for defendant 5475
—description of premises recovered 5476
—for undivided interest 5477
—plaintiff's title specified in....5478
—plaintiff's right expired before trial 5479
—for damages for waste.....5481
—for damages to plaintiff.....5495
—allowance for improvements by defendant 5495, 5496
Recovery of part of premises...5469
—description in verdict 5476
—of dower by 5480
Vendor against vendee, when vendor may not recover.....5471
Equitable defenses 5470-5472
—notice of 5472
By mortgagee, when no recovery 5472
—by trustee 5472
—Consent rule abolished 5464
Damages, where plaintiff's right expired before trial 5479

Digitized by Google

Sec.

ELECTIONS—Con.
—commissioner of revenue 129
— —in city of second class.....2893
— —Va. Const., § 119
—justices of the peace.....3092
Civil and police justice.....3097
Clerk of the court 124
—Va. Const., § 110, 112
—for city of Richmond 129
—for city of Bristol 129
—for city of Radford 129
—for city of Buena Vista..... 129
—for city with population of thirty thousand or more 129
—for hustings courts of city of Richmond 5930
—for chancery court of city of Richmond 5930
—for law and equity court of city of Richmond 5930
Clerk of city courts.....129, 3007
—Va. Const., § 118
Commissioner of Agriculture and Immigration 118, 1104
—Va. Const., § 145
Commissioner of Insurance.....4171
Commissioner of Prohibition....4623
Commissioners of the revenue... 123
—Va. Const., §§ 110, 112
—in cities 129
— —in city of second class.....2893
— —Va. Const., § 119
Commonwealth's attorney 122
—Va. Const., §§ 110, 112
—in cities 129, 3008
— —Va. Const., § 119
Congressmen 70
—apportionment 70
—one from each district 71
—how and when elected..... 72
—vacancy, how filled 73
Constable 127
—additional 128
Councilmen of city 3012
—Va. Const., § 121, 122
—of town 2994
County treasurers 123
—Va. Const., §§ 110, 112
District officers 127
Governor 118
—Va. Const., § 70
—to fill vacancy in office of.... 120
House of Delegates, members of 78
—Va. Const., § 42
—apportionment 78
—vacancy, how filled 81
— —Va. Const., § 47
Judges of Supreme Court of Appeals .....Va. Const., § 91
Circuit judges.....Va. Const., § 96
Judges of city courts.Va. Const., § 99
—of corporation courts.....5905
Judge, court of law and chancery of Norfolk 5934
Judge, of court of law and chancery of Roanoke 5935
Justices of the peace 127
—additional justices 128
—in cities 3092
Lieutenant Governor 118
—Va. Const., § 77
Mayor, of city.....129, 3010, 3012
—of town 2994
Officers of cities and towns, 3009, 3012
Overseer of the poor..... 127
Presidential electors, number.... 74
—how and when chosen..... 74
—election and meeting.....75, 76
—vacancies 76
—compensation 77
—ballots 157
—list of furnished to Secretary of the Commonwealth 157

Sec.

ELECTIONS—Con.
Secretary of the Commonwealth. 118
—Va. Const., § 80
Senate, apportionment 79
—members, when elected 80
—Va. Const., § 41
—vacancy, how filled 81
— —Va. Const., § 47
Senators of United States..... 68
—to fill vacancy in office of.... 69
Sergeant of city or town....129, 3024
—Va. Const., §§ 120, 122
Sheriff 122
—Va. Const., §§ 110, 112
—of city of Richmond 2814
State Board of Education 596
—Va. Const., § 130
State Treasurer 118
—Va. Const., § 81
Superintendent of Public Instruction 118, 621
—Va. Const., § 131
Supervisors 127
—Va. Const., §§ 111, 112
Vacancies, elections to fill...130, 197
—in General Assembly 81
— —Va. Const., § 47

Elections for Particular Purposes

To call constitutional convention. Va. Const., § 197
For disposition of glebe lands.. 36
Free school purposes 131
—duty of officers 131
To approve and ratify amendment to Constitution 312
—Va. Const., § 196
Ordered by State Board of Education 613
Increase of school levy..... 740
Bond issue for schools.....765-773
Establishment tuberculosis sanatorium 1507-1513
Bond issue for roads, order for.2110
—voters 2111
—officers, judges, polls 2112
—ballots 2112
—canvassing returns 2113
—certificate of result 2113
—order of court to carry out wishes of voters 2114
—contest 2115
—how often held 2122
—for magisterial districts 2123
Formation of new county..2676-2679
For bond issue by counties for erection of buildings, etc., 2738-2739
On question of removal of courthouse 2745-2547, 2752-2755
When city of first class formed, 2918-2921
In cities, for change of form of government 2925, 2928, 2930
—Va. Const., § 117
For adoption by city of special form of charter....2925-2928, 2930
—Va. Const., § 117
In city or town adopting "modified commission plan" or "city manager plan" 2933
In city or town to abandon changed form of government, 2954, 2955
Bond issue by city or town.3082-3085

Electoral Boards

Appointment 84
—Va. Const., § 31
—of city of second class.....2897
Terms of members 84
—Va. Const., § 31
Vacancies 84, 92
—Va. Const., § 31
Powers and duties 84
—Va. Const., § 31

Digitized by Google

Sec.

ELECTIONS—Con.
Number of members 84
—Va. Const., § 31
Eligibility, holding other office.. 84
—Va. Const., § 31
Qualification of members 84
Chairman and secretary 85
Appointment of commissioners of election 182
—for primary elections 239
—to fill vacancies 239
Appointment of judges.....84, 148
—for primary elections 224
—Va. Const., § 31
—penalty for failing to appoint. 148
—removal .....
—for towns 2995
Appointment of clerks.....84, 148
—Va. Const., § 31
—penalty for failing to appoint. 148
—removal 88
Appointment of registrars..84, 86, 88
—Va. Const., § 31
—removal 88
—for towns 2995
Secretary 85
—expenses of 89
—notice of election to Secretary of the Commonwealth..... 154
—custody of seal 158
—custody and delivery of ballots, 158, 159
—penalty for failure to perform duty 159
Meetings 87, 158
Quorum .....
Record of proceedings 87, 158
Pay and mileage 89, 156
—oath of claim 89
Seal, custody and use of..... 158
Stationery and postage for..... 89
New registration of voters, when 90
—procedure for 90
To order registration books copied, when 91
To direct registration books to be purged 107
Duties as to printing ballots.155, 156
—compensation for 156
Arrangement of voting places... 160
Improper distribution by of ballots or giving information with respect thereto or counterfeiting, penalty 167
To provide ballots for primary elections 236
Special election for school bonds 770
Of city of second class.....2897
—appointment 2897
Appointment of judges of election and registrars for towns.2995

Judges

Appointment 84, 148
—for towns 2995
—Va. Const., § 31
Qualification 84, 148, 149
—Va. Const., § 31
Vacancies 88
Removal 88
Oath 149
Term 148
List of paid poll taxes furnished to 111
—Va. Const., § 38
Failure to attend, selection of substitute 148
—penalty 4723
To receive books from and return same to registrar 104
Delivery of ballots to..... 159
—certificate of receipt 159
—opened and counted 159
—unused ballots 159

Sec.

ELECTIONS—Con.
Penalty for failing to perform duty 159
Decision of dispute as to precedence of electors 161
May cause arrest of person copying or carrying away ballot.. 163
Assistance of voters by 166
Improperly distributing, or giving information with respect to, or counterfeiting ballots, penalty 167
Ballot boxes kept by..... 171
To open, empty and close ballot boxes before election 172
Duty with respect to receiving ballot from voter 173
When may register voter..... 173
Duty to challenge voter 174
Trial of challenge 175
Closing polls, proclamation by judges 176
Canvass of vote by 176, 177
Votes counted and returns made. 178
To prevent intimidation of voters 194
May order arrest of persons intimidating voter 194
May commit person to jail for disturbing election 196
Appointment by of persons to preserve order at elections.... 193
Compensation 200
Special election for school bonds, 770, 771
Election on bond issue for roads.2112
In towns 2995
Duty, in town election.....2996, 2998

Offences

Registrar failing to deliver registration books 104
Hindrance or disturbance of registrars 106
By electoral board 148
Printing ballots, violation of duty with respect to 156
Violation of oath by printer of ballots ..... 15.
Wilful violation of section 159; opening sealed package of ballots 159
Carrying away or copying ballot 163
Assisting or advising voter, 163, 166, 472.
Disposing of, giving information with respect to, or counterfeiting ballots 167
Crowds congregating at polling places 167
For which no punishment otherwise provided 169
Certificate of election, clerk's failure to make out and deliver 186
Intimidation of voters 194
Intimidating or interfering with election officers 195
Disturbance of 196
Fraud on law relating to voting by absent voter 219
Improper expenditures by candidate 251
—by another in behalf of..... 252
Candidate failing to file statement of expenditures 255
Officers failing to perform duty, election for forming new county 2679
Concurrent jurisdiction of civil and police justices with corporation court, of violation of election laws 3102
Betting on 4692

Digitized by Google

Sec.

ELECTRIC RAILWAYS—Con.
—penalty 3980
—when not required 3982
—penalty for failure of passenger to obey conductor.....3983
Conductors and motormen conservators of peace, powers and duties 3981
Accidents, reports of to State Corporation Commission 3988
Rights, powers, duties, etc.....4061
Right of way, condemnation for.4063
—contracts for 4062
—Va. Const., § 124
Excursions, prohibition of 4008
—notice 4009
—penalty 4010
Condemnation of land of college or university by 4384
Obstructing, removing, injuring, property or equipment of, punishment 4468

ELECTRIC WORKS
Sale of by city or town, Va. Const., § 125

ELEEMOSYNARY INSTITUTIONS
System of accounting for devised by State accountant..553, 554
—mandamus to compel adoption 555
Inspection of accounts of....557, 558
—duty and penalty 558

ELEGIT
Writ abolished 6480

ELIZABETH CITY COUNTY
Taking terrapins in, penalty....3297
—disturbing eggs 3297
—forfeiture of boats 3297
Commonwealth's attorney, fees.3500
Circuit court, appointment commissioners to examine pilots..3613
—removal, vacancies 3614

ELIZABETH RIVER
Quarantine district 1542
Ferries across, leasing and operating 2048
Use of pounds nets in.....3173
—penalty 3175
Va. Const., § 21
Fishing in 3202, 3204
—penalty for unlawful.....3202, 3204
Riparian rights of owners on....3236
Lines within which wharves, piers, etc., may be located....3667
Removal of obstructions to navigation in 3668
Dredging, dumping material....3671
Survey by engineer employed by harbor commissioners 3670
Examination and repair of wharves, bulkheads, etc., at direction of harbor commissioners 3676

EMBALMING
See **"Dead Bodies"; "State Board of Embalming"**

EMBEZZLEMENT
Disfranchisement for 82
—Va. Const., § 23
Exclusion from registration for. 93
By officers of fines.....2546
—prima facie evidence 2546
Receiving deposits when bank or broker is insolvent 4132
Of money, bills, checks, &c.....4451
Of public funds by officer.....4452
Search warrant 4819-4822
Sufficiency of indictment.....4870
Prosecution for, sufficiency of proof of ownership 4872
Conviction of disqualifies as juror 5984

Sec.

EMBLEMENTS
Common law rights.....5540
Rent for land occupied by.....5541
—apportionment of rent 5541
Compensation for preparing land for crop 5542
Tenant holding over 5543

EMERGENCY
Dispensing with printing and reading bill.....Va. Const., § 50
Act of Legislature, when takes effect 4
—Va. Const., § 53
Vote on 4
Emergency expressed in act.... 4

EMINENT DOMAIN
Private property not to be taken or damaged without just compensation.....Va. Const., § 58
By United States for site for custom house, courthouse, post-office, etc. 19
—for conservation of forests.... 19
Damages caused by coast survey, how ascertained 21
—assessors 21
—assessors' report 22
— —appeals 23
—order of court on report..... 24
— —appeal from, how tried..... 25
Condemnation of land for cemetery 53, 56
Condemnation of abandoned cemtery by city or town..... 54
—procedure 54, 55
Condemnation of land for schoolhouses 672
Condemnation of land for city schools 786
Condemnation of water supply by Virginia Military Institute. 852
Land and buildings for hospital by cities and counties, 1555, 1557, 1558
Condemnation to establish drainage district 1747
—parties 1747
Roads, landing or bridge, proceeding to establish or change location 1977-1981
Tramway or railway crossing highway 2008
Cities of second class, right to condemn property for supplying light, heat, water, fuel....2906
Condemnation by city or town for establishment of public utilities 3031
—land along Lake Drummond, for water supply 3040
—property adjacent to parks or monuments, or which impairs use of streets 3065
Erection of dam.....3582-3593
Condemnation by corporation of property of another corporation having power of eminent domain 3832
—appeal from 3833
Condemnation by railroad of land, sand, earth, gravel, water or other material 3857
Public service corporation crossing works of another 3884
—crossing or changing course of public road, ascertainment of damages 3885
Condemnation of right of way by telephone and telegraph companies 4040
—title acquired 4040
—title not exclusive 4040
Condemnation of right of way by public utility company 4063

Digitized by Google

Sec.

EMINENT DOMAIN—Con.
Proceedings
"Railroad" construed 4360
Jurisdiction 4361
—hustings court of city of Richmond 5913
Entry for surveys 4362
—dwelling-houses 4362
Effort to purchase 4363
Petition, what to contain.....4364
Judgment 4372, 4373, 4387
Costs 4372, 4387
Reports, orders, proceedings, certified copies of, recordation....4381
Contiguous lands 4382
Water supply 4382
Materials, wood, sand, &c.....4382
Commissioners, application for appointment of, notice of 4365
—appointment, notice of...4366, 4370
—meetings 4366
—duties 4366
—compensation 4366
—oath 4367
—report, form of 4368
— —proceedings on 4369, 4370
— —recordation, &c., of...4369, 4381
—report, subsequent 4372
— —judgment on 4372
— —contracts embodied in.....4380
—vacation of appointment 4387
—appointment of new 4387
Damages, ascertainment....4365-4379
—payment 4369
—disposition of money paid.....4374
Title acquired 4369
—when vested 4369, 4373
—reversion on change of location 4379
When work may be begun pending proceedings for 4371
—injunction against, when not awarded 4371
Board of commissioners, application for appointment of.....4375
—appointment 4375
—duties 4375, 437
—vacancies 4375
—term 4375
—compensation 4375
—oath 4376
—report, form of 4377
—meetings, notice of 4377
—proceedings on report 4378
Change of location, proceedings for 4379
—reversion of title on 4379
—railroad company 4379
Contracts with owners of property taken, running as covenants with land 4380
Dismissal of proceedings 4387
Section 3832 not affected by chapter 176 4388
Parties 4383
Action for property taken, abatement 4383
Property not subject to condemnation 4362, 4384
Resistance to condemnation, removal of 4386
Appeals 6336, 6337
—jurisdiction of Supreme Court of Appeals .....Va. Const., § 88

PURPOSES FOR WHICH POWER MAY BE EXERCISED
Custom house, courthouse, post-office 19
Conservation of forests 19
Cemetery 53, 56
Schools 672, 786
Hospitals 1555, 1557, 1558
Drainage district 1747

Sec.

EMINENT DOMAIN—Con.
Tramway or railway 2008
Light, heat, fuel supply.....2906
Establishment of public utilities.3031
Erection of dam 3585-3593
Right of way 4040, 4063
Roads 1977-1981, 4385
Water supply 852, 2906, 3040, 4385

PARTIES ENTITLED TO EXERCISE POWER
State Highway Commission.....4385
Counties 4385
Cities and towns 4385
School district 4385
Institution for deaf and blind...4385
State hospitals 4385
State institutions 4385
University of Virginia 4385
Virginia Military Institute.....4385

EMPLOYER AND EMPLOYEE
See also **"Master and Servant"; "Mines."** Of particular departments, see the respective heads.
Federal employees ineligible as members of General Assembly, Va. Const., § 44
Employees of auditing committee of General Assembly, Va. Const., § 68
Employees of officers intrusted with State funds, bonds, Va. Const., § 85
Action by employee against railroad, fellow servant doctrine, assumption of risk, Va. Const. § 162
Employment agency inducing employee to leave employer..1805
Person or corporation authorized to hire or discharge employees, receiving fee or percentage of wages prohibited 1805
Female employees, seats for....1807
— —penalty for failing to provide 1807
—hours of labor 1808
— —exceptions, penalty 1808
Children under fourteen years of age, employment in factory, workshop, mine, etc., prohibited 1809
—employment during school hours or between certain hours prohibited 1809, 1812
—hours of employment....1810, 1812
—certificate of age, posting, filing 1810
— —issuance of 1811
—proof of age 1811
—under fourteen years of age, employment of as messengers for telegraph, telephone, or messenger company prohibited 1812
—violations of law relating to employment of, penalty 1814
— —prima facie evidence of guilt 1815
—employment by parent or guardian 1815
—packing fruits and vegetables.1815
Preventing discharged employee from obtaining employment, penalty 1817
Employees in certain employments, payment of, time and manner 1818, 1819
Employees, sale of goods to by employer, price 1820
Employees in peanut cleaning establishments, dust shield furnished to employee 1821
—in cotton factory 1821

Digitized by Google

Sec.

EQUITY—Con.

Particular Equitable Suits or Proceedings

Suit to vacate cemetery and sell land 58
To supply links in chain of title, 479-482
By Commonwealth to repeal grant 486-488
—limitation 5822, 5823
To subject escheated land to decedent's debts 516-518
To recover derelict property for Commonwealth 518-520
To enjoin and abate house of prostitution as a nuisance...1522
To enforce lien of taxes on land.2271
To remove cloud on title, tax sale or deed 2498
—limitation 2488
—generally 6248
Land sold in, liability for taxes..2499
Proceeding to recover claim against State.....2578-2583
To adjust debts, when town becomes city of second class....2903
To enforce lien of local assessment for improvements in streets, etc. 3071
Judgment of State Corporation Commission, enforcement of lien of 3732
Against directors and stockholders, dividend declared from capital stock 3840
For dissolution of non-stock corporation 3880
Against railroad violating law relating to transportation of live stock 4006
To recover capital stock of company acting as bank of circulation 4152, 4153
To enforce lien of policyholders on bonds deposited by insurance companies and guaranty companies 4214
—to administer assets of.....4215
To abate nuisance under prohibition law 4630
To annul marriage.....5100-5111
To affirm marriage 5102-5111
Divorce 5103-51
To recover dower....5125, 5126, 5127
Sale of estate of infant married woman 5137
By life tenant against remainderman for sale of fee simple....5161
By remainderman for sale of fee simple 5161
By creditor to set aside fraudulent transfer 5186
To enforce contract reserving title to chattels 5190
To impeach will, after judgment in formal probate proceedings.5258
To impeach or establish will after ex parte proceedings.5259-5261
—after probate proceedings before clerk 5259-5261
—saving to infants, insane persons and non-residents.....5260
For partition 5279-5286
—of chattels, sale 5286
To sell real estate of infant, 5326, 5335
For sale or lease of real estate of infant, insane person, or trust estate 5335-5347
Transfer of trust property out of State 5353
To administer real assets of decedent 5396

Sec.

EQUITY—Con.

By creditors against heirs and devisees 5398-5400
For relief against forfeiture of land for non-payment of rent or breach of condition of covenant 5532-5533
To recover money or property lost in gaming 5560
Suit by assignee of chose in action 5770
To surcharge or falsify account of fiduciary, limitation on.....5811
To repeal grant, limitation.5822, 5823
For discovery 6238
To remove cloud on title.....6248
—tax sale or deed.....2498
For sale of land.....6266-6273
Commissioner to execute deed or writing, appointment of 6296
—reinstatement of cause for....6297
Trustees, appointment of..6302, 6303
To enforce mechanic's lien.....6437
—limitation on 6432
—lien for labor and supplies furnished to corporation.....6439
To enforce judgment lien...6472-6474
By officer to recover property subject to lien of execution or judgment 6514
To subject homestead estate of excessive value 6545

ERRORS

See **"Writs of Error"**
Not error to describe railway company as railroad company or vice versa 5
Verdict in detinue omissions in not error 5802
In venire facias, or in drawing, summoning or empanelling jury, when verdict set aside or judgment reversed for.....6002
Amendment of pleading after demurrer, right to insist upon original pleading 6116
For which award set aside.....6162
Clerical, correction.....6329
—motion, notice 6329
Release of by judgment on confession 6330
Insufficient for reversal....6331, 6332
In judgment or decree, correction in same court 6333
—in appellate court 6334
Petition on appeal to assign errors 6346
In mechanic's lien, effect.....6431

ERYSIPELAS

Bodies dead of, transportation, rules for 1728

ESCAPE

From quarantine 1539
Of minor from Prison Association of Virginia.....1957
Jail prisoner on State convict road force 2079
Discharge of jailor's liability for 2880
Of inmate of State hospital, aiding in, punishment 4412
Of prisoner, aiding.....4504
—officer permitting 4505, 4506
—from jail 4507
— — when not sentenced.....4508
—by setting fire to jail.....4509
Delay in or refusal of officer to execute process of arrest....4510
Refusal to aid officer in prevention of 4511
Convicts from penitentiary, reward for 5042, 5043
By convict from penitentiary....5049

Digitized by Google

Sec.

ESCAPE—Con.
—punishment 5051
From prison, reward for apprehension of 5068

ESCHEATS
Land escheated, title to acquired by settlement and payment of taxes 457
Land not to escheat 492
Escheators, appointment 489
—bond 490
— —increase or reduction of... 491
— —effect of failure to give.... 491
—term 490
—removal 490
—inquest by 493
— —notice 493
— —jury 494, 495
— —how evidence given 494
— —attendance of jurors secured 495
— —verdict, returned to clerk's office 496
—possession of escheated property pending petition 501
—certificate to Register of Land Office 503
—certificate of sale 507
—duty when sale on credit..... 509
—reports to auditor 510
—payments to, into treasury.... 510
—penalty for failure to perform duty 511
—commission 513
—sale by 505
—delay of sale in favor of foreigners 506
Defendant in creditor's bill to subject escheated land to decedent's debts 516, 517
Petition for relief against..... 497
—proceedings on 497-499
—jury trial 498
—judgment 498
—certificate of facts 499
—when possession given claimant pending petition 500
—possession by escheator 501
Sales, order by Governor..... 505
—delay in case of foreigners.. 506
—when grant to issue 507, 512
—resale 508
—when sale on credit..... 509
—reports to auditor 510
—payments into treasury..... 510
—fees and commissions 513
—relief against 521
Estate not to escheat because trustee an alien 514
Of equitable title 514
Rights of tenants 515
Rights of creditors 516
—bill in equity, decree 516
Bill to recover in name of Commonwealth 518-520
Proceeds of for literary fund... 738
—Va. Const., § 134
Personal property 5275

ESSEX COUNTY
Glebe land of, act concerning, continued in force 2811
Taking terrapins in 3297
—disturbing eggs 3297
—forfeiture of boat 3297
Hunting at night 3357
Shipping wild water fowl.....3357
Commonwealth's attorney, fees..3505

ESTATES
See **"Creation and Limitation of Estates"**
Separate estate of married women 5134-5140

Sec.

ESTATES—Con.
—equitable separate estate.....5139
Of inheritance or freehold, when writing necessary 5141
—when deed or will necessary to convey 5141
—voluntary partition by deed...5141
Gifts of, necessity for writing..5141
Interest in, taken under instrument by one not a party thereto 5143
To lie in grant as well as in livery 5146
Disposed of by deed or will....5147
Future, creation of by deed or will 5147
Executory limitations, created by deed or will 5147
When power of disposition in life tenant not to defeat remainder 5147
Deed to pass rights of grantor..5148
Fee simple, passing by deed or will without words of limitation 5149
Conversion of fee tail into fee simple 5150
Limitation contingent on dying without heirs or heirs of the body, how construed 5151
Contingent remainder not to fail for want of particular estate..5153
Rule in Shelley's case abolished.5152
Remainder not affected by alienation of particular estate or merger 5154
Transfers of to uses.....5155
Deed of release effectual without lease 5156
Equitable, liability to debts.....5157
—spendthrift trusts 5157
Trust, dower in 5158
—curtesy in 5158
Survivorship between joint tenants abolished 5159
—exceptions 5160
Sale of fee simple on bill by life tenant against remainderman.5161
Sale of life estate on bill by remainderman against life tenant 5161
Deed, form of 5162
—estate conveyed by 5163
—effect of certain words of release 5164
Lease, form of 5165
Deed of trust, form of.....5166
—sale under 5167
Deed to convey grantor's interest in 5163
—buildings, privileges and appurtenances 5168
—good between parties 5169
Effect of certain words of release in deeds 5164
Which may be disposed of by will 5227
Of person presumed to be dead, administration of 5362-5368
Of plaintiff in action of ejectment 5452, 5454, 5459
For life of another, when to go to personal representaive.....5383

ESTOPPEL
Of corporation to rely on irregularity in organization 3806
—of person dealing with.....3806
Of guaranty, fidelity or security company, to deny liability....4348
To plead statute of limitation..5821

ESTRAYS
Taking up 3564

Digitized by Google

Sec.

ESTRAYS—Con.
Description, appraisement 3564
—recording, publishing 3565
When title acquired by landowner 3566
Recovery by former owner.....3567
—when landowner not liable....3568

EUCAINE
Sale, label 1664, 1691
Habitual user, furnishing to or prescribing for 1694
—penalty 1695
Sale or dispensing, penalty.....1696
Possession with intent to sell, penalty 1697
Prescription for 1698

EVICTION
Of party taking estate for improvements 5505

EVIDENCE
See "Bill of Discovery"; "Depositions"; "Witnesses"
In criminal cases, see "Criminal Procedure"
Special laws changing rules of prohibited....Va. Const., cl. 3, § 63
Accused, when statement of not received as evidence 4781
Adverse party, examination of..6214
—production of books and papers by 6237
Affidavits of witnesses in habeas corpus proceedings 5854
Answer to which oath waived as evidence 6128
Considered by appellate court...6364
Examination of adverse party..6214
Before General Assembly, how procured 303
Before State accountant.....559, 565
Before board of medical examiners 1610
Before Commissioner of Labor..1799
Burden of proof, in proceeding to test right of physician to practice 1614
—in prosecution of non-resident for engaging in fish or oyster business 3254
—cancellation of negotiable instrument by mistake or without authority 5685
Corroboration of party when other party incompetent.....6209
Entries, memoranda, declarations by party incompetent to testify 6209
Interrogatories to adverse parties or claimant 6236
Answers to interrogatories.....6236
Intoxicating liquors, United States revenue tax receipts in prosecutions for violations of law 4618, 4620
—analysis by Commissioner of Agriculture 4621
—prosecution of druggist for unlawful sale of 4595
—record and books kept by transportation company 4632
—possession as prima facie evidence of intent to sell.....4666
Judicial notice, Hening's statutes 6189
—codes 6189
—acts and resolutions of General Assembly 6189, 6190
— —in appellate court 6190
—journals of legislature 6191
—signature of Governor and judges 6194

Sec.

EVIDENCE—Con.
New promise as when limitation is pleaded 5812
Under plea of usury 5554
Possession of adulterated flour, effect as 1194
—of cocaine, eucaine, etc.....1697
—of fish in prosecution for unlawful fishing 3196
—of dredge or scrape in Pocomoke Sound as 3260
—of tools in prosecution for having in possession with intent to commit burglary, robbery or larceny 4437
—of house fixtures in prosecution for buying or receiving with intent to defraud.....4449
—in prosecution for fraudulently buying or receiving pig iron, brass, metal, etc. 4450
—of black jack, brass knucks, etc., in prosecution for selling, etc. 4535
—of ardent spirits as evidence of intent to sell 4666
—of slot machine as 4685
—of apprentice, in proceeding for harboring or enticing.....5313
Presumption of authority of person making affidavit for another 276
—in prosecution for unlawful sale of oleomargarine 1203
—of wilful desertion in prosecution of husband or parent....1941
—of abandonment 1942
—of chastity of female in prosecution for seduction 4410
—in prosecution of druggist for unlawful sale of intoxicating liquors 4595
—in prosecution of keeper of ordinary for permitting gambling, 4689, 4690
—failure of accused to testify not to create 4778
—of death from absence.....6229
Privilege against using in evidence, payment of fines for violation of oyster laws 3264
—of person paying fine for removal, etc., of oysters from polluted area 3258
Privileged communications between husband and wife.....6212
Prima facie proof in action for negligent escape of fire..... 545
—in prosecutions for deception in sale of corn meal.....1195
—in prosecutions for violations of child labor laws.....1815
—of embezzlement of fine by officer 2546
—bank, refusing to permit examination, as prima facie evidence of violation of law.....4131
—certificate of payment of internal revenue tax in prosecution for violation of prohibition law 4618, 4620
—possession of ardent spirits as evidence of intent to sell.....4666
—of statutes of United States and of other States and Territories 6192
Subpoena duces tecum.....6219-6221
Variance 6250
Of witnesses before coroner's inquest 4810
Writing, when proof of as evidence of release, payment or set-off not necessary 6095

Digitized by Google

Sec.

EVIDENCE—Con.
—proof of, when making, signing, or indorsing is averred...6125

In Particular Actions or Proceedings
Suit to supply link in title..... 481
Optometry, violation of law relative to practice of 1636
Catching oysters without license 3242
Violations of law relating to size of oysters and shells that may be taken and sold.....3244
Prosecutions for illegally taking oysters with scrapes and dredges 3246, 3247
Prosecution for taking oysters out of season 3294
Prosecution for violation of game laws 3320, 3356
Petition to court to fix boundaries of village or unincorporated community as 3550
Prosecution for seduction..4410, 4413
Prosecution for abduction.....4413
Prosecution for keeping bucket shop or bucketing 4717
In divorce suit, when given orally 5109
Proceeding to enforce contract reserving title to chattels.....5190
In proceedings for probate of will 5261
On plea of not guilty in action of ejectment 5463
In ejectment or unlawful entry or detainer to recover land within boundaries of larger tract 5465
Perpetuating testimony 6235
Bill of discovery 6238

Of Particular Facts or Issues
Of payment of poll tax on transfer of voter 115
Of improper testing for milk fat.1210
Public road, that way is.....2015
—center of 2015
—width 2015
Of return of process by mail...2828
Of officer's failure to make return of money 2835
Of negligence in action against common carrier, railroad, etc., for damage to goods 3926
In action against initial carrier, of liability for loss or injury of goods by connecting carrier...3929
Prosecution of public officer for embezzlement, default in paying as evidence 4452
Prosecution for fraudulent sale or removal of mortgaged goods, failure to surrender or disclose location of 4455
Of cohabitation, in prosecution for marriage within prohibited degree or between white and colored person 4540
Of character of house in prosecution for keeping house of ill fame 4548
Of authority of special police...4801
Against surety, judgment against personal representative as 5389
Judgment against personal representative as, against heirs and devisees 5398
Of loss of service in action for seduction 5780
Of signature, when not necessary 6093, 6125
Of release, payment or set-off, when not necessary 6093

Sec.

EVIDENCE—Con.
Of ownership, operation, etc., of property or instrumentality, when not necessary 6126
Of incorporation or partnership, when not necessary 6127
Non-residence of witnesses or party 6224
Proof of publication 6224
In mitigation of damages in action for defamation 6240
Of intention to evade exemption law, when claim enforced out of State 6557

Documentary
Copy of list of paid poll taxes.. 111
Treasurer's certificate of payment of poll tax 115
Copies of acts and records of General Assembly furnished by clerk of House of Delegates.. 307
Authentication by Secretary of the Commonwealth of records for use in other States..... 345
Copies of unsigned grants furnished by Register of Land Office 417
Statement and indorsement by surveyor, on notice of intention to locate land warrant on land in possession of another. 428
Record of plat and certificate of survey 457
Grant issued to supply link in title 485
Copy of State chemist's analysis of fertilizer as 1119
Analysis of agricultural lime...1136
Certificate of analysis of agricultural seeds 1150
—when analyst required to appear as witness 1150
Certificate, analysis of food and dairy products by State chemist 1163
Certificate of analysis of food by State officer 1178
Analysis of food, report.....1190
Certificate of analysis of commercial feeding stuffs 1231
Tax tags on fertilizer.....1113
Register of practitioners of veterinary medicine and surgery.1278
Trade-mark, certificate of registry as 1458
Copy, certificate of birth or death 1580
Record of board of medical examiners as 1611
Copy of medical register.....1612
Certificate by clerk that person has or has not registered license to practice medicine 1612
State board of dental examiners, records of 1645
Drugs, adulterated or misbranded, certificate of chemist 1660
Land book, in proceeding against treasurer 2345
List of licenses granted by commissioner of revenue as 2374
Tendering coupon twice, record of officer as 2610
Copies of books in office of auditors and treasurer 2618
Of boundary line of county, survey and plat as 2680, 2685
Certificate of publication in proceeding by city or town to annex territory 2957
Plan and survey of city or town.2977
Map of segregated districts in

Digitized by Google

Sec.

EVIDENCE—Con.
cities and towns 3049
Certificate of clerk, log brand...3580
Records, State Corporation Commission, copies of 3703
Copies of records relating to corporations from office of Secretary of the Commonwealth...3830
Copy, power of attorney, Secretary of Commonwealth as agent of foreign corporation, effect as 3845
Copy of order amending charter of railroad corporation....3859
Order amending charter of public service corporation 3868
Schedules of rates of transportation companies established by State Corporation Commission 3920
—rules for transportation of explosives 3922
Schedules, rules, regulations, etc., of State Corporation Commission for telephone companies..4056
Prosecution of bank employee, etc., receiving deposit when bank is insolvent, production of books and papers.....4132
Certificates executed by Commissioner of Insurance.....4175
—copies of records of bureau of insurance 4175
Certificate of payment of United States internal revenue tax, 4618, 4620
Analysis of ardent spirits by Commissioner of Agriculture.4621
Records and books kept by transportation company in prosecution for violation of prohibition law 4632
Copy of register of persons convicted of felony 4787
Copy of recognizance as.....4978
Copy of certificate of marriage.5074
—of register of 5098
Plats of lots, copies from attested by clerks.....5217
Report of appraisers of decedent's estate as.....5376
In action for use and occupation of land, lease as.....5519
Written act of re-entry on land.5536
Certificate of protest of negotiable instruments 5680
Copy from record book of justice 6032
When proof of writing as evidence of release, payment or set-off not necessary.....6093
Proof of writing, when making signing or endorsement is averred in pleading.....6125
Statutes, Acts of Assembly, 6189, 6190
—Hening's 6189
—Codes of Virginia.....6189
—of the United States.....6192
—of States and territories.....6192
Legislative journals 6191
Ordinances of municipal corporations, certified copies.....6193
Deeds, certified copies.....6195
—sales under deed of trust or mortgage 6196
—judicial sales 6196
—foreign 6207
Certificates of auditor of public accounts 6197
—of West Virginia 6198
Records, copies 6197
—of officers of West Virginia..6198

Sec.

EVIDENCE—Con.
—court records and papers..6201-6204
— —re-entering lost or illegible, 6201-6203
— —of another State or of United States 6205
—of public office of United States or of another State.....6206
Establishment of lost or illegible court records 6203-6204
Records, lost or destroyed, certified copies 6241
Copies, use of in different suits..6199
Court may permit withdrawal of original paper 6200
Foreign deeds, powers of attorney, policies of insurance etc....6207
Entries, memoranda, etc., by party incompetent to testify..6209
Production of books and papers by adverse party 6237
Garnishment proceedings, salary of State employee, certificate of auditor as 6559

EXAMINATION
Accounts of State officers by auditing committee of General Assembly .....Va. Const., § 68
Books and accounts of county and city officers, General Assembly to provide for, Va. Const., § 115
Of applicants for title of certified public accountant.....568, 569
Of teachers 610
—applying for pension 788
Of candidates for practice of veterinary medicine and surgery 1275, 1276
Of applicants to practice medicine 1610-1618
Chiropody, applicants for license to practice 1621
Optometry, applicants for certificate to practice.....1628-1630
Dentistry, applicants for certificate to practice.....1644, 1646
Of drugs, by board of pharmacy.1660
Applicants for registration as pharmacists ..1673, 1684, 1686, 1689
Graduate nurses, applicants for registration as 1705-1708
Embalming, license to practice 1720
By board of reviewers in proceeding to establish drainage district 1743
Of water supply by board of health 1786
Of delinquent, dependent, neglected child 1910
Books of county surveyor..2843, 2845
Resistance to officer, making in enforcing oyster laws.....3265
Of oyster and clam grounds by Dairy and Food Commissioner, 3281-3289
Of office of clerk of the court...3383
Held by board of bar examiners 3411-3415
Pilots, applicant for license as..3615
—apprentices 3620
—fee 3641
Of docks, wharves, etc., by harbor commissioners 3676
Of banks 4120-4122
—by directors 4110
By State Corporation Commission, of books, accounts, etc., of person suspected of unlawfully engaging in banking business.4131
Of insurance, guaranty, indem-

Digitized by Google

Sec.

EXAMINATION—Con.
nity, fidelity, security or other like company by Commissioner of Insurance 4178, 4179
—record of 4184
Into cause of fire, by Commissioner of Insurance.....4186, 4187
Of building, etc., as to inflammable conditions 4190
Of fraternal benefit societies..4297
—foreign fraternal benefit societies 4298
By Commissioner of Insurance, fire insurance company assuming excessive risks 4307
Of industrial sick benefit company 4355
By justice of person accused of crime 4842
Of hospital at penitentiary.....5024
Bond, etc., of fiduciaries.....5416
—reports of 5428-5429
Of juror as to interest, prejudice, etc. 6000
Of defendant in capias proceedings 6424, 6425
Of execution debtor 6503
In garnishment 6510

EXAMINERS
Of banks, appointment.....4121
—salary, oath, bond.....4121
—assistants 4121
—examinations by 4120

EXAMINER OF RECORDS
Appointment 2218
Term 2218
Removal 2218
Bond, qualification 2219
Duties, reports 2220, 2228
Power to summon and examine fiduciaries, owners of ships, etc. 2221
Correction of erroneous assessment or report 2222
Reports to of fiduciary funds..2223
Compensation 2224, 2230
Refund on property erroneously assessed 2224
Penalty for refusing to furnish information to 2229
Investigation of value of intangible personal property and incomes 2258
—report 2259
To attend meetings of and aid local board of review.....2262
Misconduct of, report to court..2265
Report by to commissioner, property held by fiduciaries 2307
Omitted persons or property, listing and assessment of, interest 2332
—tax not realized 2332
—forms for 2333
—limitation on 2334, 2336
—appropriation of tax to school funds 2335
Examination of purchases of merchant 2366
Delinquent tax list submitted to.2418
List of balances of court funds to 6310
—furnishing to Commissioner of Revenue 6310

EXCEPTIONS
To defects in indictment, after judgment, when sufficient for reversal 4879
To bonds for possession of goods, action of detinue 5799
To answer in prohibition or mandamus proceedings 5834
In criminal cases 4929
To juror, when not allowed....6001

Sec.

EXCEPTIONS—Con.
To jurisdiction, plea in abatement 6105
To answers, abolished 6123
At trial 6252
To bond in attachment proceedings 6395

EXCEPTIONS, BILL OF
In criminal cases 4929
—procedure in lieu thereof.....4929
Contents, signature by judge....6252
Part of record 6252
Certificate in lieu of.....6253
Evidence in considered on appeal 6364

EXCHANGE
Of school property 649
By colleges of coupon for registered bonds 991
County property by supervisors.2725
Wheat for flour at mills, rate of 3594
Of real estate of convict.....5004
Of real estate of infant or insane person, or property held in trust 5335-5342
Provision for in suit for foreign money 5550
Provision for in negotiable instruments 5564
Of property purchased, exemption 6531

EXCURSIONS
Special rates.....Va. Const., § 160
Prohibition of by councils and supervisors 4008-4010

EXECUTIONS
See also **"Attachment"; "Exemptions"; "Garnishment"; "Homestead Exemptions"; "Interpleader"**
Stay laws prohibited.Va. Const., § 194
—proceeding to enforce treatment prescribed by crop pest commissioners 877
For costs in proceeding against violators of food laws.....1223
—in proceeding to require security of person about to commit crime 4791
—in criminal cases 4964
— —effect of imprisonment for..4953
Lien on goods. warehouse receipt for which has been transferred without indorsement 1331
—on judgment against treasurers and sureties 2433
—when effective 6485
—on personal estate incapable of being levied on 6501
— —when lien ceases.....6502
—recovery of property subject to 6514
—not impaired by new execution 6516
—territorial extent of 6517
On judgment against county or city treasurer and surety, lien, etc. 2433
—for debt due State..2517, 2518, 2519
— —real estate levied on.2517, 2519
— —venditioni exponas....2527-2530
—against county, board of supervisors or officer 2764
—for jailor's fees 2878
—for violation of town ordinance 3011
—on bond of claimant of forfeited property 3372
—for damages by trespassing animals 3541
—rendered by State Corporation Commission 3727, 3735

Digitized by Google

Sec.

EXEMPTIONS—Con.
—proceedings to declare exempt, by execution debtor 6556
—protection of exemption.....6557
—of minors 6558
—and salaries of State employees 6559
—and salaries of city, town, county officials, clerks, employees 6560, 6561
—injunction against 6565
On death of householder, vest in widow and minor children or unmarried daughters 6562
For taxes 6563
For purchase price 6563
For damages for trespass.....6563
For fines for trespass.....6563
Deed of trust, etc., on, void....6564
Injunction to restrain sale or garnishment 6565
Householder, construed 6566
Laboring man, construed 6566

EXHIBITIONS
License for 2373

EXITS
To theatres, halls, etc.....3142
—inspection of 3143
—penalty for failing to provide.3144

EXPATRIATION
See also **"Citizenship"**
How effected 63
When not allowed 65

EXPECTORATING
In public places, penalty.....1550

EXPERIMENTAL FARMS
Funds for 868
Agricultural experiment station. 869

EXPLOSIVES
In coal mines 1851
Use of to destroy fish.....3195
—penalty 3196
Transportation of, regulations as to 3922
—penalty for violation.....3923
Destroying dwelling house, hotel, vessel, jail, etc., by, punishment 4428
—other houses 4430, 4432
—bridge, lock, or dam.....4433

EX POST FACTO LAWS
Prohibited .....Va. Const., § 58

EXPRESS
Transportation of dead body by.1728

EXPRESS COMPANIES
Allowing food to become contaminated in transit.....1220
Lien for charges 3933
Sale of unclaimed goods for transportation charges 3933
—disposition of proceeds.....3934
Maintenance by railroads.....4004
Foreign, Secretary of Commonwealth as agent on whom process served 4027
—bonds deposited with State Treasurer 4028
—when Treasurer to sell bonds..4029
—when Treasurer to surrender bonds 4030
Liability of railroad, steamboat, or steamship company over which companies operated....4031
Duties as to transportation.....4033
Penalty for violations of chapter 158 4034
Ardent spirits transported, record kept of, what to show, 4632, 4634, 4638
—effect as evidence 4632

Sec.

EXPRESS COMPANIES—Con.
—penalty for failing to keep, 4632-4634
—regulations for transportation of 4633
—affidavit by consignee, 4635, 4638, 4634
— —filing with clerk of court..4634
Delivery of ardent spirits to other than consignee 4635
—hours of delivery 4635
—record open to inspection....4637
—affidavit to be in duplicate....4654
— —original filed in clerk's office 4654

EXPULSION
Member, General Assembly, Va. Const., § 47
Member, city council 2985
Member, town council 3003

EXTENSION
Session of General Assembly, Va. Const. § 46
Charter of corporation by private act prohibited, Va. Const., § 63

EXTORTION
Punishment 4406
Kidnapping with intent to extort money, punishment 4407
By officer, punishment 4514

EXTRACTS
Of judgments 6470

EXTRADITION
See **"Fugitives from Justice"**
In prosecution of husband or parent for desertion or non-support 1942

FACTORIES
Inspection of by factory inspector 1799
Female employees, hours of labor 1808
Children, employment of, 1809-1811, 1814-1816
—penalty 1814
—by parent 1815
Sanitary facilities for employees, 1822-1824
—expense of providing.....1824
—prosecution for failure to furnish 1825-1827
Stairs, handrails, doors opening outward 1828, 1829
—penalty 1832
Safety appliances, guarding machinery, lighting 1830
—penalty 1832
Appeals from ruling of Commissioner of Labor.....1831
Fire escapes 3141
—penalty for failing to provide..3141

FACTORS
Disclosing name of principal or partner 5194-5224
—failure to disclose, liability of property 5194, 5224
Limitation of actions against....5810

FAILURE OF CONSIDERATION
See **"Negotiable Instruments"**
Set-off for 6145

FAIRFAX
Titles derived from Lord Fairfax 414

FAIRFAX COUNTY
Commonwealth's Attorney, fees.3505

FAIR GROUNDS
Superintendent of, powers of constable 2820

Digitized by Google

Sec.

FAIR GROUNDS—Con.
City police, authority at.....3005

FAIRS
Reduced rates for transportation to and from 3918

FALSE BRANDING
See **"Brands"**

FALSE ENTRIES
In accounts of bank or joint stock company by officer or clerk, penalty 4457
Of marriages, births, deaths, penalty 4491
In public record by officer, penalty 4516, 4517

FALSE IMPRISONMENT
Effect of judgment in habeas corpus proceedings.....5857

FALSE PEDIGREE
Of animal, penalty for giving...4460

FALSE PRETENSES
Disfranchisement for obtaining property under 82
—Va. Const., § 23
Exclusion from registration for obtaining money or property under 93
To procure registration of trade mark 1459
Obtaining money or other property by, punishment 4459
Obtaining signature by.....4459
Obtaining registration of live stock by 4460
Obtaining accommodation at hotel or boarding house by, punishment 4464
Search warrant for property obtained by 4819-4822
Obtaining United States currency by, sufficiency of proof.....4870

FALSE REPRESENTATIONS
Graduate nurse, application for license as, penalty 1712
Hiring automobile, horse, etc., by 4567

FALSE STATEMENTS
Procuring hunting license by, penalty 3339
Obtaining credit at hotel or boarding house by 4464
For record of marriages, births, or deaths, penalty 4492

FALSE TOKENS
Obtaining money or other property by, punishment 4459
Obtaining signature by 4459

FARMERS' INSTITUTES
State Forester conducts forestry course at 537
Commissioner of Agriculture to hold 1108
Duty of Board of Agriculture...1108

FARM PRODUCE
See also **"Commission Merchants"**
Definition 1257
Sale of, license in city or town..3072
Duty of railroad company to transport or store 3956

FARMVILLE
State Normal School at..... 939
—name 942

FAST DRIVING
Over bridge, penalty 4740

FAUQUIER COUNTY
Inspection of dams 3194
Commonwealth's attorney, fees..3505

FEDERAL COURTS
See **"United States Courts"**

Sec.

FEDERAL OFFICERS
See **"United States"**

FEDERAL RESERVE BANK SYSTEM
Banks permitted to become members of 4135

FEEBLE-MINDED PERSONS
Construction of term 1075
Separate departments for.....1076
Records, statistics, reports of...1076
Who received in State colonies..1077
—employment and training 1077
—education 1077
Petition 1078
Commission 1079
—physician 1079
—report 1079
Committee, guardian 1053, 1080
—appointment 1080
—rights, duties, bond 1080
Commitment to institution.....1080
—appeal 1080
—costs 1080
—copies of order 1081
—delivery to institution 1082
—unlawful, penalties 1084
—proceedings instituted by Board of Charities and Corrections 1903
Examination, experts 1083
Unlawful commitment, penalties.1084
Duties of court when person before it appears to be feebleminded 1085
—petition 1085
—order 1085
—commitment for observation..1085
Transfer to insane hospitals....1086
Transfer from insane hospitals..1086
Forms 1089
Women of child-bearing age....1090
Furlough, parole, discharge.....1091
Colored persons 1092, 1093
Provisions relative to insane to apply to 1094
Board of Charities and Corrections, record of by 1903
—protection of by 1903
—commitment, proceedings instituted by 1903
—instructions to parents of.....1903
Children, custody and control of by Board of Charities and Corrections 1903
—instructions to parents of.....1903
Private institutions for care of, license and inspection by Board of Charities and Corrections 1903

FEES
See also **"Compensation"; "Salaries"**
Receipts given by officers for...2829
To whom charged 3490
When not paid out of treasury..3493
Fee books, by what officers kept 3494
—what entered in 3494
Constructive fees, defined and prohibited 3495
Payment in advance 3495
Fee bills, necessity for 3495
—what to show 3495
—quashing 3495
—deceased clerks 3496, 3497
—accounting for 3499
—collection 1531, 3498-3500
—distress for 3498
—limitation on recovery of.....3500
—presented to clerk 3501
—fraudulent issue of, punishment 4515
Taxing in costs 3501
Entry in execution book.....3501

Digitized by Google

Sec.

FEES—Con.
When officer entitled to security for 3502, 3517
Payment out of treasury in civil cases 3503
—in criminal cases....3504-3512
Collected of defendant, how disposed of 3513
Payment into treasury 3513
—in Commonwealth's cases....3536
When not allowed 3514
Suits by poor persons without payment 3517
As costs in criminal cases....3536
Extortion, penalty 4514
Provision for in negotiable instruments 5564
Recovery, jurisdiction of circuit court 5390
—limitation on 3500
—no exemptions against 6531
Claims for, no exemptions against 6531
—Va. Const., § 190

Of Particular Officers or Persons
Appraisers, stock killed or injured by railroad 3994
Auditor of Public Accounts, paid into treasury 3435
Bail commissioner 4835
Bailiff of State Corporation Commission 3730
Board of dental examiners.1646, 1648
Board of examiners in optometry 1630, 1631
Board of medical examiners, 1615, 1620
—expenditure of 1616
Board of pharmacy...1674, 1680, 1687
Board of veterinary examiners, 1276, 1277
Civil justice, trial fee....3119
Civil and police justice, hearing 3104
Clerk of board of supervisors...2771
Clerk of the House of Delegates, general provisions 3478
Collectors of taxes 2439
Commissioner of accounts.. ...5414
—examining treasurer's bond....2777
Commissioner of Agriculture and Immigration, disposition of ...3441
Commissioner of Fisheries, arrest of violators of game laws.3343
Commissioner in proceeding to establish lost records 6204
Commissioner of prohibition, suit to abate nuisance under prohibition law 4630
Commissioners to examine pilots.3641
—clerk of board 3641
Criers, general provisions 3487
—in criminal cases....3504, 3508
Dairy and Food Commissioner, registering dairy, creamery, cheese factory, skimming station, &c. 1173
—inspection of machine and scales for testing milk....1207
—disposition of 1212
Employment agencies, charged applicants for employment....1803
—return of 1803
Game wardens, arrest of violators of game laws....3343
Grand jurors 4863
Harbor masters 3684, 3685
Inspectors and cullers of commodities 1432, 1433
Jailor, for prisoner confined under civil process 2877, 2878
—judgment for 2878, 2879
—payment out of treasury.3504, 3510
Jury commissioners 5986
Library board for copies.... 350
Lunacy commission 1021
Notaries, general rovisions....3480

Sec.

FEES—Con.
—statement of on affidavits, &c.3483
Physicians and surgeons, division of, penalty 1629
Pilots....3623, 3626, 3628, 3642, 3646
Police captain, how paid....3511
Register of the Land Office in general 2505
—when to be paid 2506
Registrar Vital Statistics, State.1580
—local 1579
Sealer of weights and measures.1479
Second Auditor, exchange of coupon for registered bonds....2602
State accountant, inspection of accounts of city and county officers 565
State board of medical examiners, issuing certificates to practice medicine 1613
Superintendent of Grounds and Public Buildings 402
Superintendent of Penitentiary, supporting convict road force.2077
Superintendent of Public Printing, copies of bills, calendars, etc. 250
Surveyors, general provisions...3479
—assignment of oyster planting grounds 3225
Tobacco samplers, sampling, storing, delivering 1376, 1384

ATTORNEYS
Counsel for county school board. 648
Proceeding for delivery of goods when warehouse receipt is lost or destroyed 1383
Suit to abate house of prostitution 1528
Establishment of drainage district 1771, 1774
Motion against treasurer failing to pay warrant 2787
General provisions 3428-3430
Appointed by court to defend poor person 3518
Included in costs....3533, 3534
When condemnation proceedings dismissed 4317
Suit to abate nuisance under prohibition law 4630
Provision for in negotiable instrument 5564
Quo warranto proceedings....5847

CLERKS OF COURTS
Copying registration book.... 108
Copying and certifying poll tax list 112, 114
Services relative to election.... 198
Filing certificate of adoption of mark for timber 1445
Registering license to practice medicine 1612
Furnishing papers to commissioner of revenue 2287
Furnishing tax books, &c....2287
Furnishing copy of order apportioning taxes 2449
—city taxes 2494
Petition to ascertain delinquent taxes 2454
Entries on records in sale of property for delinquent town taxes 2454
Reporting sales of delinquent land to auditor 2473
Execution of deed to land sold for delinquent taxes 2482
Redemption of land sold to State for taxes, reports of, etc....2491
Entries in delinquent land book.2493
—endorsement when land redeemed 2476
—recording sales in 2489
Application to purchase delinquent land 2495

Digitized by Google

Sec.

FEES—Con.
Tax sales, purchases for the State 2501
Entry of certificate of fines, 2552, 2553
Report to auditor of fines.....2566
Services, rearranging magisterial districts 2694
Recordation of order annexing territory to city or town 2963
Recording assignment of oyster grounds 3225
Recording sub-lease of oyster grounds 3228
Issuing hunting licenses, remitting, etc. 3333
List of county and city officers furnished Secretary of the Commonwealth 3407
General provisions 3484-3486
Supreme Court of Appeals.....3486
For what services not to charge.3491
When fees not to be paid out of treasury 3493
Payment out of treasury...3504, 3506
—felony cases 3506
Recordation of log brand.....3580
Corporations, filing papers, recordation, etc., relating to....3836
—filing list of officers, directors, stockholders 3854
—filing power of attorney of agent on whom process may be served 3854
Filing report, appraisers, stock killed or injured by railroad..3994
Recording report of viewers of turnpikes 4081
Recording reports, &c., eminent domain proceedings 4381
—furnishing copies of 4381
Keeping register of persons convicted of felony 4787
Acting as clerk to trial justice..4988
For marriages reported 5099
Contracts reserving title to chattels, recordation 5189
—attesting, when satisfied 5191
Proceedings by guardian to spend more than income of ward's estate 5321
Copies of accounts of fiduciaries, certifying 5411
—recording 5411
Recording act of re-entry on land 5537
Docketing executions issued by justice 6030
Filing abstract of judgment of justice 6030
Recording reports on accounts of general receivers 6295
Services with respect to records of district courts 6370
Entry of satisfaction of mechanic's lien 6441
Recording lien on colt.....6446
—on calf 6447
—on crop 6452
Endorsing and recording forthcoming bond 6527

COMMISSIONER IN CHANCERY
Petition to ascertain delinquent taxes 2456
General provisions 3482
Statement of on report.....3483
Settlement of receiver's report..6295

COMMISSIONER OF INSURANCE
Copies of records and papers....4175
Certificate of registration of insurance agent ... .4235
License, fraternal benefit society.4287
—foreign fraternal benefit society 4288

Sec.

FEES—Con.
COMMISSIONER OF REVENUE
General provisions 2347
Transfer fees, collection and accounting 2348
Issuing license 2361, 2383
Transferring license 2383
Furnishing to auditor list of lands belonging to the Commonwealth 2536

COMMONWEALTH'S ATTORNEY
Attending escheator's inquest... 513
For services to trust for education or educational purposes.. 591
Seizure and sale of fertilizers..1118
Prosecution of violators of pure food laws 1190, 1223
—of feeding stuffs laws.....1223
Proceeding against person rendering false list of property for taxation 2328
Proceeding to revoke license....2378
Proceeding for violation of license or revenue laws.....2396
Rule against officer failing to collect or account for fine....2554
Payment out of treasury..3504, 4966
In general 3505
Proceeding for order of court of completion of road or section thereof by turnpike company..4077
In suit to abate nuisance under prohibition law 4630
Prosecution for offences in chapter 185 4705
Prosecuting case removed to United States district court...4971

CONSTABLE
Executing summons issued by commissioner of elections.... 183
Executing orders of State live stock sanitary board 918
Burial or cremation of animal or fowl 1554
Killing dogs 2317
Execution or capias for fine and costs 2561
General provisions 3487
Failure to serve process after due effort 3489
Collecting officers' fee bills.....3499
In criminal cases.....3504, 3508, 3511
Serving process from State Corporation Commission 3730
Summoning witnesses and jury, coroner's inquest 4818

CORONER
General provisions 3487
In criminal cases 3504, 3508
Inquest 4818

COUNTY OR CITY TREASURER
Making and certifying poll tax list 112, 114
Forfeiture for failure to pay license taxes into treasury.....2381
—for failure to report violations of duty by commissioner of revenue 2384
For receipt to purchaser, sale of land for delinquent tax.....2464
Establishment of drainage district 1775

JUSTICES OF THE PEACE
Lunacy commission 1021
General provisions 3481
Payment out of treasury, 3504, 3507, 3511

OFFICERS
Special laws changing during term prohibited....Va. Const., § 63
Administering, certifying, recording oath of school trustee 638

Digitized by Google

Sec.

FEES—Con.
Execution of law as to dog tax and compensation of sheep owners 2323
Leasing property for collection of taxes 2439
Levying distress for taxes.....2439
In criminal prosecutions, liability of State for 2550
Process sent from another jurisdiction 2827
Prosecutions for violations of game and fish laws 3343
Taxed in costs 3535
Enforcing decision, controversy between pilots and masters...3637
Reporting fires to Commissioner of Insurance 4185
Enforcement of prohibition law.4655
For executing writs of venire facias on same person.....4927
In criminal cases, how certified, 4961-4964
Homestead exemption not applicable against claims for.....6531
—Va. Const., § 190

OYSTER INSPECTOR
Issuing license to fish.....3167, 3168
—to buy herring, &c. 3170
—to shuckers, packers and barrelers 3239
—to use scrape or dredge.....3246
—to take crabs 3292
—to take clams 3293
—to buy or ship clams.....3294
Transferring license to catch fish for manufacture into oil or fertilizer 3189
—collection of 3220
For selling oysters to satisfy rent 3220, 3221
General provisions for 3221
Assignment of oyster ground, 3223, 3225
Registering boats 3241

REGISTRAR
Registration of voters 98
Certificate of transfer of voters. 100
Registration rolls, transfers, copies, &c. 108
—services with respect to absent voters 218
Cities of second class 2905

SECRETARY OF THE COMMONWEALTH
Certificate of registry of trademark 1455
For commission of commissioner of deeds 2853
To be paid into treasury.....3434
—Va. Const., § 80
General provisions 3478
Filing papers, recording, etc., relating to corporation 3836
Receiving and forwarding process against foreign corporation 3846

SERGEANT
Posting list paid poll taxes..112, 114
Executing summons issued by commissioner of election 183
Posting notice of election..... 199
General provisions 3487
Failure to serve process after due effort 3489
For what service not to charge..3492
When not paid out of treasury..3493
Execution or capias for fine and costs 2561
Paid out of treasury 3503
In criminal cases.....3504, 3508, 3511
How paid 3511
Serving process from State Corporation Commission 3730

Sec.

FEES—Con.

SHERIFF
Posting list of paid poll taxes, 112, 114
Executing summons issued by commissioner of election 183
Posting notice of election..... 199
Executing orders of State live stock sanitary board 918
Execution or capias for fine and costs 2561
Summons, call of meeting of supervisors 2715
Process sent from another jurisdiction 2827
General provisions 3487
Failure to serve process after due effort 3489
For what service not to charge.3492
When not paid out of treasury..3493
Collecting officer's fee bills.....3499
Paid out of treasury.....3503
In criminal cases.....3504, 3508, 3509
Serving process of State Corporation Commission 3730
Report of fire to Commissioner of Insurance 4185
Summoning jury and witnesses, coroner's inquest 4818
Services in compelling mine owner to permit survey 5289

STATE CORPORATION COMMISSION
Collection by clerk 3703
Proceedings before 3731
Affixing seal of 3742
Granting charters, amendments to charters, licenses to foreign corporations 3746

WITNESSES
Contested election 261, 264
Lunacy commission 1021
Allowance to 3529
Payment from treasury 3530
Payment 3530
Dispute as to, settlement 3530
Time for presenting claim.....3531
Time for entry 3532
Restriction by court 3532
Taxation in costs 3535
Before State Corporation Commission 3743
Prosecutions under prohibition law 4655
In criminal cases 4957
—for Commonwealth 3512
—payment by prosecutor, when.4958
—payment by Commonwealth in misdemeanor cases, when 4959
—when case is removed to federal court 4971
Prepayment 62.0

In Particular Suits or Proceedings or for Particular Acts or Services
For making, copying, certifying and posting list of paid poll taxes, by whom paid 112, 114
In elections, executing commissioner's summons 183
By candidates for election at primary, to whom paid 249
Charged by library board for copies 350
For copies of bills, calendars, etc., furnished by Superintendent of Public Printing..... 390
In proceedings in caveat against grant, when refunded 456
For examination for certificate as certified public accountant ... 571
For administering, certifying and recording oath of school trustee 638
For instruction in higher branches in public schools.... 703

Digitized by Google

Sec.

FEES—Con.
Of students, Virginia Polytechnic Institute 865
For certificate of dealer in nursery stock 882
Lunacy proceedings 1021
For registering brand of fertilizer 1110
—tax tags 1113
Seizure and sale of fertilizers...1118
Registration of brands of agricultural lime 1134
Registering dairy, creamery, cheese factory, skimming station, etc. 1173
Inspection by Dairy and Food Commissioner of machines and scales for testing milk.....1207
Prosecution of violation of "pure food" and "feeding stuffs" laws 1223
Registration of brands of poultry and stock foods 1249
Commission merchant, registration 1258
Certificate for practice of veterinary medicine and surgery...1276
—how applied 1277
Tobacco, sampling, storing, delivering 1376, 1384
Sale of unbranded timber.....1454
Trade-mark, certificate of registry of 1458
Inspection of construction camp, by board of health 1531
—vaccination 1531
Burial or cremation of animal or fowl 1554
Inspection of hotels 1591, 1592
Admission to examination to practice medicine 1615
Chiropody, certificate to practice, 1620, 1621
Optometrist, examination of....1630
—annual 1631
—recording certificate of 1633
Dentists, examination for license to practice 1646
—annual registration 1648
Pharmacists, registration of....1674
—permits 1674
—licenses without examination..1680
—applicant for registration, 1687, 1689
Graduate nurses, registration...1708
License to practice embalming..1720
—renewal 1721
Drainage district, establishment and operation.1771, 1774, 1775, 1778
Automobiles, certificate of registration and license to operate, 2128, 2129, 2132
—duplicate 2135
—transfer of 2136
—operation for hire 2151
—how expended 2154
License, garage 2149
Execution of law as to compensation of owners for sheep killed by dogs 2323
Proceedings against person rendering false tax lists.....2328
Transfer, conveyances.....2347, 2348
Proceedings for violation of license or revenue laws 2396
Proceedings for apportionment of taxes 2449
—city taxes 2494
Petition to ascertain delinquent taxes 2456
State purchases of delinquent land, how paid 2501
On charters, no recovery of from State 2583
State coupon bonds, exchange of for registered bonds 2602

Sec.

FEES—Con.
For services to applicant for pension 2658
On process sent to officer from another jurisdiction 2827
Annexation of territory to cities and towns 2963
In hearing before civil and police justice 3104
Trial fee, proceeding before civil justice 3119
Assignment of oyster planting ground 3225
Prosecutions for violations of game and fish laws.....3343
For bar examination.....3416, 3417
On executions 3487
—when no levy made or bond taken 3488
In contempt proceeding not paid from treasury 3514
Suits in forma pauperis 3517
For legal notice 3535
Proceedings before State Corporation Commission 3731
Affixing seal of State Corporation Commission 3742
Proceeding to compel repair of turnpike 4081, 4082
For examination of banks.....4122
Report of fires to Commissioner of Insurance 4185
For certificate of registration of insurance agent 4235
License of stock salesman promoting insurance company....4237
In suit to abate nuisance under prohibition law 4630
For keeping register of persons convicted of felony 4787
For celebrating marriage.....5083

CORPORATIONS

Issuance of charter 3746
—Va. Const., § 157
Amendment to charter 3746
—Va. Const., § 157
Registration fees 3746
—notice of 3748
Relief against excessive 3775
Consolidation 3821
Charter not to issue until fees paid 3835
To clerk of court.....3836
To Secretary of Commonwealth.3836
For incorporation 3851
—Va. Const., § 157
Recordation of charter 3851
—non-stock corporations 3874
For filing list of officers with clerk of court 3854
Foreign, license to transact business 3746, 3847
—Va. Const., § 157
—certificate of payment of.....3847
—telegraph and telephone companies 4036

FEE BILLS
Fraudulent issue of, punishment.4515

FEE BOOKS
Who required to keep.....3494

FEE SIMPLE
Condemnation of in eminent domain proceeding 4369, 4373
—reversion of 4379
When deed or will to pass without words of limitation.....5149
Fee tail converted into.....5150
Sale of on bill by life tenant....5161
—on bill by remainderman.....5161
In rent, conveyance or devise of, powers to pass 5514

FEE TAIL
Converted into fee simple.....5150

Digitized by Google

Sec.

FEED
See **"Feeding Stuffs"; "Dairy and Food Commissioner"; "Board of Agriculture"**

FEEDING STUFFS
See also **"Poultry"**
Adulteration, misbranding, penalty 1230
Analysis, report 1229
—how made, notice, certificate..1231
—effect as evidence 1231
—prosecutions 1232
Concentrated commercial feeding stuffs, definition of term.....1233
—what not included 1233
Packages, printed statement on, 1233, 1234
—registration of statement, sample 1235
—when agent or seller need not file 1236
—when registration refused....1237
—when cancelled 1237
Lowering or changing ingredients 1237
Analysis at request of dealer, etc. 1244, 1245
Condimental stock food, samples, analysis 1245
—application to sell 1246
—inspection, fee 1246
—certificate 1246, 1248
—when agent need not pay fee..1247
—revocation of certificate 1248
—penalty 1249
Variability, standards of 1238
Inspection tax 1239
Tags, what to contain.....1239, 1240
Registration of millers, dealers and distributors 1239
Violations of law with reference to 1240, 1242
Seizure 1240
Samples for analysis 1241
Publication of analysis, notice..1241

FELLOW SERVANTS
Doctrine modified in action against railroad by employee, Va. Const., § 162

FELONIOUS ASSAULT
Punishment 4402
Conviction for unlawful assault on indictment for 4920

FELONIOUS SHOOTING, CUTTING, ETC.
Punishment 4402

FELONIES
See also **"Crimes"; "Fines and Penalties"; "Imprisonment"**
Disfranchisement for 82
—Va. Const., § 23
Exclusion from registration for. 93
Sentence for disqualifies officer.. 292
Members and clerk of General Assembly not privileged against arrest for 300
—Va. Const., § 48
Certificate of certified public accountant revoked on conviction of 570
Reward for arrest and conviction of felon, offer of by supervisors 2733
Attorney-at-law, revocation of license or suspension for.3423, 3424
Fee of officers in felony cases, payment from treasury 3504
—to Commonwealth's attorney..3505
Wounding in attempt to commit, punishment 4403
Entering building, etc., with intent to commit 4439

Sec.

FELONIES—Con.
Not to merge or stay, civil remedy 4763
Principals in second degree and accessories, punishment 4764
—who deemed accessories 4765
Conviction of only on confession of guilt, or verdict of jury...4776
Person convicted of, a competent witness 4779
How term of confinement for, or amount of fine, ascertained....4783
Register of persons convicted of, kept by clerk of court.....4787
Arrest for by conservator of the peace 4789
Bail, by justice..4828, 4839, 4845, 4846
Must be tried on indictment....4866
Amendment of indictment for, before plea 4877
—after plea 4878
Capias or summons when indictment found 4882
Trial of, at term at which indictment was found 4893
—accused to be present at 4894
—when court to cause plea of not guilty to be entered.....4894
Challenges in trials for....4898, 4904
Conviction of part of crime charged 4918
Indictment for, conviction of attempt to commit 4922
Time within which person accused of must be tried.....4926
Jurisdiction of circuit courts over 5890
—at special term 5896
Conviction of disqualifies for jury service 5984

Particular Crimes

What crimes are.. 4758
Abduction for purpose of defilement 4411
—limitation of prosecution.....4412
—evidence 4413
—marriage of parties 4413
Abortion, attempt to produce...4401
Altering, secreting or destroying acts or resolutions of General Assembly 310
Attempts, generally 4767
—to commit rape 4767
—to commit felony 4767
Banks, officer making false statement of condition 4124
Bank or broker, receiving deposits when insolvent 4122
Bigamy 4538, 4539
Bribery, of executive, legislative or judicial officer 4496
—acceptance of bribe 4497
Building and loan association, officer or agent making false financial statement 4165
Burglary 4437
—entering building, etc., with intent to commit 4438
—possession of tools with intent to commit 4437
Burning or destroying dwelling house, jail, asylum, etc.....4428
—other buildings....4430, 4431, 4432
—lumber, hay-stack, etc. 4431
—bridge, lock, dam 4433
—of property with intent to injure insurer 4436
Buying or receiving railroad iron, pig iron, brass, etc., with intent to defraud 4450
Bucket shop, keeping, etc...4714-4718
Bucketing 4714-4718
Buggery 4561
Canals, injuring or obstructing..4468

Digitized by Google

Sec.

FELONIES—Con.
Child, seizing, secreting, or taking from lawful custody....4409
Cocaine, eucaine, selling or dispensing 1696
—possession of with intent to sell 1697
Conspiracy to incite colored persons against white persons...4392
—white against colored....4392
—to cause wife to commit adultery 4544
—by convicts 5050
Coupons from State bonds, fraudulent use of 2607
Convicts, acts committed by, 5049-5052
Dwelling house, injury to by rioters, etc. 4532
—intimidation of inmates 4532
Elections, fraud in connection with voting by absent voter... 219
—fraudulently signing name of qualified voter 219
—false statement by voter challenged at primary election 228
Embezzlement of public fund by officer 4452
Employment agency, sending female to house of ill fame or to person for immoral purpose.1806
Entering building, etc., with intent to commit rape, robbery, or murder 4438
—to commit other crime....4439
Escape, aiding prisoner in 4504
—officer voluntarily allowing...4505
—prisoner escaping from jail...4507
— —by setting fire to jail....4509
Extortion 4406
False affidavit by dealer in food.1184
False oath of person licensed to practice medicine 1612
False pretense or token, obtaining signature to writing by..4459
False swearing before State accountant 559
Forgery, of public record, certificate of officer, etc....4484
—uttering 4484
—of seal of State, court or corporation 4485
— —keeping instrument for....4485
—of coin and bank notes....4487
— —uttering 4487
— —having in possession 4490
Forgery, of writings other than public records 4489
—making or having in possession anything designed for 4488
Fraternal benefit society, fraudulently procuring money from.4304
—making false statement in report of 4304
Fraudulent entry by officer or clerk of bank or joint stock company 4457
Fraudulently concealing or destroying will or codicil....4458
Injuring or tampering with works of canal, railroad, engines, switches, etc....4468
—switch lamp or other signal..4474
Intoxicating liquor, selling, keeping or storing for sale, soliciting or receiving orders for, manufacturing or transporting 4584, 4585
—keeping, selling, etc., at lodges, fraternity houses, clubs, etc., second offense 4606
—in house of prostitution....4607
—procuring delivery of by transportation company by false affidavit, second offense 4638

Sec.

FELONIES—Con.
—transferring estate to evade law 4670
Kidnapping, to extort money...4407
—to sell as slave....4408
Larceny, possession of tools with intent to commit 4437
—grand 4440
—of live stock 4440
—sand from banks of Potomac river 4441
—petit, third conviction for....4785
Live stock, maliciously wounding, poisoning, etc. 4467
Manslaughter, voluntary 4396
—involuntary 4397
Marriage, between white and colored persons 4546
Miscegenation 4546, 4547
Misprison of treason 4390
Murder, first degree 4394
—second degree 4395
—killing in duel out of State by agreement made within 4416
— —accessories 4417
—death of passenger on railway caused by injuring switch, engine, etc. 4468
—on railroad train or vessel, caused by shooting at train or throwing stones at 4473
Oysters, illegally taking with scrapes and dredges 3246
—carrying seed oysters out of State without permit 3249
Pandering 4579
—receiving money for placing female in house of prostitution 4579
—detaining in for debt....4579
Perjury 4493, 4494
—subordination of perjury 4494
—in application for pension....2660
—false swearing before Commissioner of Insurance 4189
—false swearing by officer, director or incorporator of insurance company or guaranty company 4206
—officer of insurance company making false report....4230
—false statement as to death or disability of insured person...4269
Poisoning, attempting 4400
Possession of tools with intent to commit burglary, robbery or larceny 4437
Prize fighting 4426
—fights between men and animals 4426
—aiders and abettors 4427
Railroad, injuring or tampering with works or equipment..4468
—switch lamp or other signal, 4468, 4474
—removing packing from journal boxes of locomotives, cars, etc.4472
—shooting at, throwing missiles at train, etc. 4473
—driving or leading animal on track of, to recover damages for injury or death of....4475
Rape 4414
—marriage as bar to prosecution 4414
Robbery 4405
—possession of tools with intent to commit 4437
Seduction 4410
—limitation of prosecution....4413
—evidence 4413
—marriage of parties 4413
Shooting, cutting, stabbing, etc., with intent to kill or maim....4402
—in attempt to commit felony..4403

Digitized by Google

Sec.

FELONIES—Con.
Smallpox, bringing into State...1532
—abandoning on shore, person sick with 4399
State Treasurer, illegally disposing of bonds of insurance companies 4218
Threat of bodily injury, in writing 4537
Timber, branding iron, unlawful use of, counterfeiting, &c.....1451
—conversion of branded 1453
Tobacco sampler or inspector, giving false receipt or note....4708
Vessel, destroying or injuring property on 4466
—shooting at or throwing missiles at 4473
Violation of sepulture 4552
Voluntary manslaughter 4396
Warehousemen, issue of receipt for goods not received.....1339
—duplicate receipt not so marked 1341

FEMALES
Eligible to office of notary public 2851
—Va. Const., § 32
Employment of in coal mine prohibited 1871
Placing in custody of any person for immoral purposes 4579
Compelling to reside with any person for immoral purposes..4579
Compelling to live a life of prostitution 4579
Receiving money for procuring female for house of prostitution 4579
Engaged in prostitution, receiving money from earnings of..4579
Detaining in house of prostitution because of debts contracted while living therein...4579
Transporting through or across State for immoral purposes...4579
Taking to or detaining in house of ill fame, punishment.....4579
Taking or detaining with intent to compel to marry or be defiled 4579
Parent or guardian consenting to females being taken or detained for prostitution 4579
As witness in prosecution for pandering 4579
Sending to obtain ardent spirits, punishment 4639
Ordering, receiving or having in possession ardent spirits.....4641
Age of consent to marry.....5090
Personal representative, marriage, extinguishment of authority 5373

FEMALE EMPLOYEES
See **"Employer and Employee"**

FENCES
Special laws regulating prohibited.....Va. Const., § 63
Removal of for coast survey.... 20
Lawful fence, definition 3538
—boundary lines of lowlands on James river 3539
—by voluntary associations.....3540
—board of supervisors declaring what is 3547
—petition for establishment....3547
—stream or canal declared by court to be 3553, 3554
— —petition 3553, 3554
—statutes relative to continued in force 3562
Division fences, erection and maintenance 3555

Sec.

FENCES—Con.
—apportioning cost 3556, 3557
—arbitration of disputes...3558-3560
—proceeding for erection or repair of 3561
—acts relative to continued in force 3562
Across canals of mills.....3588
Setting fire to, punishment.....4434
Along railroad, penalty for destroying 4476
Pulling down, punishment 4480
In Capitol Square or public grounds, injury to, punishment 4483
Injury to in graveyards, cemeteries, etc. 4553
Erection of by railroad along roadbed 3946
—mandamus to compel construction 3946
—where not necessary 3947
—liability of company for injury on enclosed track.....3948, 3997
— —on track not enclosed.....3949

FERRIES
From Northampton and Accomac counties to Norfolk and Hampton, continued 2040
—bond of proprietor 2041
— —penalty for failing to give..2042
—rates of ferriage 2043
—notice of time of leaving.....2044
—how boats manned and provided 2044
Rates, Chesapeake Bay ferries..2043
—proceeding to increase or reduce 2058
—payment in advance 2071
—illegal, penalty 2071
Of Accomac and Northampton counties not to interfere with each other, penalty 2045
Special leave to ferry from Accomac or Northampton to Norfolk 2046
—penalty for operating without license 2047
Across Elizabeth river, lease of by circuit court 2048
—operation by agent appointed by court 2048
—bond 2048
—application of proceeds from..2048
Norfolk county, property of city of Portsmouth and county of Norfolk 2049
—committee, appointment 2050
—leasing, schedules, bonds.....2051
—disposition of profits 2052
Across Curotoman river 2052
—contract to operate 2052
Continuation of, discontinuance.2053
Establishment, proceedings for, 2054-2057
—viewers, appointment 2055
— —report 2056
—between counties 2057
—change of order as to manner of operating 2061
—near existing ferries 2065
Forfeiture of 2059
—failure to operate 2060
Wharf or landing to be firm and dry 2062
Rights, how far extend.....2062
Exclusive privileges.....2063, 2066
Penalties, interference with established ferries 2063-2066
—failing to pay toll.....2071
—demanding more than lawful rate 2071
—failing to give passage in reasonable time 2072

Digitized by Google

Sec.

FERRIES—Con.
Ferriage, allowed witnesses for Commonwealth 3512
—of witnesses, generally.....3529
Appeals in controversies concerning 6336
—Va. Const., § 88
—order of hearing 6362

FERRYMAN
Exempt from jury service.....5985

FERTILIZERS
See "Lime"
Supervision of trade in 1107
Registration of brand with Commissioner of Agriculture 1110
—analysis 1110
—penalty 1118
Brands 1111
Minimum plant food allowed....1112
Tax tags, effect as evidence....1113
—renewal 1113
—form 1113
—penalty for unlawful use.....1118
Dealer's certificate to manufacture or sell 1114
—penalty for dealing without...1114
Dealers, unlawful to sell unregistered and unbranded fertilizer 1115
—penalty for violations of law..1118
Analysis, how long to remain unchanged 1116
Leather or hair, use of 1117
Condemnation and sale of for violations of law 1118
Analysis at request of purchaser.1119
—rules for 1121
—effect as evidence 1119
—damages for deficiency, procedure 1120
—appeal to Board of Agriculture 1120
—judgment, how enforced 1120
Bulk shipments 1122
Definition of terms...1125, 1129, 1130
Label, what to show.....1126
Standard measures 1126
Penalty for false label.....1127
—damages, attachment 1128
Agreements invalid 1129
Adulteration, false branding, penalty 1131
Recommendation of by State chemist 1280
Fees and taxes on, expenses of Department of Agriculture paid from 3441

FERTILIZER FUND
See **"Commissioner of Agriculture and Immigration"; "Board of Agriculture"**

FIDELITY COMPANIES
See also **"Guaranty Companies"**
Supervision and control of by State Corporation Commission.4169
Examination of by Commissioner of Insurance 4178
—when dispensed with 4179
—revocation of authority to transact business 4180
—appeal 4180
Assessment of, proportion of expense of maintaining Bureau of Insurance 4194
—notice of 4195
—proceeding to recover 4195
—appeal 4195
— —judgment on 4195
—revocation or suspension of license or certificate 4195
—report of premiums 4196
Process against, where served...6063

Sec.

FIDUCIARIES
Liability of when new or additional bond is given 281
Examination of by examiner of records 2221
—penalty for failure to give information 2221
Funds, report of by bank or depository, to examiner of records 2223
—may be invested in bonds for State debt 2595
Taxes on estate, liability for....2225
—payment 2309
—reimbursement when paid by..2448
Listing property held by for taxation 2307
—bonds, notes, evidences of debt 2308
—payment of taxes on 2309
Voting stock in corporations...3800
Committee of convict's estate, 4998-5004
List of to commissioner of accounts 5401
Revocation of authority of certified to commissioner 5401
Inventory filed by 5403
—proceeding to compel filing....5403
—penalty for failure to file....5403
Accounts of sales by 5404
Liability for debts lost by negligence or failure to make defense 5406
Judgments against 5407
Liability for costs 5413
Revocation of authority of.....5417
Appointment of new 5418
Resignation of 5419
List of posted by commissioner..5423
Compensation 5425
Investments, order of court for..5430
—securities approved for 5431
—loans on real estate, requisites for 5431
—transfer of securities to successor 5432
Claims against estate, payments by order of court 5433-5436
Compromise by, of claims due to or by 5440
—how ratified 5440
Action by and against, limitation 5810, 5811
—on bond of, accrual.....5810, 5811
—suit to surcharge or falsify account, accrual 5811
—powers of defendant ceasing, how suit to proceed 6170
Appointment, jurisdiction of chancery court of city of Richmond 5920
—of court of law and chancery of city of Norfolk 5935
—of court of law and chancery of Roanoke 5947
—of Supreme Court of Appeals in controversies concerning, Va. Const., § 88
Power to submit to arbitration..6163
Liability of, homestead exemption not applicable 6531
—Va. Const., § 190

Accounts

Allowance of expense of bond, guaranty company as surety on 4347
Recorded in will book 3393
Settlement before commissioner of accounts 5408, 5410
—penalty for failure 5408
—forfeiture of commissions.....5409
—how compelled 5410

Digitized by Google

Sec.

FIDUCIARIES—Con.
—in chancery cause, recordation of 5411
—when no allowance for costs.. 5413
Settlement before commissioner in chancery 5415
—receipt of commissioner for vouchers 5415
—time covered by 5424
—objections 5424
—allowance of expenses and commissions 5425
—report of 5426
— —filing 5427
—return of vouchers 5427
—examination, confirmation, recordation 5428
— —effect of confirmation 5429
—payments by order of court, 5433-5436
—suits to surcharge or falsify, accrual 5811

Bonds

Recorded in bond book 3393
Examination of by commissioners 5416
New or additional, when required by court 5417
—effect on liability 281
Revocation of authority for failure to give 5417
Actions on, limitation of 5810
—accrual of 5811

FIERI FACIAS
See "Executions"

FILING
Abstract of judgment of justice, civil warrant 6030
Affidavits for purchase of alcohol for scientific or mechanical purposes 4592
—for purchase of wine for sacramental purposes 4592
—for delivery of intoxicating liquor by transportation company 4634
Amended declaration or bill..... 6095
Application for pension 2648
Assessment rolls, drainage district 1771
Bonds of State officers and clerks 328
—of contractor for public printing 382
—of contractor to furnish paper. 383
—of State accountant 550
—of treasurer of Virginia Military Institute 840
—of treasurer of Virginia Polytechnic Institute 866
—of treasurer of Virginia Normal and Industrial Institute.. 950
—of commissioner of State hospitals 1011
—of person obtaining dead bodies from anatomical board. 1734
—of petitioners for establishment of drainage district 1738
—of secretary and assistant, Board of Charities and Corrections 1893
—of contractor for road maintenance 2035
—of person arrested for violation of license or revenue laws.... 2395
—of collector of delinquent taxes 2437
—of attorney employed by Auditor to collect taxes 2533
—of master of apprentice 5304
—in action of detinue..... 5797, 5807
—for indemnity, action on lost instrument 6242
Cancelled bonds and certificates of State 2638

Sec.

FILING—Con.
Canvass of votes, town election for bond issue 2749
Caveat to prevent issuing of land grant 429, 430
Certificate of adoption of mark for timber 1445
—to practice chiropody 1620
Charter and certificate by foreign building and loan association, 4159, 4160
Claim against decedent before commissioner 5422
Commission, members State Corporation Commission 3694
Complaint against commission merchant 1260
—in contested election, bond issue for roads 2115
—in contested election, removal of courthouse 2754
—in proceeding to remove officer 2705
Copy of charter, foreign insurance company, guaranty company, etc., with Commissioner of Insurance 4208
Decision of arbitrators as to division fence 3560
Depositions 6232
Disapproval by attorney of title to real estate purchased by county or school board 2709
Distress warrant with clerk of court 5528
Examination papers of applicants to practice law 3414
Executions issued by justices, 6030, 6031
Financial plan of corporation with State Corporation Commission 3788
Interrogatories and answers of taxpayers 2261
List of children employed in factory, workshop, &c. 1810
—of officers, directors, stockholders, corporation engaged in fish business 3254
Marriage license and certificate. 5076
Mechanics' lien, memorandum for 6427
—sub-contractor 6428
— —person furnishing materials or labor for 6429
—labor or supply lien against transportation company, etc., 6429, 6440
Notice of appeal from order of State entomologist 891
Oath, Dairy and Food Commissioner 1157
—of weigher of tobacco..... 1355
—of deputies, county, city, town officers 2701
—and permit to carry seed oysters 3250
—of bank directors 4117
Optometrists, certificates of registration of 1633
Orchard inspector's acceptance.. 898
Order for liquidation of insurance company 4244
Papers relating to appointment of orchard inspector 896
—in appeal from order of levy by supervisors 2763
—in proceedings before civil and police justice 3107
Petition and plat by city in proceeding for leave to erect dam. 3054
—by officer claiming salary withheld for debt due State... 3476
—in pending chancery suit..... 6096
—in suit to enforce mechanic's lien 6427

Digitized by Google

Sec.

FILING—Con.
Plat of land condemned for school house 672
Prescriptions for ardent spirits, by druggist 4591
Proof of publication by bank or trust company of certificate to commence business 4105
Receipts to clerk, payment of levies received, sale of delinquent land.....2502
Recognizances 4977
Record of lunacy commission....1019
Refunding bond of legatee or distributee 5437
Release of part of judgment or decree 6333
Report of officers and boards of of State institutions 320
—of number, name, and boundaries of school districts..... 667
—of board of charities and corrections 1894, 1899
—of sheriff, of prisoners in jail.2870
—of population of city of first class 2911
—of appraisers, stock killed or injured by railroad.....3994
—of insurance companies 4229
—of commissioners on examination of accounts of fiduciaries.5427
—of commissioner in chancery..6183
Schedule of bonds, etc., of State cancelled 2593
—of routes for transportation of insane persons, convicts, etc..3739
Statement of intention to locate land warrant on land in possession of another 428
—of system of accounting, by State Accountant 554
—before State money paid for schools 669
—of delinquent treasurers.....2413
—of clerk of board of supervisors 2775
—of auditors of cities.....2775
—of treasurer to board of supervisors 2780
—of profits and damages in actions of ejectment 5481
Superintendent of roads, report relating to mileage and condition of 2023
—recommendation of 2024
Survey and plat, assignment of oyster planting ground.....3225
Trade-mark for registry.....1458
Writing by which apprentice is bound 5304

FINANCE BOARD
How composed 2156
Designation of State depositories.2157
—approval of bond of 2158
—when new bond required.....2160
—removal of deposits from, causes for 2160
—investigation of sufficiency of bond 2161
Petition to by surety on bond of State depository for relief....5772
—deposit of funds pending.....5772

FINES AND PENALTIES
Cruel and unusual punishment not to be inflicted,..Va. Const., § 9
Special legislation as to prohibited .....Va. Const., § 63
Power of Governor to remit, Va. Const., § 73
Paid to literary fund.....738, 2575
—Va. Const., § 134
Prescribed by supervisors.....2743
Remission of 2557
To be paid in lawful money....2575
Definition 2577

Sec.

FINES AND PENALTIES—Con.
Violation of city ordinance, appeal, bond 3011
Councils of cities and towns may prescribe 3034
Incurred before Code effective, effect of Code on 6569
Abduction for purpose of defilement 4411
—inmate of State hospital.....4412
Abortion, attempt to produce....4401
—encouraging or prompting by lectures, advertisement, etc....4401
Abusive, language, use of.....4536
Accessories 4764
Acts or resolutions of General Assembly, altering, secreting or destroying 310
Adultery 4543
—conspiracy to cause wife to commit 4544
Advertising offers to obtain divorces 5116
Agricultural seed, violations of law with reference to.....1150
Agricultural lime, selling without certificate 1134
Apple barrel, use of under standard 1471
Apprentice, enticing and carrying away 5313
Attempts, generally 4767
—to commit rape 4767
—to commit larceny 4767
—to usurp government 4391
—to poison 4400
—to produce abortion 4401
Automobile, operation without license 2132
—using wrong number plate....2133
—violation of law relative to...2145
—forfeiture of machine 2146
— —sale 2147
—operating for hire without license 2153
—hired, negligently injuring....4567
Begging on street 2804
Bigamy 4538, 4539
Birds, killing, destroying nest, selling plumage 3364
—shooting for amusement.....4566
Board of health, violation of rules of 1487, 1495
Boat, taking without permission of owner 3563
—anchoring small boats in channels of Norfolk harbor.....3687
Brand, imitating or altering....1437
Bribes, offering or giving.....4496
—accepting 4497
—lobbying with General Assembly 4499-4501
—bribery of officer to prevent service of process.....4502
—bribery of commissioners, auditors, jurors, etc. 4503
Broker receiving deposits when insolvent 4132
Bucket shops, keeping, etc..4715-4718
Bucketing 4715-4718
Buggery 4551
Building and loan associations, fines imposed by 4155
Bull, permitting to run at large.4744
Burglary 4437
—entering building, etc., with intent to commit murder, rape, robbery 4438
— —with intent to commit other crime 4439
—possession of tools with intent to commit 4437
Burning or destroying dwelling-house, jail, asylum, etc.....4428
—other houses 4430, 4431, 4432

Digitized by Google

Sec.

FINES AND PENALTIES—Con.
—lumber, hay stack, etc.....4431
—bridge, lock, dam.....4433
—woods, fence, grass, etc..4434, 4435
—property with intent to injure insurer 4436
Buying or receiving house fixtures with intent to defraud..4449
—pig iron, railroad iron, brass, metal with intent to defraud..4450
Canal, failing to pay toll.....4020
—collector failing to perform duty 4020
—company, liability for excessive toll 4021
—obstructing or injuring.....4468
Cemeteries, burial grounds, etc., injuries to 4553
—violation of ordinance prohibiting burials in certain cemeteries in city of Richmond.... 57
Certified public accountant, violation of laws with reference to 572
Coal, dealer refusing to weigh at buyer's request 1475
Cocaine, selling or dispensing....1696
—possession of with intent to sell 1697
—prescription for, unlawful signing and filing 1698
Cock fighting 4550
Commission merchants, offences by 1264
Commissioners of labor, refusal or failure to answer interrogatories of.....1802
Common law offenses.....4760
Compounding offenses 4513
Condimental stock and poultry food without certificate, sale of 1249
Feeble minded, conspiracy to commit person to institution for 1084
Conspiracy to incite colored persons against white persons...4392
—to incite white against colored 4392
—to cause wife to commit adultery 4544
Contagious disease, person infected with, going to prohibited public place 1503
—going from place to place in State 1504
—violating quarantine or vaccination regulations 1505
—physician failing to report....1515
Contempt of court.....4521-4524
—proceeding before civil justice.3117
Contract with State institution, etc., by prohibited person.... 998
Convicts, importing into State..4709
—offenses by 5051, 5052
—second offense 5054
Coupons from State bond, fraudulent use of 2607
—tendering twice 2610
—officer receiving 2611
Creditor failing to mark judgment satisfied 6466
Crop pest commissioners, violation of rules of 871
—obstructing 878
Dairy and Food Commissioner, obstructing or hindering, 1169, 1213, 1218, 1220
Dam, failure of owner to maintain road or bridge over.....1985
—obstructing navigation or passage of fish 4747
Dangerous weapon, carrying to place of religious worship or on Sunday 4578

Sec.

FINES AND PENALTIES—Con.
Dead bodies, removal or burial without permit 1581
—embalming without permission of justice or coroner.....1727
—violation of law relating to transportation of 1728
—trafficking in 1734
—failure or refusal to perform duty relating to 1735
Defacing, injuring, taking, etc., personal and real property....4479
—monument 4479
—tree marking boundary 4479
Dentistry, practice without license 1641
—dental corporation or association, failing to display sign..1652
—failing to make required report 1652, 1653
Dogs, bringing into Capitol Square 412, 413
—ordered killed, concealing....1552
—larceny of 4445
—malicious trespass on 4445
—poisoning, wounding, etc.....4467
—fighting 4550
Drainage district, injuring works of 1769
Drinking water, pollution of....1784
Drunkenness 4568
Duel, fighting or sending challenge 4419
—accepting or bearing challenge.4420
—leaving State to evade law..4421
—posting or upbraiding for not fighting 4423
—out of State on agreement made within 4416
—accessories 4417
Embalming, practicing without license 1723
—disposition of fines.....1723
—without permission of justice or coroner 1727
Embezzlement 4451
—by officers of public funds....4452
Employment agency, violation of law relative to 1806
Engines, failure to provide with spark arresters 546
Escape, insane patients of State institutions, aiding 1063
—aiding prisoner in.....4504
—officer allowing 4505, 4506
—prisoner escaping after conviction 4508
— —before conviction 4508
— — by setting fire to jail....4509
—refusal to aid officer in preventing 4511
Eucaine, selling or dispensing..1696
—possession of with intent to sell 1697
—prescription for, unlawful signing and filing 1698
Exemption laws, assigning, transferring, etc., claim against laborer with intent to evade....6557
Expectorating in public place..1550
Explosives, transportation of....3923
Extortion 4406
—by officer 4514
False pretenses, obtaining money or other property by.....4459
—obtaining signature to writing by 4459
—obtaining registration of live stock by 4460
Fee bills, fraudulent issue of....4515
Feeble-minded, conspiracy to commit person to institution for 1084
—private institution for operating without license.....1903

Digitized by Google

Sec.

FINES AND PENALTIES—Con.
"Feeding stuffs" laws, violation of 1230, 1240, 1242
Fences, pulling down, leaving gates open 4481
Ferries, competing with 2063
Fertilizers, false labels on.1127, 1131
—adulteration 1311
—manufacturing or selling without certificate 1114
—sale, transportation, delivery, unregistered and unbranded..1118
Fights between men and animals 4426
—aiders and abettors 4427
Fires, setting on State reservation 544
—negligent escape of..... 545
—failure to obey order given by engineer or warden at fire....3132
—fire marshall, failure of duty by 3138
—owner of buildings failing to provide fire escapes 3141
—property owner, failure to obey order to remedy inflammable condition 4190
Forgery of public record, certificate of officer, etc.....4484
—uttering 4484
—seal of State, court, corporation 4485
— —keeping instrument for....4485
—bank notes, coin 4487
— —uttering 4487
— —having in possession 4490
—of other writings.....4489
—making or having in possession anything designed for forging any writing.....4488
Fornication 4543
Fowl dying from disease, failure to bury or cremate.....1554
—poisoning, wounding 4467
—shooting for amusement.....4566
Fraud, selling articles falsely marked 1439
Sale, pledge, etc., of goods of another and failure to pay over proceeds 4453
—failure to perform promise to deliver crop or other property in return for advances.....4454
—fraudulently selling, etc., personal property subject to deed of trust, etc. 4455
—failure to return or pay for goods delivered on approval.4456
—fraudulently concealing or destroying will or codicil.....4458
—fraudulent sale of goods marked "sterling" or "sterling silver" 4461
— —of goods marked "coin" or "coin silver" 4462
— —of goods made of gold.....4463
—defrauding hotel or boarding house 4464
— —removing baggage 4464
—fraudulent sale of stocks, bonds, town lots, etc. 4465
Fraudulent entry by officer or clerk of bank or joint stock company 4457
Gambling, keeping gaming table, etc. 4676
—permitting on premises.....4677
—aiding, resisting or hindering arrest or seizure 4678
—betting or playing at, 4679, 4681, 4686
—in public place.....4679, 4681
— —what is public place.....4680
—book making, pool selling, etc. 4682

Sec.

FINES AND PENALTIES—Con.
— —on race outside of State...4683
—keeping or exhibiting slot machine 4685
—betting or wagering.....4686
—conducting or being interested in game played for money.....4687
Gaming, keeper of ordinary, permitting at 4688
—letting outhouse, etc., for....4690
—winning at by cheat or fraud..4691
—betting on election.....4692
—conducting lottery or raffle, 4693, 4694
Gensing, digging out of season..4710
Grand jury, officer failing to summon and return.....4862
—juror failing to attend.....4862
Harbor laws, violation of.....3690
Heroin, sale of.....1695
—furnishing to habitual user..1695
Hiring horse, mule, automobile, etc., negligently injuring.....4567
—re-hiring 4567
—with intent to cheat 4567
Horse races, entering horse disguised or under false name..4684
Hotel, obstructing inspector....1593
—failing to pay fee for inspection 1593
—failing to disinfect rooms.....1594
—failing to post warning and directions as to use of gas.....1607
—defrauding, etc. 4464
House of ill fame, keeping.....4548
House of prostitution, violation of injunction against.....1524
Husband or parent, failing to support wife or child 1936
Insane persons, mistreatment of.1062
—aiding in escape of 1063
—disorderly conduct on hospital grounds 1064
—giving ardent spirits or narcotics to.....1065
Jack, permitting to run at large.4744
Jail prisoner escaping from convict road force 2079
—improperly communicating with 2858
Junk dealer failing to keep book.4711
—failing to report to police....4711
—changing form of article bought 4711
Juror, corruptly summoning to act partially 4519
—procuring to be summoned....4520
—fraud in drawing.....4526
—for disobedience of process, how imposed 4985
—non-attendance 5997
— —inquest of escheator 495
— —inquest out of court.....4984
— —grand jury 4862
Jury, person summoned on failing to attend 4896
Kidnapping with intent to extort money 4407
—with intent to sell as slave..4408
—inmate of State hospital.....4412
Larceny of oysters.....3233, 3237
—grand 4440
—petit 4440
—of animals 4440
—sand from banks of Potomac river 4441
—of bank-notes, checks, books of account 4442, 4443
—possession of tools with intent to commit 4437
—of things affixed to freehold 4444
—of dogs 4445
—of goods levied on.....4447
—receiving stolen goods 4448

Digitized by Google

Sec.

FINES AND PENALTIES—Con.
—embezzlement 4451
—sale, pledge of goods of anotner and failure to pay over proceeds 4453
—failure to perform promise to deliver crop or other property in return for advances.....4454
—fraudulent sale, removal, etc., of mortgaged chattels 4455
—failure to pay for or return goods delivered on approval..4456
—obtaining money or other property by false pretenses.....4459
Law, practicing without license.3422
Laundry, violation of regulations 1545
Lewd and lascivious cohabitation 4545
Live stock, giving false pedigree of 4460
—obtaining registration of by false pretenses 4460
—poisoning, wounding 4467
Lobbying with General Assembly 4499
—employing persons to lobby....4500
— —exceptions 4501
Lynnhaven River, polluting.....3290
Malicious trespass, dog as subject of 4445
Manslaughter, voluntary, punishment 4396
—involuntary, punishment 4397
Maternity hospital, violations of law by 1930
Medicine, violation of laws relative to practice of 1623
Millfeed, bran, etc., sale of adulterated 1196
Miller, improper grinding, etc..3594
Minors, employment in mines, false affidavit 1871
—furnishing tobacco, cigarettes, pistols, etc., to.....4695
—toy fire-arms using explosives.4697
—student, giving credit to.....4707
Miscegenation 4546
—performing marriage ceremony 4547
Misdemeanor, when no other punishment prescribed.....4782
Morphine, sale of 1695
—furnishing to habitual user....1695
Murder, first degree 4394
—second degree 4395
—killing in duel out of State on agreement made within.....4416
— —accessories 4417
Name, unauthorized use of.....1463
—unauthorized use of for advertising purposes 5782
—unlawfully changing or assuming another 5983
Non-resident, catching oysters..3254
—holding stock in corporation engaged in fish business.....3254
Non-support of wife by husband.1936
—of child by parent 1936
Notes to circulate as money, issuance 4698
—passing or receiving in payment 4699
—of bank for less than five dollars, bringing into State, passing, receiving 4700
—for less than five dollars, issuing for circulation 4701
Nursing, violations of law relating to 1710
—false representation in applying for license.....1712
Nursery stock, violation of rules of crop pest commissioners.. 871
—transportation of uncertified. 874

Sec.

FINES AND PENALTIES—Con.
—selling or giving away without having certificate of registration 882
—failure to treat cedar trees for rust 887
—obstructing crop pest commissioners 878
—delivering or giving away uninspected 879
—obstructing State Entomologist 890
—refusal to obey orchard inspector 901
—shipping or selling peach trees infected with yellows.....905
Oleomargarine, unlawfully keeping, selling or using 1201
—sale of unbranded or unlabeled.1203
Opium, sale of 1695
—furnishing to habitual user..1695
—use of in manufacture of cigarettes 4696
Optometry, violation of law with reference to practice of.1636, 1637
Pandering 4579
—receiving money for placing female in house of prostitution 4579
—detaining in for debt 4579
Peace, failure to assist justice or other officer in preservation of 4511, 4512
Pension, purchase of 2658
—falsely certifying fact.....2660
Perjury 4494
—subornation of perjury.....4495
—false swearing before State Accountant 559
—false affidavit by dealer in food.1184
—false oath of person licensed to practice medicine.....1612
—false affidavit, employment of minors or females in mines....1871
—false statement to collector of canal tolls.....4020
—false affidavit by fire insurance company, fixing pay of agents.4312
Petit larceny, second and subsequent convictions 4755
Petit treason punished as murder 4761
Pharmacy, violation of law relative to practice of.....1657, 1659
Physician, failing to report contagious disease 1515
Physicians and surgeons, division of fees 1639
Picture, unauthorized use for advertising purposes 5782
Pigeons, homing or Antwerp, killing, entrapping, etc.....4446
—shooting for amusement 4566
— —renting premises for 4566
Possession of tools with intent to commit burglary, larceny, robbery 4437
Principal in second degree....4764
Prize fighting 4426
Probation officer, interference with 1916
Process, failing to assist officer serving 2822
Profane cursing or swearing in public 4563
—over telephone 4569
Public building, violation of law as to exits, etc. 3143
Public nuisance 1520
Public property, wilful or malicious injury to State Capitol or other public building.....4482
—to property in Capitol Square.4482
—to fences, trees, etc., in Capitol Square or public grounds....4483

Digitized by Google

Sec.

FINES AND PENALTIES—Con.
Quarantine of live stock, common carrier violating regulations 912
—regulations, violation of.1505, 1535
—master of vessel or passenger refusing to answer inquiries.1537
—master failing to deliver bill of health, log book, etc.....1538
—person under, travelling in the State 1540
Rape 4414
Rappahannock Creek, placing weir or hedge in 4750
Receiving stolen goods 4448
Records, of marriages, births, deaths, false entries in.....4491
—giving false information for..4492
—public officer making false entry in or destroying....4516, 4517
—theft or destruction of by person other than officers.....4518
Removal of goods levied on....4447
Residing in prohibited district in city or town 3050
Revenue laws, violation of....2393
Riot 4532
—judge or justice failing to suppress 4529
Robbery 4405
—possession of tools with intent to commit 4437
Robins, killing, destroying eggs, etc. 3360
Rockingham county, land owners in failing to keep streams free from obstruction 4753
Sanitary regulations, imposed by cities and towns for violations of 3064
Seal, unauthorized use of.....1463
Seduction 4410
Sepulture, violation of 4552
Shooting, stabbing, cutting or wounding with intent to kill, maim, etc. 4402
—in attempt to commit felony..4403
Shooting in public place.....4404
Sidewalks or shade trees in unincorporated towns, injury to or destruction of 4782
Sidewalks in unincorporated town, riding or driving vehicle on 4733
Slaughter house, sausage factory, etc., operating unlicensed 1222
Smallpox, improper inoculation.1532
—bringing into State 1532
—abandonment on shore of person with 4399
Soft drinks, selling without license, etc. 4665
—using ardent spirits in 4665
Sora, unlawful hunting.....3359
Stallion, permitting to run at large 4744
State hospital, kidnapping patient of 4412
State institution, failure to furnish copies of publication to State Library 355
—contract with, by prohibited person 998
State Library, defacing or injuring books of 367
—removing book or property from 367
—failing to return books to.... 367
State reservation, violation of regulations governing 543
Steamboat, officer, failing to separate white and colored passengers 4023
—passenger failing to occupy place assigned 4024

Sec.

FINES AND PENALTIES—Con.
— —disorderly conduct 4024
—separate accommodations at wharves, failing to provide...4026
Subornation of perjury 4495
Sunday, working or transacting business on 4570
—persons excepted 4571
—transportation by railroad....4574
—by steamboat company.....4575
Telephone, use of profane language over 4569
Theatres, violation of law as to exits, etc., of 3143
Threat of bodily injury in writing 4537
Towel, furnishing for use in public place 1517
Trade-mark, timber, unauthorized use of 1450
—counterfeiting, selling goods with false, etc. 1456
—fraudulent representation in securing registry of 1459
—displaying without authority..1461
Treason 4389
—misprision of.....4390
Truck barrel, use or sale of below standard 1473
Tuberculosis suspect in State institution, failure of officer to report 1546
—failure to segregate 1547
—failure to disinfect apartment 1548
—letting apartment previously occupied by patient 1549
Underwriter's agency, violation of law by 4314
United States, injury to signal, monument, etc., used by..... 26
Unlawful assembly 4532
—judge or justice failing to suppress 4529
Vagrancy 2809
Veterinary medicine or surgery, illegal practice of.....1279
Vital statistics, certificates, failure to make 1581
—false 1581
—altering 1581
—violations of laws with reference to 1581
—records, false entries in 4491
— —giving false information for 4492
Warehouse, depositing another's goods in or negotiating receipt for mortgaged goods 1344
Warehouseman issuing receipt containing false statement. 1340, 1342
—delivering goods without obtaining receipt 1343
—issue of receipt for goods not received 1339
—issue of duplicate receipt not so marked 1341
Warrants, discounting 684
Water courses, pollution of.....1782
Water supply of cities and towns, pollution of 1783
Water works, failure to obtain permit to supply water.....1793
—disobeying orders of board of health 1793
Weapons, carrying concealed....4534
—black-jack, knucks, etc., selling, furnishing, etc. 4535
Weights and measures, sealer failing to have weights and measures proved 1476
—superintendent or sealer, neglect of duty 1482
—use of, not sealed 1483

Digitized by Google

Sec.

FINES AND PENALTIES—Con.
Wharves, building without authority of harbor commissioners 3675
—failure to repair 3676
—failure to provide accommodations for passengers at.....4026
—failure to provide separate accommodations for white and colored persons 4026
Witnesses in contested elections, 261, 264
—failing to attend before General Assembly 303
— —before city council or fire or police commissioners.....2985
— —before justice 6021
— —before commissioner in chancery 6181
—refusing to testify in prosecution for bribery 4498
— —for gaming 4780
—for disobedience of process, how imposed 4985
Witness, refusing to obey summons 6220

Proceedings for Recovery

Water works, disobeying orders of board of health, &c.....4793
Fines, time prisoner may be held to work on road or in quarry for 2094
—in chain gang 2095
—rate at which prisoner required to work out fine and costs....2095
For refusal to testify in investigation of merchant's purchases 2366
How recovered 2543
—in what courts 2544
—jurisdiction of circuit court...5890
—jurisdiction of justice 6015
Jury, when impaneled 2545
Judgment 2545
Receipts for 2546
Share of informer 2547
Justice, failure to give receipt..2546
—failure to account 2546
Clerk, failure to give receipt...2546
—failure to account 2546
Fines imposed by mayor.....2549
—execution 2549
Fines certified to clerk 2550
—by clerk to court.....2551
—entry in books 2552
—fieri facias 2552, 4953
Commonwealth's attorney, duty of 2554
Constable, when not to receive..2555
Collected by justice, payment to clerk 2556
Commitment to jail for....2549, 2559
When defendant may pay to clerk 2562
List of returned by clerk to Auditor 2563, 2564
—statement with 2565
—fee for 2566
—penalty for failure 2567
Execution for.....2549, 2559, 4953
—to whom directed 2561
—duty of Commonwealth's attorney 2558
—to conform to chapter 101....2576
Capias pro fine, when issued, 2559, 2560
—to whom directed 2561
Payment to clerk by sheriff or other officer collecting 2568
—penalty for default 2568
Remission of 2569-2574
—when not remitted 2569
—certificate for.....2569, 2572, 2574
—entry on judgment docket....2574

Sec.

FINES AND PENALTIES—Con.
Violations of oyster laws, payment to officers.....3264
For violation of game laws, collection of against corporation by execution 3340
For violation of laws relating to hunting, fishing and taking oysters, proceedings 3366-3377
Limitation of prosecution for...4768
Commencement of sentences in case of two or more convictions 4786
Confinement for failure to pay..4949
—limitation of 4949, 4953
—hiring out 4950, 4951
— —obligation of hirer 4951
—release 4952

Liability of Particular Officers, Clerks, Employees, &c.

Officer failing to take oath or give required bond 288
—failure to produce books and vouchers for inspection 558
—failing to keep register of State property 999
—violation of laws with reference to insane, insane hospitals, etc. 1060
—collecting taxes, failing to deliver dated tax ticket.....2409
—failing to perform duties as to sale of delinquent lands.....2503
—fines, collecting, failing to give receipt 2546
— —misuse or misappropriation 2546
— —failure to account for 2546
— —failure to pay to clerk.....2568
—receiving other than United States currency for taxes and debts due State 2606
—buying or selling coupons from State bonds 2606
—failing to keep account of coupons received 2606
—failing to perform duty, election for forming new county..2673
—failing to make return on process 2825, 2826
— —false return 2825
—failing to give receipt for taxes, fines, fees 2829
—failing to perform duty in enforcing oyster laws 3267
—game laws, failing to perform duty 3341
—violating law relating to fee bills 3495
—failing to perform duty as to moneys of State Corporation Commission 3747
—insurance, failing to perform duty under law relating to...4192
—allowing prisoner to escape, 4505, 450
—refusal to execute process for criminal 4510
—extortion by 4514
—jurors, corruptly summoning to act partially 4519
—interested in contract with institution, State, &c. 4796
—coroner's inquest, failing to execute and return process 4808
—failing to summon grand jury.4862
—failing to return recognizance or taking insufficient bail.....4857
—failure of duty relating to juries 6004
Auditor failing to report delinquent treasurer 2434
Ballastmaster, refusing to serve as 3652

Digitized by Google

Sec.

FINES AND PENALTIES—Con.
—for failure of duty 3653
Board of poor commissioners, failure to perform duty.....1904
Clerk, board of supervisors, failing to certify treasurer's report to grand jury 2780
Commissioner, failing to report on treasurer's bond 2778
Commissioner of accounts failing to keep record of fiduciaries...5401
Commonwealth's attorney, failure of duty in proceeding for rendering false tax list.....2325
Constable, failure to kill dog on which tax not paid 2317
—failure to serve or return notice 6041
Coroner failing to perform duty.4816
Escheator, failure to report and account for sales of escheated land 511
Fiduciary failing to file inventory 5403
—failing to exhibit account....5408
—refusing information to examiner of records 2221
General receiver, failure of duty 6287
Harbormaster, failing to perform duty 3691
Inspectors, dealing in commodities 1437
—reviewer of decision of, refusal to act 1431
—false marking or branding by..1441
Jailor, failure to perform duty..2864
Judge, failing to suppress riot or unlawful assembly 4529
Justice, failure to certify fines and costs imposed by him....2550
—failure to pay to clerk fines collected 2556
—failing to suppress riot or unlawful assembly 4529
Notary omitting recitals from certificates 5210
Register of the Land Office failing to account to Auditor.....2508
Secretary of the Commonwealth failing to report and account for taxes 2404
Sergeant, improperly acting as attorney at law 3426
—failing to serve or return notice 6041
—failing to get process from clerk's office 6060
Special commissioner acting without giving bond 6271
—failure to account for money..6273
State Treasurer, illegally disposing of bonds of insurance company 4218
Superintendent of Public Printing, being interested in State contracts 380
Supervisors failing to publish statement 2768
Trustee, failing to make statement of disbursements 5408

CLERK OF THE COURT
Failure of duty with respect to list of paid poll taxes..... 113
Failure to make or certify abstract of votes..... 185
Failing to make and deliver certificate of election 186
Failing to file bond 279
Failure of duty with respect to school census 653
Failing to furnish assessor with list of conveyances, grants, and land book 2242

Sec.

FINES AND PENALTIES—Con.
Failing to furnish list of conveyances, decrees and wills to Auditor and commissioner 2276
Failure to comply with law as to taxes and other money belonging to State collected by him..2406
Failing to report fines to Auditor 2567
Failing to transmit copies of bonds of officers to Auditor..2700
Failing to report prosecutions under game laws 3342
Failure to record bond of clerk of Supreme Court 3384
Failing to record, index, etc., papers, certificates, plats 3392
Failing to verify records.....3401
Failure to note release of deed of trust, &c. 3403
Issuing duplicate certificate of allowance without order of court 3404
Failing to report to legislature.3406
Failure to furnish list of officers to Secretary of Commonwealth 3407
Improperly acting as attorney at law 3426
Failure to record charter of corporations, return, etc. 3851
Failure of duty relating to charter of non-stock corporation..3874
Failing to certify dissolution of non-stock corporation 3880
Issuing marriage license contrary to law 4541
Failing to furnish copy of judgment of conviction to Superintendent of Penitentiary.....4948
Marriage, failure to perform duty as to.....5074, 5094
Failing to certify revocation of authority of fiduciary 5401
False certificate to special commissioner 6271
Failing to give notice of appointment of person to receive proceeds of sale 6272

COMMISSIONER OF THE REVENUE
Improperly issuing certificate to dentist 1648
Failure to deliver books of predecessor to 2266
Failing to exhibit land book and correct entries 2273
Failing to note changes in land book 2281
Failure to enter and assess land grants 2282
Failure to assess buildings, machinery, fixtures 2298
Failing to administer oath.....2306
Failure to list dogs.....2316
Failing to list and assess his own property 2327
Failure to keep and make copies of books 2341
—failure to deliver copy to Auditor 2342
Failing to report licenses issued.2374

COUNTY SURVEYOR
Failure to deliver copy of plat and certificate to clerk 443
Failure to amend defective plat of land grant survey..... 465
Failure to perform duty..... 465
Failing to make proper survey..2841
Failure to promptly execute survey 2842
Failure to deliver books to clerk 2844
Failure to produce books for examination 2845

Digitized by Google

Sec.

FINES AND PENALTIES—Con.
Removing packing from journal box 4472
Shooting, throwing stones or missiles at trains 4473
Destroying fences or cattle stops 4476
Electric railway, failing to use vestibuled fronts on cars 3977
—failing to separate white and colored passengers 3978
—conductor, failing to assign seats to white and colored passengers 3980
—passenger failing to take seat assigned 3983
—operating excursion when prohibited 4010

TRANSPORTATION COMPANIES
Transporting at less than regular rates 3912, 3918
Discrimination by 3914
Person falsely obtaining transportation at less than regular rate 3913
Failure to issue freight receipt..3915
Failure to deliver freight 3915
Failure to obey trackage rules and regulations 3921
Transportation of explosives....3923
State Corporation Commission, failing to furnish reports to..3924
—obstructing or hindering 3924
—failing to obey rules and regulations of 3925
—failing to make repairs, additions, etc., ordered by....3932
Failure to pay claim for loss or injury to goods 3928

Under Laws Relating to Drugs
Sale of adulterated or misbranded drugs 1657, 1659
Violation of laws relative to drugs 1692
Opium, morphine, heroin, &c., sale of 1695
—furnishing to habitual user...1695
Placing samples of drugs on private property 1701
Adulteration of drugs 1702

Under Laws Relating to Education
Division superintendent of schools, neglect of duty 617
School officer or teacher having interest in school contract.... 682
Failure of school officer to deliver records to successor.... 685
Malfeasance or neglect by school officer, trustee or teacher..686, 687
District superintendent, trustees, clerks of school boards, failing to make, post, publish annual report of school boards.... 751

Under Laws Relating to Elections
Registrar, refusing to serve as. 86
—failing to deliver books to judges of election 104
Electoral board failing to appoint judges of election, clerks 148
Ballots, violation of law with respect to 156
—officer of election tampering with 159
—carrying away or copying.... 163
—giving away, selling or counterfeiting 167
Violation of duty by officer of election 159
Assisting or advising voter..165, 166
Crowds congregating at polling places 167
Violations not otherwise provided for 169
Special messenger to obtain poll books and ballots 180

Sec.

FINES AND PENALTIES—Con.
—in primary election 228
Intimidation of voter 194
Intimidation of election officer.. 195
Fraud with respect to voting by absent voter 219
Fraudulently signing name of qualified voter 219
Publication advocating election or defeat of candidate at primary election 231
Candidate at primary election failing to file statement of expenditures 233
—exceeding limit of expenses... 234
—improper expenditures by.... 251
— —by another in behalf of.... 252
—failing to file statement of expenditures 255
Influencing vote by soliciting, money, etc., at primary election 235
Violation of duty by secretary of board of commissioners of election at primary 241
Stealing, mutilating, etc., ballot box or poll book or making fraudulent entry 244
Failure to obey summons of school trustee electoral board. 632
Betting on elections 4692
Judges, clerk, &c., failing to attend 4722
Officers, neglect of duty or corrupt conduct 4724
Voting illegally 4725
—aiding or advising 4725
—in district in which voter does not reside or is not registered.4725
—more than once at same election 4725
—with unlawful intent 4725
—attempting to influence 4725
—attempting to deter 4725
—furnishing false ballot 4725
—fraudulently changing ballot..4725
—fraudulently putting ballot in box 4725
—by non-resident 4726
Giving or receiving bribe for vote 4727
Altering, destroying, &c., books of registration 4729

Under Laws Relating to Employers and Employees
Violation of law relative to employment agency 1806
Mercantile establishment, failure to provide seats for female employees 1807
Female employees, law relating to hours of labor of, violation.1808
Preventing discharged employee from obtaining employment...1817
Employees, violations of law relating to time and manner of payment of 1819
—sale of goods to by employer.1820
—failing to furnish dust shield to 1821
—failure to provide sanitary facilities for 1827
Factories, workshops, failure to provide safety appliances....1832
Foundries, failure to provide ventilation 1833
—toilets, washrooms 1834
Mine employees, failure to instruct or warn 1842
—failure to provide required conditions of labor for 1842
—violation of law relating to protection from gas 1856, 1860
—violation of law relating to safety lamps 1862

Digitized by Google

Sec.

FINES AND PENALTIES—Con.
—employment of minors or females in, false affidavit 1871
—doing prohibited acts 1872
Under Laws Relating to Fish and Fishing, Game, Oysters, Etc.
Scallops, violation of law as to taking, &c. 3294
Terrapins, citizen interested with non-resident in catching 3253
—non-resident catching 3254
—taking out of season 3297
—diamond-back, taking out of season or undersized 3298

CLAMS

Staking in natural clamming ground 3232
Inspector assigning natural clam bed 3234
Taking with rakes or scrapes in Accomac and Northampton counties 3238
Taking with drag-box 3245
Catching on Sunday 3251
—in night time 3251
Citizen interested with non-resident in catching 3253
Non-resident catching 3254
Falsely designating as Lynnhaven 3291
Violation of law relative to taking, &c. 3294

CRABS

Staking in natural crabbing ground 3232
Taking with rakes or scrapes in Accomac and Northampton counties 3238
Catching on Sunday 3251
—in night time 3251
Citizen interested with non-resident in catching 3253
Non-resident catching 3254
Violation of law relating to taking 3292

FISH AND FISHING

Inspector violating duty relating to issuing licenses to fish, etc..3169
Obstructing fisheries in Chesapeake, Lynnhaven, Willoughby bays 3191
Fish-ways in dams, failure to construct and maintain 3193
Obstructing passage of fish by seines or nets 3198
Erecting fish dams in certain rivers 3199
Obstruction of fish by dam.....4747
Obstructing passage of fish in Sycamore Mill creek 4749
Taking food fish for manufacture into guano or oil 3176
Manufacture of fish into oil or fertilizer, or taking therefor, violation of law as to.....3190
—non-resident catching for 3184
Violations of laws as to fishing..3175
—as to Accomac and Northampton counties 3181
—applicable to Potomac river, 3303, 3305
Unlawful fishing without license.3169
— —non-resident 3210
—in spawning locality 3180
—within regularly hauled fishing landing 3182
—for menhaden out of season..3183
—using improper net for.....3183
—use of explosives, injury to fish-boxes or eggs 3196
—with seines in Holston and New rivers 3200
—Powell's river 3201

Sec.

FINES AND PENALTIES—Con.
—in Mattaponi, Pamunkey, York, Elizabeth rivers 3202
—in Back Bay 3203
—in Elizabeth river 3204
—in Potomac river 3210
—unlawfully taking trout or bass 3210
—unlawful, by non-resident 3211
Fisheries, boat engaged in, name or number concealed 3263
Proportion of fines to officers...3343
Disturbing fishing shores..5291, 5292

GAME AND HUNTING

Proportion of fine to officer.....3343
Trapping animals, violation of law relating to 3354
Wild turkey, buying or selling..3358
Violation of law relative to transportation of game 3361
Hunting, without license.....3337
—transferring license 3337
—using another's license 3337
—on land of another without permission 3338
—procuring license by false statement; altering or changing 3339
—unlawful 3356

OYSTERS

Inspector, failing to report, account, etc. 3222
—assigning natural oyster rock.3234
—failing to inspect and seal measures 3273
Staking in natural oyster rock..3232
Injuring or removing boundary marks of oyster grounds.....3235
Taking with rakes or scrapes in Accomac and Northampton counties 3238
Shucker, packer or buyer dealing without license or making false report 3239
Catching in closed season, or with patent tongs 3240
Failing to register boat used in taking 3241
Catching without license.....3242
Taking or selling, under size...3244
Taking with drag-box 3245
Illegally taking with scrapes and dredges 3246, 3248
Carrying seed oysters out of State without permit 3249
Buying or carrying seed oysters without permit 3250
Carrying out of James river during closed season without permit 3251
Catching on Sunday 3251
—in night time 3251
Using illegal measure for.....3252
Citizen interested with non-resident in catching or planting..3253
Non-resident catching 3254
Resistance to officer enforcing law 3265
Officer failing to perform duty in enforcement of law 3267
Taking for conversion into lime.3272
Roughing or taking without culling 3274
Having scrape or dredge in Pocomoke Sound 3280
Falsely designating as Lynnhaven 3291
Removal from polluted areas....3287
—interfering with officer.....3287
—payment to officer 3288
—disposition of fines 3287
Disposition of fines 3262

Digitized by Google

Sec.

FINES AND PENALTIES—Con.
Unmarked, failure to cause sale of 1454
Casting into river or creek, injuring bridge or boat 4746
Brands, defacing or fraudulent use of 1447
—unauthorized use of 1450
—branding iron, unlawful use of, counterfeiting, etc. 1451
—fraudulent branding 1452
—altering, erasing, etc. 3581
Under Laws Relating to Tobacco
Falsely marking or branding, 1358, 1389
Sold, failure to keep account of.. 1365
Rebate, or bonus, warehouseman giving 1384
—person receiving 1384
Nesting tobacco 1391
Offences relating to sale, etc..... 1392
Shipped by vessel, failure to keep record of 1393
Received by vessel without consent of owner 1394
Sending to wrong warehouse... 1397
Inspector, giving false receipt or note 4708
SAMPLER
Improperly weighing leaf tobacco 1355
Refusal to give receipt..... 1361
Delivery without order from owner 1366
Illegal issuance of note, receipt, or manifest for tobacco..... 1369
Delivery of wrong tobacco..... 1371
Failure to deliver tobacco on demand 1372
Dividing fees 1384
Failure to keep account of reprized tobacco 1396
Buying, stemming or manufacturing tobacco 1874
Giving false receipt or note..... 4708

FIREARMS
See **"Weapons"**
Toys, using explosive charges, furnishing to minors, penalty.. 4697

FIRE COMPANIES
Suspension and removal of members ..... Va. Const., § 120
Free transportation of firemen, Va. Const., § 161
Formation 3121
Organization 3122
Members, duties 3123
Meetings 3124
Engineer and wardens, appointment 3125
—to attend fires 3128
—penalty for disobeying 3132
Ordinances regulating 3127
Fire department, how constituted 3126
—by-laws 3126
—right of to enter building or premises where fire in progress 3130
—chief of, as member of committee to inspect buildings as to exits 3143
Engineer, authority at fire..... 3129
—warden acting as 3131
Wardens, grades, duties..... 3131
Destruction of property to prevent spread of fire..... 3133-3135
Dissolution 3136
Fire marshal, appointment..... 3137
—duties 3138-3140
—oath 3140
—assistants 3140
Report of fires to Commissioner of Insurance 4185

Sec.

FIRE COMPANIES—Con.
—fee 4185
—information and assistance to commissioner in making examination 4186
—penalty 4192
Examination into inflammable condition of premises 4190
—order for remedy of 4190
—penalty for failure 4192

FIRE DEPARTMENT
See also **"Cities and Towns"; "Fire Companies"**
Commissioner, investigations, witnesses, etc. 2985
Members, removal or suspension, appeal 3010
—exempt from jury service..... 5985
Assistance in fires outside of city or town 3033

FIRE ESCAPES
In hotels 1587
On what buildings required..... 3141
Design for 3141
Penalty for failing to provide... 3141

FIRE EXTINGUISHERS
In hotels 1587

FIRE INSURANCE
See **"Insurance"**
Loans on real estate by fiduciaries 5431
Action on policy, where brought, 6049, 6050

FIRE INSURANCE COMPANIES
See also **"Insurance Companies"**
Incorporation 4201
Deposit of bonds by required.... 4201
Not to engage in banking business 4240
Refund on premium 4306
Limitation on size of risks..... 4307
—penalty, revocation of license.. 4307
Adjustment of loss under policy, arbitrators and umpire to be citizens of State 4308
—oath of 4309
Assets, when distributed among stockholders 4310
Reinsurance, approval of commissioner 4310
Compact to fix pay of agents prohibited 4312
—penalty, revocation of license.. 4312
—affidavit required to be filed... 4312
—penalty, false statement in affidavit 4312
Policy to show name of company 4313
Underwriters' agency, definition. 4313
—policy issued by, what to show. 4313
—license tax required 4313
—bonds to be deposited by..... 4313
—to comply with laws as to fire insurance companies 4313
—penalties for violating law.... 4314

FIRE MARSHAL
See **"Fire Companies"**

FIRE WARDEN
See **"Fire Companies"**

FIRES
See also **"Fire Companies"; "Fire Department"**
Penalty for causing on State reservation 544
Liability for negligent escape of. 545
Engines, threshing machines, &c., to be provided with spark arresters 546
Liability to State or county for causing 547
Fire marshal, duties 1065-1067
—investigations as to causes of fires 1065

Digitized by Google

Sec.

FIRES—Con.
Liability of hotel or innkeeper for loss of property of guests by 1604
Bond issue by cities and towns for equipment against 3079
Destruction of houses, fences etc., to prevent spread of.....3133
—recovery of damages by owner. 3134, 3135
Forest, duty of game warden to provide against 3326
Liability of railroads for damage caused by 3992
Insurable interest of railroad in property along route 4018
Commissioner of Insurance, record of kept by 4184
—report to by fire departments and sheriffs 4185
— —fee 4185
—examination into cause of by, 4186, 4187
—report of incendiary fires to Commonwealth's attorney 4188
Examination into inflammable condition of buildings, etc.....4190
—order to remedy 4190
— —penalty for failure 4190
Setting jail on fire, escape by....4509

FIRMS
Listing property for taxation...2307
License to, what to contain.....2364
—change in members or name..2365
—separate licenses 2368
—engaged in more than one business 2368

FIRST CLERKS
Appointment of 340
Authority 340
Vacancy 341
When Governor to designate 341
Liability of officer and surety for default of 342

FISCAL YEAR
State hospitals 1015
Fertilizer, registered analysis to remain unchanged during 1116
State 2172

FISH AND FISHING
See also **"Board of Fisheries"; "Clams"; "Commission of Fisheries"; "Crabs"; "Hatcheries"; "Herring"; "Inspection"; "Inspectors"; "Oysters"; "Potomac River"; "Terrapin"**
In Potomac river 14
On ungranted marsh land..... 421
Inspectors of 1400-1402
For inspection, how packed.....1409
Owner to mark weight and tare.1415
—penalty 1417
—brand 1420
—how marked when unfit to pass 1428
Obstruction of by bridge.....2068
—dam obstructing passage of..3577
—dam or other thing obstructing passage of as nuisance...4747
—in Sycamore Mill creek, penalty 4749
Preservation of, etc., powers of supervisors 2743
Power of Commissioner of Fisheries to take for scientific purposes 3157
Commission of Fisheries, inspectors, captains, etc., not to have interest in fisheries 3158
Tidewater Virginia, definition of term 3162
License for fishing with nets for market 3166, 3168

Sec.

FISH AND FISHING—Con.
—for manufacture into oil or manure 3167, 3168
—for taking bluefish with line..3168
—for salting or buying herring, packing fish roe for market...3170
Without license, forfeiture for..3169
Size of mesh of nets.....3171
Size of that may be caught.....3172
Setting pound nets in certain rivers prohibited 3173
—penalty 3175
Setting gill nets or crab lines at night in Lynnhaven river 3173
—penalty 3175
Restriction as to planting oysters and setting stakes in Chesapeake Bay 2173
—penalty 3175
Restriction as to use of pound nets across streams or inlets bordering on Chesapeake Bay.3174
—penalty 3175
Manufacture into guano or oil, food fish not to be taken for..3176
—penalty 3176
Vessel licensed for fishing, concealing name or number of....3177
—having scrape, dredge, or patent tongs aboard 3177
—penalty 3177
Pound net, what construed as...3178
Shad, keeping open ways for deposit of spawn 3179
—penalty for fishing in open ways 3180
Accomac and Northampton counties, hauling seines or setting traps 3181
—fishing within regularly hauled fishing landing 3182
Menhaden fishing, closed season for 3183
—forbidden nets 3183
Manufacture into oil or manure, or taking fish therefor, license required 3167, 3168, 3185-3190
—forbidden to non-resident.....3184
—certificate required 3185
—tax on license.....3168, 3186
—application 3187
—how application contested.....3188
—when inspector to issue license 3189
—what license to State.....3189
—non-resident employees 3189
—transfer of license 3189
—penalties 3184, 3190
Obstruction of fisheries in Chesapeake, Lynnhaven, Willoughby bays 3191
Dams to be provided with fish-ladders 3192
—penalty 3193
—inspection 3194
Enforcement of laws as to.....3197
Obstructing passage of fish by seines or nets, penalty.....3198
Erection of fish dams in Roanoke, Smith's, Powell's, Holston rivers 3199
Fishing with seines, &c., in Holston and New rivers 3200
Fishing in Powell's river 3201
—in Mattaponi river 3202
—in Pamunkey river 3202
—in York river 3202
—in Elizabeth river 3202, 3204
—in Back Bay 3203
—in Potomac river, bays, creeks, inlets, streams, tributary to...3205
West of Blue Ridge, time and manner of catching black bass and trout 3206-3210

Digitized by Google

Sec.

FISH AND FISHING—Con.
—non-residents to obtain license 3209
Certain acts for protection of fish continued in force.....3218
Fish wardens, game wardens to be 3197
—duties and powers 3197
— —arrests 3197
— —seizures 3197
—proportion of fines to.....3197
Non-resident not to be interested in corporation engaged in.....3254
Boat engaged in, name and number to be kept in view.....3263
Duties, Commissioner of Game and Inland Fisheries.....3315
Laws relating to, publication of.3317
Forfeitures for violation of law, procedure 3366-3377
Common rights of fishing.....3573
Fishing shores, designation of by commissioners 5290
—penalty for disturbing..5291, 5292

Unlawful Fishing

Trout 3195, 3206-3210
Bass 3195, 3205-3210
With dynamite, etc.....3195
Injury to fish-boxes or eggs of fish 3195
Penalties 3196
By non-resident.....3211, 3212
—construction of term.....3212
Jurisdiction of courts.....3213
Judges to charge grand juries...3214
Proceedings for violations of law, 3215, 3216
Seizure of forfeited property...3217

FISHING CLUB
See also "Corporations"
Incorporation 3872-3880

FISH ROE
Packing, license for.....3170

FISH WARDENS
See "Wardens"

FIXTURES
Larceny of.....4444
Buying or receiving with intent to defraud 4449

FLAG OF STATE
Description 31
Size, Governor to prescribe..... 32
When raised 33

FLAGS
On school buildings.....678, 679

FLAGMEN
At crossings, when railroad required to maintain.....3986
Maintained by railroad at crossings in cities and towns.....3998

FLAVORING EXTRACTS
Containing alcohol, sale of.4588, 4589
Manufacturer of buying and selling alcohol 4590
—license 4590

FLAX SEED
Bushel, standard 1470

FLOUR
See **"Inspector"; "Inspection"**
Adulteration, branding.....1194
—penalty 1194
—prima facie evidence 1194
Inspectors of 1400-1402
Quality offered for inspection..1406
Barrels for 1407, 1408
Forfeiture for deficiency.....1408
Owner to mark weight and tare.1415
—penalty 1417
Brand 1416, 1419
—penalty 1417
How marked when unfit to pass..1428
Barrel, standard 1474

Sec.

FLOYD COUNTY
Commonwealth's attorney, fees..3505
Exception from act relating to dams 4747

FLUVANNA COUNTY
Commonwealth's attorney, fees..3505

FODDER STACK
Burning, punishment 4431

FOOD
See also **"Dairy and Food Commissioner"; "Flour"; "Inspection"; "Inspectors"; "Oleomargarine"; "Poultry"**
Examination and inspection by Dairy and Food Commissioner.1160
Penalty for unsanitary condition 1160
Adulterated, misbranded, condemnation of 1164-1166
—penalty for selling 1177, 1189
—penalty for adulterating.....1702
—penalty for manufacturing....1189
Analysis by Dairy and Food Commissioner 1176, 1178
—purchase of samples for.....1186
Meaning of term....1180, 1188, 1219
When article deemed adulterated.1181
Meaning of "misbranded"; "blend" 1182
Meat and meat food products, slaughtered or prepared under unsanitary conditions, penalty for selling 1182
—seizure, warrant, destruction..1182
Dealer, when guaranty of wholesaler relieves from liability...1184
—affidavit, penalty if false.....1184
Variability, standards of, fixing and publishing 1185
Penalty for violation of laws with reference to 1187
Principal, liability of, for omission or act of agent.....1188
Construction of terms 1188
Deleterious or unwholesome, or diseased, penalty for selling, 1218, 1219
—seizure 1218
Contamination in transit, penalty for allowing 1220
—on storage 1220
Cheese, manufacturer improperly disposing of cream 1197
Milk, adulterated, penalty for sale or supply of 1197
Millfeed, millstuff, bran, etc., adulterated 1196
Vinegar 1191
Cider 1192
Candy 1193
Flour 1194
Meal 1195
Oleomargarine, process butter, etc. 1198-1203

FOOTBALL PARK
City police, authority at 3005

FORCIBLE ENTRY AND DETAINER
See **"Unlawful Entry and Detainer"**

FOREIGN
Deeds, etc., admissability in evidence 6207

FOREIGN BILL OF EXCHANGE
See **"Negotiable Instruments"**

FOREIGN CORPORATIONS
See also **"Corporations"; "Express Companies"; "Insurance"; "Insurance Companies"; "Mines and Minerals"; "Railroads"**
Control and regulation, Va. Const., § 163
Discrimination against, Va. Const., § 163

Digitized by Google

Sec.

FOREIGN CORPORATIONS—Con.
Not permitted to do acts prohibited to domestic corporations, Va. Const., § 163
State Corporation Commission, authority over 3716
—reports required by 3716
—issuing license to.....3746
—annual report to 3820
—filing charter with 3847
License to do business in State, fees 3746
—Va. Const., § 157
Surrendering certificate to do business, registration fee for current year 3835
Appointment of Secretary of the Commonwealth as agent on whom process may be served, 3845-3847
—copy of process mailed to....3846
—judgment against 3845, 3846
Office maintained in this State..3847
Certificate of authority to transact business in this State....3847
—procedure for obtaining.....3847
—penalty for doing business without 3848
—liability of agents, officers, etc. 3848
—surrender of 3848
Charter, filing with State Corporation Commission 3847
—amendments to charter.....3847
Service of process on agents, officers or employees 3848
Becoming domestic corporation.3857
—Va. Const., § 163
Action against where brought, 6049, 6050
Quo warranto proceedings against, where brought 6052
How process served on....6064, 6066
—order of publication, 6064, 6069, 6070
—in Supreme Court of Appeals.6073
Attachment against.....6378, 6379
—Va. Const., § 163
Manufacturing or mining corporation, operations in this State 3844
—real estate held by.....3844
—extent to which deemed a corporation of this State.....3844
—taxes, etc., to be paid in lawful money.....3844
Operating railroad, to be chartered under laws of this State.3955
Express company 4027-4030
Telephone and telegraph companies, license 4036
Banks, not to do business in this State 4130
Building and loan association doing business in State.....4158
—filing copy of charter.....4159
—certificate 4160
—reports 4161
—deposit of securities.....4161
— —exchange of 4161
—officer or agent failing to comply with law, penalty.....4162
—revocation of license 4166
Insurance companies, to make contracts only through agents.4222
—penalty 4223
—restrictions on corresponding to restrictions on Virginia companies in other States.....4233
—license, orocedure to obtain.4272
—affidavit for renewal of license.4276
—license and certificate of authority issued by Commissioner of Insurance. 4176

Sec.

FOREIGN CORPORATIONS—Con.
— —not issued unless law complied with 4177
— —revocation, refusal to issue 4180

FOREIGN JUDGMENT
See **"Decrees"; "Judgments"; "Limitations"**

FOREIGN MONEY
See **"Money"**

FOREIGN PERSONAL REPRESENTATIVES
See **"Personal Representatives"**

FOREIGN STATES
Governor to conduct intercourse with .....Va. Const., § 73
Becoming citizen of during war.. 65

FOREMAN
See **"Mines"**
Of grand jury 4856, 4857

FOREST FIRES
Duty of game wardens to provide against 3326

FOREST RESERVE FUND
Creation and appropriation of.. 549
Money arising from.....742, 743
—apportionment to counties.... 743
—accounting for 744

FORESTRY
See **"State Forester"; "State Geological Commission"**

FORFEITED LANDS
West of Alleghanies, taxation..2293

FORFEITURE
Property accruing to State by appropriated to literary fund, Va. Const., § 134
Apple barrel, use of under standard 1491
Adulterated drugs, food and drink 1702
Adulterated, misbranded or substituted food 1165
Assessor, failure to deliver copies of assessment 2247
Auditor failing to report delinquent treasurers 2434
Ballast, vessel unloading without notice 3655
—failing to produce certificate..3657
Ballast master, refusing to serve as 3652
—for failure of duty.....3653
Bank of circulation, capital stock of company acting as..4152
Boat or vessel, taking without permission of owner.....3563
Board of poor commissioners, failure to perform duties.....1904
Canal, passing toll gate without paying toll 4020
—collector, failing to perform duty 4020
—company, liability for excessive toll 4021
Certificate of certified public accountant on conviction of felony, etc. 570
—by insanity 570
Charter of corporation, special laws remitting prohibited when .....Va. Const., § 63
—General Assembly may provide for .....Va. Const., § 154
—for payment of taxes and debts due State in other than currency 2616, 2617
—for misuse or non-use.....3831
By corporation, failure to file list of officers and directors.....3854
—failing to appoint agent on whom process may be served..3854

Digitized by Google

Sec.

FORFEITURE—Con.
Corporate stock for failure to pay subscription 3807
Clerk of court failing to transmit copy of bond of tobacco sampler to auditor.....1351
—failing to furnish list of conveyances and decrees to commissioner and auditor.....2276
—failure to report list of fines to auditor 2567
—issuing duplicate certificate of allowance without order of court 3404
—failure to report prosecutions under game laws to commissioner 3342
—failure to record, index, deliver, writings, certificates, plats...3392
—improperly acting as attorney.3426
—failing to furnish copy of judgment of conviction to superintendent of penitentiary.....4948
—failure to perform duty as to marriages 5094
—failing to certify revocation of authority of fiduciary 5401
—failure to notify clerk of House of Delegates of change of commencement of term of court, 5893, 5909
Commissioner of Accounts, failing to keep record of fiduciaries 5401
Commissioner of the revenue, failure or refusal to deliver books of predecessor to.....2266
—failing to exhibit land book and correct entries 2273
—failure to make explanatory notes of changes in land book.2281
—failure to enter and assess land grants 2282
—failure to assess buildings, machinery, fixtures 2298
—failing to administer oath....2306
—failure to list dogs 2316
—failing to list and assess his own property 2327
—failure to keep or make copies of books 2341
—failure to deliver copy of taxbooks to auditor 2342
—failure to furnish list of licenses issued 2374
Committee of convict's estate, of rights, etc. 5001
Constable, failing to serve or return notice 6041
Contractor, etc., failing to have satisfaction of lien entered....6441
Coroner failing to perform duty.4816
County surveyor, failing to note variation of magnetic needle, 435, 2849
—unauthorized delivery of plat. 441
—failing to deliver to surveyor of new county copies of entries of land therein.....2681
—failing to make proper surveys 2841
—failure to promptly execute survey 2842
—failure to deliver books to clerk 2844
—failure to produce books for examinations 2845
—failure to deliver books to successor 2846
Creditor, failing to sue principal debtor upon demand by surety 5775
—failing to enter satisfaction of lien 6456

Sec.

FORFEITURE—Con.
Ferries, proprietor failing to give bond 2042
—of Accomac and Northampton counties interferring with each other 2045
—person other than proprietor transporting person or vehicle over Chesapeake Bay to Norfolk, Hampton or York.....2047
—failure to comply with chapter 86 2059
—failure to provide boats and hands 2060
—across river bounding State, interference with 2064
—competing with 2065
—demanding illegal tolls 2071
—failure to give passage in reasonable time 2072
Fiduciaries, of commissioners....5409
Fires, failure to obey order given by engineer or warden at....3132
Fishing, nets and fishing devices for fishing without license 3169
—net or seine for fishing in spawning locality 3180
—violation of law as to Accomac and Northampton counties 3181
—nets, boats and other property of non-resident used in catching fish for or manufacturing into oil or manure 3184
—manufacture of fish into oil or fertilizer, or taking therefor, violation of law as to.....3190
—unlawful fishing, use of explosives, injury to fish-boxes or eggs 3196
—obstructing passage of fish by seines or nets 3198
—unlawful fishing in Powell's river 3201
— —in Mattaponi, Pamunky, York, Elizabeth rivers 3202
— —in Back Bay 3203
—of stock owned by non-resident in corporation engaged in fishing, etc. 3254
—boats, nets, etc., for illegal fishing in Potomac river 3303
—dam obstructing navigation or passage of fish 4747
Flour or meal, deficiency in barrel of offered for inspection..1408
Flour, corn meal, bread, salt, falsely marking or failure to brand barrels 1417
Forthcoming bond 6520
Gambling, tables, bank, wheel, money, etc., used in 4676
—keeper of ordinary permitting, 4688, 4690
Game laws, recognizance for good behaviour 3362
Gate, leaving open across private road 2010
Habeas corpus proceedings, for disobedience to writ in.....5852
Husband or parent failing to support wife or child.....1936, 1940
Inspectors dealing in commodities 1437
—reviewer of judgment of, refusal to act 1431
Judge of Supreme Court of Appeals, retired, forfeiture of salary 3464
Justice, failure to certify fines and costs imposed.....2550
—failure to pay to clerk fines collected 2556

Digitized by Google

Sec.

FORFEITURE—Con.
—failure to enter judgment in record book 6024
—refusal to give copy of entry of judgment 6032
—failure to produce entry.....6032
Land forfeited, title to acquired by settlement and payment of taxes 457
—for non-payment of rent or breach of covenant or condition 5530-5539
—relief against 5531-5534
— —time for 5538
Law, practicing without being licensed and qualified 3422
Leased premises, for failure to pay rent, recovery of premises.5448
License to practice medicine..1623
—chiropody 1623
—license tax, merchants failing to pay 2366
Log brand, for altering, erasing, etc. 3581
Lottery, prizes, etc., drawn in..4694
Marriage, between white and colored persons, performing ceremony 4547
—exacting unlawful fee for celebrating 5083
Milled, improper grinding, etc..3594
Mine, working near dividing line of land of another.....5287
—refusing to permit adjoining owner to survey 5288
Minister of gospel, failing to comply with law as to celebrating marriages 5093
Notary, omitting recitals from certificate 52
Officer, accepting pass or free transportation .....Va. Const. § 161
—failing to pay to clerk fines and costs collected 2568
—of city or town, interest in contract with or claim against city 2708
—failing to make return on process 2825, 2826
—making false return on process 2825
—failing to give receipt for taxes, fines, fees, collected 2829
—violating law relating to fee bills 3495
—accepting bribe 4497
—making false entry in or destroying records 4517
—corruptly summoning juror to act partially 4519
—failing to execute and return warrant and process for coroner's inquest 4808
—failing to return recognizance or taking insufficient bail 4887
—failing to serve and return mechanic's lien 6430
Optometrist, certificate of 1632
Oysters, boats, scrapes, dredges, for illegally taking.....3246
—boats, tackle, etc., carrying seed oysters out of State without permit 3249
—boats and other property for violation of oyster laws, etc., disposition of proceeds 3262
—boats, tackle, cargo, used in violating oyster laws 3275
—removed from polluted areas..3287
—boat, cargo, etc., for violation of law relating to taking in Potomac river 3299
Pilot, acting as without boat...3618
—employment of unauthorized person as 3621, 3623

Sec.

FORFEITURE—Con.
— —exception as to vessel in distress 3622
—vessel concealing name from or refusing to disclose to....3627
—receiving or demanding unlawful fees 3642
Railroad, refusing to receive, transport, or deliver property.3938
—refusing to take up or set down passenger 3938
—demanding or receiving more than is lawful 3938
—violations of law relating to transportation of live stock..4006
Real estate, for failure to enter on land books 2452
Register of the land office, failure to render account to auditor 2508
Sale of articles falsely marked..1439
School officers, trustees, and teachers for violation of school laws 685, 686
Secretary of Commonwealth, failure to account for and pay to auditor taxes received 2404
Sergeant improperly acting as attorney 3426
—failing to serve or return notice 6041
—failing to get process from clerk's office 6060
Sheriff, failing to pay to clerk fines and costs collected.....2568
—failing to give notice of town election 3000
—improperly acting as attorney.3426
—corruptly summoning juror to act partially 4519
—failing to serve or return notice 6041
—failing to get process from clerk's office 6060
Stallion, jack, bull, permitting to run at large.....4744
Suicide or attainder not to cause forfeiture of estate 4762
Taxation, failure to give information to commissioner.....2273
—taxpayer failing to answer interrogatories 2314
—refusing to exhibit property..2315
Teacher, of position on retired list 804
Telegraph and telephone company, failure to receive, transmit or deliver messages 4042
Terrapins, boats, nets, etc., for taking out of season.....3297
Tobacco, sampler, failing to give receipt 1361
—delivery from warehouse without order 1366
—for false branding of.....1389
—vessel receiving without consent of owner 1394
Tolls, ferries and bridges, demanding illegal 2071
Toll-bridge, failure to give passage in reasonable time.....2072
Treasurer, failing to pay license tax into treasury 2381
—failing to make statement and payment of taxes collected....2412
—returning false list of delinquent taxes 2426
—purchasing at sale of land for delinquent taxes 2463
—using or lending public money.2788
Trust estate not forfeited because trustee an alien 514
Trustee, failing to file account and inventory of sale with commissioner of accounts 5404

Digitized by Google

Sec.

FORFEITURE—Con.
Turnpike, person or property passing, etc., without paying toll 4086
—collector of toll failing to report to company, failure of person or property to pay toll.... 4086
—company receiving more than lawful toll 4087
—company failing to complete road 4077
Vendor, failure to mark satisfied contract reserving title to chattels 5191
—failure to state amount due on contract 5191
Vessels, improperly burying dead from 3659
—landing sick seaman 3660
—landing passenger without provision for maintenance 3660
Weapon, carrying concealed..... 4534
Wrecks, failure to render aid to. 3600
—commissioner failing to advertise 3606
—Commissioner failing to perform duty 3612

Enforcement

Proceeding for 3377
Recovery of in action to recover damages for violation of statute 5785
Fishing and hunting laws..3366-3377
—information 3366
—warrant 3367
—notice 3367
—seizure 3367
—claimant of property, bond.... 3368
— —judgment on bond 3372
—appraisal 3368
—defenses 3370
—trial 3371
—judgment 3372
—costs and expenses..... 3375
—writ of error and supersedeas. 3376
—sales 3377
— —of perishable property..... 3369
— —for cash 3373
— —title of purchaser 3373
— —disposition of proceeds..... 3374
— —accounting to auditor..... 3377
Gaming, how enforced..... 4986
Lottery or raffle, how enforced. 4986

FORGERY
Disfranchisement for 82
—Va. Const., § 23
Exclusion from registration for 93
Fraudulently signing name of qualified voter 219
Of public record, certificate, return or attestation of officer 4484
Seal of State, court or corporation 4485
—keeping instrument for 4485
Of coin and bank notes..... 4487
—uttering 4487
—having in possession 4490
Of other writings, punishment.. 4489
Making or having in possession anything designed for forging any writing 4488
Suspension of sentence on conviction of 4486
Obtaining signature by false pretense 4459
Search warrant for writings, tools, machines, materials, 4820, 4822
Sufficiency of indictment 4871
Signature to negotiable instrument, effect 5585

Sec.

FORMS
Accident insurance policy..4315-4318
Accounts payable out of State treasury, used by clerks..... 2175
Application for restoration to retired teachers' list 803
—for registry of trade-mark....1457
—for additional attachment....6382
Articles of apprenticeship..... 5301
Assessors of land 2243
Bail-piece 4823
Ballots 153, 155
—for President and Vice-President of United States 157
—when question submitted.... 158
—for primary election 236
—election on proposed issue of bonds for roads 2113
—election for formation of new county 2676
—election for bond issue by county 2739
—election for removal of courthouse 2752
—election on bond issue by city or town 3085
Bill of exchange 5688
Bonds for State debt.2586, 2587-2588
—of county treasurers..... 2698
—of city treasurers 2699
—of counties, loans for erection of buildings, jail, etc..... 2740
Burial permit 1570
Census taken by district school board 653
Certificate of registration of absent voter 209
—of death 1566, 1567
—of birth 1574
—license to operate automobile, motorcycle, etc. 2127
—for share of State debt owed by West Virginia 2589
—of judges, election for removal of courthouse 2752
—of acknowledgment.....5205, 5210
— —on behalf of corporations..5207
— —in representative capacity..5207
— —by commissioner of deeds..5253
—in lieu of bill of exception....6253
Commissioner of Insurance, annual report of 4183
—furnished by to companies for reports 4183
Commitment of feeble-minded persons, petition, warrants, interrogatories for 1089
Contract with school teachers.. 690
—reserving title to chattels for purchase price 5189
Coroner's inquest, warrant..... 4806
—oath of jury 4809
—inquisition 4811
Coupons, State debt.....2587, 2588
Death certificate, permit and label used when dead body is transported 1721
Deeds 5162
Deeds of trusts to secure debts..5166
Demurrer and joinder in..... 6115
Estimates published by supervisors 2763
Execution on judgment for debt due State 2517
Financial statements by banks..4120
Fines, receipts for 2548
Grant on land office warrants.. 467
Indictment, violation of law relating to sale, etc., of intoxicating liquor 4587
—second offense 4587
—of druggist for violating law relating to intoxicating liquors 4596
— —second offense 4596

Digitized by Google

Sec.

FORMS—Con.
Interrogatories to taxpayers, 2254, 2310
Land books 2254
Lease 5165
License by commissioner of revenue 2360, 2361
—by Auditor 2362
—what to contain when issued to partnership, corporation, etc. 2364
—to merchant 2366
—of delinquent and incollectible taxes by treasurer 2415
—list of by commissioner of revenue 2374
Listing property on for taxation.2307
Listing and assessment of omitted taxes 2333
Lunacy proceedings 1018
Marriage, furnished to clerks of courts by Bureau of Vital Statistics 5095
Mechanics' liens, memorandum and affidavit of general contractor 6427
—sub-contractor 6428
— —person performing labor for or furnishing material to....6429
Negotiable instrument 5563
Notice of dishonor of negotiable paper 5658
Number plate, license to operate automobile, &c. 2131
Oath of members of General Assembly, executive and judicial officers ....Va. Const., § 34
—of officer of this State.... 269
—against duelling 270
—modification of 271
—of commissioner 272
—of school trustees 649
—of commissioner to land book..2299
—of treasurer to report of sales of delinquent lands 2468
—of inspector of jails....2863
—of collector to list of delinquent city or town taxes....3076
—of members, State Corporation Commission 3696
—of commissioners in condemnation proceedings 4367, 4376
Orchard inspectors, for use of... 903
Order of publication 6070
—proceeding to purchase delinquent land 2495
Pensions 2659
—allowance of 2651
Personal property book for assessment of taxes 2300
Plea 6113, 6114
Poll books 151
Proof of loss, to insurance company 4221
Recognizance, defects in not to defeat action or judgment....4981
Record of coupons tendered in payment of debt to State....2608
—of lien on colt 6446
—of lien on get of bull....6447
Register of State coupons....2628
—of persons convicted of felony.4787
Registration books 94
Registration of brands and analyses of fertilizers 1110
Reports to Governor by officers and State institutions 320
—of district school board, annual 664
—of coal mine to inspector, annual 1874
—of board of poor commissioners 1904
—of examiner of records....2220

Sec.

FORMS—Con.
—by local board of review to Auditor 2227
—of merchant's purchases 2366
—of treasurer, sales of delinquent land 2465
—by clerks of redemption of land sold to State for taxes....2491
—by clerk to court of fines....2551
—by clerk of court to House of Delegates 3405
—of viewers, proceeding to compel repair of turnpike 4030
—premiums by insurance companies 4196
—of insurance companies 4229
—of commissioners in condemnation proceedings 4368, 4377
—by junk dealer 4711
Road bonds for magisterial district 2124
School bonds 766
School register 689
Statement of expenditures by candidate 253
—of school board, annual 750
Tax tags for fertilizers....1113
—for commercial feeding stuffs..1239
Taxation, land books 2254
—personal property books.2254, 2300
—tax books 2254
—interrogatories 2254, 2310
—recapitulation of tax levies...2337
Tobacco sampler's receipt..1356, 1357
Vital statistics, furnished by State registrar 1577
—by local registrars 1578
Voucher signed by absent voter. 211
Warehouse receipts 1291, 1292
Warrant for expenses of public school system 662
—for claims against school district 670
—on State treasury 2183
—coroner's inquest 4806
—of arrest for crime 4824
Writs, process, etc., of State Corporation Commission 3730
—Supreme Court of Appeals may prescribe 5960
Writing adopting trade mark or brand for timber 1449

FORMER ACQUITTAL
Plea of in bar of further prosecution 4773
—prosecution for violation of revenue law 4773
—when not a bar 4773, 4774
—offence against two or more statutes or ordinances 4775

FORMER JEOPARDY
No man to be put twice in jeopardy for same offense, Va. Const., § 8
Plea of in prosecution for duelling or homicide committed in.4422
Acquittal by jury may be pleaded as 4773
—prosecution for violation of revenue law 4773
—when not a bar 4773, 4774
—offence against two or more statutes or ordinances 4775
Accused convicted of part of offense charged 4918
Verdict of not guilty to bar prosecution for attempt 4922
Failure to try person indicted for felony 4926

FORNICATION
Punishment 4543

FORTHCOMING BONDS
Officers' commissions 3487

Digitized by Google

Sec.

FORTHCOMING BONDS—Con.
By defendant in action of detinue 5798
Claimant of property levied on..6157
In injunctions 6324
—on restraining removal of property out of State 6323
—additional security to surety..6325
Execution on when injunction dissolved, damages 6327
In attachment proceedings.....6394
—exceptions to 6395
—defense to attachment by party giving 6402
—by garnishee 6398
On execution, not to impair lien of judgment 6475
When and how taken.....6518
Contents 6518
Property left with debtor.....6518
Tenant unable to give, proceedings 6519
Withdrawal from clerk's office..6528
Lien of.....6479, 6520, 6527
Forfeited, return 6520
—action on, costs 6521
—liability of obligors.....6521
—endorsement and record, 6520, 6527, 6528
Return of to clerk's office.....6527
—record, clerk's fee.....6527
Under distress warrant, defense.6522
Remedy of creditor if bond quashed 6523
When not to be taken.....6524
—indorsement on execution 6525
Execution on 6524
—indorsing "no security taken," 6525, 6530
—no stay of 6530
Justice's proceedings on.....6526
—removal to court 6526
Judgment on 6526
—costs included in 6529
—justice to keep record of.....6530

FORTS
Purchased or leased by United States 17, 19

FOUNDRIES
Ventilation of 1833
—penalty for failure to provide.1833
Toilets, wash-rooms 1834
—penalty for failure to provide..1834

FOWL
Trespassing, powers of supervisors 2743
Dead, throwing into Lynnhaven river 3289
Report to land owner when caught in trap 3350
Wounding or poisoning, punishment 4467
Shooting for amusement, &c....4566
—renting premises for 4566

FOWLING
Common rights of 3573

FOX
Premium on scalp 2729
Hunting for on land of another..3338

FRANCHISE
Powers of counties, cities, and towns over not impaired by power granted to State Corporation Commission, Va. Const., cl. b, § 156
Of corporation, taking in eminent domain proceedings, Va. Const., § 159
Foreign corporation acquiring or operating .....Va. Const., § 163
General Assembly may levy tax on .....Va. Const., § 170

Sec.

FRANCHISE—Con.
Taxation, railway or canal corporation....Va. Const., §§ 177, 178
—change in method of taxing, Va. Const., § 181
Provisions in conflict with chapter 73, effect of 1796
Granted by city or town, 3016, 3018-3022
—Va. Const., § 125
—ordinance 3016, 3018, 3021
—advertisement.....3016, 3018, 3019
—bids 3016, 3019, 3020
—bond 3020
—time for which granted.....3016
—award 3020, 3021
—amendment 3022
—mandamus 3023
Purchased by city or town.....3017
Gas, electric, or water plant, purchase by city or town.....3017
Assessment by State Corporation Commission, proceeding to correct 2392
For supplying light, water, &c., acquirement by city of second class 2906
Granted to public service corporation by city, town or county, power of State Corporation Commission 3712
Of public service corporation, acquired by purchaser at sale under mortgage or deed of trust.3895
Tax, exemption of building and loan association from 4168
Quo warranto for misuse or non-use, by corporation or individual 5841-5847
Appeals in cases involving.....6337

FRANK
Definition .....Va. Const., § 153
When issuance of prohibited, Va. Const., § 161

FRANKLIN COUNTY
Commonwealth's attorney, fees..3505

FRATERNAL ASSOCIATIONS
See also **"Corporations"**
Incorporation 3872-3880

FRATERNAL BENEFIT ASSOCIATIONS
See also **"Corporations"**
Incorporation 3872-3880
Supervision and control by State Corporation Commission 4169

FRATERNAL BENEFIT SOCIETIES
See also **"Corporations"**
Created by laws of another State, appointment of Secretary of the Commonwealth as agent on whom process may be served..3845
—process mailed to 3846
—judgment against 3845, 3846
Definition 4273
Lodge system, definition of.....4274
Representative form of government, definition of 4276
Exemption from other laws ..4276
Benefits, conditions of 4277
Beneficiaries 4278
Membership, qualifications for...4279
Certificate of membership, what to show 4280
Funds of 4281
Investments 4282
Payments by members, purposes used for 4283
Incorporation, organization 4284
—amendment of charter 4285
Powers 4284, 4285
Reincorporation 4285
Transfer of membership 4286
Merger 4286

Digitized by Google

Sec.

FRATERNAL BENEFIT SOCIETIES—Con.
Annual license of 4287
Place of meeting 4289
Location of office 4289
Foreign, license to do business, procedure for obtaining 4287
— —revocation of 4295, 4301
—examination of by Commissioner of Insurance 4299
— —adverse publication 4300
Officers, liability of 4290
Waiver of provisions of laws and constitution of 4291
Benefits not liable to attachment or garnishment 4292
Filing constitution and laws with Commissioner of Insurance...4293
Annual reports 4294
—mailed to beneficiaries 4294
Certificates, valuation of...4295, 4296
Examination of by Commissioner of Insurance 4297
Dissolution of 4295, 4297
—procedure for 4297
—receiver, appointment....4297, 4298
Societies exempted from law....4302
Exemption from taxation 4303
Fraud in securing certificate of, penalty 4304
Fraudulently obtaining money from, penalty 4304
Soliciting membership in society not licensed, penalty 4304
False statement in reports of, penalty 4304
Violating law as to, penalty....4304

FRATERNITY HOUSE
Keeping, etc., ardent spirits at, punishment 4606
Used in violating prohibition law, nuisance 4622
—closing up 4622
—bond of owner 4622
—injunction against 4630
Not a home within meaning of prohibition law 4662

FRAUD
Certificate of certified public accountant revoked for 570
Defense to negotiation of warehouse receipt 1336
In procuring registration of trade-mark 1459
—land grant 486-488
Scheme to defraud by issuance, sale, etc., of stocks, bonds, town lots, investigation of by State Corporation Commission.3714
In drawing jurors 4526
Hiring horse, vehicle, automobile, etc., with intent to cheat..4567
Winning at game by, punishment 4692
Compromise of suit of infant or insane person, when set aside for 5332
Procuring negotiable instrument by 5617
Money paid by, when right to recover accrues 5811
In procurement of contract, plea of 6145
—proceedings on 6146-6150
Ground for attachment 6379

FRAUDS, STATUTE OF
General provisions 5561

FRAUDULENT CONVEYANCES
Set aside, homestead not to be claimed in....Va. Const., § 191
Fraudulent acts void 5184
Intent to delay, hinder, defraud creditors 5184, 5186
Bona fide purchasers 5184

Sec.

FRAUDULENT CONVEYANCES—Con.
Consideration 5185
—marriage as 5185
Gifts, conveyances, &c., void as to prior creditors 5185
Position of subsequent creditors.5185
Suit by creditor to set aside....5186
—judgment or decree not necessary before 5186
—measure of relief 5186
—lien of creditor 5186
—intervening by petition....5186
—personal decree against debtor.5186
Sale of merchandise in bulk....5187
Loans of goods or chattels....5188
—possession 5188
Reservation of use of property..5188
—of title, recordation 5189
—how enforced 5190
—possession of chattels 5189
—when and how lien released...5191
—penalty for failure to release..5191
Necessity for writing, contract in consideration of marriage 5192
—conveyance or sale of real estate, or term therein of more than five years 5192
—bill or contract of sale of chattels, posession remaining in seller 5192
—recordation 5193-5196
—validity when recorded...5193, 5194
—void as to creditors and purchasers unless recorded 5194
—possession as notice to purchaser 5194
—where recorded 5195
— —when goods removed from county 5196
Mortgage, deed of trust, &c., on personal property in another State invalid unless recorded in this State 5197
Writings admitted to record on same day, priority between...5198
When writings to be recorded in county and when in corporation 5199
Subsequent purchaser, lien for purchase money paid before recordation 5200
Construction of term "creditors".5200
—"purchasers" 5200
When purchasers not affected by recordation 5201
Trader failing to disclose name of principal or partner..5194, 5224
Effect of deed purporting to convey property which grantor does not own but subsequently acquires 5202
Suits to avoid, limitations on...5820
Attachment 6379

FREDERICK COUNTY
Jail, jailor 2868
Commonwealth's attorney, fees..3505

FREDERICKSBURG
State Normal School at.... 939
—name 942
Jail, jailor 2868
Commonwealth's attorney, fees..3505
Ballast masters 3651
—assistants 3651
—district 3651
Corporation court 5905
—judge 5905
—appointment of ballast masters 3651

FREEDOM
Of speech and press..Va. Const., § 58
—restraint on prohibited, Va. Const., § 12
Religious freedom 34, 35
—Va. Const., § 16

Digitized by Google

Sec.

FREEDOM—Con.
Privilege of members of General Assembly from liability for speech or debate....Va. Const., § 48
FREEHOLD
Review in cases involving.....6337
FREEHOLDERS
Petition by for investigation of San Jose scale 880
Request by for investigation for rust in cedar trees 886
FREEMASONS
Property of 47
Land 48
Books and furniture 49
Trustees, appointment of 49
FREIGHT
See also **"Common Carriers"; "Railroads"; "Transportation Companies"**
Definition .....Va. Const., § 153
Unclaimed, sale for charges, 3933, 3934
FRUITS
Preserved in ardent spirits as ardent spirits 4581
FRUIT TREES
Inspection of 898
—destruction 899-901
Injuring, in condemnation proceedings 4382
FUEL
Provided by cities of second class 2906
FUGITIVES FROM JUSTICE
Limitation of prosecution.....4768
Ground for divorce 5103
Rewards for apprehension of...5068
Extradition
For crime committed outside of United States 5059, 5060
Of fugitives from another State.5061
—warrant for arrest, issuance..5062
— —execution 5063
—proceedings after arrest..5063-5065
—recognizance 5063
— —discharge 5065
—commitment 5063
— —discharge from 5065
—information of proceedings to Governor 5064
—duty of Governor 5064
—delivery to person authorized by Governor to receive accused 5065
—discharge 5065, 5066
—costs 5066
—when detained in this State..5067
FUNDS
See **"Appropriations"; "Literary Fund"; "Public Funds"**
Court funds, see **"Courts"; "Receivers"**
School funds, see **"Education"**
FUNERAL EXPENSES
Of Confederate pensioners.....2646
FURNITURE
Of Freemasons, Odd Fellows, &c. 49
At Capitol and State Library building 403
At Governor's house 404-405
For county officers, furnished by supervisors 2767
For court and county officers, proportion of expense borne by city of second class 2904
For civil and police justice.....3109
GALLINULES
Unlawful hunting of 3356

Sec.

GAMBLING
Removal of officer convicted of..2705
Concurrent jurisdiction of corporation court and police justice 3094
—civil and police justice.....3102
GAME
See also **"Game Wardens"; "Hunting"**
Preservation of, etc., powers of supervisors 2743
Duties, Commissioner of Game and Inland Fisheries, in general 3315
Laws, blanks and printed matter for carrying out provision of, how provided 3316
—publication of 3317
—violation of duty as to by officers and wardens 3341
—prosecutions under reported to commissioner 3342
—cost of prosecutions, fees to wardens 3343
—charge to grand jury on.....3345
—certain conflicting laws repealed 3346
—certain acts not affected.....3347
—regulations by boards of supervisors 3356
—conviction a third time for violation of, proceedings on.....3362
—acts of local application continued in effect 3365
—forfeitures for violation of, enforcement 3366-3377
Game protection fund, money from hunting licenses paid to, 3333, 3336
—how disposed of 3336
—penalty on clerk for failing to report prosecutions paid to....3342
—reports by treasurer 3344
Violations of law by corporation, service of process, &c. 3340
—collection of fine 3340
Fur-bearing or hair-bearing animals, trapping on land of another 3348
—season for 3348
—written consent 3348
—inspection of traps 3349
—report to land owner of animals or fowls caught 3350
—place for setting traps 3351
—liability for damages from....3351
—right to destroy traps, &c....3352
—trapping or killing on one's own land 3353
—penalties for violations of law.3354
—separate offenses 3354
—adoption of law by supervisors 3355
Size of gun that may be used...3356
Use of more than one gun.....3356
Transportation of from State, penalty 3361
—killing, &c., with intent to ship 3361
Unlawful hunting 3356
—wild water fowl 3356
—wild turkey 3356
—muskrats 3356
—pheasants 3356
—grouse 3356
—quail 3356
—partridges 3356
—woodcock 3356
—ducks 3356
—sora 3356
—rails 3356
—mudhens 3356
—gallinules 3356
—plover 3356
—surf birds 3356

Digitized by Google

Sec.

GAME—Con.
—snipe 3356
—sand pipers 3356
—willets 3356
—tattlers 3356
—curlews 3356
—doves 3356
—robins 3356, 3360
—hares 3356
—deer 3356
—squirrels 3356
—at night 3356
—penalty 3356
—regulations by supervisors.... 3356
—exceptions to law 3357
—birds other than game birds, penalty 3364
—acts of local application continued in effect 3365

GAME PROTECTION FUND
See "Game"

GAME WARDENS
See also "Game"; "Fish and Fishing"
To be fish wardens 3197
Appointment, term 3319
Process, service by 3318
Duties and powers 3320
—arrest, search, seizure 3320
Supervision and control by commissioner 3321
Removal 3321
Bonds, conditions of 3322
Ex-officio wardens 3323
Compensation 3324, 3325
Forest fires, duties as to 3326
Violation of duty under game laws, penalty 3341
Fees and proportion of fines to.. 3343
In Accomac and Northampton counties, appointment and control of 3347
In Princess Anne county, appointment 3347

GAMING
Lotteries prohibited..Va. Const., § 60
Keeping gaming table, bank, wheel of fortune, etc. 4676
—permitting on premises 4677
—acting as doorkeeper 4678
—hindering arrest or seizure.... 4678
—betting or playing at, 4679, 4681, 4686
In public place..... 4679, 4681
—what is public place..... 4680
Playing, punishment 4686
Conducting or being interested in game played for money..... 4687
Bookmaking on races, pool selling, etc. 4682
Permitting at ordinary or house of entertainment 4688
—presumption of 4689
Letting outhouse, etc., for unlawful gaming, presumption 4690
Winning at by cheat or fraud.. 4691
Betting on election 4692
Lottery or raffle 4693
—forfeiture of prizes, etc..... 4694
Laws remedial 4704
Attorney's or officer's fees in prosecutions for 4705
Bucket shops, bucketing, etc., 4714-4718
Betting on horse race run on street, road, bridge or landing 4741
Witness testifying for prosecution, immunity to 4780
—penalty for refusing to testify. 4780
Accused incompetent to testify, when 4780
Apparatus for, search warrant for 4820-4822

Sec.

GAMING—Con.
Forfeiture for, how enforced.... 4986
Contracts for, void 5558
Money or property lost, recovery of 5559-5560
—repayment to bar prosecution.. 5560

GARAGES
Definition 2150
License, fee 2149
—where payable 2152
Lien 6445
—how enforced 6449

GARNISHMENT
See also "Exemptions"; "Homestead Exemption"
For collection of taxes..... 2444-2447
Pension, exempt from 2658
Payments on insurance policy, when not subject to..... 4219
Payments by fraternal benefit society not subject to 4292
In attachment proceedings, examination 6398
—answer 6398
—order to pay money or deliver property 6398
—forthcoming bond 6398
—exemption 6398
—failing to appear 6399
—failing to disclose fully..... 6400
—judgment for costs 6400
Summons, when returnable..... 6055
On execution, summons 6509
—examination of garnishee 6510
—judgment, execution 6510, 6513
— —costs 6513
—failure of garnishee to appear or disclose 6511
—payment by garnishee 6512
—after return day 6485
Wages and salaries of employees of State 6559
—of city, town, or county officers, clerks, employees.. 6560, 6561
—of laborer 6555, 6556
— —proceeding to exempt 6556

GAS
See also "Gas Companies"; "Gas Works"; "Public Utility Companies"
Sale or lease of by State Geological Commission 631
Use of, warnings and directions posted in hotels, boarding-houses, etc. 1607
In mines, protection against, 1854-1864
Taxation, separate assessment.. 2235
Plant, purchase by city or town. 3017
Unlawful diversion or use of... 4478
On estate of insane person or infant, suit to sell or lease.. 5335-5347
—estate held in trust..... 5335-5347

GAS COMPANIES
Use of streets by....Va. Const., § 124
As public service corporations.. 3881
Injury to or destruction of property of 4478
Unlawful use of or interference with gas meter 4478

GAS FIXTURES
Buying or receiving with intent to defraud 4449

GAS WORKS
Sale of by city or town. Va. Const., § 125
Acquired by city or town..... 3031

GATES
See also "Toll Gates"
Across private roads..... 2009
—leaving open, penalty 2010
On public highway, proceeding for removal 2011, 2012

Digitized by Google

Sec.

GENERAL ASSEMBLY—Con.
—stay of 297
Arrest and imprisonment, privilege against 297, 299, 300
Witnesses, power to summons.. 303
—administering oath to 304
Salaries 3457, 3458, 3459
Exempt from jury service.....5985
Document clerk, salary 3457
—office, when kept open.....3457

Powers and Duties

May provide for trial of criminal cases by justices of the peace.....Va. Const., § 8
May provide for juries of less than twelve.....Va. Const., § 8
May limit number of jurors in civil cases.....Va. Const., § 10
To provide for annual registration of voters.....Va. Const., § 25
—appeal from denial of, Va. Const., § 25
—correction of illegal or fraudulent.....Va. Const., § 25
—transfer of voters..Va. Const., § 25
To provide ballots for elections, Va. Const., § 28
May prescribe property qualification for voting in county, city, or town elections, Va. Const., § 30
To enact laws to regulate elections.....Va. Const., § 36
May provide for voting machines.....Va. Const., § 37
Writs of elections to supply vacancies.....Va. Const., § 47
General powers of Senate and House .....Va. Const., § 47
Impeachment of officers, Va. Const., § 54
Congressional districts, apportionment.....Va. Const., § 55
May declare when offices deemed vacant .....Va. Const., § 56
To provide for conducting and making return of elections, Va. Const., § 56
—for determining contested elections.....Va. Const., § 56
Removing disability for voting with reference to duelling, Va. Const., § 57
Suspension of writ of habeas corpus.....Va. Const., § 58
Bill of attainder prohibited, Va. Const., § 58
Ex post facto laws prohibited, Va. Const., § 58
Obligation of contract, laws impairing, prohibited.Va. Const., § 58
Freedom of speech and press, law abridging prohibited, Va. Const., § 58
Property taken for public use, compensation.....Va. Const., § 58
Religious worship, freedom of to be maintained.....Va. Const., § 58
Religious tests not to be imposed.....Va. Const., § 58
Not to incorporate churches, Va. Const., § 59
Not to authorize lotteries, Va. Const., § 60
Formation and division of counties.....Va. Const., § 61
Intoxicating liquors, laws relative to.....Va. Const., § 62
Courts, powers which may be conferred on.....Va. Const., § 63
Special laws prohibited when, Va. Const., § 63
General legislation, Va. Const., §§ 64, 65

Sec.

GENERAL ASSEMBLY—Con.
Acts surrendering or suspending power to tax corporations prohibited.....Va. Const., § 64
Exempting corporation, association, or individual from operation of general law prohibited.....Va. Const., § 64
May authorize local legislation by counties, cities, and towns, Va. Const., § 65
Appropriations to charitable and other institutions, limitations on .....Va. Const., § 67
—may authorize counties, cities, towns to make....Va. Const., § 67
As to election of Governor, Va. Const., § 70
—of Lieutenant Governor, Va. Const., § 77
—of Secretary of Commonwealth, Va. Const., § 80
—of State Treasurer.Va. Const., § 81
—of Attorney General, Va. Const., § 107
—of Auditor of Public Accounts, Va. Const., § 82
To provide for discharge of executive functions..Va. Const., § 78
To provide system of checks and balances for officers, Va. Const., § 84
Establishment and maintenance of Bureau of Labor and Statistics.....Va. Const., § 86
Changing jurisdiction of Supreme Court of Appeals, Va. Const., § 88
Rearranging judicial circuits, Va. Const., § 95
May provide additional courts for cities.....Va. Const., § 95
May establish courts of land registration.....Va. Const., § 100
Conferring jurisdiction on clerks of court as to probate of wills and appointment of fiduciaries, Va. Const., § 101
To provide for election or appointment and for jurisdiction of justices of the peace, Va. Const., § 103
To provide for granting bail, Va. Const., § 109
To provide for examination of books and accounts of county and city officers...Va. Const., § 115
To enact laws for government of cities and towns..Va. Const., § 117
—special laws in relation thereto, how passed....Va. Const., § 117
May prescribe forms of government for cities and towns, Va. Const., § 117
Classification of cities and towns, Va. Const., § 117
Provision for election of city and town officers not provided for in Constitution...Va. Const., § 120
May change time of election of city officers.....Va. Const., § 122
Restricting powers of cities and towns in granting franchises, selling or leasing property, Va. Const., § 125
May provide for extension or contraction of corporate limits of city or town...Va. Const., § 126
To establish and maintain system of free public schools, Va. Const., § 129
To set apart literary fund, Va. Const., § 134
Appropriation for school purposes .....Va. Const., § 135

Digitized by Google

Sec.

GENERAL ASSEMBLY—Con.
May establish agricultural, normal, manual training, and technical schools..Va. Const., § 137
May provide for compulsory education.....Va. Const., § 138
May continue appropriation to William and Mary College, Va. Const., § 141
Not to regulate affairs of corporation or grant rights or privileges by special act, Va. Const., § 154
May amend or repeal laws relating to chartering corporations.....Va. Const., § 154
—for surrender or forfeiture of charter of.....Va. Const., § 154
May provide for election by people of members of State Corporation Commission, Va. Const., § 155
May establish subordinate divisions or bureaus of State Corporation Commission, Va. Const., § 155
To provide quarters for and funds for expenses of State Corporation Commission, Va. Const., § 155
May amend laws relating to State Corporation Commission, Va. Const., cl. 1, § 156
To provide for payment of fees by corporations...Va. Const., § 157
May discriminate against foreign corporations..Va. Const., § 163
May enact laws preventing trusts, combinations and monopolies.....Va. Const., § 165
May prevent railroads being built parallel to Richmond, Fredericksburg and Potomac Railroad.....Va. Const., § 166
May regulate issue of stock and bonds by corporations, Va. Const., § 167
May provide for assessment of taxes.....Va. Const., § 169
May allow lower rate to be assessed by cities and towns on land added to corporate limits, Va. Const., § 169
May segregate property for taxation .....Va. Const., § 169
May levy taxes on incomes, franchises, etc.....Va. Const., § 170
To provide for reassessment of real estate.....Va. Const., § 171
To provide for separate assessment of coal and mineral lands.....Va. Const., § 172
To levy capitation tax, Va. Const., § 173
—may authorize counties, cities and towns to levy additional, Va. Const., § 173
May define and survey natural oyster beds.....Va. Const., § 175
May provide for taxation of railway and canal corporations, Va. Const., § 181
May change exemptions from taxation .....Va. Const., § 183
To provide and maintain sinking fund.....Va. Const., § 187
May fix rate of taxation, Va. Const., § 189
May levy special tax and make appropriations for pensions, Va. Const., § 189
To provide for setting apart exemptions.....Va. Const., § 190
Stay laws prohibited..Va. Const., § 194
Calling constitutional convention.....Va. Const., § 197

Sec.

GENERAL ASSEMBLY—Con.
To determine election of Governor and Lieutenant Governor. 119
Amendment to Constitution, how proposed, enrolled, published and submitted to the people.. 312
—Va. Const., § 196
May impose duties on Attorney General 376
Power to suspend or repeal gifts, devises, &c., for educational or literary purposes 593
Rector and visitors of University of Virginia subject to control of 806
Consent to deed of trust on property of University of Virginia. 821
Control of Virginia Military Institute 834
Control over Virginia Agricultural and Mechanical College and Polytechnic Institute..... 860
Disbursement of fund appropriated for county demonstration inspected by 921
Virginia State School for Colored Deaf and Blind Children, control of 983
To fix compensation of persons employed in Bureau of Labor and Industrial Statistics.....1801
Appropriation for Bureau of Labor and Industrial Statistics..1801
Consent of required for street or highway through land of State, &c. 3041
Banks, inspection of 4133
—repeal or modification of charters of 4134
Right reserved to provide for connecting work of one public service corporation with another 3887
Repeal of charter of public service corporation 3891

ELECTION AND REMOVAL OF OFFICERS

To decide contested election for Governor .....Va. Const., § 70
Election of Governor in case of tie vote.....Va. Const., § 70
Judges of Supreme Court of Appeals .....Va. Const., § 91
—circuit judges.....Va. Const., § 96
—of city courts.....Va. Const., § 99
—removal .....Va. Const., § 104
—for new circuit 5889
Vacancies in office filled by..... 122
Auditor of Public Accounts..... 323
Second Auditor 323
Register of the Land Office..... 323
Superintendent of Public Printing 323
Failure of State officers to qualify 329
Removal of State officers..... 330
Filling vacancies....330, 331, 332, 336
Civil justices for cities.....3112
Commissioner of Insurance.....4171
Commissioner of Prohibition....4623
—restoration or removal of.....4624
—filling vacancy 4624
To confirm appointment of members of State Corporation Commission 3694
—Va. Const., § 155
—State Highway Commissioner..1962

Reports to

By Governor....Va. Const., §§ 68, 73
—of suspension of officers, Va. Const., § 73
—of fines remitted 2574
—of removal of notary.....2850
—suspension of Commissioner of Prohibition 4624

Digitized by Google

Sec.

GOOD BEHAVIOR
Security for, procedure to require 4790-4792
Of convicts, allowance for..... 5017

GOODS AND CHATTELS
Gifts of, when invalid..... 5142
Loan of, when void as to creditors 5188
Reservation of use or property by way of condition, reversion, remainder or otherwise 5188
Contract in consideration of marriage, void as to creditors. 5192
For sale of, possession allowed to remain with seller 5192
—valid when recorded..... 5193-5196
Partition, by sale, when..... 5286
Levy of execution on..... 6485
—when subject to prior lien.... 6486

GOODS SOLD AND DELIVERED
Action by owner of adrift property against land owner..... 3571
—burden of proof 3572

GOVERNMENT
Unfformity.....Va. Const., § 14
Preservation.....Va. Const., § 15
Attempt to usurp..... 4391

GOVERNOR
Impeachment.....Va. Const., § 54
Chief executive officer, Va. Const., § 69
Ineligible for next succeeding term .....Va. Const., § 69
Ineligible to other office, Va. Const., § 69
Qualifications of.....Va. Const., § 71
Salary.....Va. Const., § 72
Residence.....Va. Const., § 72
Record of official acts of kept by Secretary of Commonwealth, Va. Const., § 80
Equivalent to "the executive power of the Commonwealth". 5
Equivalent to "the person having the executive power" 5
Term of office 118
—Va. Const., § 69
Election 118, 119
—Va. Const., § 70
—returns, counting 119
— —Va. Const., § 70
—contested 264, 265
— —Va. Const., § 70
—tie vote .....Va. Const., § 70
Vacancy in office, how duties discharged 120
—Va. Const., § 78
—how filled 120
Staff 319
—expense of 319
Notice to of absence of Auditor, Second Auditor, State Treasurer 340
—of Secretary of the Commonwealth 346
Books of Superintendent of Public Printing to be open to.... 381
Appeal to by bidder for contract for public printing 382
—by bidder on contract to furnish paper 383
Inventory of property in house of 404
Purchase of furniture for house of 405
—sale of 405
Copies of land grants lacking signature of 417
Member and chairman State Geological Commission....523, 828
Member of Art Commission 581
Member of State Board of Education 596

Sec.

GOVERNOR—Con.
—Va. Const., § 130
Member Virginia Normal School Board 941
Member of Convict Lime Board. 1266
Member of board of review, appeal from proceeding of State Board of Dental Examiners revoking license 1651
Member of Finance Board..... 2156
Member and chairman, State Tax Board 2213
Bond payable to, action on..... 2512
Contract with, action on..... 2512
Actions in name of, debts due State 2512
Bids to surrender bonds for cancellation opened in presence of 2625
Privilege from arrest 2823
Approval of printing, blanks, etc., for carrying out provisions of game laws..... 3316
Salary 3432
Stenographer 3432
Secretary 3432
—salary 3432
Assistant secretary 3432
—salary 3432
Janitor 3432
—salary 3432
Messenger 3432
—salary 3432
Servants at Executive Mansion.. 3432
Record of convicts submitted to. 5018
Visitor of penitentiary 5025
Warrant, commutation of punishment 5069
—return of 5070
Exempt from jury service..... 5985
Doorkeeper, exempt from jury service 5985
Actions against, venue of..... 6049
—court in which brought..... 6051
Judicial notice taken of signature of 6194

Powers and Duties
Proclamation of Constitution, Va. Const., Schedule, § 24
Report to General Assembly, Va. Const., §§ 68, 73
—of suspension of officers, Va. Const., § 73
—of fines remitted 2574
—of removal of notary..... 2850
—appointment of commissioners of deeds 2853
—suspension of Commissioner of Prohibition 4624
Duties and powers...Va. Const., § 73
Requiring information from, inspecting books, etc., of executive officers.....Va. Const., § 74
Commissions and grants attested by.....Va. Const., § 75
Veto of bills.....Va. Const., § 76
When duties to devolve on Lieutenant Governor...Va. Const., § 78
Commissions issued by to judges, Va. Const., § 162
—to Attorney General, Va. Const., § 107
—to forest wardens..... 540
—to officers of Virginia Military Institute 843
—to Commissioner of Game and Inland Fisheries 3309
To lease or convey land to United States for lighthouse 18
To prescribe size of State flag.. 32
To issue writ of election to fill vacancy in office of United States Senator 69, 73
—vacancy in House of Representatives of United States..... 73

Digitized by Google

Sec.

GOVERNOR—Con.
Writ of election to fill vacancy in General Assembly 81
—Va. Const., § 47
Special election ordered by..... 146
Proclamation selecting judges for special court to determine contested election 266
—vacancies 266
Record of certificate of oath taken by 277
Bond approved or acknowledged before 279
General Assembly, proclamation of change of meeting place of. 295
—application to for extra session 296
—designation of time and place of extra session 296
Militia may call out, when.... 318
—provide for transportation, equipment, etc. 314
—orders, notification of place of rendezvous 315
—distribution of militia laws and articles of war 317
Payments from civil contingent fund on order of 318
Inspection of books, &c., of officers 321
—employment of accountant.... 321
Approval of traveling expenses of commissioners for promotion of uniformity of legislation... 322
Bonds of certain officers, approval of 325, 326
—may require new or additional bonds 327
—of Dairy and Food Commissioner 1157
—of Commissioner of Fisheries..3146
—of Shellfish Commissioner.....3146
—of Secretary of the Commonwealth 2134
Report of Secretary of the Commonwealth to, transmitted to General Assembly 344
—of Library Board 360
—of Art Commission 585
May use State Library 366
May use law libraries 371
May require opinion and advice of Attorney General 375
—Va. Const., § 74
To assign office to Attorney General 378
To direct distribution of legislative journals 386
Authority to edit annual reports of departments 393
Distribution of annual reports of departments 393
Superintendent of Grounds and Buildings to be subject to control of 402
Control of public buildings..... 402
To order purchase of furniture for Capitol and State Library building 403
To approve contract to furnish water State Capitol and Library building 406
May order use of Senate chamber and hall of House during recess 409
Control of Capitol Square..... 410
Certificate of allowance of bounty land 418
To control magazine, stone quarry, natural oyster beds, lands of the Commonwealth 459
To sign and seal grant of land.. 468
Order of sale of escheated land.. 505
—delivery of to Auditor of Public Accounts 505
—resale 508

Sec.

GOVERNOR—Con.
Approval of lease or sale of gas, oil or minerals by State Geological Commission 531
May call on State accountant to examine certain accounts 564
To provide office for Legislative Reference Bureau 575
Art Commission, appointment of members of 581
To confer degree on graduate of Virginia Military Institute.... 848
Approval of forms for use of orchard inspectors 903
Proclamation of quarantine of diseased live stock 909
—prohibiting importation of.... 910
Conference, county demonstration work 925
To call meetings, visitors Virginia Normal and Industrial Institute 958
Approval of appointment of additional employees of Board of Agriculture 1106
May accept rules and regulations for establishment of bureau of animal industry 1289
Weights and measures, asigning room in Capitol in which kept.1464
—manufacture 1466
—furnished to counties and cities 1467
Quarantine of convict 1543
Investigations by Board of Charities and Corrections ordered by 1902
Pardon of minors in custody of prison association 1959
—inspection of jail register.....2861
—not to grant before conviction.5069
Reciprocal agreements with other States relative to use of roads by automobiles 2137
Order of for transfer of money to State depository 2162
Claims against State laid before by Auditor 2176
—payment 2176
Approval of compensation, collector of delinquent taxes.....2436
Payment compensation, agent selling lands of State.....2540
Fines, remission of.....2569-2574
—report of to General Assembly 2574
Proclamation of formation of city of first class 2911
Cancellation of State coupons, instrument provided by 2630
Raising temporary loans 2640
Furnishing artificial limbs to pensioners 2668-2671
—countersigning order for payment for 2670
Designation of judge in proceedings for annexation by cities and towns 2958
—to sit in criminal case in place of disqualified judge 4917
Proclamation putting law relative to fish and oyster industry in Potomac river into effect, cl. 12 3299
Penitentiary, approval of rules, 4996, 5007
—for employment of convicts on public buildings and grounds.5014
—record of conduct of convict submitted to 5018
—proceeding to try sanity of convict 5007
—permit, to visit 5025
Rewards for arrests 5068

Digitized by Google

Sec.

GOVERNOR—Con.
Fugitives from justice, surrender of for crime committed without United States....5059, 5060
—surrender of on demand of executive 5061, 5067
—notice to by justice, notice to executive 5064
Commutation of capital punishment, notice to Superintendent of Penitentiary 5069
—warrant 5069
— —return 5070
To designate Thanksgiving day.5758
Supreme Court of Appeals summoning to try appeal, habeas corpus proceeding 5858
—request for special session....5885
—changing place of session.....5967

APPOINTMENTS AND REMOVALS
Vacancies in office filled by, 122, 329-332
Officers suspended or removed by, 330, 336
Temporary appointment United States Senator 69
Officers of militia.....314, 316
Commissioners for the promotion of uniformity of legislation.... 322
Directors of penitentiary and State prison farm 333
—Va. Const., § 148
—removal 336
First clerk for Auditor of Public Accounts, Second Auditor, State Treasurer 341
Escheators 489
—removal 490
Member of State Geological Commission 523, 828
State accountant 550
State Board of Accountancy.... 566
Director of Legislative Reference Bureau 573
Member of State Board of Education 596
Visitors of University of Virginia 807
—vacancies 807, 808
Visitors of Virginia Military Institute 835
Visitors of Virginia Agricultural and Mechanical College and Polytechnic Institute 859
—vacancy 859, 862
Curators, Hampton Normal and Agricultural Institute 926
Visitors of William and Mary College 935
Members of Virginia Normal School board 941
Visitors of Virginia Normal and Industrial Institute 948
Visitors of Virginia School for Deaf and Blind 971
Visitors of Virginia State School for Colored Deaf and Blind Children 984
Directors, insane hospitals 1006
—Va. Const., § 149
Commissioner, State hospitals...1009
—Va. Const., § 152
—removal 1012
Members Board of Agriculture..1099
—Va. Const., § 143
Commissioner of Agriculture and Immigration, vacancy 1104
Dairy and Food Commissioner...1155
—removal, vacancy 1156
Board of veterinary examiners..1274
Tobacco samplers 1349
—vacancy 1350
—deputy 1352
—removal 1388

Sec.

GOVERNOR—Con.
Inspectors of flour and other commodities 1400
—vacancy 1401
—removal 1404
Cullers of lumber 1403
State Board of Health.....1486
Health Commissioner 1489
Board of medical examiners.....1609
Members, Virginia State board of examiners in optometry 1625
—vacancy 1625
Members, State board of dental examiners 1642
Board of pharmacy 1666
Members State board of graduate nurses 1703
Members State board of embalming 1716, 1717
—certificate 1718
Commissioner of Labor 1798
Members Board of Charities and Corrections 1888
—removal 1889
State Highway Commissioner...1962
Suspension of treasurer of county or city or other officer charged with collecting public revenue 2791
—appointment of successor.....2791
Notaries 2850
Commissioners of deeds 2853
Commission of Fisheries.....3146
Commissioner of Fisheries.....3146
Shellfish Commissioner 3146
Commissioners of wrecks.....3596
Harbormaster for Warwick county 3679
Members, State Corporation Commission 3694
—Va. Const., § 155
Judge for new circuit.....5889
Suspension of Commissioner of Prohibition 4624
—filling vacancy 4624

Reports to
By auditing committee, Va. Const., § 68
Information from departments and institutions....Va. Const., § 74
By officers and State institutions 320, 321
By Secretary of the Commonwealth 344
—of formation of city of first class 2911
By Attorney General 377
By State accountant 560
—annual 561
Of reason for removal of professor, Virginia Military Institute 842
By board of visitors of Virginia Military Institute 850
By Board of Crop Pest Commissioners 884
Of disbursement of fund appropriated for county demonstration work 921
By Commissioner of State Hospitals 1010
By State hospitals 1016
By Commissioner of Agriculture.1124
By Dairy and Food Commissioner 1175
By Commissioner of Agriculture of work of division of markets 1255
By Convict Lime Board 1272
By Health Commissioner 1489
By State Board of Health.....1502
By Virginia State board of examiners in optometry 1627
By board of pharmacy 1679
By Bureau of Labor and Industrial Statistics 1797

Digitized by Google

Sec.

GOVERNOR—Con.
By chief factory inspector.....1799
By Board of Charities and Corrections, annual 1899
By State Highway Commissioner 1969
By Auditor, annual 2202
—what to contain 2203
By Second Auditor 2202
By State Treasurer, annual.....2202
—what to state and show.....2204
Of money from estate of deceased inmate of R. E. Lee Camp 2672
By Commissioner of Fisheries, 3146, 3169
By Commissioner of Game and Inland Fisheries 3314
—of receipts and disbursements.3311
By board of harbor commissioners 3677
By State Corporation Commission 3751
—Va. Const., cl. i, § 156
By Commissioner of Prohibition, annual 4625
By directors of penitentiary....5027
—annual 5030

GRAIN
Grinding 3594, 3595
Burning 4431
Person harvesting, exempt from jury service 5985

GRAND JURY
Regular and special terms.....4851
Summoning 4852
Lists 4852
Venire facias 4852
Special, when, how, and by whom ordered 4854
—proceeding to abate nuisance..1520
—to investigate offense by convict 5056
Jurors, when and how selected..4852
—apportionment to districts or wards 4852
—number 4853
— —deficiency; how supplied...4855
—qualifications 4853
—oath 4856
—new, when 4857
—failure to attend, penalty.....4862
—pay and mileage 4863
—privilege from arrest 2823
Foreman, oath 4856
—new, when 4857
Duties 4859
Indictments and presentments, how found and made.....4860
—effect on of irregularities in selection of jurors, &c.....4861
Sending indictment to second grand jury, when 4861
Failure of officer to summon and return, penalty 4862
Attorney for Commonwealth may go before, when 4864
Witnesses before 4860, 4864
—grand juror as 4860
Charge of judge to 4858
—regarding discount of warrants 684
—school officer having interest in contract 684
—with respect to violations of pure food laws 1190
—violations of tobacco laws....1399
—violations of revenue laws, 2355, 2357
—regarding statements by supervisors 2768
—unlawful fishing 3214
—fishing in Potomac river.....3305
—game laws 3345

Sec.

GRAND JURY—Con.
To ascertain if annual report to school board has been made, posted and published 751
Public nuisance, presentment for 1520
Child under 18 years of age not sent on to 1908, 1914
Statements of treasurer to board of supervisors certified to 2780
Examination of books of assessment of taxes 2397
—examination of taxpayer.....2397
—indictment 2397
Summoning witnesses before....6217

GRAND LARCENY
See also **"Larceny"; "Petit Larceny"**
Defined and punished 4440
Attempt to commit, how punished 4767
Prosecution for, conviction of petit larceny 4921

GRANTEE
Of reversion of land let to lease, rights of 5512
—liability to lessee 5513

GRANTS
See **"Land Office"**
By Commonwealth, form of, Va. Const., § 75
Marsh and meadow land to remain ungranted 421
Estates to lie in as in livery...5146
For educational or literary purposes 587
—how taken and held 588
—trustees 590

GRASS
Burning, punishment 4434

GRATE BASKET
Buying or receiving with intent to defraud 4449

GRAVEL
Condemnation of 4382
—by railroad corporation.....3857

GRAVE ROBBING
Punishment 4552

GRAVESTONES
Wilful and malicious defacement or destruction of, punishment.4553

GRAVEYARD
See **"Cemetery"**
Malicious injuries to, punishment 4553
Exemption from taxation 2272
—Va. Const., § 183

GRAYSON COUNTY
Commonwealth's attorney, fees..3505
Trespass by animals of non-resident, damages 3542
—distress of 3543
—sale 3544
—when restored to owner.....3545
—when surrendered to resident purchaser 3546
Exception from acts relating to dams 4747

GREENE COUNTY
Commonwealth's attorney, fees..3505

GREENSVILLE COUNTY
Commonwealth's attorney, fees..3505

GRIEF
As element of damage in action against telegraph or telephone company 4051

GROUND RENT
Assessment of for taxation.....2245
Limitation on action to recover..5817

Digitized by Google

Sec.

GROUNDS OF DEFENSE
Court may require 6091
Before civil and police justice.. 3105
On petition to establish boundary of real estate 5490
On notice of motion for judgment 6046
In attachment proceedings..... 6382

GROUSE
Unlawful hunting, selling, having in possession 3356
Shipment from State 3361

GUARANTOR
See also "Guaranty"
Seller of agricultural seeds, liability as 1154
—wholesaler or manufacturer of food 1184
— —of drugs 1659
Requiring creditor to sue..... 5774
—effect of failure to sue..... 5775
Remedy against principal for money paid 5777
Confession of judgment by, effect of 5778
Suit against, effect of failure of principal to defend 5778

GUARANTY
See also "Guarantor"
Of seller of agricultural seeds.. 1154
Of wholesaler or manufacturer of food 1184
Of drugs, wholesaler or manufacturer, that articles not adulterated or misbranded 1659
By railroad company, of bonds of other corporation 3828
By banks 4111
By trust company 4148
Writing required 5561

GUARANTY COMPANIES
See also "Guaranty"; "Indemnity Companies"; "Insurance"
Definition 4200
Incorporation 4201
—certificate, what to set forth.. 4202
Certificate required before making contracts 4203, 4205
—validity of contracts made without 4203
—renewal of 4210
Prerequisites to engaging in business 4205
—payment of capital stock..... 4205
—statement to Commissioner of Insurance 4205
Examination by Commissioner of Insurance 4206
Supervision and control by State Corporation Commission 4169
Examination of by Commissioner of Insurance 4178
—when dispensed with 4179
—revocation of certificate to transact business 4180
—appeal 4180
Assessment of proportion of expense of maintaining Bureau of Insurance 4194, 4195
—notice of 4195
—proceedings to recover 4195
—appeal 4195
—judgment on 4195
—revocation or suspension of license or certificate 4195
—report of premiums 4196
Foreign, license required before making contracts 4203
—validity of contracts made without 4203
—renewal of 4210
—consent that process may be served on Secretary of Commonwealth 4207

Sec.

GUARANTY COMPANIES—Con.
—filing copy of charter with Commissioner of Insurance ... 4208
Statement of capital stock furnished State Treasurer 4211
Bonds deposited with State Treasurer 4211
—amount of 4211
—receipt for 4211
—assessment for expense of keeping 4211
—not subject to taxation..... 4211
—collection of interest on..... 4212
—how applied to payment of claims against company 4213
—lien of policyholders on..... 4214
—suit to enforce liens 4214, 4215
—duty of treasurer when bonds paid 4216
—when companies may withdraw 4217
—illegal disposition of by treasurer, penalty 4218
Reports to commissioner, annual, special 4229
—time for filing 4229
—penalty for failure to file..... 4229
—false statement in, perjury.... 4229
Violations of law by, penalty... 4231
—how enforced 4234
—hearing, appeal 4234
Minimum capital required 4341
Agents, who deemed to be..... 4342
—statement filed with State Corporation Commission by 4343
Authorized to do business in this State, list filed with clerks of courts by Commissioner of Insurance 4344
—notice of revocation of authority 4344
Suits against, jurisdiction of.... 4345
When accepted as surety on official bonds 4346, 4350
—rights and liabilities as..... 4346
Expense of securing bonds to be allowed by courts, &c., in settlements 4347
—exceptions 4347
Estoppel to deny power to assume liability 4348
Power of attorney to execute bonds 4349
—acknowledgment, recordation of 4349
—revocation, recordation of..... 4349
Limitation on amount of bonds of 4350
Agents doing business while company in default 4209
Process against, where served.. 6062
Suit to administer assets of.... 4215
As surety on bonds of officers and clerks. 325, 2698, 2699, 4346, 4350
—cost of, when paid by State.... 325
—premium 2699
—on bond of Secretary of Commonwealth 2134
—on bonds of clerks and bailiff of State Corporation Commission 3705

GUARANTY INSURANCE
See "Guaranty Companies"; "Insurance"
Definitions 4200

GUARDIAN AD LITEM
For infant or insane defendant, appointment 6093
—compensation 6093
In proceedings to establish drainage district 1741
—removal 1741
Before civil and police justice... 3105
In eminent domain proceedings.. 4365
In probate proceedings 5255

Digitized by Google

Sec.

GUARDIAN AD LITEM—Con.
On petition by guardian to spend more than income of ward's estate 5321
In suit to sell or lease real estate of infant or insane person 5337
In proceeding to release dower of insane wife 5346
—curtesy of insane husband....5346
In proceeding to transfer property of infant or insane person out of State 5350
In divorce suit against convict..6042
In proceeding to establish lost record 6203
In proceeding to perpetuate testimony 6235
In proceeding to substitute trustee 6299
Consent to vacation proceeding..6308
Depositions taken in presence of or on interrogatories agreed to by 5339
Not to be interested in purchase or lease of land of infant or insane person 5341

GUARDIAN AND WARD
See "Curators"; "Fiduciaries"; "Infants"; "Insane Persons"; "Minors"
Appointment 5314-5317
—testamentary 5314
—when void 5315
—by courts 5316, 5317
—change of guardians 5326
—jurisdiction of clerks of courts, Va. Const., § 101
—appeals 6336, 6337
— —Va. Const., § 88
Trust company as 4148
Jurisdiction of chancery courts over 5326
Bond 5318
—of curator 5319
—limitation of action on..5810, 5811
—accrual of action on 5811
—examination of by commissioner 5416
— —how, when required 5417
Accounts, settlement before commissioner 5408, 5410
—penalty for failure.....5408, 5409
—final settlement 5320
—disbursements beyond income.5321
—compound interest on annual balances, when 5323
—compelling settlement 5326
Inventory filed by 5403
—proceeding to compel filing....5403
—penalty for failing to file.....5403
Ward's estate, custody of.....5320
—disbursements beyond income.5321
—sale of personalty 5322
—recovery of compound interest for 5324
—investments, interest for failure to invest 5323, 5325
—time allowed to invest.....5325
—jurisdiction over 5326
—sale of real estate 5326
—liability for interest 5325
—proceedings by guardian 5326
— —for sale or lease of real estate 5335-5347
— —proceeds, how secured, applied, paid over 5342, 5343, 5351
—transfer to foreign guardian, 5350-5356
— —proceeds of sale of real estate 5351
—bank deposit of ward, payment to guardian.....4125

Sec.

GUARDIAN AND WARD—Con.
—when proceeds of sale of infant's land in partition suit paid to.....5281
—when funds paid directly to infant 5343
—when to parents of.....5343
— —order of court for payment to persons entitled 5433
—listing property of child for taxation 2307
Ward's person, custody of.....5320
—maintenance 5320
—education 5320
—on separation of parents.5327-5329
—mother's access to.....5328-5330
Penalty for violation of law relating to employment of children 1814
—prima facie evidence..... 1815
—allowing boy under ten years of age or girl under sixteen years of age to sell newspapers, etc, penalty.....1813
—consent to marriage of minor ward 5078
—binding ward as apprentice..5298
—consent to adoption of child..5333
Petition to have child released from operation of child labor law 1816
Affidavit of age of child employed in coal mine.....1871
—penalty for false affidavit....1871
Dependent or neglected child, petition by probation officer for disposition of.....1915
—penalty for failing to abide by order of court.....1915
Consenting to female child's being taken for prostitution or sexual intercourse, punishment 4579
Action to recover damages caused by intoxicated person, against person causing intoxication 4675
How infants may sue.....5331
Compromise in behalf of infant, approved by court.....5332
—setting aside for fraud.....5332
Not to be interested in purchase or lease of land of infant....5341
Debts due by guardian, priority of payment from decedent's estate 5390, 5391, 5395
Liability for debts lost by negligence or failure to make defense 5406
Waste, liability of guardian for.5508
Application for change of name of ward.....5983
Power to submit to arbitration.6163
Homestead exemption, setting apart 6541
Compensation, expenses.....5425
Termination of trust.....5320
Removal 5326
Discharge, when property transferred out of State.....5356
Resignation 5419
Of feeble-minded person, appointment, bond.....1080, 1085
—powers and duties.....1080

GUARDS
Penitentiary, employment, dismissal 5040
—number of.....3451, 5040
—carrying weapons.....5040
—compensation 3451, 5041
— —how paid.....5041
—vacation 5041
—detailed with convict employed outside of penitentiary.....5042

Digitized by Google

Sec.

GUARDS—Con.
—exempt from jury service.....5985
For State prison farm, appointment, compensation 3452, 5047
—vacation 3452, 5041
For jail 4954
—compensation 4954, 4955
For transportation of convicts to penitentiary 4948
—person sentenced to death, 4942, 4948
Allowance to, affidavit to account for 3504
Fees, criminal cases 3508
Appointment of by commissioners of wrecks.....3602
Permitting escape of prisoner, 4505, 4506

GUESSES' RIVER
Obstructing navigation of, punishment 4752

GUILTY, PLEA OF
Trial on.....4900, 4927
—Va Const., § 8

GUN
Used in hunting, size.....3356
Carrying to place of religious worship or on Sunday, punishment 4578
Toy, using explosive charge, furnishing to minor.....4697

GUNPOWDER
In cities and towns, regulations of keeping of.....3030

HABEAS CORPUS
Suspension of writ, Va. Const., § 58
Member of General Assembly must obey writ of..... 301
Jurisdiction 5848
—of courts and judges of city of Richmond 5922, 5928
—of Court of Law and Chancery of Norfolk.....5935
—of Court of Law and Chancery of Roanoke.....5947
Original jurisdiction of Supreme Court of Appeals.....5864
—Va. Const., § 88
Affidavits 5848
—evidence 5854
Court of Appeals, summoning to try appeals.....5858
Review 5858, 5859
Bail 5859
Ad testificandum.....5861
Writ, how directed.....5849
—return 5849
—service 5851
—penalty for disobeying.....5852
—de homine replegiando abolished 5860
—ad testificandum, when and by whom granted.....5861
Bond required of petitioner...5850
Judgment 5853
—in vacation.....5856
—conclusive 5857
—suspension 5859
Costs 5853
Facts, made part of record....5855
Powers of judge in vacation....5856
To test legality of detention of alleged lunatic, epileptic, etc.1029
To test right of Prison Association to retain custody of minor 1958

HAIR
Plastering, standard bushel....1470

HALIFAX COUNTY
Commonwealth's Attorney, fees.3505

Sec.

HAMPTON
Ferries to Norfolk, Yorktown, Accomac and Northampton counties 2010
—penalty for operating without license 2047
Circuit Court.....5887

HAMPTON NORMAL AND AGRICULTURAL INSTITUTE
Appropriation for.....853, 926
Curators, appointment..... 926
Selection of students..... 927
Treasurer, appointment, bond.... 928
Annual report..... 930
Congressional appropriation.931, 932
Legislative power over..... 933
Funds, interest on bonds....853, 929
—disbursement 853
President, annual report.....986, 989
Visitors, report.....987
Expenses 988

HAMPTON ROADS
Location of nets for crabs in...3292

HANOVER COUNTY
Commonwealth's attorney, fees..3505

HARBOR COMMISSIONERS
See **"Board of Harbor Commissioners of Norfolk, Portsmouth and Norfolk County"**

HARBOR MASTERS
As ballast masters.....3645
In city of Richmond.....3664
In city of Alexandria.....3664
In city of Norfolk.....3673
In city of Portsmouth.....3673
In city of Newport News.....3678
In county of Warwick.....3679
Removal 3679
Term of office.....3680
Duties 3681
—at City Point.....3682
Port regulations.....3681
Registers kept by.....3683
Fees 3684
—vessel anchoring at private wharf 3685
Control of Richmond dock.3688, 3689
Failure to perform duty, penalty.3691
Presentment to grand jury of violators of law.....3690
In office when code takes effect, terms not affecting.....3691

HARES
Unlawful hunting.....3356
Shipment from State.....3361

HARRISONBURG
State Normal School at..... 939
—name 942
Circuit Court.....5887

HATCHERIES
See **"Board of Fisheries"; "Commission of Fisheries"; "Fish and Fishing"**
Established and maintained by Commission of Fisheries.....3152
—superintendent of.....3154
— —arrest by.....3155
— —authority to compromise...3156
Taking fish for culture in.....3157

HAWK
Premium on scalp.....2729
Killing 3364

HAY
Weighing, cities and towns providing for.....3833
Person harvesting, exempt from jury service.....5995

HAY STACK
Burning, punishment.....4431

Digitized by Google

Sec.

HEADS OF DEPARTMENTS
Copies of legislative journals to be furnished to..... 386
Copies of Acts of Assembly to be furnished to..... 388
Annual reports..... 393
—printing and distribution of.. 393
Report of unsatisfactory printing 395

HEADLIGHTS
On locomotives.....3976

HEALTH
See **"Health Commissioner"; "Public Health"; "State Board of Health"**

HEALTH COMMISSIONER
See also **"Public Health"; "State Board of Health"**
Appointment, term, residence....1489
Powers and duties.....1489
Annual report.....1489
Assistant commissioner, salary..1490
Bacteriologist, salary.....1490
Clerk, salary.....1490
Salary 1490
Hotels, enforcement of laws with reference to.....1590
—certificate 1590
—fee 1591
—time of inspection.....1591
—notice to owner.....1592
Warrants 1591

HEARING
Before Board of Health relative to supply of water by water works 1791
Petition to reopen coal mine closed by inspector.....1870
Proceeding to recover claim against State.....2579
Application for pension.....2656
Proceeding by city or town to annex territory.....2958
Appeal of removed or suspended city officer.....3010
On application by city or town to Circuit Court for leave to erect dam 3058
Local assessment for improvements to streets, etc.....3067-3071
By Commission of Fisheries as to size of oysters that may be taken 3244
—shipment of seed oysters out of State.....3249
Petition to fix boundaries of village or unincorporated community 3550
By arbitrators, disptue as to division fence.....3559
Before State Corporation Commission 3711
—conducted by agents of State Corporation Commission.....3715
—to compel railroad or transportation company to make repairs and improvements.....3720
—on complaint of supervisors, mayor or councils for examination of road, etc., of transportation or transmission line.3721
—revision of rates and practices of telephone companies.....4054
—to revoke license or certificate of insurance company.....4180
—proceeding to impose fine or penalty on insurance company.4234
Proceeding to remove Commissioner of Insurance or deputy.4198
Insurance company violating law, before Commissioner of Insurance 4222
—before State Corporation Commission 4234

Sec.

HEARING—Con.
Before Commissioner of Insurance, insurance agent, proceeding to revoke or suspend certificate of registration.....4235
Proceeding to liquidate insurance company.....4244
Co-operative life insurance or casualty company, proceeding to revoke or suspend license of 4270
Fire insurance company, proceeding to revoke license for assuming excessive risks.....4307
Appeal from sentence of justice for contempt.....4523
Suit for divorce.....5106
—to annul or affirm marriage..5106
Appeal from order of clerk probating will 5249
Appeal from order of clerk appointing executor, administrator, curator or appraisers.....5249
On motion for probate of will..5256
Petition for transfer of property of infant or insane person out of State.....5350
Proceeding to grant administration on estate of person presumed to be dead.....5362, 5363
Quo warranto proceedings.....5846
Suit in equity set for.....6138
—as to part of defendants.....6139
—bringing in new parties.....6139
Rule against special commissioner, receiver or purchaser, 6275, 6276
Appeals by Supreme Court of Appeals, order of.....6261, 6362
—in criminal cases.....4936

HEAT
See **"Public Utility Companies"**
Furnishing, as public utility....4067

HEIRS
See also **"Descent and Distribution"; "Personal Representatives"**
Of purchaser of land sold for delinquent taxes, deed to.....2486
Dower, motion for assignment of 5125
—recovery of dower and damages against.....5127, 5128
—relief against improper assignment of.....5129
Liability of on warranty of ancestor in deed to real estate..5148
Form of covenant in deed construed as binding.....5170
—general warranty.....5171, 5173
—special warranty.....5172, 5173
—against encumbrances 5175
—further assurances.....5176
—for lessee's quiet enjoyment of his term.....5181
Purchaser of real estate from heir, when not affected by probate of will.....5263
Children of slave marriages....5268
—Va. Const., § 190
Property brought into hotchpot.5278
Of adopted child.....5333
List of furnished by personal representative 5379
Sale of real estate of decedent..5397
—suit against by creditor..5398, 5399
—judgment against personal representative as evidence against 5398
—title of purchaser from.....5397
Action of ejectment by.....5452
Recovery of rent by..... 5520
Revival of action for or against, 6168-6171

Digitized by Google

Sec.

HEMP
See "Inspection"; "Inspectors."
Inspectors of.....1400, 1401, 1402
Offered for inspection, how prized 1414
—owner to mark weight and tare 1415
—penalty 1417
—label 1427
—how marked when unfit to pass 1428
Seed, bushel, standard.....1470

HENING'S STATUTES
As evidence.....6189

HENRICO COUNTY
Payment of compensation to officers of Prison Association of Virginia on certificate of judge of Circuit Court of.....1954
Treasurer, when and where to collect taxes.....2410
Commonwealth's Attorney, fees.3505
Damages for trespass by animals 3541
Larceny of dogs in.....4445
—malicious trespass.....4445
Sheriff, process from clerk of penitentiary directed to.....5028
Circuit Court, chancery docket..6245

HENRY COUNTY
Commonwealth's Attorney, fees.3505

HEREDITAMENTS
Definition.....cl. 10, 5

HEROIN
Label on drug containing.....1664
Selling, giving away, etc., penalty 1693, 1695
—proprietary remedies containing 1693
—prescription 1693, 1694
—penalty 1695

HERRINGS
Buying or salting, license.....3170
Fishing season for in Potomac River 3300, 3302

HIGHLAND COUNTY
Commonwealth's Attorney, fees.3505

HIGH SCHOOLS
See "Education"

HIGHWAYS
See "Cities and Towns"; "Roads"; "Streets"
Rivers and streams as.....2003

HIRING
Horse, automobile, etc., with intent to cheat.....4567
—rehiring 4567
Of prisoners to work out fines, 4950, 4951
Apportionment of hire on death of person interested.....5544-5547

HOGG'S ISLAND
Exemption of citizen of from jury service.....5985

HOGS
Cholera, serum, manufacture, distribution 1283, 1284, 1285
Trespass by, impounding.....3541
—damages, proceeding to recover, lien, sale.....3541
—of non-resident.....3542
—distress of.....3543
—sale 3544-3546
Running at large in villages or unincorporated communities, penalty 3550, 3551
Running at large in counties in which boundary lines are lawful fences.....3548
—damages 3552
Turnpike tolls.....4083

Sec.

HOGS—Con.
—on valley turnpike.....4083
Registration, obtaining by false pretenses 4160
Giving false pedigree of.....4160

HOG CHOLERA
Serum, manufacture and distribution 1283-1285

HOLIDAYS
Term of convict expiring on....5046
Days designated as.....5758
Negotiable instrument falling due on 5647
—presentment for acceptance on.5709
Day for act falling on 5755

HOLLYWOOD CEMETERY
Employment of convicts in.....5015

HOLSTON RIVER
Erection of fish dam in, penalty.3199
Fishing with seines, etc.....3200

HOME
Use of ardent spirits in.....4662
—home defined.....4662

HOMESTEAD EXEMPTION
Constitutional provisions for, Va. Const., § 190-193
Demands to which inapplicable.....Va. Const., § 190
Property not subject to, Va. Const., § 191
General Assembly to provide for setting aside.....Va. Const., § 192
Previously claimed, effect of constitutional provisions on, Va. Const., § 194
Amount of.....6531
—effect of increase in value....6544
—liability of excess for debts..6545
When not to apply.....6531
—Va. Const, §§ 190, 191
Persons entitled to.....6531
Equitable estates.....6532
Real estate, how secured.....6532
—selection, description.....6532
—recording 3393, 6532
—subject to incumbrances.....6533
—held as joint tenant, etc., partition of.....6534
—sale of.....6535
—rights of widow and minor children 6536
—petition for by widow and minor children.....6537
—widow's dower or jointure bars 6538
— —no effect on rights of minor children 6538
—personal estate in lieu of.....6539
Personal property.....6539
—selection, description, recordation 6540
—selection by widow and minor children; their rights.....6541
—sale, petition by widow and minor children.....6542
Time for claiming.....6543
Rents and profits from property claimed 6544
Right to, when exhausted.....6547
Waiver 6548
—form of, effect of.....6548
—enforcement of claim.....6549
— —decedent's estate.....6549
—in recognizance.....4974
Property acquired from proceeds of exemption, setting aside....6546
—recording claim to.....6546
When exemption ceases.....6550
—rights of widow and minor children 6550
—how estate passes.....6550
Sale for incumbrance, disposition of surplus.....6533

Digitized by Google

Sec.

HOMESTEAD EXEMPTION—Con.
Mortgage, etc., enforcement.....6549
Judgment liens.....6550
Judgment on instruments waiving homestead.....6551
—on demand against which homestead cannot be claimed.6551
Poor debtor's exemption...6552-6557
Deeds, recorded in deed book....3393

HOMICIDE
See also "Crimes"; "Criminal Procedure"
Degrees of murder defined.....4393
—first degree, punishment.....4394
—second degree, punishment....4395
Manslaughter, voluntary, punishment.....4396
Manslaughter, involuntary, punishment.....4397
Death out of State, where punished.....4398
By duel outside of State.....4416
—accessories to murder by.....4417
—venue of prosecution.....4418
—former conviction or acquittal as defense.....4422
Death of passenger on railway caused by injuring or tampering with.....4468, 4474
Death of passenger caused by shooting at, throwing stones or missiles at, train or vessel....4473
In suppressing riots and unlawful assemblies.....4531
Petit treason, punished as murder.....4761
Prosecution for death without State from injury inflicted within State.....4770
—from injury inflicted by one within State.....4770
Death in one county from wound inflicted in another, jurisdiction of prosecution.....4772
Warrant of arrest issued by coroner.....4813
Verdict to specify degree of....4919
Duty of court on confession of guilt.....4919
Verdict of guilty of involuntary manslaughter, when.....4920
By convict.....5049, 5051
When bar to acquisition of estate by descent or distribution.5274

HOPEWELL, CITY OF
Commonwealth's Attorney, fees.3505
City of first class.....5905
Courts in continued.....5905
Circuit Court.....5887
Corporation Court.....5905
—judge, salary.....3468
— —increase, decrease.....3469

HORN HARBOR
Assignment of oyster grounds in.....3229

HORSE RACING
Entering, riding or driving horses disguised or under false names.....4634
Betting on.....4682, 4683, 4741
On road, bridge, landing or streets, penalty.....4741
—person betting on, penalty....4741
Contract for wager on, void....5558

HORSES
See also "Live Stock"
Sale of on execution, distress warrant, etc.....2833
Trespass by, impounding.....3541
—damages, proceeding to recover, lien, sale, etc.....3541
—of non-resident.....3542
—distress.....3543
—sale of.....3544-3546

Sec.

HORSES—Con.
Running at large in counties in which boundary lines are lawful fences.....3548
—damages.....3552
—in village or unincorporated community.....3550, 3551
Killed or injured by railroad, appraisal of value.....3994
—fee.....3996
—suit to recover.....3995
—when not applicable.....3997
Turnpike toll on.....4083
—on valley turnpike.....4083
Larceny of.....4440
Registration, obtaining by false pretenses, punishment.....4460
—giving false pedigree of, punishment.....4460
Poisoning, punishment.....4467
Shooting, stabbing, cutting, punishment.....4467
Hired, injury or damage to, punishment.....4567
—re-hiring.....4567
—with intent to cheat.....4567
Unaltered, restraint.....4744
Lien of livery stable keeper on..6445
—how enforced.....6449
Exemption.....6552, 6553

HOSPITALS
See also "State Hospitals"
For convicts see "Penitentiary"
For insane see "Insane Hospitals"
Establishment by counties and towns.....1555, 1557
—cost of establishing and maintaining, how paid.....1556
—removal of infected persons to.1559
—pesthouses.....1560
Condemnation of land for, 1555, 1557, 1558, 4885
Records kept by.....1576
Dead body, delivery to anatomical board.....1731
Reports by to Board of Charities and Corrections.....1895
Property of, exemption from taxation.....2272, 2301
—Va. Const., § 183
Gifts to, inheritance tax on....2272
Fire escapes.....3141
—penalty.....3141
Lands of not subject to condemnation.....4384
Ordering, purchasing, receiving, ardent spirits.....4601
—license.....4601
—sale of.....4601
—reports.....4601
—bond.....4602
Claims against decedent's estate.....5390, 5391, 5395

HOTCHPOT
Advancements brought into.....5278

HOTELS
Use or sale of oleomargarine, sign.....1199
Sale of ice cream or milk not meeting standards.....1216, 1217
Towels for common use prohibited.....1517
Definition.....1585
Transient guest.....1585
Charges posted.....1586
Fire escapes and extinguishers.....1587, 3141
—rooms opening on light well..1588
Inspection by State Board of Health.....1589
—certificate.....1590
—fee.....1591
—time of inspection.....1591
—notice to comply with law....1592

Digitized by Google

Sec.

HOTELS—Con.
—obstructing inspector, penalty.1593
—failing to pay fee, penalty...1593
Disinfection of rooms.....1594, 1596
Sanitary condition, water.....1595
Bed covering.....1597
—airing 1598
Towels 1517, 1599
Water closets.....1600
Privies 1601
Liability, limitation of.....1602
—notice, posting.....1602
—where guest failed to lock or bolt doors 1603
—fire or overwhelming disaster.1604
—baggage, etc., not in actual custody of proprietor or employee 1605
—limitation to suits against....1606
Warnings and directions as to use of gas.....1607
Fire escapes.....3141
—notice of.....1587
—penalty 3141
Burning or destroying, punishment 4428
Obtaining accommodations at by false pretenses.....4464
—removal of baggage without paying bill.....4464
Ardent spirits, use of for cooking purposes, massages, etc..4602
—license 4602
—procedure to obtain 4602
—statement 4603
—bond 4603
—counties and cities in which license not granted.....4603
—receiving from transportation company 4605
—record, affidavit.....4605
—penalty for failing to comply with law.....4605
—employee assisting guest to obtain ardent spirits, punishment 4650
—proprietor permitting employee to assist guest to obtain ardent spirits, punishment.....4651
— —failing to discharge employee 4651
—selling or keeping ardent spirits for sale.....4652
—revocation of license.....4653
—guest having ardent spirits in baggage 4662
—room of guest not a home within meaning of prohibition law 4662
Lien for charges.....6444
—how enforced.....6449-6451

HOUSE
Used in violating prohibition law, nuisance.....4622
—closing up.....4622
—bond of owner.....4622
—injunction against.....4630

HOUSEBREAKING
See **"Burglary"**
Punishment 4438-4439

HOUSEHOLDER
See **"Homestead Exemption"**
Exemptions 6398, 6531-6566
Construction of word.....6566

HOUSE OF BURGESSES
Publication of Journal of by Library Board..... 401

HOUSE OF DELEGATES
See **"General Assembly"**

HOUSE OF ILL FAME
See **"House of Prostitution"; "Pandering"**
Keeping, punishment 4548

Sec.

HOUSE OF ILL FAME—Con.
Evidence of character of house.4548
Taking females to or detaining in, punishment.....4579
Receiving money, etc., for placing female in 4579
Person placing wife in 4579
Detaining female in because of debts 4579

HOUSE OF PRIVATE ENTERTAINMENT
Lien for charges.....6444
—now enforced.....6449-6451

HOUSE OF PROSTITUTION
See also **"House of Ill Fame"; "Pandering"**
As nuisance.....1521
—furniture, fixtures.....1521
—injunction, notice.....1522
— —violation of, contempt proceeding, punishment.....1524
—trial 1523
—abatement, close of building..1525
—sale of furniture, disposition of proceeds.....1525, 1526
—property delivered to owner on giving bond.....1527
Employment agency sending female servant to.....1804
—penalty 1806
Ardent spirits, receiving, keeping, storing in, punishment...4607

HOUSE OF REPRESENTATIVES
See **"Members of Congress"**

HUNGARIAN GRASS
See also **"Agricultural Seed"**
Seed, bushel, standard.....1470

HUNTING
See also **"Game"**
Common right of.....3573
—on unappropriated marsh or meadow lands..... 421
License, date, form, number....3327
—when not necessary, to hunt on one's own land.....3330, 3334
— —tenants 3334
— —of non-resident.....3330
Exhibit of to officer or land owner 3335
—county, how obtained.....3328
— —amount paid for.....3328
—State license, how obtained...3329
— —amount paid for.....3329
—to non-resident, how obtained.3330
— —amount paid for.....3330
—to alien, how obtained.....3331
— —amount paid for 3331
—transfer of license, penalty...3337
—using license of another, penalty 3337
—procuring by false statement, penalty 3379
—changing or altering, penalty.3329
Without license, penalty.....3337
Gun, size of that may be used..3356
—use of more than one.....3356

HUNTING CLUB
Incorporation 3872-3880

HUSBAND AND WIFE
See **"Curtesy"; "Desertion"; "Divorce"; "Dower"; "Marriage"; "Married Women"**
Desertion or non-support of wife 1936-1944
—recognizance for support, 1938, 1939, 1940
—jurisdiction of prosecution, 1937, 1942
Conspiracy to cause wife to commit adultery, punishment.....4514
Placing wife in house of prostitution or causing to lead life of prostitution.....4579

Digitized by Google

Sec.

HUSBAND AND WIFE—Con.
Competency of wife as witness in prosecution for pandering..4579
Action for injury by intoxicated person, against person causing intoxication 4675
Contracts of wife.....5134
Torts of wife, liability of husband 5134
Property rights of wife.....5134
Suits by and against wife.....5134
Personal injury to wife, recovery for.....5134
Desertion by husband, bar to interest in wife's estate.....5140
Tenancy by entireties abolished.5159
—exceptions 5160
Conveyances by, effect on rights of wife.....5211
Wife, appointment of attorney in fact 5215
—writings executed by attorney.5215
Intestate husband or wife, distribution of personal property.5273
Wife, provision for in will, renunciation by, how made, etc.5276
Wife's share as distributee in personal property of husband barred by adultery.....5277
Rights of dower and curtesy barred by partition sale.. ...5281
Separation of, custody of children 5327-5330
Dower release of when lands of infant or insane husband sold, 5344, 5345
—of insane wife, how released..5346
Curtesy of insane husband, how passed 5346
Wife's right of entry not barred by husband's acts.....5441, 5442
Damages for death by wrongful act.....5787, 5788
Competency to testify for or against each other.....6210
—in criminal case.....6211
—presumption from failure.....6211
—communications between privileged 6212
—wife as witness in prosecution for pandering.....457

Wife's Separate Estate
General provisions.....5134-5140
Curtesy 5134
—barred by desertion.....5140
Debts or liabilities of husband..5134
Control of.....5134
Contingent right of dower, disposal of.....5135
Minors, control of, receiver.....5136
—sale of estate.....5137
Intestate, passes how.....5138
Equitable estates.....5139
Distribution of personal property 5273
—husband's share barred by adultery 5277

HUSTINGS COURTS
See also "City Courts"; "Corporation Courts"; "Judges"
In cities.....Va. Const., § 98
—when to cease to exist, Va. Const. § 98
Continued 5905
—Va. Const, § 98
Judge, election of...Va. Const. § 99
—salary 3468, 3471
— —Va. Const, § 103
— —how paid.....3472
— —increase 3469
—not to practice law.....5975
— —Va. Const., § 105
—not to hold other office.....5976
— —Va. Const., § 105

Sec.

HUSTINGS COURTS—Con.
— —exception 5976
— —Va. Const., § 105
—residence 5977
—Va. Const, § 99
—effect of removal.....5977
—jails, inspection of.....286..
— —committee 2863
— —report 2863
—qualification before, civil and police justice.....3099
— —substitute, appointment of.3101
—designation of special term for Circuit Court.....5894
Appointment of commission to fix salaries of councilmen.....2951
Appeals to, witness fined or imprisoned for failing to attend before City Council, Fire or Police Commissioner.....2985
—abutting owner, assessment of damages when street graded..3038
—assessment for local improvements 3070, 3071
—from conviction before justice.4989
— —amendment of warrant.....4989
— —bail 4989
— —new warrant.....4989
— —continuance 4989
— —how tried, jury 4990
Qualification before, civil and police justice.....3099
—substitute, appointment.....3101
Allowance to counsel appointed to defend poor person.....3518
Exclusive jurisdiction of cases arising under prohibition laws.4614
License for sale of soft drinks..4665
—revocation of.....4665
Grand jury, selection.....4851
—terms for.....4851
—when special grand jury may be ordered.....4854
—how deficiency supplied.....4855
—selection of foreman, oath, 4856, 4857
—charge to 4858
—imposing fine on officer failing to summon or juror failing to attend 4862
Bail, person convicted before justice 4989
To dispose of infant of convict mother 5008
Term ending during trial; postponement of next term.....5973
Judgment docket.....6461-6464
—entry of payment on.....6465-6467

HUSTINGS COURT OF CITY OF RICHMOND
See "City Courts"; "Hustings Court of City of Richmond, Part II"; "Judges"
Establishment 5912
Jurisdiction 5913, 5928
Terms 5915
Process, who to execute.....5917
Judge, election.....Va. Const., § 99
Salary 3468
—increase 3469
—decrease 3469
Clerk, election, term, compensation 129, 5930
—duties 5916
—copies of land books and personal property books furnished to 2342
—list of violations of revenue laws furnished to.....2356
—custody of public property, records and papers.....5916
Grand jury.....5919
Jurors 5919
—summoning 5918

Digitized by Google

Sec.

HUSTINGS COURT OF CITY OF RICHMOND—Con.
—jury commissioners.....5986
Appeals from.....5929
Report to, of misfeasance, etc., of board of review and tax officers 2215
—to show cause why should not be removed.....2215
—of sale of land for delinquent taxes 2467
Proceeding to correct erroneous assessment for taxation.....2248
Appointment local board of review 2226
Appointment of committee to inspect jail.....2863
—oath, report, compensation....2863
Mandamus to compel erection or repair of jail or courthouse..2867

HUSTINGS COURT OF CITY OF RICHMOND, PART II
See also **"City Courts," "Hustings Court of City of Richmond"; "Judges"**
Establishment 5912
Jurisdiction 5914, 5928, 5933
Terms 5915
Process, who to execute to.....5917
Grand jury.....5919
Jurors 5919
—summoning 5918
Jury commissioners.....5986
Judge, salary.....3468
—increase, decrease.....3469
—election.....Va. Const., § 99
Clerk, election, term, compensation 129, 5930
—duties 5916
—copies of land books and personal property books furnished to.....2342
—list of violations of revenue laws furnished to.....2356
—to record copies of report, orders, etc., in condemnation proceedings 4381
— —indexing 4381
— —fee 4381
—register of securities kept by.5925
— —fees 5925
Proceeding to correct erroneous assessment for taxation.....2248
Removal of cases to or from other courts of city of Richmond 5927
Appeals from.....5929
Records of, as notice to purchasers of land north of James River 5932
Statutes applicable to.....5933

HYDROPHOBIA
See **"Rabies"**

HYDROCYANIC ACID
Sale, label.....1691

HYOSCYAMUS
Sale, label.....1691

HYPNOTISM
Practice of, when prohibited....4721

HYPOTHECATION
See **"Pledge"**

ICE CREAM
See **"Dairy and Food Commissioner"**
Containers, sterilization of.....1204
Centrifugal machine and scales, inspection of.....1206, 1209
—fee 1206
—condemnation 1206
—certificate of operator...1207, 1208
— —revocation 1207
Milk and cream, standard of measure, samples.....1208
Improper test, penalty, evidence.1210

Sec.

ICE CREAM—Con.
—exception 1211
Varieties, definition of.....1215
—fruit ice cream.....1215
—nut ice cream.....1215
Below standard, sale of, mark, sign 1216
—penalty 1217

ICE CREAM PLANT
See **"Dairy and Food Commissioner"**
Inspection of by Dairy and Food Commissioner 1160
—penalty for keeping in unsanitary condition.....1160

IDIOTS
See also **"Insane Hospitals"; "Insane Persons"**
Disqualified as voters 82
—Va. Const., § 23
Excluded from registration..... 93
—Va. Const., § 23
"Insane person" includes, cl. 5.. 5
—when does not include.....1066
Not admitted to insane hospitals.1039
—removal from hospitals.....1039
Committee for.....1063
Listing property of for taxation.2307
Disqualified as jurors.....5984

IMMIGRATION
See **"Board of Agriculture"; "Commissioner of Agriculture and Immigration"; "Department of Agriculture"**

IMMUNITY
On repayment of money won at gambling 5560

IMPEACHMENT
Of officers.....Va. Const., § 54
Member State Corporation Commission 3752
—Va. Const., § 155
Of witness proving adverse.....6215
—by prior inconsistent writing.6216

IMPOTENCY
Divorce for.....5103

IMPOUNDING
Automobile, for violation of law.2146
—sale 2147
Trespassing animals.....3541
Animals running at large in village or unincorporated community 3550

IMPRISONMENT
See also **"Crimes"; "Criminal Procedure"; "Felonies"; "Misdemeanors"**
Abandoning on shore person sick with smallpox.....4399
Abduction for purpose of defilement 4411
—inmate of State hospital.....4412
Abortion, attempting to produce.4401
—encouraging or prompting by lecture, advertising, etc.....4401
Accessory after the fact.....4764
Acts and resolutions of General Assembly, altering, secreting or destroying..... 310
Adulterated flour, failure to brand 1194
Allowance of time accused was confined in insane hospital....4910
Animals, interference with officers of Society for Prevention of Cruelty to.....4555
—fights between men and animals 4426, 4427
Arson 4428-4436
Attempts, generally.....4767
—to commit larceny 4767
—to commit rape.....4767
—to usurp government.....4891

Digitized by Google

Sec.

IMPRISONMENT—Con.
—to poison....4400
—to commit abortion....4401
Automobiles, violation of law relative to....2145
Bank officer or employee, or broker, receiving deposit when bank insolvent....4132
Bank officer, making false statement of condition of bank....4124
Banking, person engaging in without authority of law....4136
For bigamy....4538
Boarding-house, defrauding....4464
—removing baggage....4464
Bribes, offering or giving....4496
—accepting....4497
Bribery, lobbying with General Assembly....4499-4501
—of officer to prevent service of process....4502
—of commissioners, auditors, jurors, etc....4503
Bucket-shop, keeping, etc., 4715, 4716
—bucketing....4715, 4716
Buggery....4551
Building and loan association, officer or agent making false financial statement....4165
Burglary....4437
—entering building, etc., with intent to commit murder, rape, robbery....4438
— —with intent to commit other crime....4439
—possession of tools with intent to commit....4437
Burning or destroying dwelling-house, jail, asylum, etc....4428
—other houses....4430, 4431, 4432
—lumber, haystack, etc....4431
—bridge, lock, dam....4433
—woods, fence, grass, etc....4134
—property with intent to injure insurer....4436
Buying or receiving pig iron, railroad iron, brass, metal with intent to defraud....4450
Buying or receiving certain house fixtures with intent to defraud....4449
By-laws of county, violation of..2743
Canals, injuring or obstructing..4468
Certificate of birth or death, altering....1581
Certified public accountants, violation of law relating to.... 572
Cemeteries, burial grounds, etc., injuries to....4553
Cheese, selling impure....1171
—keeping dairy in unsanitary condition....1172
Children, delinquent, concealing or removing....1916
—inducing to commit crime, etc.1923
—illegally seizing, taking, secreting....4409
Clerk issuing marriage license contrary to law....4541
Cocaine, encaine, selling or dispensing....1696
—possession of with intent to sell....1697
Commissioner of labor, failure or refusal to answer questions or interrogatories of....1802
Compounding offenses....4513
Condimental stocks and poultry food, sale of without certificate....1249
Conspiring to commit person to institution of feeble minded..1084
—to incite colored persons against white persons....4392

Sec.

IMPRISONMENT—Con.
—white against colored....4392
—conspiracy to cause wife to commit adultery....4544
Contagious disease, infected person going to prohibited public place....1503
—going from place to place....1504
—violating quarantine or vaccination regulations....1505
Contempt of court....4521-4524
—proceeding before civil justice.3117
Conviction for two or more offenses, when confinement for second or subsequent conviction to commence....4786
Convicts, offenses by....5051, 5052
—second offense....5054
—importing into State....4709
Corn meal, deception in sale of..1195
Costs, for failure to pay....4949
County or city treasurer violating law....2790
County ordinances and by-laws, for violation of....2743
Coupons from State bonds, fraudulent use of....2607
—tendering twice....2610
—officer receiving....2611
Dairy, keeping in unsanitary condition....1172
Dairy and Food Commissioner, hindering or obstructing, 1169, 1213, 1218, 1220
Dead bodies, violations of law relating to transportation of..1728
—trafficking in....1734
In default of bond required by justice for good behavior....4803
Dentistry, practice without license....1641
As ground for divorce....5103
Dogs, poisoning, wounding, etc..4467
Drugs, adulterated or misbranded, sale, manufacture....1657, 1659
—opium, morphine, etc., sale of.1695
— —furnishing to habitual user.1695
—cocaine, eucaine, selling or dispensing....1696
— —possession with intent to sell....1697
Duel, fighting or sending challenge....4419
—accepting or bearing challenge....4420
—leaving State to evade law....4421
—posting or upbraiding for not fighting....4423
Election, intimidation of voter.. 194
—disturbing election.... 196
—fraud in connection with voting by absent voter.... 219
—violation of duty by secretary of Board of Commissioners of election at primary.... 241
—stealing, mutilating, etc., ballot box, poll book, or making fraudulent entry, etc.... 244
—officers, neglect of duty or corrupt conduct....4724
—voting illegally....4725
—illegally influencing....4725
—non-resident voting....4726
—giving or receiving bribe for vote....4727
—altering, destroying, etc., books of registration....4729
Embezzlement of public funds by officer....4452
Escape, aiding prisoner in....4504
—officer allowing....4505, 4506
—prisoner escaping after conviction....4507
— —before conviction....4508
— —by setting fire to jail....4509

Digitized by Google

Sec.

IMPRISONMENT—Con.
—refusal to aid officer in preventing 4511
—of jail prisoner from convict road force 2079
Eucaine, selling or dispensing..1696
—possession of with intent to sell 1697
Extortion 4406
"Feeding stuffs" laws, violations of 1230, 1240, 1242
Fertilizer, adulterating or falsely branding....1131
For failure to pay fine, 2549, 4949-4953
Fishing laws, violation of....3175
Fishing in spawning locality...3180
—within regularly hauled fishing landing....3182
—use of explosives, injury to fish boxes or eggs....3196
—unlawfully taking trout or bass 3210
—non-resident fishing without license 3210
—unlawful, by non-resident....3211
—violation of law applicable to Potomac River....3305
Flour, adulterated, failure to brand 1194
Food, diseased or unwholesome, selling 1218, 1219
—transportation or storage under insanitary conditions....1220
Forging public record, certificate of officer, etc....4484
—uttering 4484
—seal of State, court, corporation 4485
— —keeping instrument for....4485
—coin, bank notes....4487
— —uttering 4487
— —having in possession....4490
—of other writing....4489
—having in possession, making, etc., anything designed for forging any writing....4488
Fowl, poisoning, wounding, etc..4467
Fraternal benefit society, fraud in securing certificate of membership 4304
Fraudulent entry by officer or clerk of bank or joint stock company 4457
Fraudulently destroying or concealing will or codicil....4458
Obtaining signature to writing by false pretense....4459
Fraudulent sale of goods marked "sterling" or "sterling silver".4461
—goods marked "coin" or "coin silver" 4462
—of goods made of gold....4463
—defrauding hotel or boarding-house 4464
— —removing baggage....4464
Fraudulent sale of stocks, bonds, town lots, etc....4465
Game, violation of law relating to transportation of....3261
Game laws, person convicted a third time for violation of...3362
Gambling, keeping gaming table, etc....4676
—permitting on premises....4677
—aiding, hindering arrest or seizure 4678
—betting or playing at, 4679, 4681, 4686
—in public place....4679, 4681
— —what is public place....4680
—book making, pool selling, etc.4682
— —on race outside of State...4683
—keeping or exhibiting slot-machine 4685

Sec.

IMPRISONMENT—Con.
—betting or wagering....4686
—conducting or being interested in game played for money....4687
—keeper of ordinary permitting at 4688
— —letting outhouse for....4690
—winning at by cheat or fraud.4691
—conducting lottery or raffle...4693
General Assembly, altering, secreting or destroying acts or resolutions of.... 310
—members and clerks, privilege against 297, 299, 300
—privileged against for words spoken or written.... 302
Guaranty company, agent of doing business while company is in default....4209
Horse races, entering horse disguised name....4654
Hotels, failing to disinfect rooms, 1594
—defrauding 4464
—removing baggage....4464
Keeping house of ill-fame....4548
Hunting, unlawful....3256
Injunction against house of prostitution, violation of....1524
Insurance, agent doing business while company is in default..4209
Insurance company, officer, etc., making false statement in report 4230
Intoxicating liquors, violation of law as to....4585
—violations of law relating to advertisement of....4609
—violation of injunction, proceeding to abate nuisance....4630
—person of intemperate habits or drug addict, refusing to disclose from whom ardent spirits were obtained....4640
—possession by minor....4641
— —as agent for another person 4641
—female ordering, receiving, or having in possession....4642
—hotel, employee, assisting guest to obtain....4650
— —proprietor of, or of house of private entertainment permitting employee to assist guest in procuring....4651
— —failure to discharge convicted employee....4651
—hotel or boarding house, keeping ardent spirits in....4652
—transporting in vehicle....4657
—soft drinks, sale without license, using ardent spirits in, etc. 4665
Juror, fraud in drawing....4526
Kidnapping with intent to extort money....4407
—to sell as slave....4408
—inmate of State hospital....4412
Larceny, grand....4440
—petit 4440
—of animals....4440
—sand from banks of Potomac River 4441
—of bank notes, checks, books of account 4442, 4443
—possession of tools with intent to commit....4437
—second and subsequent convictions of....4785
Lewd and lascivious co-habitation 4545
Live stock, giving false pedigree of 4460
—obtaining registration of by false pretenses....4460

Digitized by Google

Sec.

IMPRISONMENT—Con.
—poisoning, wounding.....4467
Lobbying with General Assembly 4499
—employing persons to lobby..4500
— —exceptions 4501
Manslaughter, voluntary.....4396
—involuntary 4397
Marriage, within prohibited degrees 4540
—leaving State to evade law....4540
—former husband or wife living.4538
—celebrating without license or contrary to law.....4542
—between white and colored persons 4546
Medicine, violation of laws relative to practice of.. 1623
Milk, selling impure.....1171
—keeping dairy in unsanitary condition 1172
Milkfat, improper test for.....1210
Mines, violations of laws relating to.....1869
—employees, failure to instruct or warn.....1842
— —failure to provide required conditions of labor for.....1812
—violation of law relating to protection of employers from gas 1856, 1860
—fire boss, violations of law relating to.....1860
—violations of law relating to safety lamps.....1862
—employment of minors or females in, false affidavit.....1871
—employees doing prohibited acts 1872
—failure to report accident in..1873
—failing to make report to inspector 1874
—steam locomotives, use in.....1877
—failing to adopt and post rules.1878
—sale or use of improper illuminating oil in.....1882
—refusing to permit inspector to test oil.....1883
Mines, coal, employment of incompetent engineers.....1846
—interference with engineer or machinery 1846
—failure to provide roadways and refuge holes.....1846
—coal, violation of law relating to machinery, appliances, signals, inspection, etc.....1844
—coal, violation of law relating to ventilation of.....1850, 1853
—permitting coal dust to accumulate 1850
—explosives in 1851
Minors, furnishing toy firearms using explosives to 4697
Miscegenation 4546
For misdemeanor 4782
For misprison of treason 4390
Morphine, selling.....1695
—furnishing to habitual user...1695
For murder.....4394, 4395
—killing in duel out of State by agreement made within.....4416
— —accessories 4417
Name, unlawfully changing or assuming another.....5983
—unauthorized use of.....1463
Obstructing navigation in Mattaponi or Pamunkey Rivers....4748
Obstructing navigation or passage of fish in Sycamore Mill creek 4749
Notes to circulate as money, issuance 4698
Officer, collecting taxes, failing to deliver dated tax ticket...2409

Sec.

IMPRISONMENT—Con.
—receiving other than United States currency for taxes and debts due State.....2606
—buying or selling coupons from State bonds.....2606
—failing to keep account of coupons received.....2606
—person failing to assist officer with process.....2822
—refusal to execute process for criminal 4510
—refusal to assist officer in preservation of peace, etc..4511, 4512
Opium, sale of.....1695
—furnishing to habitual user...1695
—use of in manufacture of cigarettes 4696
Optometry, violations of law relative to practice of.....1636, 1637
Ordinances of county, violation of 2743
Oysters, larceny of.....3237
—taking oysters, crabs, clams or shells in Accomac or Northampton counties with rakes or scrapes 3238
—taking in closed season, or with patent tongs 3240
—for illegally taking with scrapes and dredges.....3246
—carrying seed oysters out of State without permit.....3249
—resistance to officer enforcing law 3265
—roughing or taking without culling 3274
—removal from polluted areas..3287
— —interference with officer...3287
Pandering 4579
—receiving money for placing female in house of prostitution 4579
—detaining in for debt.....4579
Pension, application for, falsely certifying fact in connection with 2660
Perjury 4494
—subornation of perjury 4494
Person intending to commit crime 4791, 4794
—discharge by circuit or corporation court.....4794
Pharmacy, violation of law relative to practice of.....1657
Pilots, conducting vessel without or employing unauthorized person 3621, 3623
—exception as to vessel in distress 3622
—suspended pilot failing to give bond for good behavior.....3644
Possession, of eucaine or cocaine with intent to sell..... 1697
—of tools with intent to commit burglary, larceny, robbery....4437
Prize fighting.....4426
—fights between men and animals 4426
—aiders and abettors.....4427
Probation officer, interfering with 1916
Public building, wilful or malicious injury to.....4482
Public halls, violations of law relating to exits.....3144
Pure food laws violations..1130, 1187
Railroad, injuring or tampering with property or equipment of.4468
—switch-lamps, signals....4468, 4474
—trespasser jumping on or off cars of.....4470
—trespassing on trains.....4471
—removing packing from journal boxes.....4472

Digitized by Google

Sec.

IMPRISONMENT—Con.
—shooting at, throwing stones or missiles at....4473
—destroying fences or cattle stops....4476
—driving animal on track of with view to recover damages.4475
Rape....4414
For failure to give recognizance.4976
Records, public officer making false entry in or destroying..4516
—theft or destruction by person other than officer....4518
Riot or unlawful assemoly....4532
Violation of special and local road legislation....2013
Robbery....4405
—possession of tools with intent to commit....4427
Seal, unauthorized use of....1463
Seduction....4410
Selling diseased or unwholesome food....1213, 1219
Selling impure milk, cheese, etc.1171
Violation of sepulture....4552
Shooting, stabbing, cutting, or wounding with intent to kill or maim....4402
—in attempt to commit felony ..4403
Shooting, in public place....4404
—pigeons, birds, fowls, for amusement....4566
— —renting premises for....4566
Smallpox, improper inoculation..1532
—bringing into State....1532
—abandoning on shore, person sick with....4399
Soft drinks, selling without license, using ardent spirits in, etc....4665
State Capitol, wilful or malicious injury to....4482
State Library, defacing books, etc., in or removing books from....567
State reservation, violating regulations governing....543
—setting fires or damaging timber on....544
—negligent escape of fire....545
State Treasurer, illegally disposing of bonds of insurance company....4318
Steamboat, passengers, failing to occupy place assigned....4024
—disorderly conduct....4024
Streets, unauthorized use of....3024
Subornation of perjury....4494
Superintendent of Public Printing, being interested in contract....380
Taxpayer rendering false and fraudulent return....2397
Term of when to commence....5019
Terrapins, taking out of season.3297
—diamond-back, taking out of season or undersized....3298
Timber, marked, destruction or conversion of....1447
—brands, defacing or fraudulent use of....1447
—branding iron, unlawful use, counterfeiting, etc....1451
—fraudulent branding....1452
—conversion of branded....1453
Theatres, violations of law relating to exits....3144
For threat of bodily injury, in writing....4537
Tobacco inspector or sampler, giving false receipt or note..4708
Trade-mark, counterfeiting, selling goods with false, etc....1456

Sec.

IMPRISONMENT—Con.
—fraudulent representation in procuring registry of....1459
—displaying without authority..1461
Unlawful assembly or riot....4532
Vessel, shooting at, throwing stones or other missiles at...4473
—destroying or injuring....4466
— —property on....4466
Warehousemen issuing receipt containing false statement, 1340, 1342
—delivering goods without obtaining receipt....1343
—issue of receipt for goods not received....1339
—issue of duplicate receipt not so marked....1341
—depositing another's goods in warehouse or negotiating receipt for mortgaged goods....1344
Water supply of cities and towns, pollution of....1782
—pollution of drinking water..1784
Weapons, carrying concealed....4534
Of witness, for failing to attend before General Assembly....307
—failing to attend or to produce books and papers before city council or fire or police commissioners....2985
—refusing to testify....6221
—in prosecution for bribery, refusing to testify....4498
—refusing to testify in prosecution for unlawful gaming....4780

IMPROVEMENT COMPANIES
See **"Internal Improvement Companies"**

IMPROVEMENTS
By alienee, on property subject to dower....5128
Claim for in action of ejectment....5483-5487, 5491-5497
—petition for allowance of....5491
—jury trial of....5491-5496
—suspension of execution....5491
—how value estimated....5494
— —in excess of damages to plaintiff....5495
—verdict for balance....5496
— —lien....5497
—reimbursement of life tenant..5498
—exception as to mortgagees and trustees....5499
—valuation of estate without improvements....5500, 5501
—relinquishing estate to defendant....5502
— —payment by defendant....5503
— —sale of land for....5503
— —recovery by defendant if evicted....5505
—when valuation deemed real estate....5504
Mechanics' lien for....6436
On real estate set apart as homestead....6544
—suit to subject excess....6545

INCEST
Punishment....4540, 5084, 5085. 5086
Marriage void from time of conviction....5088

INCOMES
General Assembly may tax, Va. Const., § 170
Taxation of, net income of railroad or canal company not assessed for....Va. Const., § 176
Assessment for taxation....2313
—allowance for adopted children....2313

Digitized by Google

Sec.

INDECENT LANGUAGE
Using over telephone, punishment 4569

INDEMNIFYING BOND
See also **"Attachments"; "Distress"; "Executions"; "Forthcoming Bonds"**
When officer making levy entitled to.....6154
—effect of failure to give.....6154
—effect as to claimant or purchaser of property.. 6155
Action on.....6156
In action on lost instrument....6242
On execution, payment of proceeds of sale to creditors giving 6489
—when obligor may have new execution 6498
In action to recover property subject to lien of judgment or execution 6514
Of claimant of rent after affidavit of defense by tenant.....6520

INDEMNITY
For tax collectors.....2619, 2620
Surety in bail bond or recognizance taking from principal..4837
To surety on bond given under decree or order of court.....5776

INDEMNITY COMPANIES
See also **"Guaranty Companies"; "Indemnity Insurance Company"; "Insurance"**
Supervision and control by State Corporation Commission.....4169
Examination of by Commissioner of Insurance.....4178
—when dispensed with.....4179
—revocation of authority to transact business.....4180
—appeal 4180
Assessment of proportion of expense of maintaining Bureau of Insurance. 4194, 4195
—notice of.....4195
—proceedings to recover... 4195
—appeal 4195
—judgment on.....4195
—revocation or suspension of license or certificate.....4195
—report of premiums.....4196
Jurisdiction of proceedings against 4345
Process against, where served..6063

INDEMNITY INSURANCE COMPANIES
See also **"Guaranty Companies"; "Indemnity Companies"; "Insurance"**
License and certificate to do business 4272
—procedure to obtain.....4272

INDEX
To House Journal..... 306
To acts and resolutions of General Assembly... 307
To Senate Journal..... 308
To record of patents for land... 470
Certificate of damages against dealer in fertilizer assessed by commissioner... 1120
State Registrar of Vital Statistics to keep.....1577
Petition and orders in proceeding to establish drainage district..1742
To record of delinquent real estate 2428
Notice of motion for judgment against delinquent treasurer..2432
Report of delinquent tax sale..2469
Assessment for local improvements 3071

Sec.

INDEX—Con.
Papers, by civil and police justice 3107
Assignment of oyster planting ground 3225
Executions 3391
—issued by justice.....6031
By clerk of court.....3391, 3392
—order, record, entry 3391
—execution 3391
—judgment 3391
—decree 3391
—writings, plats, etc.....3392
Of deed conveying both real and personal property.....3393
To will book.....3394
General index for clerks' offices.3394
—books to be indexed..... ..3394
—what index to show 3394
—committee to inquire into necessity for.....3395
— —report, action on 3396
— —adoption and use.....3397
—of extension of time of deed of trust, mortgage or lien....5827
—of mechanics' liens.....6127
—of labor and supply liens.....6439
Judgment of State Corporation Commission, judgment lien docket 3733
Revocation of power of attorney to execute bonds for surety company 4349
Report of commissioners, eminent domain proceedings, 4369, 4381
—receipt for payment of damages 4369, 4381
Of register of persons convicted of felony.....4787
To marriage register 5076
Contract reserving title to chattels 5189
To book of unacknowledged writings lodged with clerk of court 5213
Of judgment, order, decree for partition, assignment of dower, or recovery of land.....5216
List of heirs.....5379
Of accounts and inventories of fiduciaries 5405, 5428
Of extension of limitation of right to enforce deed of trust or mortgage.....5827
To Virginia Reports.....5880
Of order for change of name of person 5983
Receiver's book.....6294
Mechanics' liens.....6427
—labor and supply liens.....6439
Judgment docket.....6464
—general index to.....3394
—judgments of Federal courts..6462
Lis pendens, record of.....6469
Attachment, record of 6469

INDIAN CORN
Distress 2830

INDIANS
Who deemed to be..... 67
Criminal proceedings against...4968

INDICTMENT
See **"Criminal Procedure"; "Grand Jury"; "Information"; "Presentment"**
Conclusion .....Va. Const., § 106
Jurisdiction of circuit courts, 5890, 5892
—of corporation courts.....5910
—of Hustings Court of Richmond 5913
—of Hustings Court of Richmond, Part II.....5914
Prosecutions to be by.....4865

Digitized by Google

Sec.

INDICTMENT—Con.
Information filed on....4865
Prosecution for felony must be by....4865
Process for appearance of accused....4866
How found by grand jury....4860
—names of witnesses on....4860
—ignored by one grand jury, may be found true bill by same or another grand jury....4861
—what irregularities in not to vitiate....4861, 4875
What defects not to vitiate, 4861, 4875
For misdemeanor, amendment of.4876
For treason or felony, amendment of before plea....4877
—after plea....4878
Defects in causing judgment to be arrested or reversed....4879
Not error to designate railway company as railroad company or vice versa....cl. 19, 5
Several counts, demurrer or motion....4923
—effect of general verdict of guilty on....4923
Form of, violation of law relating to sale, etc., of intoxicating liquors....4587
— —second offense....4596
—druggist violating law relating to intoxicating liquor....4596
— —second offense....4596
—for violation of prohibition law, allegations not necessary in....4661
— —what proof sufficient....4661
—name of prosecutor to be written on, when....4867
— —on indictment for cruelty to animals....4564
—for perjury, sufficiency of statement in....4869
—for subornation of perjury....4869
—for embezzlement, sufficiency of statement....4870
—for larceny of money, bullion, bank notes, etc., sufficiency of statement....4870
— —sufficiency of proof....4870
—for forgery, or uttering, sufficiency of statement....4871
—sufficiency of allegation of intent....4873
—omission of unnecessary allegations....4874
Process on, capias or summons..4881
—how awarded, directed, returned and executed....4882
—when issued....4889
—mailing to officers in other counties....4884
—execution throughout State...4885
—against corporation....4892
Of officer or trustee failing to make, post, or publish annual statement of school board.... 751
Of members, board of supervisors failing to make statements....2768
Of accessories....4766
Of corporation, summons....4892
—trial....4892
Against convict, duty of court...5057
Of non-resident disturbing fishing shore....5292
For felony, necessity for....4865
—time within which must be found....4880
—tried at same term....4893
—conviction of less offense....4918
—time within which trial must be had....4926

Sec.

INDICTMENT—Con.
For misdemeanor, trial....4889
For violation rules of Crop Pest Commissioners.... 871
For doing business without license....2369
For recovery of penalty for violation of license or revenue laws....2394, 2396
For false return of property for assessment....2397
For recovery of fines....2543-2545
—for refusal to furnish information as to merchant's purchases....2366
For embezzlement....4451
For fraudulent sale of stocks, bonds, town lots, etc....4465
Conviction of less offense....4918
For felonious homicide, crime accused may be found guilty of....4920
For malicious wounding, etc., conviction for unlawful wounding....4920
Discharge for failure to indict in time....4889
Sufficiency of proof, indictment for violation of prohibition law....4661
—indictment for larceny of money, bank notes, etc....4870
—of proof of ownership....4872
Acquittal a bar to further prosecution, though indictment is defective....4773

INDORSEMENT
See "Negotiable Instruments"

INDUSTRIAL SCHOOL
Property of, exemption from taxation....2272, 2301
—Va. Const., § 183
Gifts, inheritance tax on....2272
Appropriation to by county, city, town or district, Va. Const., § 141

INDUSTRIAL SICK BENEFIT COMPANIES
See also "Commissioner of Insurance"; "Insurance"; "Insurance Companies"
Definition....4351
Policies, restrictions as to....4352
—beneficiaries under....4352
Securities to be deposited with treasurer....4353
Taxation of....4354
License to do business....4354, 4355
—renewal of....4355
Examination by Commissioner of Insurance....4355
Supervision by Bureau of Insurance....4356
Annual reports....4356
Purpose to be stated in charter.4357
Foreign, qualification to do business in State....4358
Excessive insurance, relief against....4359

INEBRIATES
See "Insane Hospitals"; "Insane Persons"
Commission....1017, 1074
Commitment, care, expense....1068
—discharge....1068
Inebriates' Home....1069
How committed to private hospitals....1070
Time compelled to remain in sanitarium; right of appeal; trial by jury....1071
Rights of person proceeded against, appeal....1072

Digitized by Google

Sec.

INEBRIATES—Con.
Duty of sheriff or other person in charge of 1073
Right of private sanitarium to receive 1073
—voluntary patients....1073
Certificate of commitment....1074
Committee, bond, report...1017, 1074

INFAMOUS OFFENSE
Conviction of as ground for divorce 5103

INFANCY
See "Infants"
Plea of by State cadet at Virginia Military Institute.... 849
Promise to pay debt contracted during infancy, writing required 5561

INFANTS
See also "Apprentices"; "Children"; "Infancy"; "Guardian and Ward"; "Minors"; "Parent and Child"
Infected with dangerous disease, expense of removing and maintaining 1519
Of convict mother, how disposed of 5008
Marriage of, consent of parent or guardian....5078
—age of consent to marry....5090
—when marriage of void without divorce....5090
Will, when may make....5228
Overseer of poor placing in incorporated institution....5299, 5300
—in asylum or school....5300
—bond taken....5303, 5304

Property and Contracts
Sales of estates of, General Assembly may confer power on courts ....Va. Const., § 63
Trust company as guardian or trustee for....4148
Bank deposit by....4126
—check on....4126
Married woman, receiver for estate of....5136, 5137
—sale of estate of....5137
Real estate of, descent from....5272
Personal property, distribution of 5273
Real estate, proceeds from sale of in partition suit, how disposed of....5281
Earnings of, who entitled to....5320
Fund of, when paid to infant..5343
—when to parents....5343
Dower of wife in estate of infant husband, how conveyed..5344
—how proceeds secured to wife.5345
When proceeds of sale of real estate of to pass as real estate 5347
Property, transfer of to foreign guardian 5350-5366
—when property sold and proceeds transferred....5355
Proceeds of land relinquished to defendant claiming for improvement on deemed real estate 5504
Promise to pay debt contracted during infancy, writing required 5561
Indorsement or assignment of negotiable instrument by, effect of....5584
Transacting business as trader, liability of....6108
Rights as to homestead...6526-6543
—when to cease 6550
Rights as to property exempt from levy....6562

Sec.

INFANTS—Con.
Wages, exemption from garnishment 6558

Actions and Proceedings By and Against
Guardian ad litem for, appointment 6098
—in proceeding to establish drainage district....1741
—before civil and police justice.3105
—eminent domain proceedings..4365
—in probate proceedings....5255
—in suit to sell or lease real estate 5337
Suits by, by next friend....5331
Compromises in behalf of, approval by court....5332
—setting aside for fraud....5332
Appearing by attorney, when no ground for reversal....6331
Suits against, depositions in....5339
Right to show cause against order or decree....6305
—against judgment in ejectment 5487
Abutting owner, notice to when street graded....3037
Notice to, assessment for local improvements 3069
Leases, proceedings for surrender or renewal of....5334
Real estate, suits to sell or lease 5326, 5335-5347
—guardian ad litem....5337
—validation of certain sales...5338
—how proceeds secured, applied, and paid over....5332, 5343
Application for change of name of 5983
Party to proceeding to substitute trustee....6299
Limitations, on entry on or actions for land by....5807, 5808
—time excluded....5809
—on personal actions....5823
—on claims against State....2583
—on bill to impeach or establish will....5260
—on probate of will against purchaser from heir....5263
Saving in favor of, judgment in ejectment 5487
Right to show cause against order or decree....6305
—time for....6305
Bill of review, time for 6316

INFECTIOUS DISEASES
See "Dead Bodies"; "Public Health"; "Quarantine"; "State Board of Health"; "State Live Stock Sanitary Board"
Publication of list of by board of health....1488
—study of....1491
Local boards, duties....1493, 1497
Vaccination 1493
Quarantine 1493, 1497, 1500
Report of....1497
Disinfection 1500
Infected person, place excluded from 1503
—going from place to place in State, penalty....1504
—employment in laundry 1545
Penalty for violating quarantine or vaccination regulations....1505
Report of by physician....1515
Removing person infected with, expense 1519
Convict, quarantine of....1543
Hospitals for....1557
—removals to....1559
—location of....1560

Digitized by Google

Sec.

INFECTIOUS DISEASES—Con.
Notification to registrar of vital statistics of what are.....1577
Vessel with on board, quarantine of 3645

IN FORMA PAUPERIS
Suits, fees, costs, counsel.....3517
—compensation to counsel.....3518
Cost on writ of error in criminal case.....4938

INFORMATION
See **"Criminal Procedure"; "Indictment"; "Presentment"**
Jurisdiction of circuit courts, 5890, 5892
—of corporation courts.....5910
—of Hustings Court of Richmond 5913
—of Hustings Court of Richmond, Part II.....5914
Prosecutions to be by.....4865
When may be filed.....4866
Process for appearance of accused 4866, 4881
Name of prosecutor to be written on, when.....4867
Process on, capias or summons, 4866, 4881
—how awarded, directed, returned, executed.....4882
—when issued.....4889
—mailing to officers in other counties 4884
—execution throughout State....4885
—against corporation.....4892
When not necessary on presentment 4888
For violation rules of Crop Pest Commissioners 871
For Lunacy Commission.....1017
For doing business without license 2369
For violation of injunction against house of prostitution.1524
For recovery of penalty for violation of revenue laws..2394, 2396
For recovery of fines.2543, 2544, 2545
—for refusing to testify in investigation of merchant's purchases 2366
For seizure of property for violation of oyster laws.....3279
For enforcement of forfeiture for violation of laws concerning hunting, fishing and taking oysters 3366-3377
For violation of law relating to cruelty to animals, name of prosecutor on.....4564
To enforce forfeiture for gaming, lottery, raffle, etc.....4986
In nature of quo warranto.....5844
To impose additional punishment on convict for previous conviction 5054
Against corporation, process on.4892
—trial of.....4892
Discharge of accused for failure to file in time.....4880

INFORMER
Rights as to fines and penalties 1203, 2547
—against person defacing books, etc., in State Library..... 367
—for false branding of tobacco, 1359, 1389
—for offenses relating to sale, etc., of tobacco.....1392
—for use of apple barrel under standard 1471
—for interfering with exclusive privilege of ferry.....2063
—for improper use of number plate of automobile.....2133

Sec.

INFORMER—Con.
—officer failing to give receipt for fine collected.....2546
—for begging on street.....2804
—for obstructing fisheries in Chesapeake, Lynnhaven, Willoughby's bays.....3191
—for unlawful fishing in Mattaponi, Pamunkey, York, Elizabeth Rivers.....3202
—for falsely designating oysters and clams as Lynnhaven.....3291
—for violation of fishing laws applicable to Potomac River..3303
—for practicing law without license 3422
—for performing marriage ceremony, white and colored persons 4547
—for bookmaking or poolselling on result of race, etc.....4682
—for digging gensing out of season 4710
—for obstruction of navigation or passage of fish by dam or other thing.....4747
—for obstruction of navigation of Mattaponi or Pamunkey Rivers 4748
In proceeding to compel repair of turnpike.....4078
—costs borne by.....4081

INHERITANCE
See **"Descent and Distribution"; "Heirs"**

INHERITANCE TAX
Exemptions from.....2272
—Va. Const., § 183

INJUNCTION
Jurisdiction of.....6318, 6319
—to judgment, decree, or execution on behalf of Commonwealth 6049
— —in what court.....6051
—of courts of city of Richmond 5922, 5928
—of Court of Law and Chancery of Norfolk.....5935
—of Court of Law and Chancery of Roanoke.....5947
In suit for specific property....6315
Awarded when bill of review granted 6316
Expiration 63
Enlargement 6317
Awarded by Court of Appeals, 6317, 6320
Clerk to whom directed.....6321
Affidavit 6322
Notice 6322
Against removal of property out of State, bond.....6323
Bond 6324
—forthcoming, on restraining removal of property from State 6323
—forthcoming, on restraining levy 6324
—time for.....6324
—additional security.....6325
—how payable.....287
Dissolution 6317
—in vacation, notice, etc.....6326
—damages 6327
—appeals 6336
—appeals, bonds.....6351
—against judgment for specific property, damages awarded...6377
Dismissal of bill for.....6328
Costs 6324, 6327, 6328
To enforce law relating to primary elections..... 224
Trade-mark, counterfeiting or imitating 1460

Digitized by Google

Sec.

INJUNCTION—Con.
Against house of prostitution, 1522-1528
—violation, contempt proceeding, punishment 1524
By State Corporation Commission against Public Service Corporation 3902
In proceeding against railroad for violation of law relating to live stock.....4006
Against insurance company, proceeding for liquidation.....4213
Against fraternal benefit society.4298
When not awarded against company, beginning work on land in process of condemnation...4371
Against violation of law relating to advertisement of intoxicating liquors.....4609
To abate nuisance under prohibition law.....4630
To prevent sale, pending suit in which defense of usury is made 5555
To restrain use of name, portrait or picture for advertising purposes 5782
In attachment proceedings 6389
To restrain sale of crop subject to lien.....6453
To execution, repayment to debtor 6495
Against sale of exempt property or garnishment of wages...6565

INLET
Definition 3181

INNS AND INNKEEPERS
See **"Hotels"**

INQUESTS
See **"Coroners"**
Escheators 493-496
Coroners 4806-4818

INQUIRY OF DAMAGES
Order for, when clerk to enter at rules.....6131
—when not necessary.....6132
—action of assumpsit.....6133
—when set aside.....6135
Trial 6247
—time for.....6249

INQUISITION
See also **"Coroners"; "Inquests"**
Of coroner's jury, form.....4811
—returned to court.....4812

INSANE HOSPITALS
See also **"Commissioner of State Hospitals for Insane"; "Insane Persons"; "State Colony for Epileptics and Feeble-Minded"**
Constitutional provisions, Va. Const., §§ 149-152
Location, management.....1004, 1005
Corporate names.....1005
Who admitted to.....1004
Definitions 1006
Funds for.....1013
—deposit of.....1013
—disbursement 1014
Fiscal year.....1015
Stationery to be furnished to...384
General Board of State Hospital Directors, how constituted, Va. Const., § 150
—powers and duties, Va. Const., § 150
—management of hospitals.....1004
—members, appointment, term..1006
—meetings 1006
—expenses 1006
—appointment and removal of superintendents 1007
—chairman 1009

Sec.

INSANE HOSPITALS—Con.
— —Va. Const., § 152
—deposit of funds with superintendent 1014
—voluntary patients, rate of charges for.....1088
—approval of traveling expenses of Commissioner of State Hospitals 3447
Directors, appointment, number, term 1006
—vacancies 1006
—Va. Const., § 149
—powers and duties.....1095
—Va. Const., §§ 149, 151
—meetings, place, quorum.....1006
—expenses 1006
—appointment of officers.....1008
— —Va. Const., § 151
— —compensation, removal.....1008
—chairman 1009
— —Va. Const., § 152
—requisition for funds.....1013
— —disbursements 1014
—report of expenditures.....1013
—biennial reports.....1016
—interest in contracts prohibited 1059
—penalty 1060
—special duties.....1095
Officers and employees, appointment and removal.....1008
—Va. Const., § 151
—term 1008
— —Va. Const., § 151
—salaries 1008, 3447
—interest in contracts prohibited 1059
— —penalties 1060
—conservators of the peace....1061
—mistreatment of inmates, punishment 1062
—aiding escape of inmates.....1063
—interference with.....1064
—exempt from jury service.....5985
Superintendents, appointment, qualifications, term, removal.1007
—Va. Const., § 151
—appointment and removal of employees .....Va. Const., § 151
—compensation 1007, 3447
— —rent 3447
—expenditures of funds.....1014
—reports, estimates.....1016
—forms for lunacy proceedings..1018
—duty when sheriff fails to deliver patient.....1025
—examination of papers, reception of patients.....1026
—attendants for patients transported to hospitals.....1027
— —expense 1027
—examination of patient, return of 1028
—voluntary patients, report....1031
—disposition of insane person convicted of crime when restored to sanity.....1045
—certificate to discharged patient 1046
—expenditures for insane person of funds appropriated by committee 1050
—interest in contract prohibited..1059
—penalty for violations of law.1060
—conservators of the peace....1061
—petition for transfer of patient to institution for feeble-minded 1086
—special duties.....1095
—schedule of routes for transportation of insane filed with.3739
— —certificate presented to....3740
— —how paid.....3740

Digitized by Google

Sec.

INSANE HOSPITALS—Con.
—insane person, accused of crime, reports to court on condition of....4909
— —notice to clerk to return to jail 4911
—exempt from jury service....5985
Proceeding to determine legality of detention of patient....1029
Non-resident patients, admission 1030, 1036
—discharge 1031
Voluntary patients....1031
—expense, bond....1031
—discharge 1031
Admission of patients without commitment 1032
—certificate of physicians....1033
—power of superintendent....1034
—commitment, expenses....1035
Idiots not admitted....1039
Delivery of patient to friends, 1040, 1041
—bond 1040
—re-examination 1042
—surrender of....1043
Escape of patient, warrant, arrest 1044
Disposition of insane person convicted of crime when restored to sanity....1045
Discharge of patients....1046
Legal residence of patients....1047
Expense of removal of patients.1048
Liability of patient to State for expenses of care of, etc....1058
Insane person accused of crime, commitment to....4909, 4910, 4913
—return to jail when restored to sanity 4911
—confinement of insane convict in 5007
Epileptic and feeble-minded, separate departments for....1076
Inebriates and drug addicts, commitment 1068
—expense 1068
Feeble-minded person, transfer to 1086
Transfer of patient to colony for feeble-minded....1086
Contracts with, interest of officers in prohibited....1059
Penalties for violations of law by officers....1060
Disorderly conduct on hospital grounds 1064
Giving ardent spirits or narcotics to inmates....1065
Reports, epileptic and feeble-minded persons....1076
Records, epileptic and feeble-minded persons....1076
Abducting, kidnapping or aiding escape of inmate, punishment 4412

INSANE PERSONS
See also **"Feeble-Minded Persons"; "Idiots"; "Inebriates"; "Insane Hospitals"; "State Colony for Epileptics and Feeble-Minded"**
Hospitals for....1004, 1005
Commission 1017-1021
—information, complaint, warrant 1017
—depositions 1017
—report 1018
—record 1019
—commitment 1020, 1022, 1023
—fees 1021
—delivery of patient to hospital, 1024, 1026
—conveyance of patient to hospital 1027

Sec.

INSANE PERSONS—Con.
—expenses 1027
Admission to State hospitals, 1024-1027
Examination at hospital, return.1028
Proceeding to test legality of detention 1029
Non-resident, disposition of....1030
—admission to State hospitals, 1030, 1036
—appointment of committee....1052
Voluntary patients in State hospitals 1031
—expense, bond 1031
Admission to State hospital without commitment 1035
—certificate of physicians....1033
—power of superintendent....1034
—commitment, expense 1035
Care of outside of hospitals....1037
—expense 1038
Idiots, return of from hospitals.1039
Delivery to friends....1040, 1041
—bond 1040
—re-examination 1042
—surrender of 1043
Escape, warrant, arrest....1044
Convicted of crime, disposition of when restored to sanity....1045
Discharge from hospitals....1046
Legal residence of 1047
Expense of removal to or from hospitals 1048
Confinement in jail 1049
—expenses 1049
—nurses and physicians, apportionment of pay....1049
Mistreatment of, punishment....1062
Aiding escape from hospitals...1063
Giving ardent spirits or narcotics to when patients in hospitals..1065
Construction of words....1066
Epileptics, where committed....1067
Inebriates, commitment, care, expense 1068
—inebriates' home 1069
—how committed to private hospitals 1070
Forms for committing 1089
Abutting owner, when street graded, notice to 3037
Accused of crime, not to be tried while insane 4908
—commitment to hospital, 4909, 4910, 4913
—trial to determine sanity....4909
— —after conviction....4910
—commitment to jail when restored to sanity 4911
—sentence or trial when restored to sanity 4912
Suits against, depositions in....5339
Carnal knowledge of....4414
Committee, appointment....1050-1052
— —Va. Const., § 101
—provision for insane person and dependents 1050
—of resident not found....1051
—of non-resident 1052
—powers and duties 1054
—custody and care of estate....1054
—bond 1053
— —limitation of action on....5810
— —when right of action on accrues 5811
—petition for sale of real estate 1055-1057
— —reference to commissioner..1056
— —action of court on report, application of proceeds....1057
—liability for expenses of ward.1059
— —non-resident patients....1058
—listing property for taxation..2307
—trust company as 4148

Digitized by Google

Sec.

INSANE PERSONS—Con.
—suit to sell or lease land.5335-5347
— —not to be interested in purchase or lease of 5341
—petition to transfer property out of State 5350
— —proceeds sale of real estate.5351
—judgment against 5407
—power to submit to arbitration 6163
—revival of action for and against 6168-6170
—party to proceeding for substitution of trustee.....6299
Compromises on behalf of, approval by court 5332
—may be set aside for fraud....5332
Contracts for transportation of by State Corporation Commission 3738
—routes for 3739
—payment 3740
Convict, trial of sanity of.....5007
—confinement in insane hospital 5007
—when returned to penitentiary.5007
Curtesy of insane husband, how released 5346, 5347
Definition, cl. 5..... 5
Disqualified as voter 82
—exclusion from registration.. 93
—Va. Const., § 23.
Disqualified as juror.....5984
Dower of wife in estate of insane husband, how conveyed.....5344
—how proceeds secured to wife.5345
Dower of insane wife, how released 5346,5347
Estate, liability of.....1058
—petition for sale of.....1055-1057
—listing for taxation 2307
—real estate, proceeds from sale of in partition suit, how disposed of 5281
—leases, proceeding for surrender or renewal 5334
—sale or lease of real estate of, suit for 5335-5347
— —guardian ad litem 5337
— —how proceeds secured, applied, paid over 5342
—when proceeds of sale to pass as real estate 5347
—transfer of property to foreign guardian or committee....5350-5356
— —when property sold and proceeds transferred 5355
—proceeds of land relinquished to defendant claiming for improvements on, deemed real estate 5504
Feeble minded persons.....1075-1094
Guardian ad litem for, appointment of 6098
—in proceeding to establish drainage district 1741
—before civil and police justice.3105
—in eminent domain proceedings 4365
—in probate proceedings.....5255
Inebriates, time compelled to remain in sanatorium; right of appeal; trial by jury 1071
—rights of person proceeded against, appeal, order of court.1072
—duty of sheriff or other person in charge of 1073
—right of private sanitorium to receive 1073
—voluntary patients 1073
—certificate of commitment.....1074
—committee, bond, report.....1074

Sec.

INSANE PERSONS—Con.
Limitations, entry on or action to recover land 5807, 5808
—time excluded 5809
—personal actions 5823
—claims of against State.....2583
—bill to impeach or establish will, time for filing 5260
—devisee, time for probate of will against purchaser from heir 5263
—saving in favor of, judgment in ejectment 5487
—bill of review, time for.....6316
Marriage of, void from what time 5088
Notice to, assessment for local improvement 3069
Public office held by, declared vacant 137
Recognizance for, how taken....4975
Revocation of certificate of certified public accountant who becomes 570
Taxation, listing property for..2307

INSIGNIA
Of trade's union, association, etc., unauthorized wearing or use of 4719

INSOLVENCY
See **"Bankruptcy"**
Of bank, closing by State Corporation Commission.....4120
—receiver for 4120
—insolvent person, notice to of dishonor of negotiable instrument 5663
—presentment of bill of exchange to for acceptance 5707
—protest of bill of, for better security 5720

INSPECTION
See also **"Inspectors"**
Books, accounts, etc., of officers of executive department by Governor 321
—Va. Const., § 74
Of accounts of State officers by State accountant 557-560
Of accounts of county and city officers by State accountant 565
Of schools 610
Annual, by visitors of Virginia Military Institute..... 850
To locate San Jose scale..... 880
Centrifugal machine and scales for testing milk and cream, 1206, 1209
Slaughter house, sausage factory, etc. 1222
Fee, millers, distributors and dealers in commercial feeding stuff 1239
Fee, certificate to sell condimental stock and poultry food....1246
Animals, by bureau of animal industry 1289
Districts 1405
Flour and meal, quality offered.1406
—barrels, how made 1407
—barrels, quantity contained...1408
—marking weight and tare.....1415
—branding 1416
—false weight or tare and failure to brand 1417
Fish, how packed 1409
—marketing, weight and tare...1415
Beef and pork, how packed.....1410
—marking, weight and tare.....1415
Pitch, tar, turpentine, barrels..1411
—marking weight and tare.....1415
Salt, barrels, how made.....1412

Digitized by Google

Sec.

INSPECTION—Con.
—marking, weight and tire.....1415
—branding 1416
—false weight or tare and failure to brand 1417
Lumber, dimensions and quality.1413
—long butt staves.....1413
—pipe and hogshead staves....1413
—barrel staves 1413
—hogshead heading 1413
—red oak hogshead staves.....1413
—worm holes, how lumber split.1413
—shingles 1413
—plank, etc. 1413
—other defects 1413
Hemp, how prized 1414
—marking weight and tare 1415
Articles unfit to pass.....1428
Damaged barrels 1429
Review of 1430
Fees 1432, 1433
Assistance in 1434
Re-weighing, repacking commodities 1435
Of laborers constructing works of public improvement 1531
Of hotels 1589, 1590
—fee 1591
—time for 1591
Factories, mills, workshops, etc., by factory inspector.....1799
Of employment agencies.....1803
By board of charities and corrections of private institutions for care of feeble-minded.....1903
Of institutions to which delinquent or destitute children are committed 1918
Books and returns of income taxes 2343, 2344
By supervisors of jailor's register 2861
Of jails 2863
Theatres, halls, etc, exits and doors of 3143
Of fishways in dams.....3194
Fee book of clerk of the court.3494
Books and papers of transportation and transmission companies by State Corporation Commission 3710
—Va. Const., § 156
Books of corporation, by bondholders 3808
Of banks, by General Assembly.4133
Of penitentiary and prison farm by directors 5027
Record on former appeal.....6345

INSPECTION DISTRICTS
See **"Inspection"; "Inspectors"**
Court to lay off and assign....1405

INSPECTORS
See **"Commissioner of Agriculture and Immigration"; "Fertilizers"; "Mines and Mining"**
Appointment 1400
—by State Entomologist 880
Vacancy 1401
Deputies 1402
—removal 1404
—dealings prohibited 1437
Removal 1404
Districts 1405
Commodities inspected 1400
When to attend and inspect.....1418
Marking articles unfit to pass..1428
Branding commodities.1419-1428, 1430
Duty when barrels damaged....1429
Review of judgment of, costs....1430
Reviewers, penalty for refusal to act 1431
Fees 1432, 1433
Assistance to 1434

Sec.

INSPECTORS—Con.
Reweighing, repacking 1435
To enforce laws 1436
Dealings prohibited 1437
Falsely marking, etc., penalty..1441
Books 1442

Of Beef and Pork
Appointment 1400
Vacancy 1401
Deputies 1402
Removal 1404
Districts 1405
Branding 1420
Dealings prohibited 1420

Of Butter and Lard
Appointment 1400
Vacancy 1401
Deputies 1402
Removal 1404
Districts 1405
Branding 1425
Dealings prohibited 1437

Factory Inspectors
Chief factory inspector.....1799
—assistant, appointment 1799
—deputies, appointment 1799
—duties 1799

Of Flour, Corn Meal, Bread
Appointment 1400
Vacancy 1401
Deputies 1402
Removal 1404
Districts 1405
Branding 1419
Dealings prohibited 1437
Publication by 1443

Of Hemp
Appointment 1400
Vacancy 1401
Deputies 1402
Removal 1404
Districts 1405
Labeling 1427, 1428
Dealings prohibited 1437

Of Lumber
Appointment 1400
Vacancy 1401
Cullers 1403
—dealings prohibited.....1437
Districts 1405
Removal 1404
Branding, certificate, 1426, 1428, 1430
Dealings prohibited 1437

Of Orchards
In general 895-904

Of Oysters, Fish, Clams, Crabs, Etc.
Appointment 3153, 3154
Term 3153
Removal 3153
Vacancies 3153
Control of 3154
Arrest and seizure by.....3155
Authority to compromise.....3156
Qualification, oath, bond.....3219
Collection of fines and rentals..3220
Reports, receipts, payment of revenue collected, accounts....3222
—penalty for failure to perform duty 3223
Not to have interest in fisheries.3158
Notice to Commission of Fisheries of assignment of oyster-planting ground 3165
—charged with rentals on.....3165
—notice of to Commissioner of Fisheries 3165
—assignment of oyster ground..3224
— —application, posting.....3225
— —filing plat 3225
— —fee 3225

Digitized by Google

See.

INSPECTORS—Con.
— —notice of 3226
— —to riparian owner 3223
— —fee 3223
—of location for bathing grounds 3230
—natural rock and clam beds not to be assigned....3234
Arrest and seizure by, 3155, 3266, 3278
Clamming grounds, designation of 3295
—stakes, plat, recordation of..3295
Crabbing ground, designation of.3295
—stakes, plat, recordation of....3295
Collection of rent for oyster ground 3225
—levy for 3225
Duties 3220
—when commissioner of revenue to perform duties of 3296
—under laws relating to Potomac river 3299
—ex officio, game warden....3323
Deputies, appointment 3219
—oath, duties 3219
Fees, collection of 3220
—for selling oysters to satisfy rent 3220, 3221
—general provision for....3221
—for assignment of oyster ground 3223, 3225
—for granting license to shuckers, packers and barrelers....3239
—for registering boats 3241
—for issuing license for fishing, 3167, 3168
—for issuing license to catch fish to manufacture into oil or manure 3189
—for issuing license to use scrape or dredge 3246
—for posting list of rented oyster ground, reporting abandonment, etc. 3271
—for issuing license to take crabs 3292
—for license to take clams....3293
— —to buy or ship 3294
Fines, collection of 3220
—payment to inspector....3264
—compromise 3156
—portion of fine to go to....3262
— —for removal of oysters from polluted area, etc....3287
— —of proceeds of forfeited vessel, cargo, etc., to go to....3275
Of fish, appointment 1400
—vacancy 1401
—deputies 1402
—removal 1404
—districts 1405
—branding 1420
—dealings prohibited 1437
Issuing licenses for fishing 3166-3168
—fee 3167, 3168
—penalty for failure to perform duty 3169
—to catch fish for manufacture into oil or manure....3189
— —transfer 3189
— — —fee 3189
—shucking or packing oysters..3239
—buying for marketing in barrels 3239
— —fee 3239
—to oyster tongers....3242
—to take oysters with scrape or dredge 3246
— —tax on 3247
—to catch crabs 3292
— —marking number of license on boat 3292

See.

INSPECTORS—Con.
—to buy, market or ship clams..3294
Measures, illegal, seizure and destruction of 3252, 3273
Notice to Commission of Fisheries of assignment of oyster-planting ground 3165
Penalty for failure to perform duty 3169, 3223, 3267
—for assigning natural rock or clam bed 3234
—for resisting in making arrest, seizure, etc. 3265
—for failing to inspect and seal measures 3273
Permit to carry seed oysters out of State, tax 3249
—for planting in State 3250
—to carry oysters out of James river during closed season....3251
Police, designation of by....3276
Posting list of parcels of rented oyster ground 3271
Registration of boat used in taking oysters 3241
—display of mark 3241
—of tongers 3242
—of vessel used in taking oysters with scrapes and dredges.3246
— —display of 3246
Removal of nets in spawning locality 3180
—of stakes, watchhouses, etc., from natural rocks....3232
— —of oysters from....3233
Rentals, collection of 3220
—charged with 3165
Report of violations of law relating to fishing in spawning localities 3180
—of oyster packer or shucker failing to make report....3239
—to clerk of plats not claimed..3271
Report to, of oysters shucked and packed 3239
Tax on license to take oysters with scrape or dredge....3247
—on permit to carry seed oysters out of State 3249
—for taking clams....3293
Warrants, issued by....3277
—for seizure of forfeited property directed to 3367
—how executed and returned...3367
—sale 3372-3374, 3377

Of Pitch, Tar, and Turpentine

Appointment 1400
Vacancy 1401
Deputies 1402
Removal 1404
Districts 1405
Branding 1420
Dealings prohibited 1437

Of Plumbing

Appointment, duties, compensation 1544

Under Prohibition Law

Appointed by Commissioner of Prohibition, compensation, removal 4627
—to have power of sheriff....4628
—powers of 4629

Of Salt

Appointment 1400
Vacancy 1401
Deputies 1402
Removal 1404
Districts 1405
Branding 1421, 1422
—alum salt 1422
When to pass or weigh....1423
Certificate 1424, 1428, 1430

Digitized by Google

Sec.

INSPECTORS—Con.
Dealings prohibited 1437
Quarterly returns 1443
Books 1442

INSTALLMENTS
Provision for payment by in negotiable instrument.....5564
Action of debt for non-payment of 5759

INSTITUTION OF LEARNING
Student, residence for purpose of voting .....Va. Const., § 24
Not owned by State, appropriation to .....Va. Const., § 141
—appropriation to by city, town, county or district..Va. Const., § 141
To furnish copies of publications to State Library 354
—penalty for failure 355
Property of, exempt from taxation 2272, 2301
—Va. Const., § 183
Gifts to, exemption from taxation 2272

INSTRUCTIONS
Court not to give instructions directing verdict 6003

INSULTING WORDS
Action for 5781

INSURANCE
See also **"Bureau of Insurance"; "Commissioner of Insurance"; "Fire Insurance"; "Insurance Companies"; "Life Insurance"**
Definitions 4200
Character of risks insured against 4305
On school buildings 764
On tobacco in public warehouse.1385
—publication 1395
On county buildings 2726
Insurable interest of railroad in property along route.....4018
Of title, required for loan of fiduciary funds 5431
Accident and sick benefits not subject to attachment, garnishment, distress 4219
Answers or statements in application, when not to bar recovery on policy 4220
—representations, warranties ..4220
—affidavits before or after loss..4220
Proof of loss, companies to furnish forms for 4221
—waiver by failing to furnish..4221
Policy, on school buildings, where kept on file 764
—type printed in 4227
—condition in, limiting time for suit or action on.....4227
—assignment of life insurance policies 5767
—action on 6094
— —complaint 6094
— —unnecessary averment 6094
— —filing 6094
—venue of action to recover on, 6049, 6050
—foreign, admissibility as evidence 6207
Burning of property with intent to injure insurer.....4436
Injuring or destroying vessel or property thereon, with intent to injure insurer 4466
Poisoning, killing, wounding, animals, etc., with intent to injure insurer 4467

Sec.

INSURANCE COMPANIES
See also **"Accident Insurance Companies"; "Bureau of Insurance"; "Casualty Companies"; "Commissioner of Insurance"; "Fidelity Companies"; "Fire Insurance Companies"; "Fraternal Benefit Societies"; "Guaranty Companies"; "Life Insurance Companies"; "Mutual Fire, Lightning, Storm Insurance Companies"**
Definition 4200
Incorporation 4201
—certificate, what to set forth..4202
Certificate required before making contracts 4203, 4205
—validity of contract made without 4203
—renewal of 4210
Minimum capital stock required.4204
Prerequisites to engaging in business 4205
—payment of capital stock 4205
—statement to Commissioner of Insurance 4205
Examination by Commissioner of Insurance 4206
Statement of capital stock furnished to State Treasurer....4211
Bonds deposited with State Treasurer 4211
—amount of 4211
—receipt for 4211
—assessment for expense of keeping 4211
—examination of 4211
—not subject to taxation.....4211
—collection of interest on 4212
—how applied to payment of claims against company.....4213
—lien of policy holdiers on.....4214
—suit to enforce lien.....4214, 4215
—duty of treasurer when bonds paid 4216
—when companies may withdraw 4217
—illegal disposition of by treasurer, penalty 4218
Suit to administer assets of....4215
Penalty for transacting business illegally 4223
Penalty for refusing to exhibit books or records to Commissioner of Insurance.....4224
Expenses of investigations by commissioner 4225
Reports to commissioner, annual, special 4229
—time for filing 4229
—penalty for failure to report..4229
—false statement in, perjury...4229
Violations of law by, penalty....4231
—how enforced 4234
—hearing, appeal 4234
Agents, list of to be filed.....4235
—certificate of registration of..4235
— —fee for 4235
— —revocation 4235
— —appeal 4235
— —penalty for doing business without 4235
—doing business while company in default, penalty.....4209
—resident, for foreign companies 4222
—prohibited from making agreement not expressed in policy.4222
—allowing rebate of premium, prohibited 4222
— —special advantage in dividends 4222

Digitized by Google

Sec.

INSURANCE COMPANIES—Con.
—penalty for doing business illegally 4223
Revocation of charter for failure to obtain license 4236
Promotion of, restriction as to..4237
—information furnished bureau of insurance 4237
—license to promoter, fee for....4237
—contracts for stock, conditions of 4237
—bond of promoter or fiscal agent 4238
—penalties 4239
Liquidation by commissioner, causes for 4242
—rule to show cause 4242
—injunction 4243
—order on application....4243
—how liquidation effected....4244
—expenses of, how paid 4245
—report to State Corporation Commission 4246
Engaging in banking business, prohibited 4240
Publication of false or misleading statement, penalty....4241
Business may engage in....4305
Doing more than one kind of business 4305
Limit on single risk 4305
Adjustment of loss under policy, arbitrators and umpires for..4308
—oath of 4309
Assets, when distributed to stockholders 4310
Re-insurance, approval of commissioner 4310
Statement to bureau of insurance, reserve of unearned premiums 4311
Supervision and inspection by State Corporation Commission.4169
Examination of by Commissioner of Insurance 4178
—when dispensed with 4179
Revocation of certificate to transact business 4180
—appeal 4180
Assessment of proportion of expense of maintaining bureau of insurance 4194, 4195
—notice of 4195
—proceedings to recover 4195
—appeal 4195
— —judgment on....4195
—revocation or suspension of license or certificate 4195
—report of premiums 4196
Liability of president and directors 4305
Taxation, taxes, segregation of.2206
—Va. Const., § 183
Venue of action against...6049, 6050
Process against, where served..6063
Certificates to file in other State, furnished by Commissioner of Insurance 4183
Foreign, license required before making contracts 4203
—validity of contracts made without 4203
—renewal of 4210
—consent that process may be served on Secretary of Commonwealth 4207
—filing copy of charter with Commissioner of Insurance....4208
—to transact business through resident agents 4222
— —penalty 4223
—license, renewal of, conditions of 4226

Sec.

INSURANCE COMPANIES—Con.
—restrictions on to correspond with those on Virginia companies in other States....4233

INSURRECTION
Employment of militia to repel, Va. Const., § 73
Inciting colored against white or white against colored....4392

INTENT
Sufficiency of allegation of in indictment, etc. 4873

INTEREST
Special laws regulating rate of, prohibited ....Va. Const., § 63
Legal rate 5551
—contracts for greater illegal..5552
Rate allowed bankers, brokers, 5553, 4143
Usury, plea of 5554
—evidence 5554
—judgment when contract usurious 5554
—corporation may not plead....5556
—corporation may not charge..5557
Payment of excessive, recovery..5555
In action of debt or assumpsit on negotiable instrument 5760
—to recover on certificate of deposit issued by bank 4142
Allowed on rent 5519
On bonds for school purposes.... 765
—paid to Virginia Polytechnic Institute and Hampton Normal and Agricultural Institute..853, 929
—of State held by colleges..... 990
—of drainage district 1774, 1777
— —payment of 1771, 1774
—issued by counties for improvement of roads 2116
—on road bonds, issued for magisterial district 2124
—on road bonds, ceasing after day fixed for redemption of...2119
—for State debt, 2586, 2591, 2601, 2603
— —payment 2597
—issued by counties for loans for erecting buildings....2740
—of county issued when courthouse removed 2751
—issued by city or town....3084
—deposited with State Treasurer by insurance and guaranty companies, to whom paid....4212
When amount of certificate of deposit in bank is recovered by warrant or motion 4142
Charged by banks discounting paper 4143, 5553
—by building and loan associations 4154, 4155
Compound, liability of guardian for 5323
—recovery for ward 5324
Computation of value of life estate or estate by curtesy or dower 5132, 5133
—table for 5131
On court funds 6282
—receiver charged with 6284
—when payable 6288
On county warrants, not allowed.2724
On damages assessed against dealer in fertilizer by commissioner 1120
On debts of the University of Virginia 818, 820
On deposits in State depository, 2158, 2162
In lieu of dower, paid by alienee.5128
—present value of 5131-5133

Digitized by Google

Sec.

INTEREST—Con.
On estate of person presumed to be dead 5365
Guardian, when liable for..5323, 5325
—recovery of compound for ward 5324
On judgments 6259
—against officer for failing to make return of money collected 2835
—of State Corporation Commission 3733
—on loans from literary fund.....760
In negotiable instruments, provision for 5564
—when to begin to run 5579
—action on 5760
When treasurers charged with..2435
Payment of on Corcoran fund of University of Virginia 827
On taxes 2411
—Va. Const., § 180
—assessment of taxes omitted for any year, etc.....2332
—lien on real estate 2454
—paid on redemption of land sold for delinquent taxes, 2475, 2479, 2487, 2491
Fixed in verdict 6259
Judgment for 6259

INTERNAL IMPROVEMENT COMPANIES
See also **"Corporations"; "Internal Improvements"; "Public Service Corporations"**
As public service corporations..3881
Sale of works of.....3756, 3757
—purchaser to become a corporation 3757
Quo warranto proceedings against 3757
—judgment of dissolution, winding up 3757
Penalty for stringing telegraph or telephone wires across.....4049
State interest in, dividends.3759, 3890
—payment to sinking fund.....3890
—report to State Corporation Commission 3892, 3893
—recovery of 3766
—proxies 3760, 3761, 3764
—directors 3762
— —appointment 3763
— —term 3764

INTERNAL IMPROVEMENTS
See also **"Internal Improvement Companies"**
State interest in prohibited, Va. Const., § 185
Sale of 3756, 3757
—State rights in, Corporation Commissioner to attend sale of 3756
Abandonment of works, quo warranto 3757
Sale of under mortgage, etc., terms of 3889
Reports of to State Corporation Commission 3893

INTERPLEADER
Of claimants to goods in warehouse 1306-1308
Before justice 6035
—judgment on appeal 6038
Disclaimer of interest by defendant 6151
Affidavit of defendant 6151
Order 6151
Appearance 6151
Claimant made party.....6151
Trial 6151
Judgment 6151, 6153

Sec.

INTERPLEADER—Con.
As to property distrained or levied on 6152, 6156
—application for, who may make.6152
Sales 6153
—indemnifying bond 6154, 6155
—suspending bond 6156
—forthcoming bond 6157
—perishable goods 6157
—surplus 6158
Costs 6153
Indemnifying bond 6154, 6155
Suspending bond 6156
Forthcoming bond 6157
In attachment proceedings, 6402, 6403, 6407
—in proceeding to enforce lien on personal property.....6450

INTERPRETERS
For witnesses 6223

INTERROGATORIES
By Commissioner of Labor.....1799
—penalty for refusing to answer.1802
Of taxpayer, of personal property for taxation.....2310, 2311
—refusal to answer, penalty....2314
—return 2254-2256
— —when filed 2261
Depositions on in suits against infants and insane persons....5339
Examination of defendant on when answer insufficient.....6123
To defendant after bill taken for confessed 6136
To adverse party or claimant in action at law 6236
—bill in equity 6238
To defendant in capias proceeding, notice of time and place to answer 6421
—filing by plaintiff.....6424
—return of to court.....6425
To execution debtor.....6503
—on execution issued by civil justice 3116
—answers to 6503
—surrender of property.....6504
—return to court 6505
—commitment of debtor.....6506
—sale of property, proceeds.....6507

INTERSTATE COMMERCE
Telegraph and telephone messages, penalty not applicable to 4044
—burden of proof when message relayed out of State.....4045

INTESTACY
See **"Decents and Distribution"**
Separate estate of married woman passes how 5138

INTOXICATING LIQUORS
General Assembly may enact laws regulating..Va. Const., § 62
Acts and products not affected by law 4588
Act on exercise of police power 4659
Acts continued in force.....4673
Acts not affected by chapter 184 4673
Action, right of, by wife, child, parent, employer, etc., for damage by intoxicated person against person causing intoxication 4675
Advertising, unlawful 4583, 4609
—injunction 4609
—penalty 4609
—application for license....4599, 4602
Agent, liability of 4584
—of authorities, purchase by....4672
Analysis 4621
Antiseptic preparations containing alcohol, sale of.....4583, 4589
Appeal by Commonwealth.....4645

Digitized by Google

Sec.
INTOXICATING LIQUORS—Con.
Attorneys, employment to assist prosecution 4644
Baggage, examination of....4636
Bail, person transporting in vehicle 4657
Banks, unlawful to handle drafts in payment for, penalty....4610
Book to be kept by common carriers 4632, 4634
—penalty for failure 4632, 4634
Brandy, sale by druggists....4588
Breaking and entering, power of officers for 4619
Bringing into State, amount allowed 4636
Burden of proof, possession for personal use 4584
—malt ground not for use in ardent spirits 4671
Certificate of license of druggist 4599
—of collector of internal revenue as evidence 4620
—of chemist as evidence....4621
Charters and ordinances of cities and towns not affected by chapter 184 4673
Cider, manufacture, sale, use of..4588
Cities and towns, power to pass ordinances 4617
— —enforcement of 4615
Club house, storing, selling, &c., unlawful 4606
—penalty 4606
—as nuisance 4622
—injunction against 4630
Commonwealth, right of appeal by 4645
Consignee, affidavit by, 4634, 4635, 4638
—false, penalty 4634
—authorizing another to receive shipment 4635
Constables, duty to enforce law..4655
—fees 4655
Constitutionality, invalidity of part not to affect remainder of act 4646
Construction of act, liberal....4659
Container, how labeled....4633, 4638
Counsel, associate, in prosecutions 4644
Delivery by common carrier, 4634, 4635
—hours for 4635
Denatured alcohol, manufacture, use, sale of 4588
Denatured rum, manufacture, use, sale of 4588
Dentists, purchase of alcohol by 4594
Deputies, appointment by Commissioner of Prohibition....4627
—powers 4629
Dispensary, unlawful 4583
Drafts, in payment for ardent spirits, unlawful to handle....4610
Drinking in public places, penalty 4631
Employees, liability of 4584
—of druggist, discharge upon conviction 4595
Evasions of law, penalty....4608
—encumbering estate to evade..4670
Express company, duty to keep records 4632
Fees, commissioner of revenue for license to druggist 4599
—attorney for commonwealth, injunction of nuisance 4630
—attorney for complainant....4630
—commissioner 4630
—of officers 4655
Female, giving ardent spirits to 4639
—sending for ardent spirits....4639

Sec.
INTOXICATING LIQUORS—Con.
—ordering or receipt by, unlawful 4642
Fines for violation of law....4585
Flavoring extracts containing alcohol, sale of 4588, 4589
Forfeiture, vehicle used in transporting 4658
Form, of indictment 4587
Fraternity house, storing, selling, &c., unlawful 4606
—penalty 4606
—as nuisance 4622
—injunction against 4630
Giving away, unlawful....4583, 4639
—to female or minor 4639
—in home 4662
—to patients in insane hospitals 4662
Home, definition 1065
—having and giving away ardent spirits in 4662
Hospital, purchase and sale by..4601
—statement required of 4601
—license to 4601
—bond 4602
House of prostitution, receiving, keeping, use, &c., in 4607
Identification required when....4656
Imprisonment for violations of law 4585
Injunction to prevent advertising 4609
—abatement of nuisance 4630
Insane hospital giving to patients of 1065
—bringing on grounds of....1065
Inspection of records of carriers 4632, 4637
Inspectors, appointment by Commissioner of Prohibition....4627
—powers 4629
Intemperate habits, giving ardent spirits to person of 4639
—person of required to disclose from whom spirits obtained..4640
— —penalty for refusal....4640
—definition 4649
Intoxication, definition 4649
Intoxicated person running automobile, engine, etc., punishment 4722
Jamaica ginger, sale of....4589
—manufacture of 4589
Jurisdiction 4614
—enforcement of city ordinances, 4614, 4615
—prosecution for sales....4586
—concurrent of civil and police justice with corporation courts 3102
Jury, trial without 4616
—venire from another county....4663
Justice of peace, duties and powers 4613
—search warrant issued by....4612
—duty to enforce law....4655
—fees 4655
Keeping, unlawful 4583
Labels for containers....4633, 4638
Laboratories, alcohol, ordering, purchasing, receiving 4601
—statement by 4601
—license to 4601
—bond 4602
Lodge, storing, selling, &c., unlawful 4606
—penalty 4606
—as nuisance 4622
—injunction against 4630
Malt, grinding for use in manufacture of ardent spirits, prohibited 4671
—burden of proof in prosecution 4671
Manufacture prohibited 4583
—of alcohol, license for....4600

Digitized by Google

Sec.
INTOXICATING LIQUORS—Con.
Mayors, duty to enforce law....4655
—fees 4655
Medicinal preparations containing alcohol, sale of 4588, 4589
Meeting place, storing, keeping, &c., unlawful 4606
—penalty 4606
Minor, giving ardent spirits to.4639
—sending for ardent spirits....4639
—possession by, penalty 4641
—as agents 4641
Newspapers, publication of advertisements, &c., by....4609
Notice of application by druggist for license 4599
—of application by hotel 4602
Nuisances, certain places declared 4622
—injunction against 4630
Oath, who may administer 4667
Offer, unlawful 4583
Officers charged with enforcement 4628, 4655
When may break and enter....4619
—inspection of records of carriers 4632, 4637
—fees 4655
Orders for, receiving, unlawful..4583
—soliciting 4583
—agent of carrier not to receive or transmit 4611
—by female, unlawful 4642
Patent medicines containing alcohol, sale of 4588, 4589
Petition against licensing druggist 4599
Physician to make prescription in duplicate 4654
—requisites of prescriptions, 4591, 4598
—penalty, revocation of license..4598
—purchase of alcohol by 4594
Police, duty to enforce law....4655
—fees 4655
Possession, by minor, penalty...4641
—as evidence of purpose to sell..4666
Presumption, tax receipt, prima facie evidence 4618, 4620
—finding ardent spirits, prima facie evidence 4618
—in sales by druggists 4595
Procedure 4613
Proof of violation, what sufficient 4661
Prosecutions not to be dismissed over objection of commissioner or associate counsel 4644
Purchase, by agents of authorities charged with enforcing law 4672
Railroad company, duty to keep records 4632
Receiving for personal use, amount allowed 4638
—affidavit required 4638
—by female, unlawful 4642
Receipts for United States internal revenue tax, list of.....4660
—prosecution of persons holding 4660
Records by common carriers, 4632, 4634, 4637
—by consignee 4605
Report, of manufacturer purchasing alcohol 4590
Sale prohibited 4583
—situs of 4586
—by druggist, license for 4599
—by wholesale druggist, license for 4600
—of vehicle used in transporting 4658
— —disposition of proceeds....4658
Search warrant 4612
—vehicles 4657
Seizures 4612
—disposition of 4618, 4658

Sec.
INTOXICATING LIQUORS—Con.
—vehicles 4657, 4658
Sergeants, duty to enforce law..4655
—fees 4655
Sheriffs, duty to enforce law....4655
—fees 4655
Shipment to hotels 4605
—to druggists 4605
Soft drinks, definition 4664
—license for sale of 4665
—use of ardent spirits in.....4665
Soliciting orders for, unlawful..4583
Stamps to be affixed to affidavits and prescriptions 4668
—proceeds of, payment to State treasury 4668
Steamboat company, duty to keep records 4632
Storing, unlawful 4583
—by druggists 4605
—by hotel 4605
Tax receipt, United States, as evidence 4618, 4620
Toilet preparations containing alcohol, sale of 4588, 4589
Transportation company, duty to keep records 4632
Use of in jail 2857
Vehicle transporting, search of.4657
—seizure of 4657
—how disposed of 4658
Venire from another county....4662
Venue, change of 4662
Veterinary surgeon, purchase of alcohol by 4594
Warrants, search and seizure...4612
Whiskey, sale by druggists.....4588
Wine, manufacture, sale, use of 4588
Witnesses, fees of 4655
—self-incrimination not to excuse from testifying 4674

Affidavit

Purchaser of alcohol or wine from druggist 4592
—filing, registering 4592
Power of druggist to administer oath 4592
Of person of intemperate habits.4597
Of user of narcotic drug 4597
By hotel 4605
By druggist 4605
Copies of records of carriers..4632
Of consignee receiving shipment, 4634, 4635, 4639
—oath, by whom administered..4634
—sent to clerk of court.....4634
—false, penalty 4634
To be in duplicate 4654
Filing 4654
Examination 4654
Who may administer oath 4667
Stamps to be affixed to.....4668

Alcohol

Effect of on human system taught in schools 702
Manufacture, use, sale of..4588, 4589
Purchase of by manufacturers..4590
Purchase by dentists, physicians, veterinary surgeons 4594
Manufacture, license for.....4600
Sale by wholesale druggist, license for 4600
Wood or denatured 4604

Bonds

Of druggist 4602
Of hospital 4602
Of laboratory 4602
Of hotel 4603
Required of persons violating law 4643
Of person accused of transporting in vehicle 4657

Clerk of the Court

Statement by druggist to 4601
—by hospitals 4602

Digitized by Google

Sec.

INTOXICATING LIQUORS—Con.
—by laboratories 4602
—by hotels 4603
Prescriptions and affidavits filed with 4654
—to permit examination of.....4654
—fees 4655

Commissioner of Prohibition

Commissioner of Prohibition, notice to of prosecutions for violation of city ordinances..4615
Analysis of mixtures containing ardent spirits, request for....4621
—cost of, payment 4621
Election 4623
Salary 4623
Term 4623
Suspension by Governor.....4624
Vacancy 122, 4624
Report to Governor 4625
Bond 4626
Deputies and inspectors, appointment 4627
—removal 4627
—powers 4629
Employment of attorneys by, 4627, 4628
Powers and duties 4628
Injunction against nuisance, fee allowed to 4630
Examination of prescriptions, affidavits, records by 4648
Reporting violations of law to Commonwealth's attorney 4648
List of holders of internal revenue tax receipts to be procured by 4660
—report to Commonwealth's attorney 4660
—publication of 4660
Report to of vehicles arrested..4657
Stamps for affidavits and prescriptions to be prepared and sold by 4668

Common Carriers

Transportation and delivery to hospitals and laboratories.....4601
—to hotels 4602
Agents and employees not to take orders or receive money for..4611
Book to be kept by.....4632, 4634
Delivery, to person other than consignee 4634, 4635
—without affidavit of consignee.4634
—hours for 4635
To file affidavits 4654

Commonwealth's Attorney

To charge and prosecute for second offense 4587, 4596
Injunction against nuisance, fee to 4630
Not to dismiss prosecutions over objection of commissioner or associate counsel 4644
Examination of prescriptions, affidavits, record books by....4647
Duty to prosecute violations of law by 4647, 4648, 4655
Fees 4655
To prosecute holders of internal revenue tax receipts 4660

Definitions

Intoxication 4649
Intemperate habits 4649
Home 4662
Soft drinks 4664
Ardent spirits 4581
Person 4582
Second offense 4582

Druggists

Sales by 4588, 4589
—grain, fruit, ethyl alcohol, 4588, 4589, 4591, 4592
—whiskey, brandy 4588, 4591
—wine for sacramental purposes, 4588, 4591, 4592

Sec.

INTOXICATING LIQUORS—Con.
—medicinal preparations containing alcohol 4588
—toilet or antiseptic preparations 4588
—Jamaica ginger 4589
—presumption, rebuttal 4595
—by employees 4595
Prescriptions required for sales by 4591
—filing 4591, 4654
—registering, book for.....4591
Affidavits required for sales by..4592
—filing 4592, 4654
—registering, book for.....4592
Oaths administered by 4592
Penalties for violation of law, 4593, 4595, 4605
—revocation of license....4593, 4595
Indictments against, form.....4596
License to sell 4599
—qualifications required 4599
—procedure for obtaining.....4599
Wholesale, license to sell.....4600
—statement to clerk of court..4601
—bond required 4602
Shipment to, amount of.....4605
—record of 4605
—affidavit 4605
Identification to be required by.4656

Evidence

Of second offense 4587
Tax receipt, United States.4618, 4620
Liquor, &c., found in search....4618
Certificate of collector of revenue 4620
Certificate of chemist as 4621
Record of carrier as 4632
Possession, prima facie, of purpose to sell 4666
Self-incrimination not to excuse witness from testifying 4674

Hotels

Purchase and use by 4602
License to 4602
—procedure for obtaining.....4602
Bond 4603
Statement by 4603
Counties and cities excepted....4603
Shipment to, amount 4605
—affidavit 4605
—record of 4605
—penalties 4605
Employees procuring for guests.4650
—assisting in procuring 4650
Proprietors procuring or assisting guest to procure 4651
—allowing employees to procure.4651
—failure to discharge convicted employee 4651
Keeping or selling 4652
Permitting to be kept or sold..4653
Revocation of license of.....4653
Guest, having ardent spirits....4662

Indictment

Form of 4587
Second offense 4587
Against druggist, form 4596
— —second offense 4596
Recognizance to answer 4613
Person on whose premises ardent spirits found 4618
—United States tax receipt found 4618
Not necessary to allege sale or gift to particular person.....4661

Licenses

Manufacturer purchasing alcohol 4590
Of druggist, how procured 4599
—revocation for violation of law.4593
Manufacturer of alcohol 4600
Wholesale druggist to sell.....4600
To hospitals 4601
To laboratories 4601
To hotels 4602

Digitized by Google

Sec.

INTOXICATING LIQUORS—Con.
—revocation 4653
Of boarding house, &c., revocation 4653
New lessee of place of former conviction 4653
To sell soft drinks 4665
—revocation 4665

Penalties
Possession for personal use....4584
Purchasing for personal use...4584
Giving away 4584
Drinking 4584
—in public places 4631
Receiving 4583
Second offense 4584
Acting as agent of buyer or seller 4584
Selling, keeping or storing for sale, advertising, soliciting or receiving orders for, manufacturing or transporting 4584
In general 4584, 4585
Fines and imprisonment 4585
Violation of law by druggists...4593
False affidavit 4597
Physician, violation of law as to prescriptions 4598
—failure to make affidavit in duplicate 4654
Druggist or hotelkeeper violating law as to shipments 4605
Club, fraternity house, &c., keeping, storing, selling, &c....4606
—second offense 4606
Receiving, using, &c., in house of prostitution 4607
Evasion of law 4608
—encumbering estate to evade law 4670
Advertising ardent spirits....4609
—second offense 4609
Common carrier, agent or employee of, receiving orders or collecting money for 4611
—failure to keep record..4632, 4634
—employee or agent 4632, 4634
Violating injunction against nuisance 4630
Consignee, false affidavit by, 4534, 4538
—falsely representing one's self to be 4534
Affidavit, false 4638
—second offense 4638
Person of intemperate habits, refusal to disclose from whom ardent spirits received 4640
Minors, possession by 4641
Hotel employees, procuring or assisting guest in procuring..4651
guests or others 4651
Hotelkeeper, keeping or selling..4652
Hotel proprietor, procuring for or assisting guest in procuring...4651
—permitting employee to procure 4651
—failing to discharge convicted employee 4651
Failure to make affidavits in duplicate 4654
Transporting in vehicle 4657
Soft drinks, violating provisions as to 4665
Sentence to work on public roads 4669
Intoxicated person running automobile, engine, &c....4722

Prescriptions
What to show 4591
Filing registering 4591
Requisites of 4598
To be in duplicate 4654
Filing 4654
Examination of 4654
Stamps to be affixed to....4668

Second offense
Penalty for 4584, 4585

Sec.

INTOXICATING LIQUORS—Con.
Form of indictment 4587, 4596
By club, fraternity house, lodge, &c. 4606
In house of prostitution 4607
Advertising ardent spirits....4609
Procuring by false affidavit 4639
By hotels 4653

Transportation
Prohibited 4581
—qualification 4583
To hospitals and laboratories..4601
To hotels 4602
Amount which may be transported 4633
Persons to whom transportation permitted 4633
By travelers 4636

INTOXICATION
See **"Intoxicating Liquors"**
Removal of officer for....2705

INVASION
Suspension of writ of habeas corpus ....Va. Const., § 58
Employment of militia to repel, Va. Const., § 73
Removal of records in case of.3287

INVENTORY
Property in Governor's house.... 401
By superintendent of roads....2024
Recorded in will book 3393
By commissioners of wrecks....3603
Of property at penitentiary, taken by directors 5029
Of property of State prison farm, 5029, 5047
Sale of merchandise in bulk....5187
Of personal representative, guardian, curator or committee...5403
—appraisement as 5403
—recordation, index 5405
Of trustees 5404
—recordation, index 5405

INVESTIGATIONS
By council of city or town 2952
By fire marshal 3134
By commissioner of fisheries....3148
—shellfish commissioner 3148
By commissioner of insurance of excessive rates for insurance..4199
Insurance company doing business illegally 4222-4225
Of penitentiary, by board of directors 5029

INVESTMENT
Funds of savings bank....4143
Time allowed guardian to invest funds of ward 5325
Proceeds of sale or lease of land of infant, insane person or trust estate 5342
Estate of person presumed to be dead 5365
By fiduciaries 5430
—securities approved for....5431
Court funds, by general receiver, 6280, 6282, 6284

INVOLUNTARY MANSLAUGHTER
Punishment 4397
Conviction of on indictment for felonious homicide 4920

IRISH POTATOES
Distress for rent 2830

IRON
Taxation, separate assessment of.2235

IRON AND QUININE
Sale of tincture of 1681

ISLE OF WIGHT COUNTY
Taking terrapins or disturbing eggs, season for 3297
—forfeiture of boat, nets, etc....3297
Commonwealth's attorney, fees.3505

Digitized by Google

Sec.

ISSUE
Construction of word 5152
Of null marriage deemed legitimate 5270
Negotiable instrument, definition.6752
Proceeding without joinder in..6112
Misjoining, not ground for reversal 6331

ISSUE OUT OF CHANCERY
Trial of 6246
In suit to remove cloud on title..6248

JACKS
See also **"Live Stock"**
Restraint of, when forfeited....4744
Owner of, lien on colt 6446

JAILS
See also **"Commitment"; "Convicts"; "Imprisonment"; "Penitentiary"; "Prisoners"; "State Convict Road Force"**
Dead body in, delivery to anatomical board 1731
Plans for, submitted to Board of Charities and Corrections....1896
Erection or repair of, loan for by supervisors 2738
—approval of court, order for election 2738
—election 2739
—bond issue 2740, 2741
Mandamus to compel 2865-2867
Provided for 2854
How constructed 2855
To be kept in repair 2855
Of county to be for town, when..2856
How kept 2857
Care of prisoners in 2857
Control of prisoners in 2858
—rules 2858
Use of intoxicating liquor in....2857
Reports to State Board of Charities as to condition of.....2862
Inspection of 2863
—reports of 2863
—by local committee of visitors.1897
Courts may adopt other....2872, 2867
—judge or justice may designate 2873
For federal prisoners 2875, 2876
Matron, appointment, term, salary 3027
Cities and towns may provide....3030
Burning or destroying, punishment 4428
Destroying by explosives 4428
Guard for, summoning 4954
—costs of, how paid.....4954, 4955
Physician, appointment, compensation 4956
—to attend sick prisoner in convict road force 2091

Commitment to; Confinement in
Lunatics 1020
—allowance to jailer 1049
—confinement 1049
Children under eighteen not to be committed to 1908, 1914
Person doing business without license 2369
For fine.....2549, 2559, 4949, 4953
—capias 2560, 2561
For violations of county ordinances and by-laws.....2743
For nuisance, unauthorized use of streets 3024
For failing to give recognizance when convicted of violation of game laws 3362
Suspended pilot failing to give bond 3644
Deserting seaman 3662
For contempt before State Corporation Commission 3728
When term of confinement in to commence 5019
Fugitive from justice.....5063, 5065
—charge for support of.....5066

Sec.

JAILS—Con.

Jailers
Reports by to Board of Charities and Corrections 1895, 2871
Receipt for prisoner delivered to convict road force 2076
—release from liability.....2076
—report, to whom delivered 2076
Records kept by 2860
—violations of rules by prisoners 2861
—submitted to Governor.....2861
Failing to perform duty, penalty 2864
Who to be 2865
To attend court and obey its orders 2869
Reports to court 2870
Of adopted jail, duty of.....2874
Compensation 2876-2878
—for federal prisoners 2876
—for person confined under civil process 2877
—when payment made 2878
—how recovered 2878
Discharge of prisoner held under civil process, when 2878
Turning over prisoners to successor 2880
Fees 3510
—payment from treasury.....3504
—certificate of allowance..4961, 4962
—effect of failure to present claim for in time 4965
Allowance for prisoner committed for contempt before State Corporation Commission.3728
Escape of prisoner, permitting, 4505, 4506
Order superseding commitment delivered to 4850
Prisoner committed for failure to pay fine and costs, duty as to..4953
—release of 4953
Summoning guard for jail.....4954
Exempt from jury service.....5985

Prisoners
Quarantine of 1543
Tubercular, examination, report of 1546
—segregation 1547
State convict road force, employment on 2073
—request to courts for delivery to 2075
—what prisoners delivered to....2075
—receipt for, report 2076
—fee to jailer 2077
—return of to jail.....2077, 2080
—escape from, trial, punishment.2079
—discharged, allowance to.....2082
—transportation to and from jails, expense 2087
Sentenced to chain gang or public works, when 2075
—appeal 2075
Escape from convict road force..2079
—aiding, punishment 4504
—officer permitting 4505, 4506
—from jail after conviction 4507
—before conviction 4508
—by setting fire to jail.....4509
—refusal to aid officer in preventing 4511
Employed on roads or in quarries credit for good behavior..2094
—credit on fine and costs.....2094
—rate at which prisoner required to work out fine and costs....2095
Good behavior, credit for when working on road or in quarries 2094
Fine, time required to work on road or in quarry for nonpayment of 2094
—held to labor in chain gang..2095
—rate at which fine and costs worked out 2095

Digitized by Google

Sec.

JAILS—Con.
Care of 2857
Control of 2858
—rules 2858
Medical attendance, medicines, clothing for 4956
—allowance for, how paid....4956

JAMAICA GINGER
Sale of 1681, 4589
Manufacture of 4589

JAMES CITY COUNTY
Poorhouse and school for poor..2812
Jail, jailer 2868
Taking terrapins, disturbing eggs, season for 3297
—forfeiture of boats, nets, etc..3297
Commonwealth's attorney, fees..3505
Grand jurors 4852
Circuit court 5387

JAMES RIVER
Use of pound nets in 3173
—penalty 3173
Taking oysters with patent tongs prohibited 3240
Oysters caught in, culling..3243, 3244
Use of oyster scrape or dredge in, permit 3248
Seed oysters, license to carry from 3250
Oysters, permit to carry out of during closed season....3251
Allowing noxious substances to pass into injuring fish....3195
—penalty 3196
Boundary lines on low grounds as lawful fence 3539
Steam vessel failing to sound whistle on approaching bend..4755

JAMES RIVER AND KANAWHA COMPANY
Payment of interest on bonds of to colleges, etc.... 990
Sale to Richmond and Alleghany Railroad Company 3772

JANITORS
At State capitol 402
At State Library 402
Governor's office, salary....3432

JEFFERSON DAVIS DAY
Public holiday 5758

JEOPARDY
See **"Former Jeopardy"**

JOINDER
Of issue on plea or demurrer, proceeding without 6112
In demurrer to evidence 6117

JOINT AND SEVERAL
When negotiable instruments deemed to be 5579
—payees and indorsers 5631

JOINT CONTRACTORS
Acknowledgment of debt barred by limitations 5813
Actions against 6265
Effect of judgment against less than all 6263

JOINT DEBTORS
Negotiable instruments, presentment to 5640
—notice of dishonor to 5662
Liability of personal representative 5762
Compromise with 5763, 5764
Contribution 5766
Acknowledgment of debt barred by limitations 5813
Motion for judgment against....6047
Set-off of individual claims....6144
Action against, effect of bar as against co-debtor 6263
Judgment against part....6265
Joint execution against 6481

Sec.

JOINT JUDGMENT
Action of debt or assumpsit on negotiable instrument 5760

JOINT LIABILITY
Effect of compromise by fiduciary 5440
—by receiver, etc., of corporation 5440

JOINT STOCK COMPANIES
Proceeding against by auditor for violation of revenue law....2544
Fraudulent entry in account of, punishment 4457

JOINT TENANTS
Apportionment of tax among....2449
Survivorship between abolished.5159
—exceptions 5160
Partition 5279
Action of ejectment between....5466
Liability for waste 5507
Homestead exemption, partition.6534

JOINT WRONGDOERS
Action against 6264
Effect of judgment against less than all 6264

JOINTURE
Bars dower 5120
Election between jointure and dower 5121
Loss of, right to dower....5122
Effect on right to homestead exemption 6538, 6541

JOURNALS
Legislative Journals, see **"General Assembly"**
Of Constitutional Convention furnished to colleges 356
Of town council 3028
Board of directors of penitentiary 5031
In proceeding to establish lost records 6204

JUDGES
Of elections, see **"Elections"**; of particular courts, see the respective titles
Not eligible as member of General Assembly....Va. Const., § 44
Impeachment ....Va. Const., § 54
Removal ....Va. Const., § 104
Constitutional provisions, Va. Const., §§ 87-109
State reports furnished to 347
May use State Law Library.... 371
Acts of Assembly furnished to.. 388
Privilege from arrest 2823
Of corporation court, when city of first class formed 2913
Of Supreme Court of Appeals, retirement 3464
Forgery of certificate or attestation of 4484
Intimidating or impeding, punishment 4525
Jury list drawn in presence of..4895
Disqualified in criminal case, designation of another to try case 4917
As member of special court of appeals 5873
Holding other courts 5898
Lawyer holding court for....5899
Death of, not to end term....5902
Of court of law and chancery of the city of Norfolk 5934
Of court of law and chancery of Roanoke 5946
Exempt from jury service....5985
Interested in case, where suit brought 6049
Judicial notice taken of signature of 6194
Appointment, qualification, term
Election, etc...Va. Const., §§ 87-109
—corporation courts 5905

Digitized by Google

Sec.

JUDGES—Con.

Commissions issued to, Va. Const., § 102
Removal .....Va. Const., § 104
Oath of, who may administer.. 273
—where recorded 277
Vacancy, term of successor.....5889
—Va. Const., § 102
For new circuit 5889
For special term 5896
Where to reside 5897, 5977
—removal vacates office, when.5977
Appointment to sit for disqualified judge 4917
—to compose special court for trial of contested election .. 266
—to hold hearing for annexation of territory by city 2958
—pro tempore 5900
Not to practice 5975
—Va. Const., § 105
Not to hold other office 5976
—Va. Const., § 105
—exception 5976
— —Va. Const., § 105
Qualification, time for 5978
—failure vacates office 5978

Compensation

Salary .....Va. Const., § 102
—how paid .....Va. Const., § 103
—not increased or diminished during term .....Va. Const., § 102
Pro tempore judge 5901
Of judge holding court other than his own 5898
—mileage 5898

Powers, duties and liabilities

Correction of list of paid poll taxes .....Va. Const., § 38
Adjournment of court 5959
—powers during adjournment..5959
Allowance to constables, sergeants and policemen in cities.3511
—to attorney appointed to defend poor person 3518
—to certify to auditor list of allowances made by court....2187
Appeal to from denial of registration 103
—Va. Const., § 19
—by city officer, removed or suspended, trial of 3010
—from sentence of justice for contempt 4523
Application to enter name on list of paid poll taxes 110
Automobile, seizure and sale of for violation of law.....2146, 2147
Bail, allowance of.....4829-4837
—to certify recognizance to clerk 4847
— —attachment for failure.....4847
—person charged with transporting ardent spirits 4657
Bill of exception, signing.....6252
—certificate in lieu of 6253
Bond of public officer, requiring new or additional 280
—of custodian of insane person..1020
—of examiner of record, approval of 2219
—of assessor of land for taxation given before 2241
—of notary, given before.....2850
—of trustee 6301
Capias against defendant about to quit State 6419
—taking bond of defendant.....6422
—quashing, discharge 6423, 6424
Children committed to Board of Charities or institution by, 1905, 1908
—appointment of physician to examine 1910
—placing in hospital 1910
—delivery to probation officer...1913

Sec.

JUDGES—Con.

—convicted of misdemeanor, corporal punishment of 1923
—orders as to custody of when parents separated 5327-5330
—delinquent or destitute, report from institutions receiving....1918
— —investigations of violations of law relating to 1920
— —incidental powers of courts, judges and officers 1921
City of second class, entry in law order book that population of ten thousand or more has been attained 2911
—certificate to Secretary of the Commonwealth 2911
—appeal 2912
Certificate of correctness of account of assessor 2250
—of account of fees of justice..3507
—list of county and city officers, for Secretary of the Commonwealth 3407
—of facts proved 6331
Commissioners in chancery, 6178, 6180, 6182
—requiring to settle accounts of fiduciary 5415
Compromise of action for wrongful death, approval of.....5789
Condemnation proceedings 4361
Conservator of peace 4789
—duties as, arrests by.....4789
—proceeding to require recognizance of person about to commit crime 4790-4792
— —of person going armed....4795
— —of person about to commit breach of peace 4796
Contempt, summary punishment of 4521
—limitation of penalty.....4524
—jury trial 4524
Certificate of incorporation, amendment 3779, 3780
—when to order election of directors of 3803
— —on complaint of stockholder 3804
—endorsement on certificate of incorporation 3851
—certificate of incorporation of non-stock corporation 3874
Decedent's estate, order for distribution of 5439
—administration on estate of person presumed to be dead, 5362-5368
Deposition of prosecutrix in rape case, order for taking 4415
Election on bond issue by city or town, order for 3082-3088
Execution, proceeding to quash..6499
—order staying, bond.....6499
Execution debtor committed for failure to answer interrogatories, discharge of 6506
Exemption of wages from garnishment, proceeding for 6556
Extradition of fugitive from justice, proceeding for.....5063, 5065
Grand jury, selection of citizens to serve on 4852
Grand jury, charge to 4858
—as to violations of revenue laws 2355, 2357
—to examine books of assessment 2397
—as to unlawful fishing 3214
—relative to fish law in Potomac river 3305
—on game laws 3345
Guardians, liability for failure to require bond of 5318
Habeas corpus 5848-5861
—powers in 5856
—may compel member of General Assembly to obey writ of.... 301

Digitized by Google

Sec.

JUDGES—Con.
—to test legality of detention of alleged lunatic, inebriate, etc..1029
Infant married woman's estate, commitment to receiver.....5136
—sale of 5137
Injunctions, jurisdiction 6319
—dissolving or enlarging.....6318
—in vacation 6326
—against house of prostitution..1522
— —violation, contempt proceeding 1524
— — —approval of bond of owner..1527
—against railroad violating law as to transportation of live stock 4006
—against violations of law relating to advertisement of intoxicating liquors 4609
—against nuisance under prohibition law 4630
—in attachment proceedings....6389
Insane persons, lunacy commission 1017, 1020
—custodian of, bond 1020
—fixing allowance for confinement of in jail 1049
Interpleader 6152
—sale of property pending.6153, 6157
Intoxicating liquor law, recognizance of accused to answer indictment 4613
—recognizance of witnesses....4613
—bond of accused not to violate law 4613
—commitment of accused to jail.4613
Jail prisoners, putting on convict road force, chain gang, or public works 2075
—appeal of prisoner 2075
Jury drawn in presence of.....5992
—order for greater number of jurors 5993
—signing certificate of allowances to 6010
—venire facias for, 4896, 4897, 5999, 6006
Lost records, proceeding to establish 6203, 6204
Mandamus, issuing writ of..5831-5840
Certifying orders, &c., in to clerk of court 5839
Notice to superintendent of penitentiary of person sentenced to work on public roads or quarries 2094, 2095
Oath administered by to judge.. 273
—to person elected or appointed to office, when 273
Oath before board of veterinary examiners 1275
—justice, juvenile and domestic relations court 1946
Order for sale of perishable goods leased on 2832
—prohibiting waste by tenant..5511
—changing place of holding court 5965
Order of publication of process to commence suit 6069
—dispensing with publication in newspaper 6070
Petition in pending chancery suit, allowing filing 6096
Primary election, jurisdiction to enforce law relative to..... 224
Process for arrest of person issuing 4823
—when to issue, how directed..4824
Pro tempore judge 5900
Prohibition, issuing writ of.5831-5840
—certifying orders, &c., to clerk of court 5839
Qualification before, board of medical examiners 1610
—examiner of records 2219
—officers 2696

Sec.

JUDGES—Con.
Quarantine of prisoner in jail....1543
Quo warranto proceedings, 5842-5847
Record, signing 5962
Recognizance, discharge of surety on 4982, 4982
—certificate of 4982
—new bail 4983
—from person suspected of being about to engage in duel 4424
Register of persons convicted of felony, to see that clerk keeps.4787
Release of prisoner confined for failure to pay fine and costs..4951
Removal of cause by 6175
—when improper for judge to try case 6176
Reports to by auditor, of delinquent treasurers, clerks, or other officers 2201
—whether city and county clerks have settled with State.....2201
Sale of property on distress warrant when expensive to keep..6519
School property, proceeding to sell or exchange 649
Search warrant, for violations of prohibition law 4612
Sentence of person convicted of misdemeanor to convict road force 2096
Special term for circuit court, designation of 5894
—adjournment of 5895
Suppression of riots and unlawful assemblies by 4527
—commitment of rioter on failure to give bail 4528
—penalty for failure to suppress 4529
—aid to judge in suppression of.4539
—killing or wounding in suppression of 4531
Taxation, time for delivery of copies of assessment, extension of 2247
—rule against clerk for failure to forward list of conveyances to auditor and commissioner..2276
—delinquent tax list certified to..2417
—list of delinquent lands, correction of errors in 2473
Transcript of record, contents..6341
Treasurer, requiring new bond of 2777
Vacation powers over chancery causes 6307
—in law cases 6308
—enforcing obedience to decrees 6309
Venire facias for jury to try criminal case, when issued....4897
—new venire 4896
—for additional jurors 5999
—for trial of case in which county, city or town is party....6006
Witnesses, list of entries of fees of to be signed by 3530
—summoning in jurisdiction in which accused was arrested..4827
—issuing subpoena duces tecum.6219
—compelling attendance 6220
—committing for refusal to testify 6221

APPOINTMENTS AND REMOVALS
Electoral board 84
—Va. Const., § 31 92
—vacancies in 92
County surveyor 126
Superintendent of the poor..... 126
Vacancies in offices filled by, 136, 138, 139
Probation officers 1911, 1912
Assessors of land for taxation..2223
Local board of review.....2226
Commissioner of revenue, removal 2315

Digitized by Google

JUDGES—Con. Sec.
—appointment of successor.....2315
Delinquent tax collector 2421
Surveyor of land sold for delinquent taxes 2480, 2481
Deputies to officers, removal....2701
Pension commissioners 2657
Coroners 2815
When to fill vacancy in city council 2983
—in town council 3003
Committee to inquire into necessity for general index in clerk's office 3395, 3396
Ballast masters 3648
Guardians 5316, 5317
Curator for minor 5319
Commissioner of accounts.....5401
—assistants 5402
Jury commissioners 5986
Guardian ad litem 6098
Commissioners in chancery, appointment 6178
Bail commissioner 6188
Receivers, in attachment proceedings 6389
Trustee 6298-6302
Requiring bond of 6301

JUDGMENTS
See also "Decrees"; "Executions"; "Judgment by Confession"; "Judgment by Default"; "Motion for Judgment"; "Office Judgments"
Sales under, see "Judicial Sales"
Order for reimbursing county for expense of destroying diseased cedar trees to have effect of.. 892
Drainage district, order for costs and expenses in proceeding to establish to have effect of 1756
—establishment of effect of assessment roll as 1771
Recovery of land, list of furnished by clerk to commissioner 2275
Distributing funds held in court, directing payment of taxes....2309
Bond of purchaser of land at sale for debt due State to have effect of 2525, 2526
Against treasurer, adjustment by supervisors 2737
On verdict, for failure to pay costs on appeal 3522
For costs 3525
—suit in name of one for another 3526
—none against Commonwealth..3537
—against fiduciaries 5407
—when money paid into court..6143
Decision of controversies between pilots and masters by commissioners to have effect of.....3637
Obligation of hirer of prisoners..4951
Joint, effect of death of joint debtor or creditor 5160
Several, when, in action of ejectment 5468
For dower in action of ejectment, commissioners to assign.....5480
Of court ceasing to exist, how executed 5974
Office judgment, when entered..6131
—inquiry of damages.....6131-6133
—when to become final 6134
—when set aside 6135
When money paid into court....6143
When set-off claimed..6144, 6148, 6150
Award under rule of court entered as 6161, 6163
Motion for, in lieu of action at law 6046
—on bonds taken by officer 6045
—on bond of sheriff, sergeant or constable 6045
—notice of 6044, 6046
—joint and several parties 6047

JUDGMENTS—Con. Sec.
On behalf of Commonwealth, venue of suit to enjoin or suspend 6049, 6051
Not to be entered on return of nihil 6068
In case of variance 6250
Entered after verdict set aside..6251
On declaration containing faulty counts 6258
Interest awarded in 6259
Against less than all defendants, action on contract 6263, 6265
Injunction to, where suit brought 6318
—by whom awarded 6319
—damages when dissolved 6327
Construction of word 6459
Judgment creditors, who are....6460
Abstracts 6461
Payment and satisfaction..6465-6467
Noting discharge in bankruptcy.6467
Forfeited forthcoming bond to have effect of 6520
—judgment on by justice..6526-6530

In particular actions or proceedings
In case of impeachment. Va. Const., § 54
On application by railroad or canal corporation for relief from assessment for taxation, Va. Const., § 180
On appeal from denial of registration 103
In proceedings on caveat against issuing grant 448, 450
—on writ of error 449
On petition for redress against escheat 498
In contested election, final..... 268
—removal of courthouse.....2754
Proceeding to condemn adulterated, misbranded or substituted food 1165
Forfeited recognizance of husband or parent for support of wife or child 1940
Proceeding on petition against person filing false list of property for taxation 2322
Proceeding to revoke license....2378
Action of debt to recover penalty for violation of license or revenue laws 2395
Garnishment for collection of taxes 2445, 2446
For debt due State 2513, 2514
—correction of mistake 2515
On motion to recover amount paid State by mistake 2516
Against personal representative of purchaser of land sold on execution for debt due State....2526
Against officer for failing to deliver goods to sheriff having writ of venditioni exponas....2528
Proceeding to recover fine.....2545
On claim against State.....2580
—special appropriation for.....2582
For taxes, satisfied on tender of coupons from State bonds.....2596
Proceeding against treasurer for refund of money collected under illegal levy 2762
Against officer failing to make return of money collected on process 2835
In favor of officer against deputy 2836, 2837
For fees of jailer confining person on civil process.....2878
—recovered by creditor paying fees 2879
On appeal from decision of mayor of town 3011

Digitized by Google

Sec.

JUDGMENTS—Con.
Assessment of damage to abutting owner when street graded 3039
In prosecution for violation of fishing laws 3216
Against corporation engaged in fish business for failing to file list of directors, officers and stockholders 3254
Proceeding for enforcement of forfeiture for violation of fish, game and oyster laws....3372, 3377
—final 3376
In proceeding by officer claiming salary withheld for debt due State 3476
Against sheriff, deputy or constable for failing to account for fee bills 3499
On bond of non-resident for costs 3519
For defendant on recovery of less than twenty dollars on contract 3524
For value of stock, stockholder dissenting from consolidation..3822
Action against railroad for stock killed or injured 3995
Against turnpike company, applying for order of completion of road or section thereof.....4077
Proceeding to collect assessment of insurance company for expenses of bureau of insurance.4195
In condemnation proceedings, on subsequent report 4372
—for sand, gravel, water, etc..4382
—when proceedings dismissed..4387
In action or scire facias on recognizance 4980
In probate proceedings....5257, 5258
—as bar to bill in equity.....5258
For or against decedent, action on, by or against personal representative 5384
Against fiduciaries 5407
Unlawful entry or detainer.....5447
In action of ejectment, when judgments several 5468
—office judgment 5462
—for part of premises.....5469
—right of plaintiff expiring before trial 5479
—for plaintiff 5480
—for dower 5480
—conclusive 5486
— —saving to persons under disability 5487
—on verdict for balance between damages and claim for improvements 5496
—for value of estate without improvements 5502
—for re-entry on land for nonpayment of rent on breach of covenant or condition 5530
Proceeding to establish boundaries of land 5490
Proceeding to sell goods distrained or attached for rent not payable in money.....5529
In suits for foreign money....5550
Usurious contract 5554, 5555
In action of debt or assumpsit on negotiable instrument.....5760
On motion by surety against principal to recover money paid..5777
In action to recover damages for wrongful death 5788
Action of detinue 5801
Mandamus or prohibition proceedings 5836
—vacation, how certified and entered 5839
Quo warranto proceedings, 5846, 5847

Sec.

JUDGMENTS—Con.
In habeas corpus proceeding, 5853, 5856, 5857
—suspension of by writ of error.5859
On appeal from justice, civil warrants 6038
In trover, effect of 6087
Interpleader proceedings 6151
—claim of third person to property levied on 6152
In action on lost instrument....6242
On inquiry of damages 6249
Bond with condition for payment of money 6261
—against surety of limited liability 6261
—annuity bond 6262
—payable in installments 6262
—subject to condition 6262
On rule against special commissioner, receiver or purchaser, judicial sales 6275, 6276
For specific personal property affirmed on appeal, damages for detention of 6377
In attachment proceedings.....6495
—order of sale 6495
—when attachment quashed....6403
—when to proceed to judgment when attachment fails.....6404
Garnishment proceedings..6510, 6513
On instrument waiving homestead 6551
On demand against which homestead cannot be claimed.....6551

By Confession or Default

By confession, provision for not to affect negotiability 5567
—against surety, effect of failure of surety to notify principal..5778
—entry of in vacation 6130
—lien of 6139, 6470
—release of errors 6330
—how docketed 6463
By default, against surety, effect of failure of surety to notify principal 5778
—in quo warranto proceedings. 5846
—rehearing as to parties not served 6072
—entry of in clerk's office.....6131
—order for inquiry of damages..6131
— —when not necessary.....6132
— —action of assumpsit 6133
—when to become final 6134
—when set aside 6135
—for failure to answer interrogatories 6236
—for failure to produce books, writings, etc.....6237
—trial of inquiry of damages, 6247, 6249
—errors in, correction of 6323
— —in appellate court 6324
—in attachment, rehearing.....6411
—in action of ejectment 6462

Entry, Docketing and Recording

Certificate of damages assessed against dealer in fertilizer....1120
Entry when fine remitted by Governor 2574
Assessment for local improvement 3071
Index of 3391
Abstracts of, recorded in judgment docket 3393
Of State Corporation Commission 3722
Assignment of dower 5216
Partition 5216
Recovery of land, recordation of.5216
Proceeding to establish boundaries of land 5490
Lost record of, re-entry 6201
Judgment by confession or default 6463

Digitized by Google

Sec.

JUDGMENTS—Con.
Dockets 6461, 6462
—judgments entered on....6461, 6462
—contents 3393, 6463
—index 3391, 6164
—entry of payments 6465-6467
Judgment in favor of State....6468
Judgments of United States courts 6461, 6462
On forthcoming bonds 6530

Correction and Review

Arrest or reversal of for defect in indictment 4879
Against administrator of person presumed to be dead, re-opening 5367
Reversal of, effect on limitation..5827
Arrest or reversal for failure of record to show venire facias..6002
Informality of entry, no ground for reversal 6331
Errors, for which judgment not to be reversed or arrested....6331
—correction in same court..6329, 6333
— —appellate court 6334
— —motion for correction, necessity for review 6334
On verdict reduced under protest, appeal 6335
Appeals from to Supreme Court of Appeals 6336, 6337
—bond to suspend 6338

Operation and Effect

Abatement of public nuisance, effect 1520
Against foreign corporation after service of process on Secretary of the Commonwealth, 3845, 3846
Joint judgment, on death of joint debtor or creditor.....5160
In probate proceedings as bar to bill in equity 5258
Against personal representative, prima facie evidence against surety 5389
—as evidence against heirs or devisees 5398
When right of entry of wife not barred by 5441, 5442
Unlawful entry or detainer, conclusiveness 5450
—not to bar trespass or ejectment 5450
In ejectment, conclusiveness....5486
Liability of personal representative of joint judgment debtor.5762
Against surety, effect of failure of principal to defend 5778
Arrest of, effect on limitation....5826
Against unincorporated association 6058
When new parties brought in found not liable 6106
Death or change of parties after verdict 6164
—pending appeal 6167
Against defendant whose powers have ceased 6170
On testimony of party when adverse party is incompetent....6209
Against joint wrongdoers.....6264
Against receivers, effect of.....6292
Entered in vacation, effect of..6308

Lien and Priorities

When officer disqualified 293
To enforce treatment prescribed by crop pest commissioners.... 877
On forfeited recognizance.....1940
Against treasurer and sureties..2433
Against treasurers and sureties, what a lien on 2433
On property condemned in eminent domain proceedings 4374
Ascertainment and payment of in suit for partition 5281

Sec.

JUDGMENTS—Con.
Of State Corporation Commission 3732
For improvement on real estate.5497
—life tenant paying 5498
Time from which lien runs, judgment by confession 6130
Office judgment 6131
Judgment against receiver.....6292
On real estate 6470
Time effective 6470
Priorities 6470
Docketing, necessity for as to purchasers 6471
Enforcement in equity 6472
—judgment not exceeding twenty dollars.....6473
—when barred 6474
Order of liability between alienees of different parts of real estate.6476
Subrogation 6474
—limitation of right to enforce..6474
Action for recovery of property subject to 6514
On homestead exemption 6550

Enforcement

Special laws prohibited, Va. Const., § 63
For debts due State 2517, 2518
Final, proceeding for enforcement of forfeiture, for purpose of appeal 3376
In equity, of State Corporation Commission 3732
Disobedience to as contempt....4521
Scire facias for execution on, by administrator de bonis non....5387
—inquiry of damages not necessary 6132
Proceeding to establish boundaries of land 5490
Proceeding to sell goods distrained or attached for rent not payable in money, execution...5529
Limitation, judgment of another State 5819
Judgment of court ceasing to exist 5974
Executions 6477, 6480-6517
—limitation 6477, 6478
Action on scire facias 6477
—limitation 6477, 6478
Recognizances and bonds having force of judgments.....6479

Of Justices

On civil claim 6022, 6023
—abstract of 6025, 6030
—how given 6022
—endorsement on papers 6023
—record book of 6024
—abstract 6025, 6030
Action or scire facias on.....,6040
On forfeited forthcoming bond, 6526-6530

Of State Corporation Commission

Rendering 3727
For contempt 3728
For costs, fees, mileage.....3731
Lien, docketing, enforcement....3732
In public session.....3733
When to take effect 3733
Interest on 3733
On bonds before 3735
Against transportation company failing to refund after appeal..3736
—when and how marked satisfied 3736
Against officers to recover fine for neglect of duty 3747
Against insurance companies violating law 4234

In Criminal Cases

On warrant against person intending to commit crime 4791
—on appeal 4793
For costs on dismissal of prosecution 4850

Digitized by Google

Sec.

JUDGMENTS—Con.
—against prosecutor when 4868
Misdemeanor, in absence of accused 4883, 4884, 4889
—on trial on indictment or presentment 4889
On general verdict of guilty on indictment containing several counts 4923
When jury agree as to some and disagree as to others where two or more tried jointly....4924
When not to be suspended.....4925
On writ of error 4938
—how certified and entered....4939

JUDGMENT BY CONFESSION
See also **"Judgments"; "Judgment by Default"**
Provision for not to affect negotiability 5567
Against surety, effect of failure of surety to notify principal.....5778
In vacation 6130
Release of errors 6330
Docketing 6463
Lien 6470

JUDGMENT BY DEFAULT
See also **"Judgments"; "Judgment by Confession"**
Party refusing to answer interrogatories 6236
—refusing to produce writings..6237
Errors in, correction of.....6333
—in appellate court 6334
Trial of inquiry of damages, 6247, 6249
Attachment proceeding, rehearing 6411

JUDGMENT DOCKET
See also **"Docketing"; "Judgments"**
What recorded in 3393
Index for 3394
Judgment of State Corporation Commission docketed in.....3732
Satisfaction of judgment entered on by State Corporation Commission 3736

JUDICIAL CIRCUITS
See also **"Circuit Courts"**
Number and constitution, Va. Const., § 94
General Assembly may rearrange, Va. Const., § 95
Examiner of records for.....2218
City of second class remaining part of 2309
Division of State into 5888

JUDICIAL DEPARTMENT
Separate from executive and legislative .....Va. Const., §§ 5, 39
Constitutional provisions, Va. Const., §§ 87-109

JUDICIAL NOTICE
Acts and resolutions of General Assembly 6190
Signature of Governor and judges 6194
Seal of notary to certificate of protest of negotiable instrument 5680

JUDICIAL OFFICERS
Oath .....Va. Const., § 34
Bribery of 4496
—acceptance of 4497
—disqualification on conviction..4497
—evidence and witnesses.....4498

JUDICIAL PROCEEDINGS
See **"Courts"** and the titles of the particular courts.
Tax on, paid to clerk of the court.2401

JUDICIAL SALES
Of real estate, special laws prohibited .....Va. Const., § 63
Personal property of ward.....5322

Sec.

JUDICIAL SALES—Con.
Real estate of ward 5326
Lands of persons under disabilities 5334-5347
Recitals in deed as evidence....6196
Decree for 6266
Special commissioners, appointment 6266
—bond 6266, 6269
—report on delinquent taxes or sales therefor 6267
—sale or renting by 6269
— —before giving bond, penalty.6271
—report of sale 6269
—payments to 6270, 6272
—collection of purchase money.6272
—larceny by 6273
—proceedings against . . 6274-6276
— —sureties 6277
—commissions 6279
Confirmation 6268
Proceeds, apportionment 6268
Delinquent taxes 6267, 6268
Purchasers, liability after payment to commissioner....6270, 6272
—proceedings against 6274-6277
—effect of reversal of decree....6306
Purchase money, collection.....6272
—who to collect 6272
Execution of decree by sheriffs and sergeants 6278
Commissions 6279
Enforcement of liens 6449
—of judgments 6472

JUNIOR ORDER OF UNITED AMERICAN MECHANICS
Application of chapter 171 to....4302

JUNK DEALERS
Books to be kept by 4711
Daily statement to police.....4711
Not to change form of article bought 4711
Possession of stolen article as larceny 4711
Penalty for violating law.....4711

JURIES
Trial by .....Va. Const., § 10
Voter privileged from jury service during elections, Va. Const., § 29
Escheator's jury 494-496
Coroner's inquest, oath.....4809
—compensation 4811
In hustings court of Richmond, 5918, 5919
In court of law and chancery of Norfolk 5942
In court of law and chancery of Roanoke 5954
Irregularities in summoning, &c., cured by verdict 6002
Trial judge not to direct verdict 6003
Special juries, how formed, number of 6005
Case in which city, county or town is party 6006
Waiver of 6012
Number of jurors 6012
—Va. Const., § 11
—where county, city or town is party 6012
—jury of three persons 6012
Views by 6013
Disclosures by jurors 6014
Finding facts in case of variance 6250
To assess damages when verdict set aside 6251
Papers read in evidence taken out by 6257
Allowing interest in verdict.....6259
Omission of name, of juror not ground for reversal 6331

Digitized by Google

JURIES—Con. Sec.

Trial by of Particular Actions or Proceedings

Proceeding on caveat against issuing grant 447
Inquest by escheator 494, 496
Petition for redress against escheat 498
Inebriate, drug addict, proceeding to commit to private hospital..1071
Petition against person filing false list of property for taxation 2328
Attorney, proceeding to revoke license of or suspend.....3424
Action, motion, presentment, indictment or information for recovery of fine 2545
Proceeding to recover claim against State 2580
Proceeding for removal of officer.2706
Proceeding to enforce forfeitures, violation of fish, game, oyster laws 3371
Action to receive call on stock subscription 3843
Proceedings for contempt of court 4524
Coroner's inquest 4806-4817
Probate proceeding 5257
Proceeding to impeach or establish will 5259
Examination of reports of fiduciaries 5428
Action of unlawful entry or detainer 5446
—appeal from justice 5449
Petition to establish boundaries of land 5490
Assessment of allowances for improvements to real estate, 5491-5496
Proceeding to sell goods distrained or attached for rent not payable in money 5529
Appeals from justices in civil cases 6038
Motion for judgment 6048
Plea in equity 6121
To ascertain damages for specific personal property after judgment affirmed or injunction dissolved 6277
Garnishment 6400
Interpleader in attachment proceedings 6407
Trial of issues and inquiries of damages by 6247, 6249
Suit to remove cloud on title....6248
Rule against special commissioners, receiver or purchasers, judicial sale 6276

Qualification of Jurors and Exemptions

Persons liable to serve as jurors.5984
Disqualification.....5984, 5998, 6011
—on conviction of perjury or subornation of perjury 4495
Persons exempt from service....5985
—after serving once, when exempt 5995

Summoning, Attendance, Discharge

For coroner's inquest, 4806, 4809, 4817
Lists, commissioners to prepare..5988
—delivered to and kept by clerk 5989
—adding and striking off names 5989
Names, to be written on separate ballots 5990
Jury box 5990
—custody of 5990
—drawing names from, 5991-5993, 5996
—tampering with, penalty.....4526
Non-attendance, fine for 5997
Venire 5992

JURIES—Con. Sec.

—court may increase 5993
—filling deficiency 5999
—record of on appeal 6002
—when county, city or town is party 6006
Neglect of duty by officers, penalty 6004
Special juries 6005
Drawing 5991-5993, 5996
—number 5992
—additional number 5993
—indorsing ballots 5994
Summoning 5992, 5993
—by coroner 2817
—by person appointed by court..2821
—from another jurisdiction, prosecution for violation of prohibition law 4663
Selection by lot 5996
Discharging jurors 5998
Bystanders, jurors from 5999
—to determine identity of convict 5054
Irregularity in cured by verdict 6002

Compensation

On coroner's inquest 4814
How paid 5991, 6010
Amount 6007
Mileage 6007
Apportionment between State county and corporation..6007, 6009
When juror not entitled to.....6008
Claim for, verified by affidavit..6007
—when barred 6010
Statement furnished to clerk....6007
—entries by clerk 6009
—list by clerk, to whom furnished 6010

Competency of Jurors, Challenges, Objections

Interest, prejudice, &c.....6000
Challenges 6000
—in criminal cases 4898
Exception not allowed after juror
Person requesting service.....5998
—requested for service.....5998
Examination of jurors 6000
sworn 6001
Person having controversy to be tried at same term.....6011
When city or county a party..6006

Offenses Relating to Juries

Bribery of juror 4502
Officer corruptly summoning to act partially 4519
Corruptly procuring juror to be summoned 4520
Intimidating or impeding 4525
Fraud in drawing 4526
Contempt by juror, summary punishment of 4521
—penalty 4524
Juror failing to attend coroner's inquest 4808
Juror on inquest out of court, fine for failing to attend.....4984
Juror, fine for disobedience of process or contempt, how imposed 4985

Jury Commissioners

United States commissioner may act as 291
Appointment 5986
—notification of 5987
Compensation 5986
Eligibility for re-appointment...5986
Oath 5987
List of jurors prepared by 5988
—delivery to clerk 5989
—ballots of names 5990

In Criminal Prosecutions

Unanimous verdict....Va. Const., § 8
Trial without .....Va. Const., § 8

Digitized by Google

Sec.

JURIES—Con.
General Assembly may provide for jury of less than twelve, Va. Const., § 8
Trial without, violations of prohibition law 4616
Acquittal by a bar to further prosecution 4773, 4775
—prosecution for violation of revenue laws 4773
—when not a bar 4773, 4774
Ascertainment of confinement or fine for felony 4783
—of punishment in criminal cases 4784
Venire facias, issue by clerks of courts 4893
—in felony cases, contents....4894
—in felony cases, second writ...4896
—in felony cases, when may issue 4897
—irregularity in, effect of....4895
—on change of venue 4916
Jury list 4895
Completion of panel 4896
Fine of person summoned for failure to attend 4896
Challenges, number allowed, how tried 4897
Disqualification for opposition to capital punishment 4899
Selection of panel 4900
—of jury from 4900
Trial without jury upon plea of guilty 4900
When summoned from another county 4901
When to be kept together....4902
Expense of boarding 4902
Swearing new juror, when....4903
Discharge of jury when unable to agree 4903
Challenges, felony cases where defendants tried jointly 4904
Opening statement of counsel....4905
To try sanity or insanity of person accused of crime 4909, 4910
—verdict when acquittal because of insanity 4913
For trial of misdemeanors 4927
—trial without jury 4927
—number of jurors 4927
Compensation, mileage 4928
—how and by whom paid 4928
—when apportioned between State and county 4928
Use in trial of civil cases....4927
Appeal from conviction before justice 4990
In proceeding against convict to impose punishment for previous conviction 5054

JURISDICTION
See also **"Concurrent Jurisdiction"; "Courts"; "Removal of Causes"; "Venue"**; and the titles of the respective courts
Appellate, see **"Appeals"**
Probate, see **"Wills"**
Special laws regulating, prohibited ....Va. Const., § 63
Of courts, to be regulated by law, Va. Const., § 87
Effect of Constitution, Va. Const. Schedule, § 3
Over waters between Virginia and Maryland 14
Over lands and places acquired by the United States 17-19
Over Miller Manual Labor Training School 1002
Of courts, continuation of when new county formed....2682, 2683
Of city or town for protection of water supply 3031
Over waters, in circuit courts....3213

Sec.

JURISDICTION—Con.
Of courts not affected by acts relating to State Corporation Commission 3754
Territorial, corporation courts..5910
Not necessary to plead....6082
Exception to, when and how taken 6105
Over rivers, water courses, bays, etc., between counties and cities 5958
Place of bringing actions..6049-6051
Amount in controversy 6472
—justices 6015
—in attachment 6415
—proceedings on forthcoming bond 6526

Of Particular Courts
Of Supreme Court of Appeals, general provisions 6336, 6337
—Va. Const., § 88
—appeals from proceeding establishing drainage district..1748, 1756
—appeal by railroad company in proceeding to establish drainage district 1767
—appeal from order authorizing drainage commission to issue additional bonds 1777
—order of circuit court allowing tramway or railway to cross highway 2007
—appeals by Commonwealth, correction of assessment of taxes..2391
—correction of assessment made by State Corporation Commission 2392
— —Va. Const., § 180
—contest of application to purchase land sold for delinquent taxes 2495
—appeals by State or defendant in proceeding to remove officer.2706
—approval of title to real estate purchased by county or school board 2709
—orders of State Corporation Commission 3734
— —in contempt proceedings...3728
—writs of error from judgment refusing or requiring excessive bail 4930
— —in criminal cases....4931
— —in contempt proceedings....4932
Of special court of appeals, Va. Const., § 89
Of circuit courts, in general....5890
—powers formerly vested in county courts 5891
—special term 5896
—concurrent with corporation courts 5911
—concurrent with city courts, Va. Const., § 98
—of county, over city of second class 2896
—over waters adjacent to counties 3213
—to declare stream or canal a lawful fence 3553, 3554
Of corporation courts 5910
—concurrent with circuit court.5911
Of State Corporation Commission, concurrent with courts....3754
Of mayor or police justice over violation of ordinances relating to intoxicating liquors, territorial 4615
Of justices of the peace, criminal 4987
—civil, concurrent with trial justice 4988
—in city 3002
— —extent of 3002
Of civil justice 3114
Of police justice 4988, 3004

Digitized by Google

Sec.

JURISDICTION—Con.
—extent of 3094
Of trial justice, criminal..4987, 4988
—civil, concurrent with justices of peace 4988
Of civil and police justice....3102
—extent of 3102
Of juvenile and domestic relations courts 1937-1944, 1950
Of court of law and chancery of Roanoke 5947, 5948
Of court of law and chancery of the city of Norfolk....5935, 5936
—corporation court of Norfolk..5936
Of law and equity court of the city of Richmond 5922, 5928
Of circuit court of city of Richmond 5926, 5928
Of chancery court of city of Richmond 5920, 5928
Of hustings court of city of Richmond 5913, 5928
Of hustings court of city of Richmond, Part II....5914, 5928, 5933
Of circuit court for city of Lynchburg, territorial 5904

Of Particular Officers
Of commissioners of revenue....2253
Of conservator of peace for poorhouse 2807
Of city police officer at race course, park, etc., outside city limits 3005
Of corporate authorities of city or town outside of corporate limits 3006
Of game warden 3320
Of Commissioner of Game and Inland Fisheries 3320
Of board of harbor commissioners of Norfolk, Portsmouth and Norfolk county 3667
Of harbor masters, Norfolk city.3673
—Norfolk county 3673
—city of Portsmouth 3673
—Newport News 3678
—Warwick county 3679
—city of Richmond 3664
—city of Alexandria 3664
Of special police for counties..4801
—for watering place, manufacturing plant, etc....4804, 4805

Of Particular Actions or Proceedings
Proceeding against State institution for failing to furnish copies of publication to State Library. 355
Contested primary elections.... 247
Creditor's bill to subject escheated land to decedent's debts 516
Motion for appointment of trustees for gifts, devises, etc., for educational or literary purposes 590
Proceedings for recovery of money due literary fund.... 603
Proceedings against treasurer for failing to pay school funds to depository 737
Violation of rules of crop pest commissioners 871
Appointment of committees for insane persons 1050, 1052
Feeble-minded person, commitment of, appeal 1080
Complaint against commission merchant 1260
Physician, proceeding to test right to practice 1614
—refused admittance to examination, refused certificate, or certificate revoked 1614
Establishment of drainage district 1737, 1739, 1740
Proceeding to have child released from operation of child labor laws 1816
Appeals from rulings of commissioner of labor 1831

Sec.

JURISDICTION—Con.
Petition to reopen coal mine closed by inspector 1870
Automobile, seizure and sale for violation of law 2146
Proceeding to correct assessment of land and minerals for taxation 2236, 2237
Debt, action of for recovery of, penalty for violation of revenue or license laws 2395
Enforcement of debt due State..2511
Proceeding by auditor against officers for violation of revenue laws 2544
Proceeding to recover claims against State 2578
Action against county officer for illegal interest in contract with county 2707
Action against city or town officer for illegal interest in contract with city 2708
Actions and motions on bond of county or city treasurer....2789
Proceedings by officers against deputies for default, etc....2838
Petition of officer claiming salary withheld for debt due State..3476
Motion for judgment against sheriff or constable failing to account for fee bills 3499
Damages for trespassing animals.3541
Proceedings for recovery of stock subscriptions 3843
Motion against public service corporation failing to establish wagon-way 3883
Actions against guaranty, fidelity and security companies 4345
Condemnation proceedings....4361
Suit for divorce 5105
Suit to annul or affirm marriage.5105
Estate of infant married woman, commitment to receiver 5136
—sale of 5137
Proceeding for sale of fee simple on bill by life tenant against remainderman 5161
—by remainderman against life tenant 5161
Probate of wills 5247
Partition of land 5279
Proceeding to sell or lease real estate of infant, insane person, or trust estate 5335
Proceeding to transfer property of insane person or infant out of State 5350, 5351
—proceeds of sale 5351
—trust estates 5351, 5353
Action of unlawful entry or detainer 5445
Action of ejectment 5453
Petition to establish boundary to real estate 5490
Suit by assignee, on chose in action 5770
Petition by surety for relief from bond 5771, 5772
—for indemnifying bond 5776
Motion by surety against principal for money paid 5777
Proceeding for change of name of person 5983
Warrants for small claims..6015, 6020
Appeals from justices, civil warrants 6037
Action or scire facias on judgment of justice 6040
Motion for judgment on bond taken by officer 6045
—on bond of sheriff, sergeant or constable 6045
Quo warranto 6052
Prohibition 6053
Certiorari 6053
Mandamus 6053

Digitized by Google

Sec.

JURISDICTION—Con.
—to establish roads and bridges between counties 1992
—to compel compliance with law as to franchises 3023
Of injunctions 6318, 6319
—in Supreme Court of Appeals..6320
Proceedings on penal bonds....6374
Of attachments 6380
—of justice to try 6415
—for rent 6416-6418
Suit to enforce mechanic's lien..6437
Proceeding to enforce lien on personal property 6449
Enforcement of lien of judgment 6472
Motion to quash execution 6499
Petition to sell estate set apart as homestead 6542
Crimes in Chesapeake Bay..... 14
Enforcement of law relating to primary elections 224
Offenses committed in Capitol Square 413
Proceeding against escheator to recover fine for failure to perform duty 511
Offenses against forestry laws.. 548
Prosecutions for transporting or storing food under insanitary conditions 1220
Prosecutions for violations of food laws 1223
Prosecution of husband or parent for desertion or non-support 1937, 1942
Habeas corpus against prison association 1958
Fines, proceeding to recover....2544
Violations of county ordinances and by-laws 2742
Over misdemeanors 3094
Fishery laws, violations of.....3155
Proceedings under laws relating to oysters and other shellfish 3256
Violations of laws relating to fishing in Potomac river 3304
Violations of game laws 3345
Enforcement of forfeiture for violation of fish, game and oyster laws 3366
Prosecution for allowing animal to run at large in villages and unincorporated communities.....3551
Pilots, violation of law relating to 3621
Violation of law relating to separate railroad cars for white and colored passengers 3969
Prosecution, for building wharf without permit of harbor commissioners 3675
Violations by railroad of law relating to caboose cars 4016
Action against telegraph and telephone companies failing to receive, transmit or deliver message 4047
Prosecution for homicide, death outside of State 4398
Killing in duel out of State by agreement made within.....4416
Leaving State to evade law relating to duels 4421
Proceedings under law relating to cruelty to animals 4562
Prosecution of railroad company for transportation on Sunday..4574
—of steamboat company.....4575
Prosecution for pandering.....4579
Violations of prohibition law....4614
Territorial jurisdiction of mayor, or police justice over violations of ordinances relating to intoxicating liquors 4615
Prosecution for sale of intoxicating liquor 4586

JURISDICTION—Con.

Sec.

Prosecution of accessories 4766
Prosecution of offenses committed wholly or partly without State.4769
—larceny or robbery committed outside of State 4769
Prosecution for death without State from injury inflicted within State 4770
—death or injury without State inflicted by one within 4770
Offenses committed on boundary of two counties 4771
Death in one county from wound inflicted in another 4772
Trial of convicts 5053

Concurrent Jurisdiction

Of circuit courts with city courts .....Va. Const., § 98
Of State with United States over land acquired from State.....1719
Trial of right of person to practice medicine, circuit courts, corporation courts and justices.1614
Of violations of mining law....1886
Circuit courts, justices and juvenile and domestic relations courts 1950
Of police justices with corporation courts 3094
Of civil and police justices with corporation courts 3102
Of offenses committed on water..3213
Offenses against law relating to fish and shellfish industry in Potomac river, Virginia and Maryland 3299
Of violations of game laws, justices with circuit courts.....3345
Of State Corporation Commission with courts 3754
Of circuit and corporation courts with justices in prosecution of misdemeanor 4987
Of trial justices and justices of the peace 4988
Of circuit and corporation courts.5911
Over river, water course or bay between counties and cities....5958

JURY BOX

Ballots deposited in 5990
Custody of 5990
Drawing names from..5991-5993, 5996
Tampering with, penalty.....4526

JURY COMMISSIONERS

See also **"Juries"**
United States commissioner may act as 291
Appointment 5986
—notification of 5987
Compensation 5986
Eligibility for re-appointment..5986
Oath 5987
List of jurors prepared by.....5988
—delivery to clerk 5989
—ballots of names 5990

JUSTICES

See **"Justices of the Peace"**

JUSTICES OF THE PEACE

See also **"Civil and Police Justices"; "Police Justices"; "Warrants for Small Claims"**
Word "Justice" construed as equivalent to 5
May administer oath to member of General Assembly 273
—to commissioner in another State 273
Acts of Assembly furnished to..... 372, 381
As registrar of vital statistics..1564
Permission of, when necessary before embalming dead body..1797
Mayor of town to have authority.3011
Acting as ballast master.....3656

Digitized by Google

Sec.

JUSTICES OF THE PEACE—Con.
Commissioner of insurance to have power of 4189
Forgery of certificate, attestation, etc., of 4484
Penalty for failing to obey order of in preservation of the peace..4512
Contempt before, power to punish 4522
—appeal from sentence, bond, certificate 4523
Intimidating or impeding, punishment 4525
Killing or wounding in suppression of riots, &c....4531
Conservator of the peace, duty as 4789-4796
When to act as coroner 4816
Certificate of acknowledgment before 5205
Association of other justices with in trials 6022

Appeals
Trial of 6018, 6038
—notice of 6039
Allowance of 6027
Bonds 6027
Dismissal 6027
Duty of justice and clerk....6036
Jurisdiction 6037
Judgment 6038
Costs 6038
Review of decisions 6337
Proceeding for condemnation of adulterated, etc., food....1165
Child under 18 committed to Board of Charities and Corrections or institution....1914, 1915
Delinquent child committed on petition of probation officer..1917
Violations of ordinances or by-laws of county 2743
Proceeding for violation of law relating to cruelty to animals..4562
Unlawful entry or detainer....5449
Warrants for small claims, 6019, 6027, 6028
Trial of title of property levied on under distress warrant or execution 6038
Proceeding to sell personal property to satisfy lien 6451
In criminal cases....4989, 4990

Civil Jurisdiction, Authority, Procedure
Concurrent with trial justice...4988
Appointment of assessor of damage by coast survey 21
Depositions before in contested election 260
Orchard inspector, collection of expenses 897
Inebriate, or drug addict, proceeding to commit to private hospital 1070-1074
Petition to have person declared feeble-minded....1078, 1079, 1085
—when to direct 1085
Fertilizer, drawing sample for analysis 1119
Sample of agricultural lime for analysis 1136
Proceeding for condemnation of adulterated, misbranded or substituted food 1164-1166
Review of judgment of inspector 1430
Proceeding to sell timber found adrift 1446
Abatement of nuisance....1518
—unauthorized use of street....3024
Dogs, mad or sheep-killing, order for killing 1551
Animals or fowls, burial or cremation of 1554
Removal of persons with contagious disease to hospital....1559

Sec.

JUSTICES OF THE PEACE—Con.
Physician, proceeding to test right to practice 1614
Probation officers, appointment of 1911
—expenses, certificate for....1911
Recovery of penalty for leaving gate across private road open..2010
Proceeding to estimate damage to sheep or stock by dogs....2319
Garnishment for taxes.....2444-2446
In cities 3102, 3103
Division fences, appointment of arbitrators 3557, 3558
Proceedings against canal company receiving excessive tolls.4021
Proceeding to enforce contract reserving title to chattel....5190
Issue of distress warrant for rent 5222
Compelling owner of mine to permit survey by adjoining landowner 5289
Proceedings in unlawful detainer, 5445, 5446, 5447, 6015
Proceeding to try title to property levied on under distress warrant or execution 6035
Proceeding to sell personal property to satisfy lien....6449

ATTACHMENTS
Issuance 6386
Endorsement of bond 6384
Filing bond 6384, 6386, 6415
Return 6386, 6387
For rent 6416
—return 6417, 6418
When justice to try 6418
—for rent 6418

DEPENDENT AND DELINQUENT CHILDREN
Committed to Board of Charities or institution 1905
—appointment of physician to examine 1910
—placing in hospital 1910
Child under 18 years of age not to be committed to jail..1908, 1914
—commitment of to Board of Charities and Corrections or institution 1908, 1914
Delivery to probation officer, proceedings 1913
Petition of probation officer for disposition for 1915
—proceedings on 1915
—contempt 1915, 1916

DETINUE
Warrant in detinue, affidavit for seizure of property 5797
Order for 5797
How contested, when abated....5800
Bond of plaintiff 5797
Bond of defendant for return of goods 5798
Exception to bond 5799
Judgment 5801
Costs 5803
Filing bond with clerk....5804
Sales under order of justice....5798

EXECUTION
Issued 6029
Return, renewal 6030
Stay of 6027
Docketing and indexing by clerk 6031
Writ of possession 6029
Trial of title of property levied on 6035
Failure of officer to pay over money collected 6032
Failure of officer to return..6032, 6033
Liability of officers for money collected 6034
Motion to quash, proceedings on.6499
Interrogatories to debtor..6503, 6505

Digitized by Google

Sec.

JUSTICES OF THE PEACE—Con.
Suit to recover property subject to lien of 6514
Proceeds 6515

FINES
Receipt for 2546
Report of, compensation 2546
—penalty for failure 2546
Misappropriation of 2546
Security for 2549
Endorsement on warrant.....2549
Commitment to jail for 2549
Execution for 2549
Certified to clerk 2549
—forfeiture for failure 2549
Payment to justice 2555
When justice to pay fines to clerks 2556
—forfeiture for failure 2556
Owner of dam for failing to maintain road or bridge over, recovery 1985

FORTHCOMING BOND, MOTION FOR JUDGMENT ON
Motion on 6526
Removal 6526
Judgment 6526
Costs 6529
Record 6530
Execution not to be stayed.....6530

GARNISHMENT
Summons 6509
Examination of debtor 6510
Failure of debtor to appear or disclose identity 6511
Judgment 6510, 6511
Payment by garnishee to officer.6512
Costs 6513
Proceeding to exempt wages from 6556

JUDGMENT
Proceeding for condemnation of adulterated, etc., food.....1165
On civil warrant 6022
Endorsement 6023
Entry 6024
Abstract of 6024, 6030
Against officer failing to return execution or pay over proceeds 6033, 6034
Record book of judgments....6024
—delivery to successor 6024
—delivery to clerk.....6024
Scire facias on 6040
Action on 6040
On forthcoming bond 6526
—costs included 6529
—record of 6530

LUNACY PROCEEDINGS
Commission to ascertain insanity, 1017, 1020
Commitment papers 1018
Record 1019
Commitment 1020
Custodian of insane person, bond 1020
Fees and expenses 1021

WARRANTS
Issuance, in cities 3103
Removal of poor person to place of last settlement 2802
To view and appraise estray or adrift property 3564
Damages by trespassing animals.3541
Pilots, conducting vessel without or employing unauthorized person 3621
Against receivers, when tried....6293

WARRANTS FOR SMALL CLAIMS
Jurisdiction of civil claims.....6015
Removal to circuit or corporation court 6017
Irregularities in warrant 6018
Not to have jurisdiction if a material witness, related to party, interested in claim, etc.6019

Sec.

JUSTICES OF THE PEACE—Con.
—effect of judgment 6019
—other justice to act 6019
How issued, directed, returned, executed 6020
Witnesses, subpoenas for 6021
—fining for failing to attend....6021
Trial, costs 6022
Association of other justices with 6022
Record book, entries in 6024-6032
Judgment 6022, 6023
—endorsement on papers.....6023
—abstract of 6025
— —to clerk's office 6030
New trial 6026
Stay of execution 6027, 6029
Appeals, security....6019, 6027, 6028
—delivery of papers to clerk....6036
Execution 6029
—return, renewal 6030
—docketing by clerk, indexing..6031
—writ of possession 6029
Proceeding against officer failing to return execution, pay money, etc. 6033

Criminal Jurisdiction, Authority, Procedure
Jurisdiction 4987
—Va. Const., § 8
Trial, removal of to other magisterial district 4824
Trial of misdemeanors on warrant 4987
Trial of misdemeanor without warrant 4992
—Va. Const., § 8
Summoning witnesses 4824
—in jurisdiction in which accused was arrested 4837
Power to adjourn examination or trial 4839
—commitment or recognizance of accused 4839, 4841
Bringing accused before, 4826, 4827, 4941
—where warrant issued in county other than where trial ought to be 4827
Allowance of bail....4828, 4837, 4845
Discharge of person committed or under recognizance for misdemeanor, when 4849
—order, filing, delivery to jailer.4850
—judgment for costs 4850
Costs, certification of.....4961, 4962
Processes issued by to be returnable to trial justice, when.4988
Appeals from conviction before, 4989, 4990
Prisoner sentenced to work on roads or in quarry, notice to superintendent of penitentiary.2094
Person convicted of misdemeanor, sentence to convict road force.2096
—delivery to superintendent of penitentiary 2096
Commitment of person to other jail adopted by court 2873
Conservator of peace 4789
—duties as, arrests by 4789
Offenses under chapter 28 relative to forestry laws 548
Sale of unsound meat 1183
Sale of deleterious or unwholesome food 1218
Use of truck barrel below standard 1473
Violations of mining law.....1856
Children convicted of misdemeanor, corporal punishment of 1924
Husband or parent deserting or failing to support wife or child, 1937-1944
Commitment of minor to prison association 1954-1956

Digitized by Google

Sec.
JUSTICES OF THE PEACE—Con.
Trial of prisoner escaped from convict road force 2079
Automobiles, seizure and sale of for violation of law 2146, 2147
Violations of ordinances or by-laws of county 2743
Motion against person begging on street 2804
Proceeding against vagrants, 2809, 2810
Fishery laws, violation of, 3155, 3215-3217
—Potomac river 3299
Violations of oyster laws.....3278
Offenses against game laws....3345
—destruction of boats, nets, etc..3356
Allowing animals to run at large in villages or unincorporated communities 3551
Proceeding against deserting seamen 3661-3663
Building wharf without permit..3675
Suppression of riots and unlawful assemblies 4527
—commitment of rioter on failure to give bail 4528
Violations of law relating to cruelty to animals 4562
Restraint of person disturbing public worship 4576
Appointment of police for religious meeting 4580
Intoxicating liquor laws, duty to enforce 4655
—search warrant for violations of 4612
—recognizance of accused to answer indictment 4613
—recognizance of witnesses....4613
—bond of accused not to violate law 4613
—warrant for arrest of person bringing ardent spirits into State 4636
Fine on witness or other person for disobedience of process, procedure for 4985
Extradition proceedings, warrant of arrest 5062
—proceeding on, commitment, bail, recognizance 5063
—notice to Governor 5064

EXAMINATION OF ACCUSED
Examination of accused 4842
Separation of witnesses 4843
Reduction to writing of testimony of witnesses 4844
Discharge of accused 4845
Trial and sentence, when.....4845
Commitment for trial.....4845, 4846
Recognizance of accused..4845, 4846
Recognizance of witnesses.....4845
Return of proceedings 4846
Certification of examination and commitment and recognizance.4847
—attachment for failure.....4847
Association of other justices in, disagreement 4848

RECOGNIZANCES
Of person convicted of violating game laws 3362
Of person suspected of being about to engage in duel.....4424
Of person accused of violating intoxicating liquor laws 4613
Of person about to commit crime. 4790-4792
Of person going armed.....4795
Of person about to commit breach of the peace 4796
For good behavior 4803
Of accused after examination, 4845, 4846
Of witnesses 4845
Default on recording 4978
—notice to Commonwealth's attorney 4978

Sec.
JUSTICES OF THE PEACE—Con.
—certification of 4840
Discharge of surety on 4982, 4983
—certificate of 4983
—new bail 4983
In extradition proceedings.....5063

SEARCH WARRANTS
Violations of intoxicating liquor laws 4612
Seizure of gambling devices, tables, wheels, money, etc....4676
When and in what case, to issue 4819, 4820
How directed 4821
Disposition of property seized under 4822

WARRANTS FOR ARREST
Issue of 4823, 4824
When to issue, how directed, execution and return 4824
Endorsement of warrant issued in another jurisdiction 4825
Power to issue 4988
Returnable to trial justice, when.4988
Person escaping from quarantine.1539
Person bringing intoxicating liquors into State 4636
Violation of fishing laws...3215-3217
Violations of oyster laws.....3277
Deserting seaman 3661
Person carrying weapon on Sunday or to place of public worship 4578
In extradition proceedings 5062
Non-resident disturbing fishing shores 5292

Election and Qualification
General Assembly to provide for appointment or election, and jurisdiction.....Va. Const., § 108
Election of 127
—term 127
Additional, how provided 128
—term 134, 136
—member of Congress may act as 291
—what United States officers not disqualified for 291
Elected justice of the juvenile and domestic relations court.....1945
When new county formed.....2682
Of city of second class, election, term 2893
In cities or towns changing form of government 2948
Vacating office by holding certain other public offices.....3093
In cities, election, term.....3092

Fees
Lunacy proceedings 1021
Drawing sample of fertilizer for analysis 1119
General provisions 3481
Fee book 3494
Enforcement of prohibition law..4655
In criminal cases 3507
—certificate of judge for payment of 3507
—when not paid from treasury 3511
Payment out of treasury 3504
—certificate of allowance..4961, 4962
—effect of failure to present claim in time 4965

Penalties
Failure to perform duty in suppressing riot, &c.....4529
Failure to enter judgment in record book 6024
Refusal to give copy of entry of judgment 6032
Failure to produce entry 6032

Witnesses
Entry of fees and allowance....3529
Restriction of number whose fees may be taxed in costs.....3532

Digitized by Google

Sec.

JUSTICES OF THE PEACE—Con.
Compelling attendance 6021
Issuing process for 6217
Depositions of taken before.....6225
—out of State 6226

JUVENILE AND DOMESTIC RELATIONS COURTS
See also **"Children"; "Guardian and Ward"; "Husband and Wife"; "Infants"; "Minors"; "Parent and Child"**
Establishment of 1945
Justice, term 1945, 1953
—oath 1946
—salary 1947
—vacancy, substitute 1948
—removal 1949
—conservator of the peace 1950
Jurisdiction 1950
—offenses committed by children under 18 years of age 1950
—husband or parent failing to support or deserting wife or child 1937-1944, 1950
—offenses against children.....1950
—cases affecting, care, custody, &c., of children 1950
—delinquent children, appointment of probation officers for..1912
—delivery of children to probation officer 1913
—report, proceeding 1913
Court rooms, records 1951
Clerks and bailiffs, powers and duties 1952

KEEPER OF ROLLS
See **"General Assembly"**

KEEPER OF SEALS
Secretary of Commonwealth to be 344

KENTUCKY
Boundary line 13
Compact with 13

KEYS
Buying or receiving with intent to defraud 4449

KIDNAPPING
With intent to extort money, punishment 4407
To sell as slave, punishment....4408
Illegally seizing, or secreting child 4409
Inmate of State hospital, punishment 4412

KING AND QUEEN COUNTY
Commonwealth's attorney, fees.3505

KING GEORGE COUNTY
Ballast masters 3651
Commonwealth's attorney, fees..3505

KING WILLIAM COUNTY
Commonwealth's attorney, fees..3505

KNIGHTS OF PYTHIAS
Chapter 171 not to apply to....4302

KNOWLEDGE
Of infirmity in negotiable instrument 5618
By jurors, of facts in issue.....6014
Fertilizers 1126, 1132
—penalty 1127, 1131
—damages 1128
Agricultural lime.....1132, 1133, 1134
Seed containers..1139, 1140, 1141, 1151
—penalty 1151
Cider vinegar 1191
Cider 1192
Flour 1194
Corn meal 1195
Ice cream 1216
Milk 1216
Commercial feeding stuffs.....1240
Tobacco, falsely marketed.....1389
Inspected hemp 1427
Trade unions, etc.....1455
Counterfeiting, penalty 1456

Sec.

KNOWLEDGE—Con.
—application, registry 1457, 1458
—certificate, evidence 1458
—penalty for false statement....1459
—injunction, damages for infringement 1460
—displaying without authority, penalty 1461
—suits, plaintiff 1462
Drugs, false 1657, 1659, 1664
Poisons sold or dispensed 1691
Morphine, heroin, opium, &c., drugs containing 1693
Used in transportation of dead body 1728
Oaths of deputies, by clerk of the court 2701
Books and papers stored by auditor 2188
Game for shipment from State.3361

LABOR
See **"Commissioner of Labor"; "Labor Union"**
Special act regulating prohibited, Va. Const., § 63

LABOR DAY
Public holiday 5758

LABOR UNION
Label, trade mark 1455
—application 1457
—registry, certificate, evidence..1458
—penalty for false statement....1459
—unlawful use, injunction, damages 1460
—displaying without authority penalty 1461
Suits by, plaintiff 1462

LABORER
See **"Exemptions"; "Homestead Exemptions"; "Mechanic's Liens"**
Lien of 6426
—extent of, how perfected..6427, 6429
—priority 6437
—transportation, mining or manufacturing company 6438
Wages, exemption 6555-6557

LAKE DRUMMOND
Use of waters of by city, town or county 3040

LAMPS
Safety, use of in mines...1861, 1862

LANCASTER COUNTY
Ferry across Curotoman river..2052
Taking terrapins in, penalty....3297
—disturbing eggs 3297
—forfeiture of boat 3297
Commonwealth's attorney, fees..3505
Obstructing landings by throwing oyster shells into water.....4751

LAND
See also **"Creation and Limitation of Estates"; "Estates"; "Land Office"; "Real Estate"**
Construed to include, cl. 10..... 5
Recovery for damage to by establishment of cemetery 56
Forfeited or escheated, title to acquired by settlement or payment of taxes 457
When not to escheat 492
Equitable title, escheat of..... 514
Forest reserves not subject to warrant, survey or patent..... 532
Entry on by surveyor of oyster ground 3259
Condemnation of, power of railroad corporation 3857
Telegraph and telephone conduits, wires, etc., on.....4028
Title to, transfer of in condemnation proceedings.....4369, 4373
—reversion of 4379
Recordation of order, judgment or decree for recovery of.....3216

Digitized by Google

Sec.

LAND—Con.
Action to recover, when included within boundaries of grant under which plaintiff claims, rule for recovery 5465
Possession of part not construed as possession of whole.....5470
Equitable title of vendee as defense to ejectment 5471, 5473
—when mortgagee or trustee not to recover 5472, 5473
Recovery of, allowance for betterments or improvements, 5483-5485, 5491-5505
—relinquishment of title.....5502
Re-entry for breach of covenant or condition 5530-5539
—relief against 5531-5534
— —time for 5538
Limitation of actions to recover, 5805-5809
Actions and suits to recover or charge with debt, where brought 6049, 6050
Controversies as to title, appeals 6336, 6337
—jurisdiction of Supreme Court of Appeals .....Va. Const., § 88

LAND BOOKS
See also **"Taxation"**
Form of 2254, 2279
—furnished by auditor 2254
—property of white and colored persons shown separately.....2279
—town and city lots.....2280
—changes noted in 2281
—grants entered in 2282
—notation of real estate sold for taxes 2283
Owner causing land to be entered on 2451
—forfeiture for failure 2452
Exhibit to taxpayer, correction of entries 2273
Land divided among several....2285
Transfers on 2285
Mistakes in, correction....2286, 2288
Owner dying intestate or devising land 2287
Entry of mineral lands 2234
Minerals and lands assessed separately 2235
Omitted land, entry and assessment 2292, 2293
Columns added 2329
Extensions and recapitulation....2337
Original 2341, 2342
Oath to 2299
Examination of 2299
Copies 2299
— —copy to assessor 2242
Not altered by commissioner of revenue after delivery.....2354
—how disposed of 2342
Admitted as evidence 2345
No book for previous year, how supplied 2331
Court to cause to be bound.....5979

LAND BOUNTY
Seal used in claiming, no tax charged on 2402

LANDINGS
See also **"Bridges"; "Wharves"**
Establishing or altering location of 1977-1983
—superintendent, report 1977
—viewers 1977
— —examination, location, map, report 1978
— —pay 1983
Report of viewers 1978
—proceedings on, process to summon proprietors 1979
—service, publication, posting...1979

Sec.

LANDINGS—Con.
—non-resident or unknown owners 1979
—defenses, compensation, damages 1980
—commissioners, appointment...1980
— —meeting, notice, report.....1980
— —pay 1983
— —report, proceedings on.....1980
— —confirmation 1980
Appeal to circuit court 1980
—hearing, judgment 1980
Costs and damages 1981
Land not condemned without consent of owner, cemetery, seminary 1982
Not more than one acre condemned for 1982
Pay, viewers, commissioners, surveyor 1983
Appeals in controversies concerning 6336, 6337
—Va. Const., § 88
Ferry, to be firm and dry.....2062
Franchise, granting by city or town 3016-3022
—Va. Const., § 125
Separate waiting rooms for colored persons 3716
Drinking ardent spirits at boat landing, punishment 4631
Driving animals on at dangerous speed 4741
Horse racing on 4741

LANDLORD AND TENANT
See also **"Leases"; "Rent"**
Distress on property of tenant for taxes due by landlord....2441
—credit for from rents.....2447
Emblements, common law rights.5540
—rent for land occupied by.....5541
— —apportionment of rent.....5541
—compensation for preparing land for crop 5542
—tenant holding over 5543
Hunting on land without license.3334
Landlord as party to ejectment against tenant 5455
Lien on crops for advances to tenant 6454, 6455
Manure, removal of as waste....5510
Notice to tenant, assessment for local improvements 3069
Notice to tenant to destroy diseased trees 888, 899
Service of process on agent in proceeding to establish road...1979
Waste, liability of tenant for....5506
—committed pending suit.....5511
—removal of manure as.....5510

Leases
Rights of tenant in escheated land 515
Form of 5165
Contract for term of more than five years, recordation of, 5192, 5193
—when writing required 5561
Covenant to pay the taxes, effect of 5178
—that he will not assign without leave 5179
—that he will leave premises in good repair 5179
— —effect of destruction of property 5180
— —when lessee deprived of property by public enemy....5180
Covenants for lessee's quiet enjoyment of his term 5181
Provision for re-entry by lessor for default in rent, &c.....5182
Rights of tenant when leased lands partitioned 5285

Digitized by Google

Sec.

LANDLORD AND TENANT—Con.
Rights of grantees and assignees against lessees 5512
Rights of lessees against grantees, assignees, &c.....5513
Grant of reversion, powers passing to grantee 5514
Notice to terminate tenancy....5516
—on whom served 5516
—when unnecessary 5516
Effect of failure of tenant to vacate at expiration of term....5517
—liability for use and occupation and damages 5517
Desertion of premises by tenant, rights of landlord 5518
Use and occupation, action for...5519
—effect of agreement reserving certain rent 5519
Re-entry, when tenant deserts
—for breach of covenant 5530
—proceeding and judgment.....5530
—relief to defendant, when barred 5530
— —how gotten 5533, 5534
— —to mortgagee or trustee....5532
—suit for, when brought.....5535
—written act, recorded.....5536
— —certificate, publication 5536
—possession restored to owner within what time, how.....5538
—limitation of suit against person in possession by re-entry..5539
Unlawful detainer, proceedings against tenant 5445
Recovery of premises in action of unlawful detainer for failure to pay rent 5448

Rent

Credit on of taxes paid for landlord 2447
Covenant to pay 5178
Effect of destruction of property.5180
—deprivation of property by public enemy 5180
—reduction of rent 5180
Payment of balance due by tenant on contract reserving title to chattels 5191
Apportionment 5544-5547
premises 5518
—land occupied by emblements.5541
—from lessee from tenant for life or other uncertain interest..5543
—recovery by personal representative, remedies 5545
—purchase of part of land by holder of rent 5547
— —part of rent by holder of land 5547
Forfeiture for default in 5548
—recovery of premises in action of unlawful detainer 5448
—security for rent 5449
Attornment, when unnecessary..5514
—when void 5515
Re-entry for non-payment 5518
—forfeitures, relief against.5531-5533
Action for 5519
Interest on 5519
Who may recover 5520
Who liable for 5521
Liability of under-tenant..5523, 5525
Attachment for 5526
—entry by force to levy.....5526
Priorities of liens 5523, 5524
Goods of tenant, removal of by subsequent lienors 5524
—payment of rent by lienors....5524
—taking under legal process, payment of rent 5524
—goods of under-tenant 5525
For land occupied by emblements 5541
—apportionment 5541

Sec.

LANDLORD AND TENANT—Con.
From lessee of tenant for life or other uncertain interest 5543
—apportionment 5543
Compensation for preparing land for crops 5542
Attachment for 6416-6418

DISTRESS

Of property of tenant for taxes due by landlord 2441
—credit for on rent 2447
Distress for 5519
When made 5522
By whom made 5522
Goods subject to 5523, 5526
Effect of lien on goods 5524
Entry by force to levy.....5526
Irregularity or unlawful act, effect of 5527
—action for damages for.....5527
Return of warrants 5528
Venditioni exponas 5528
When rent payable in other thing than money 5529
Forthcoming bonds 6518-6530
—affidavit of tenant unable to give 6519
—motion for judgment on.....6519
—defense to 6519, 6522
—bond of claimant of rent.....6519
—sale of property 6519
—quashing 6523

LANDMARKS
Injury to or destruction of.....4479

LAND OFFICE
See also **"Register of the Land Office"**

Register

Election 323
Term 324
Bond 325
—effect of failure to give..... 327
—filed 328
Record of oath taken by..... 277
Vacancy 329
—how filled 122, 329, 331
Salary 3439
Removal 330
Business hours 337
Proceedings and vouchers 338
Clerks, appointment 335, 3449
—removal or suspension 336
—salary 3439
Employees 402
Records of titles in Northern Neck 414
Original plat not delivered out of office 415
To file and preserve vouchers and certificates 416
To keep a register of warrants.. 416
To furnish copies of unsigned grants 417
—certificate to 417
When and to whom to issue warrant 418
When to issue duplicate 419
Report of oath and names of chain-carriers to 436
To receipt for plat returned to.. 442
To issue new warrant on loss of land by caveat 452
Grants made out by 455
When not to receive plat..... 458
When not to issue grant 459
To note grant or renewal of warrant 461
To return defective plat to surveyor 463
—postage allowed 466
When and in what form to issue grant 467
Delivery of grant 468
Recordation of grant 468
—index 470

Digitized by Google

Sec.

LAND OFFICE—Con.
Warrant for surplus in grant.... 472
Receipt for court's certificate on resurvey 476
To enter decree repealing grant. 488
Certificate of escheator, publication of 504
—copy filed with Governor 504
When to issue grant for escheated land 507, 512
List of grants, forwarded to clerk of court 2242
—to whom furnished 2277
Fees 2505
—when to be paid 2506
—paid into treasury.....402, 3439
Account with auditor 2507, 2508
—when to pay funds into treasury 2509
Contingent expenses 3439

Land Grants
Grants to run in name of Commonwealth and be attested by Governor .....Va. Const., § 75
Copies of unsigned 417
—effect of as evidence 417
—as to vested rights 417
Land not to be granted 421
Issuing on judgment on caveat.. 450
When caveat dismissed or decided in favor of defendant 455
Affidavit of person applying for. 459
Issuance of 459
When not to issue 459
Void 459
—magazine at Westham 459
—stone quarry worked by State.. 459
—common 459
—natural oyster bed 459
Noting by register 461
When and in what form to issue.. 467
Delivery and execution of..... 468
Recordation of 468
To heirs and assigns, recitals in 469
Correction of errors in 475
Consolidation of 475
When new grant to issue for surplus 478
Entry for surplus in 471, 572
Recitals in grant for surplus.... 472
Following suit to supply link in title 483, 484
—caveat against 484
—recordation of 485
Suit to repeal 486
—limitation on 5822, 5823
For escheated land 507, 512
Forest reserves not subject to.. 532
List of furnished to clerks of courts 2242
List furnished to auditor, commissioner of revenue and tax boards 2278
Copy furnished commissioners by individual 2278
Entered in land books.....2282
Of waste and unappropriated land 2504
Recorded in deed book 3393
Natural oyster bed, rock or shoals not to be granted 3573

Survey
Warrant lodged with surveyor.. 420
Entry by surveyor 422
When entry void 124
Warrants not fully appropriated by entry 425
By surveyor of an adjoining county 426
On land in possession of another, 428-431
By whom made 432
Notice of time of 433
Entry void when party fails to appear for survey 434

Sec.

LAND OFFICE—Con.
Variation of magnetic needle to be stated 435
—forfeiture for failure to state.. 435
Chain-carriers to be sworn..... 436
—report of oath 436
How made and marked 437
Plats and certificates, delivery of and what to show..438, 441, 457
—examination and entry of 439
—penalty for delivery of to unauthorized person 441
—return of to register and receipt for 442
—filed with clerk of court..... 443
—when not to be recorded.....458
—void 458
Annual return of list of..... 440
By one in possession who has paid taxes 457
Return of defective plat to surveyor 463
Removal of defects 464
—penalty for failure 465
Resurvey by patentee 473
—costs and damages 473
—security for 474
Resurvey on petition of grantee. 476
—return of certificate to land office 476
—caveat against 477
—new grant for surplus 478

Caveat
Filing 429, 430, 450
Proceedings on 431
Duties of clerk of court 445, 446
Process on 446
Trial 447
Proceedings after judgment..... 448
—if for defendant 448
—if for plaintiff 450
Writ of error to judgment..... 449
Issuing new caveat 448, 450
Causes for which may issue.... 444
What to state 444
Effect of failure to enter..... 444
Copy delivered to clerk by caveator 445
—void for failure 445
Issue of grant when judgment for plaintiff 450
Proceedings on second caveat.. 451
Costs, security for 451
Affidavit filed with 453
Dismissal, new summons..... 454
—order of publication 454
List of those decided or dismissed 455
Fees refunded 456
Against resurvey 477, 478
Against grant to supply link in title 484

Warrants
Register of 416
When and to whom to issue..... 418
Issue of duplicate for lost warrant 419
Location of land on 420
Land on which no warrant to be located 421
How entered when no surveyor in county 426
Entry and survey when principal surveyor interested 427
Caveats to prevent issue, 429, 430, 431
Location on 420, 422
Entry by surveyor 422
Priorities 423
When not fully appropriated by entry 425
Location of land in possession of another 428-431
Location void when party fails to appear for survey 434
—new location 434

Digitized by Google

Sec.

LAND OFFICE—Con.
Location invalid when bond already settled 457
Location of on surplus in grant, new grant for surplus 472
Location, inclusion of several in one grant 475
New warrant on loss of land by caveat 452
Assignment of 460
Noting of grant on or renewal of 462
When personal estate 462
When real estate 462
Forest reserves not subject to.. 532

LARCENY
See also **"Criminal Procedure"; "Grand Larceny"; "Petit Larceny"**
Conviction to disqualify voter.. 82
—Va. Const., § 23
—to exclude from registration.. 93
— —Va Const., § 23
—to disqualify for jury service.5984
Grand and petit, defendant punished 4440
Of animals 4440
Of sand on banks of Potomac river 4441
Of bank notes, checks, account books 4442, 4443
Of things affixed to freehold....4444
Of dogs 2324, 2325, 4445
Of oysters, punishment 3233, 3237
—roughing or taking without culling 3274
Entry of dwelling house with intent to commit, punishment...4437
—other house, ship, railroad car, etc. 4439
Possession of tools with intent to commit 4437
Removal, etc., of goods levied on.4447
Receiving stolen goods as.....4448
Embezzlement of money, bill, check, etc., as 4451
—of public funds by officer.....4452
Sale or pledge of goods of another and failing to pay over proceeds 4453
Failure to perform promise to deliver crops, etc., in return for advance of money 4454
Fraudulent sale, removal, etc., of mortgaged chattel 4455
Failure to pay for or return goods delivered on approval 4456
Obtaining money or other property by false pretenses or tokens 4459
Suspension of sentence on conviction 4486
Of public records 4518
When possession of stolen goods by junk dealer is 4711
Attempt to commit, how punished 4767
Committed without State, jurisdiction of prosecution for....4769
Search warrant for stolen property 4819-4822
Of United States currency, sufficiency of proof 4870
Of money, bullion, bank notes, &c. 4870
Sufficiency of indictment 4870
Sufficiency of proof of ownership 4872
Conviction for petit larceny on prosecution for grand larceny..4921
—when proof shows property worth more than fifty dollars..4921
Special commissioner or receiver failing to account for money..6273

Sec.

LARD
See also **"Inspection"; "Inspectors"**
Inspectors of 1400, 1401, 1402
—brand by 1425
—how marked when unfit to pass.1428

LASCIVIOUSNESS
Lewd or lascivious cohabitation, punishment 4545

LAUNDRY
Regulation and inspection of...1545
Construction of term.....1545
Children, employment in, 1809-1811, 1814-1816
—penalty 1814
—by parent 1815

LAW AND EQUITY COURT OF THE CITY OF RICHMOND
Establishment 5912
Jurisdiction 5922, 5928
Terms 5923
Sheriff of city of Richmond to be officer to 5924
Rules, docket 5924
Judge, salary, how paid....3468, 5924
—increase, decrease 3460
Clerk 2696, 5924
—register of securities kept by..5925
—fees 5925
—election, term, compensation, 129, 5930
Removal of cases to or from other courts of city of Richmond 5927
Appeals from 5922, 5929
Commissioner 5924
Sheriff, fees paid from treasury..3503
—deputy 3503
Chancery docket 6245
Office judgment, when becomes final 6134

LAW LIBRARIES
See also **"Libraries"; "State Library"**
Separate from State Library.... 360
Establishment and branches.... 368
Additions to 358, 369
Regulations 370
Who may use 371. 5878
Librarian and employees, appointment 360, 368, 5878
—Va. Const., § 132
Supreme Court of Appeals to control and use 360, 368, 5878
—Va. Const., § 132
Publications received in exchange placed in 347
Supreme Court reports placed in. 347
Acts of Assembly furnished to..388
Director and employees of Legislative Reference Bureau to have access to 576
Fees from bar examinations applied to 3417
Contributed by members of the bar 373, 374
—duties of clerks of courts..... 373
—rules for government of....373, 374

LAW MERCHANT
See **"Negotiable Instruments"**
When rules of to govern.....5757

LAW REPORTS
See **"Supreme Court Reports"**

LAW SCHOOLS
State Reports furnished to..... 347
Journals, Acts of Assembly and Code furnished to 356
Teacher in, license to practice law granted to 3409

LEASES
See also **"Landlord and Tenant"**
Form of 5165
Of gas, oil or minerals by State Geological Commission 531

Digitized by Google

Sec.

LEASES—Con.
Petition by committee to lease property of insane person, 1055-1057
Of ferries across Elizabeth river.2048
Of Norfolk county ferries..2050, 2051
Of property of county, city or town exemption from taxation.2272
Of real estate for collection of taxes 2439
Of corporate property by city or town 3016, 3018-3022
—Va. Const., § 125
Of oyster ground.....3224-3228
—forfeiture by corporation for employment of non-resident labor 3224
Recordation of in deed book....3393
Railroad operated under, filing with State Corporation Commission 3993
Of real estate of convict.....5004
Deed of release effectual without lease 5156
Deed of, transfer by of possession to use 5155
Covenants to pay the rent..5178, 5180
—to pay the taxes 5178
—that he will not assign without leave 5179
—that he will leave the premises in good repair 5179, 5180
—for lessee's quiet enjoyment of his term 5181
—for re-entry by lessor for default of lessee 5182
—rights of grantee of reversion in 5512
—rights of assignee of lessee in 5512
—rights of lessee against grantee of reversion 5513
Contract for term of more than five years, void as to creditors and purchasers 5192
—valid if recorded, etc., 5193, 5194, 5195
Included in devise of land.....5240
By curator of estate of decedent.5248
Rights of lessee where leased lands divided or sold in partition proceedings 5285
Surrender or renewal by or on behalf of infant or insane person 5334
Of real estate of infants, insane persons or trust estate, suits for 5335-5341
—who may not be interested with lessee 5341
—proceeds, how secured, applied and paid over 5342, 5343
— —secured to wife.....5345
Rights of grantee of reversion..5512
—of assignee of lessee.....5512
—of lessee against grantee of reversion 5513
As evidence in action for use and occupation of land 5519
Contract for, writing required..5561
Of corporation, service of process on lessee 6065, 6066

LEE COUNTY
Trespass by animals of non-resident, damages 3542
—distress of 3544
—when returned to owner.....3545
—when surrendered to resident purchaser 3546
Fees of Commonwealth's attorney 3505

LEE-JACKSON DAY
Public holiday 5758

LEE MEMORIAL ASSOCIATION
Acts relating to continued in force 61

Sec.

LEGACIES
See "Wills"
For retired teachers' fund..... 792
Inheritance tax on, exemptions from 2272
Legatee dying before testator, issue to take when.....5238
—to several jointly 5238
Distribution to legatee 5437
—order to creditors to show cause against 5439
—refunding bond...5437, 5438, 5439
—refund by 5438, 5439

LEGAL TENDER
See also "Money"
Gold weighed with weights not sealed 1485
Notes, levy of execution on, how accounted for 6487

LEGISLATIVE DEPARTMENT
Separate from executive and judicial .....Va. Const., §§ 5, 39
General provisions, Va. Const., §§ 40-68

LEGISLATIVE DISTRICT
City of second class remaining part of 2909

LEGISLATIVE REFERENCE BUREAU
Provision for 573
Director, appointment and qualification 573
Salary and term 573
Duties 573, 577-579
Assistants, draftsmen and clerks. 574
—appointment and compensation. 574
Offices and office hours 575
Books and records of open to public 578
Requests for drafting bills, secrecy 579
Printing and stationery for.... 580
—payment for 580

LEPROSY
Bodies dead of, transportation, rules for 1728

LETTERS OF CREDIT
Issued by banks or trust company 4112

LEVARI FACIAS
Abolished 6480

LEVIES
See "Executions"; "Exemptions"; "Homestead Exemptions"; "Interpleader"; "Taxation"
County levies, see "Counties"
Of tax to establish tuberculosis sanatorium 1510
Of road tax 1986, 1987
—for upkeep of roads and redemption of bonds 2117
Of taxes for paying interest on and redeeming bonds for roads in magisterial district.....2123
To recover penalty for non-payment of taxes 3066
Appeals from levy of taxes.....6336
Exemptions not to extend to levy for taxes 6563
To collect tax from merchant..2366
Pension exempt from.....2655
For pension fund 2662
By supervisors 2720
—school taxes 2721
—to pay interest on school bonds 2721
—to provide sinking fund to pay bonds issued for buildings 2741
—for erection of Confederate monument 2742
—to pay allowances by courts..2755
—appeal from 2762
—for support of poor.....2795, 2806
—of tax for extension of turnpike in counties 4093
Crops exempt from 2830

Digitized by Google

Sec.

LEVIES—Con.
Unreasonable, prohibited 2831
Removal of goods 2831
On horses, live stock, sustenance.2831
Of taxes, by cities of second class 2907
County, payment of when territory annexed to city or town..2960
Rent for oyster ground.....3225
To pay for installing general index in clerk's office.....3393
On trespassing animals.....3541
Payments on insurance policy, when not subject to 4219
Removal of goods levied on, punishment 4447
Order in which paid from decedent's estate 5390, 5391, 5395
On goods on leased premises, provision for payment of rent.5524
Of execution 6485
—on equitable interest 6486
—property subject to lien.....6486
—property in personal possession of debtor 6490
—on goods in warehouse..1314, 1331
—on judgment for debt due State 2519
— —venditioni exponas 2527-2530
Of attachment 6389, 6390
—on effects in hands of officer..6408
—for rent, entering by force....5526
—on goods in personal possession of party 5526
Distress warrant, officer entering by force 5526
—on goods in personal possession of party 5526
Homestead exemption not applicable to claims for 6531
—Va. Const., § 190
Indemnifying bond, when officer entitled to 6154
—procedure of officer when not given 6154
Suspending bond of claimant...6156
Forthcoming bond of claimant..6157
Interpleader 6152-6158

LEVISA RIVER
Obstructing navigation, punishment 4752

LEWDNESS
See **"House of Prostitution"**
Punishment 4545

LIABILITY
Of manufacturer or packer to seller of falsely branded goods.1440
Of dealer in drugs, for misbranding or adulteration when guaranteed by manufacturer or wholesaler 1659
Of mine operator for death or injury of employee 1872
Automobiles, damage by violation of laws relating to, 2146, 2148
—seizure of machine 2146
—sale 2147
Of clerk of court to person injured by removal of records from county or city 3387
Of clerk of court for failure to note release of deed of trust or other obligation 3402
Of attorney to client 3427
Of directors and officers of corporation for false statement..3805
Of members of company or association acting as bank of circulation in suit by State to recover capital stock 4153
Of officers of insurance company, writing insurance when company is insolvent 4305

Sec.

LIABILITY—Con.
—of mutual fire or storm insurance company failing to perform duty 4335, 4340
Of husband, wife's estate not liable for 5134
Of wife, husband not responsible for 5134
Of heir on warranty of ancestor 5148
For unauthorized use of name or picture of any person for advertising purposes 5782

LIBEL
To recover damages for death caused by vessel 5786
Action for insulting words.....5781
Apology, evidence of in mitigation of damages 6240
Plea of truth 6240

LIBRARIAN
Of Senate, salary 3457
—when office kept open 3457
Of law library of Supreme Court of Appeals 5878

LIBRARIES
See **"Law Libraries"; "State Library"**
Donations of State publications to 351
Copy of Journals of Senate and House furnished to 386
Acts of Assembly furnished to.. 388
Annual reports of departments furnished to 393
In public schools 754, 755
—manager 754, 756
Property of exempt from taxation 2272, 2301
No inheritance tax on gifts to..2272
—Va. Const., § 183
Established by city or town....3074
—fund for 3074

LIBRARY BOARD
See **"State Library"**
Appointment 360
A corporation 360
Records of proceedings 360
Property acquired by 360
Library funds expended under direction of 360
To receive no compensation....360
Report to Governor 360
Board of directors 360
Term 360
Meetings 360
Appointment by 360
Secretary, duties 363
—records kept by 363
To permit use of library 366
Time books may be kept out....366
Fees charged for copies made by 350
Exchange or sale of duplicates..351
—account of 351
To arrange for distribution and exchange of Virginia publications 352
To fix prices of State publications 358
Warrants on library fund.....359
Books procured by 361
—historical works and relics....362
Expenditures to publish history of Virginia 362
To determine value of book not returned 367
Publication of Journals of House of Burgesses for 401

Digitized by Google

LICENSES Sec.

See **"Auditor of Public Accounts"; "Automobiles"; "Commissioner of the Revenue"; "Game"; "Hunting"; "Taxation"**

General Assembly may levy, Va. Const., § 170
To whom granted 2358
When required 2359
—transacting business without compensation 2359
When may be granted 2359
Application 2360, 2361, 2362
—filing 2360, 2361, 2362
—certificate of commissioner, 2360, 2361
Period for which granted 2361
—expiration 2361
—for three months or less 2361
—fee of commissioner 2361
Amount of 2361
When Auditor may grant 2362
Commissioner of revenue may obtain 2363
Form when issued to partnership, corporation, etc. 2364
Partnership, effect of change in partners 2365
—change in name 2365
Interrogatories to applicants 2366
—refusal to answer, penalty 2366
Designation of place of business 2367
—void if place not designated 2367
Corporation, designation of date of authority to transact business 2367
—void for failure to show date. 2367
Exemptions where tax estimated on income 2368
Person or corporation engaged in more than one business 2368
Doing business without 2369
When double tax imposed 2369
—collection, penalty for failure to pay 2369
Assessment 2369
—reformation by Auditor 2370
—of less than legal tax, omission deducted from compensation of commissioner 2371
To whom tax paid 2372
Issuance 2373
Expiration, term 2373
Apportionment 2373
Lists, return to Auditor 2374
—what to show, form 2374
—authentication 2374
—return 2374
—as evidence to charge officer 2375
A personal privilege 2376, 2377
Assignment 2377
Revocation 2378
—cost of proceeding 2378
Alteration when place of business changed 2379
Carrying on business without 2380
—penalties, separate offenses 2380
When payable into treasury 2381
Does not exempt property from taxation 2382
Commissioner's fees 2383
—transfer 2383
—by whom paid 2383
—when withheld 2384
Erroneously assessed, correction. 2385
—time for 2385
—correction or refund, 2386, 2387, 2388
Doing business without, penalty. 2393
Violating law with reference to, penalty 2393
Penalties, how recovered 2394
—action of debt 2395
— —arrest, bond 2395

LICENSES—Con.
—presentment, indictment or information 2395, 2396
By cities of second class 2907
Imposed by cities and towns 2072
Revocation of for violation of prohibition law 4653

On Particular Classes of Persons, Occupations or Privileges

Theatres 2373
Exhibitions or other performances 2373
Bowling alleys 2373
Billiard tables 2373
Bagatelle tables 2373
Pool tables 2373
On accident insurance company, procedure to obtain 4272
—revocation of 4320
To manufacture alcohol 4600
To hospitals to buy and dispense ardent spirits 4601
—to chemical laboratories 4601
—to hotels 4602
Of manufacturer of toilet articles, patent medicines, etc., to purchase alcohol 4590
Of alien casualty insurance company, deposit required 4326
Automobiles, motorcycles, etc., owner 2126
—application for 2126
—issuance, form 2127
—attached to machine 2127
—of manufacturer or dealer 2128
—chauffeur 2129
—termination of 2130
—fee 2128, 2129, 2132
—loss of, duplicate 2135
—return of when machine sold 2136
—another car purchased, new certificate 2136
—transfer 2136
—non-residents 2137
—automobiles, operated for hire, fee 2151
— —when payable 2152
Building and loan association, revocation of 4166
On bulls 6447
Or charter of corporation, refund when erroneous or excessive 3775
To practice chiropody 1620-1623
—annulment 1623
Clams, taking 3293
—buying, marketing, shipping 3294
Condimental stock and poultry food, sale of 1246, 1247, 1248
Of co-operative life insurance or casualty company, revocation or suspension of 4270
Crabs, taking, buying or marketing 3292
—fees, taxes 3292
—how license designated 3292
Of dealer in nursery stock 882
Dentistry, to practice 1644, 1646
—registration 1647, 1648
—revocation, causes for 1649
— —hearing 1650
— —appeal 1651
To druggist to sell alcohol, whiskey, brandy and wine, procedure to issue 4599
—wholesale druggist 4600
—revocation of for violation of law relating to intoxicating liquors 4593, 4595
— —for failure to discharge clerk 4575
To practice embalming dead human bodies 1720-1723, 1726
Of fire insurance company, revocation of 4307

Digitized by Google

Sec.

LICENSES—Con.
—for entering contract to fix pay of agents 4312
To fish for market with nets....3166
—for manufacture into oil or manure 3167
—for blue fish by hand 3168
—fees, taxes 3167, 3168
—display of license 3168
—forfeiture for fishing without..3169
—revocation for taking food fish for fertilizer 3176
Fish, manufacture into oil or fertilizer or taking therefor, 3167, 3168, 3185-3190
—issue of license, tax, 3168, 3186, 3189
—transfer 3189
For salting or buying herring or packing fish roe for market..3170
—tax, fee 3170
For fishing, non-resident 3209
To foreign corporation, issued by State Corporation Commission.3746
—fee 3746
—Va. Const., § 157
— —revocation ....Va. Const., § 157
To foreign telephone and telegraph companies 4036
Of fraternal benefit society....4287
—foreign fraternal benefit society 4288
— —cancellation of 4295
— —suspension of 4299
— —revocation of 4301
Garage, fee 2149
—definition of 2150
Of graduate nurse 1706-1714
For hunting, date, contents 3327
—county, how obtained, fee....3328
—State, how obtained, fee....3329
—non-resident, how obtained, fee 3330
—aliens, how obtained, fee....3331
—by whom issued, record 3332
—money received from, disposition of 3333
—not required of owners, landlords, &c. 3334
—delivered to and returned by clerks of courts 3335
—to be carried and exhibited....3335
—hunting without, transferring, using another's license, prohibited 3337
For hunting, in Accomac county, disposition of proceeds from...3347
—Northampton county 3347
—Princess Anne county....3347
Of indemnity insurance company, procedure to obtain....4272
Of industrial sick benefit company 4354, 4355
Of insurance companies, 4176, 4177, 4181, 4195
—revocation of 4180, 4195
—renewal of 4210
—suspension of 4223
—renewal, conditions of....4226
—promoter or stock salesman of.4237
—segregation of for State taxation 2206
To practice law, attorney of another State 3408, 3409
—teacher in law school....3409
—to applicants passing examination 3411, 3419
—revocation of 3420, 3423, 3424
Of life insurance company, procedure to obtain 4272
—revocation or suspension of...4250
—credit for on reincorporation..4254
To marry, required 5071
—by whom issued 5072
—certificate 5074
—return of 5074

Sec.

LICENSES—Con.
—penalty for failing to return..5074
—registration 5075
—filing 5076
—defective, validity of marriage.5083
—clerk issuing contrary to law..4541
—celebrating without 4542
Of maternity hospital 1925
To practice medicine 1612-1617
—annulment of 1623
—suspension or revocation for unlawfully prescribing intoxicating liquor 4593
On merchants 2366
—interrogatories 2366
—review by local board....2366
—refusal to furnish information, penalty 2366
—increase, collection 2366
—decrease, refund 2366
Of mutual fire or storm insurance company 4328
Not required of newspapers....3062
Underwriter's agency 4313
Of keeper of ordinary, forfeited for permitting gambling..4688, 4690
Oysters, shucking and packing..3239
—buying for market in barrels..3239
—in lieu of taxes on capital....3239
—registration of boat used in taking 3241
— —display of mark....3241
—to tongers 3242
— —revocation of 3244
—to catch with scrapes and dredges 3246
— —tax 3247
—to carry out of State when under size 3249
—to carry seed oysters to be planted in State 3250
Of panoramas 2373
Pharmacy, recognition of when issued by former board....1676
—issued without examination, to whom 1680
—examination for 1684, 1685
—issue of 1688
Pilots 3615
Private institution for care of feeble-minded persons 1903
On professional firms, separate, to members 2368
Scallops, taking 3293
—buying, marketing, shipping..3294
On public shows 2373
—imposed by city or town on show, etc., outside of corporate limits 2006
To operate slaughter house, sausage factory, etc. 1222
—revocation 1223
For sale of soft drinks....4665
—revocation 4665
Party buying and selling coupons of State bonds 2514
Streets, projections over....3015

LIEN
See also "Mechanic's Lien"; "Warehouses and Warehousemen"
Action by officer to recover property subject to lien 6514
On trespassing animal for damages 3541
On animals and vehicles taken charge of by Society for Prevention of Cruelty to Animals, 4559, 4560
—enforcement by sale 4561
Of assessment in proceeding to establish drainage district....1771
Of assessment for local improvements 3071

Digitized by Google

Sec.

LIEN—Con.
Of assessment against bank or banking institution for fees for examination 4122
Of attachment 6393
—on goods or money in hands of officer 6408
—necessity for recording memorandum of lis pendens....6469
Of attorney-at-law for fees....3429
On baggage at hotel or boarding house 6444
—removing baggage without paying bill 4464
Of bailee, how enforced....6449-6451
By corporation to secure bonds, procedure to create 3783
Of creditor bringing suit to set aside fraudulent transfer....5186
—of creditor filing petition....5186
On crops, for advances....6452, 6455
—agreement, docketing 6452
—injoining sale of crop....6453
—by landlord, for advances....6454
— —how enforced, affidavit....6454
— —effect on of other liens....6455
On estate of decedent....5392, 5400
Of decree entered in vacation....6307
On property condemned in eminent domain proceedings 4374
On exempt property, void....6564
Of fieri facias 6485
—territorial extent of 6517
—enforcement by garnishment after return day 6485
—on property not capable of being levied on 6501, 6517
— —when ceases 6502
Of forthcoming bond 6520, 6527
Of keeper of garage 6445
—how enforced 6449-6451
On goods and chattels, reserved for purchase price, recordation of contract 5189
—how contract enforced 5190
—when and how lien released....5191
On goods on leased premises, liability for rent 5523-5525
Of hotel, boarding house, etc....6444
—how enforced 6449-6451
Of judgment, on real estate....6470
—priority 6470
—order of attaching 6470
—necessity for docketing....6471
—enforcement in equity, 6472, 6473, 6474
— —limitation 6474
—subrogation to 6475
—not impaired by other judgment 6475
—order in which real estate subjected to 6476
Of judgment to enforce treatment prescribed by State crop pest commissioners 877
Of judgment against delinquent treasurer 2433
—execution 2433
Of judgment of State Corporation Commission 3732
Judgment or decree for defendant, allowance for improvements to land 5497
—of life tenant paying judgment 5498
Of judgment or decree by confession, time from which runs....6130
Of office judgment 6134
Of judgment against receiver....6292
Of judgment on homestead exemption 6550
Of persons furnishing labor, service, materials, to transportation, mining, manufacturing companies 6438
—recordation of memorandum, enforcement 6439

Sec.

LIEN—Con.
—rights of assignee of 6440
—effect of bankruptcy, death or absconding 6442
On land, priority over mechanic's lien 6436
Of keeper of livery stable....6445
—how enforced 6449-6451
Of loans to schools from literary fund 764
Of mutual assurance society, for assessments, protection of bona fide purchasers 6458
On negotiable instrument, holding for value 5589
Of owner of stallion or jackass..6446
Of owner of licensed bull....6447
Ascertainment and payment of in suit for partition of real estate.5281
On personal property for repairs.6443
—how enforced 6449-6451
On personal property, book recorded in 3393
Of policy holder, on property of co-operative life insurance company or casualty company 4270
Of policy holders on bonds deposited with treasurer by insurance or guaranty company..4214
—suit to enforce 4214
Of purchaser for portion of purchase money paid before notice.5200
Reserved for unpaid purchase money, limitation on enforcement of 5827
—extension of 5827
Of recognizance 6479
Bond having force of judgment..6479
Of forfeited recognizance in proceeding against husband or parent for desertion or non-support 1940
Of school district bonds held by State Board of Education.... 614
Of school bonds 766
Taxes, on property of railway or canal corporation..Va. Const., § 179
Of taxes on real estate....2271, 2454
—capitation tax 2455
— —Va. Const., § 173
—on rent 2271
—garnishment proceedings for collection of 2444
Of taxes on real estate, assessed by town councils....2457
Of transportation company for charges 3933
Of vendor, equitable lien abolished 5133
On vessel or raft, for cost of repairing or replacing buoy, beacon or day mark 4756

LIEUTENANT-GOVERNOR
See also **"Elections"**
Election 118
—Va. Const., § 77
—how determined 119
Term 118
—Va. Const., § 77
Governor may not suspend, Va. Const., § 73
Eligibility ....Va. Const., § 77
Duties ....Va. Const., § 78
President of Senate...Va. Const., § 79
Compensation ....Va. Const., § 79
Vote ....Va. Const., § 79
Impeachment ....Va. Const., § 54
Contested election of 264
—how determined 265
Vacancy in office, how duties discharged 120, 121
—how filled 120, 121
Record of oath taken by 277
Member of board to approve cost of surety on officer's bond.... 325
May use State Library.... 366

Digitized by Google

Sec.

LIEUTENANT-GOVERNOR—Con.
May use State Law Library 371
Exempt from jury service.....5985

LIFE ESTATE
See also **"Estates"; "Life Tenant"**
Sold for delinquent taxes, effect on remainder or reversion 2488
Present value of how calculated 5131-5133
When power to dispose of not to defeat remainder 5147
Sale of fee simple on bill by life tenant or remainderman 5161
Estate for life of another, to go to personal representative.....5383

LIFE INSURANCE
See also **"Insurance"; "Life Insurance Companies"**
Death by suicide or legal execution, effect of 4228
When policy incontestable.....4228
Assignment of policy 5767
Venue of action to recover on policy 6049, 6050

LIFE INSURANCE COMPANIES
See also **"Insurance"; "Life Insurance"**
Incorporation 4201
—deposit of bonds by required...4201
Discrimination in premiums or dividends, prohibited 4222
Policy at lower than actual age of applicant, prohibited 4222
Penalty for doing business illegally 4223
Not to engage in banking business 4240
Policy, fraudulent procurement of, penalty 4248
—procuring without knowledge or consent of insured 4248
Trust funds deposited with treasurer 4271
—how invested 4271
—return of to company 4271
License and certificate to do business 4272
—procedure to obtain 4272
—revocation or suspension of....4250
— —notice, hearing 4250
— —appeal 4250
— —penalty for engaging in business thereafter 4250
Foreign, license and certificate to do business 4272
—procedure to obtain 4272
Statutes applicable to 4265
Assessment or co-operative, prerequisites to commencing business 4259
—membership, payments to company 4259
—statement to commissioner....4259
—license or certificate 4259
—emergency fund 4260
— —disposition of 4261
—discontinuance of business....4261
— —receiver, appointment 4261
—officers, failure to levy assessments, penalty 4262
—who deemed to be 4263
—annual meetings 4265
—by-laws, adoption of 4265
—books and papers, inspection of 4265
—transfer or reinsurance of risks 4266
— —to company not authorized to do business in this State, penalty 4266
—reserve fund 4268
—policy, fraudulent procurement, penalty 4269
—false statement as to death or disability, perjury 4269

Sec.

LIFE INSURANCE COMPANIES—Con.
—assessment, notice of, what to contain 4267
— —failure to levy, penalty....4262
—policy or certificate, limitation as to amount of 4270
— —lien of 4270
— —failure to pay, penalty.....4270
— —forfeiture of license for....4270
—trust funds deposited with treasurer 4271
— —how invested 4271
— —return of to company.....4271
Legal reserve companies, requirements as to 4256
—valuation of policies by commissioner 4257
—information furnished to commissioner 4257
—assessment of 4257
—foreign, valuation of policies of 4257, 4258
Mutual companies, prerequisites for doing business 4247
—surplus fund, distribution of..4249
—reincorporation as stock company 4251
— —approval by members 4252
— —rights and liabilities of new company 4253
— —license, credit on.....4254
— —deposit of bonds 4255

LIFE SAVING STATION
Conveyance of lands for 18
Acquisition of land for..... 19

LIFE TENANT
See also **"Estates"; "Life Estate"**
Failing to repair mill, rights of remainderman or reversioner..3592
Annuity tables 5131
Calculating value of estate..5132, 5133
Power of disposition in, when not to defeat remainder 5147
Bill in equity to sell fee simple..5161
Bill by remainderman to sell fee simple 5161
Apportionment of rent from lessee of 5543

LIGHT
Cities of second class may provide 2906
As public utility 4067

LIGHT AND HEAT PLANT
Supervision of 402
Contract for fuel 406
Employees 402, 408

LIGHT HOUSES
Purchase or lease of land by United States for 18, 19
Penalty for injuring 26

LIME
See also **"Convict Lime Board"; "Fertilizer"**
Agricultural, dealer, brand.....1133
—registration, effect as guarantee 1132
—fee, certificate 1134
—penalty for selling without....1135
—rules and regulations 1135
—inspection 1135
—analysis 1135
— —method, copy, evidence....1136
— —deficiency, penalty, enforcement 1137
Bushel, standard 1470
Use of to destroy fish, prohibited 3195
—penalty 3196
Taking oysters for conversion into, prohibited 3277

LIMITATION
See **"Statutes of Limitation"**
Of bond issues by cities and towns 3079, 3080, 3090
—Va. Const., § 127

Digitized by Google

Sec.

LIMITATION—Con.
Of imprisonment for fine and costs 4953
Words of, when fee simple to pass without 5149
Validity of when fee tail converted into fee simple....5150
Contingent on dying without heirs or heirs of the body, how construed 5151
Rule in Shelly's case abolished..5152
Remainder not to fail for want of a particular estate....5153
—not defeated by alienation of particular estate or by merger.5154
To uses 5155
—deed of release effectual without lease 5156
Of trust estate, not subject to debts of or to alienation by beneficiary 5157
Of use or property by condition, reversion, remainder or otherwise in goods and chattels, when void as to creditors....5188
Survivorship between joint tenants abolished 5159
—exceptions 5160
Deed to convey grantor's interest.5163
—buildings, privileges and appurtenances 5168
—good between parties 5169
Effect of certain words of release in deed 5164

LINE TREE
Removing, defacing, etc., punishment 4479

LIQUORS
See **"Intoxicating Liquors"**

LIS PENDENS
Notice of, book recorded in....3393
Recording, indexing 6469

LISTS
Of paid poll taxes furnished by treasurers to clerks 104, 114
—Va. Const., § 38
—correction 110
— —Va. Const., § 38
—copies furnished by clerks of courts 111
— —Va. Const., § 38
Of securities belonging to literary fund filed with Second Auditor's annual report 614
Of school trustees, furnished to Superintendent of Public Instruction 634
Of retired teachers, publication of 798
—removal from 801
Of cancelled coupon bonds exchanged by colleges 992
Of persons licensed to practice medicine, furnished by clerk..1612
Of names of employees under sixteen years of age in factory, mill, mine, etc. 1810
Of conveyances furnished by clerk to Auditor and commissioner of revenue 2274
Of personal property for taxation 2305-2307
—penalty for false 2328
Of dogs for taxation 2316
Of licenses furnished by commissioner of revenue to Auditor and clerks 2374
By treasurers, of insolvent and delinquent taxpayers 2412
—of delinquent and uncollectible taxes 2414-2419
Of assessments of omitted capitation taxes 2420
—collections 2420
Of delinquent capitation taxes..2423

Sec.

LISTS—Con.
Of delinquent taxes, how forwarded to Auditor 2427
Of delinquent treasurers to Attorney-General 2432
Of taxes paid on real estate in advance 2438
By treasurer of delinquent town taxes 2457
Of delinquent real estate, furnished to treasurers 2460
Of payments of delinquent taxes, 2465, 2466
Of purchases of delinquent lands in name of Auditor 2489
Of fines, returned by clerk to Auditor 2563-2565
Of bonds purchased by commissioners of sinking fund 2625
Of application for pensions, posting and delivering to courts....2655
Commissioners of deeds 2853
Of delinquent taxes by collector in city or town 3076, 3077
Corporation engaged in fish business, of officers, directors, stockholders filed 3254
Of rented oyster grounds, posting.3271
By clerk of court, of county, district, city officers for Secretary of Commonwealth 3407
Of persons licensed to practice law certified to Supreme Court of Appeals 3411
Of witnesses' fees by clerk of court 3530
Of officers and directors of corporations, certified to clerk of court 3854
Of banks failing to pay fee for examination 4122
Of agents, filed by insurance company 4235
Of guaranty companies furnished to clerks of courts....4344
Of persons holding United States revenue tax receipts for sale of ardent spirits, publication of, etc. 4660
Of persons to serve on grand jury, selection by judge, delivery to clerk 4852
With venire facias in criminal case 4895
—how drawn 4895
Of creditors, filed in sale of merchandise in bulk 5187
Of heirs, furnished by personal representative 5379
Of fiduciaries furnished to commissioner of accounts 5401
—posting 5423
Of jurors, prepared by jury commissioners 5988
—delivered to clerk of court....5989
—entry on when juror drawn....5994
—to try case against city, town or county 6006
—of attendance and mileage....6007
—of allowances 6010

LITERARY ASSOCIATIONS
See also **"Corporations"**
Property of 47-49
Trustees of 49
Incorporation 3872
Disturbance of, punishment 4577

LITERARY FUND
See also **"Education"**
Set apart ....Va. Const., § 134
Of what constituted..Va. Const., § 134
Interest on, applied to schools, Va. Const., § 135
Surplus from condemnation of abandoned graveyards 54
Payment from for publication of escheator's certificate 504

Digitized by Google

Sec.

LITERARY FUND—Con.
Payment from of fees for escheator's sale 513
Payment from of debt of decedent whose land has escheated..... 516
Investment of by State Board of Education 614
Audit and payment of claims on...615
—limitation 615
Funds of paid into treasury.... 615
Property formerly held by board of, vested in school trustees... 648
Penalties recovered for benefit of 687
State appropriations for high schools credited to 708
—normal department of 709
—payments from 710
Creation, management 738
Income from for school funds, 738, 739
Loans from 757
—applications for 758
—amount 759
—interest, bonds, notes..... 760
—repayment 761
—expenditure 762
—lien, insurance 764
Payments to retired teachers' fund from 790
Withholding or enforcing payment of for failure of institution to report 989
Payment to of fines for violating laws relating to embalming..1723
Separate account of by treasurer.2195
Receipts and disbursements, report of by treasurer 2204
Fines credited to 2575
Certificates for West Virginia's share of State debt held by....2641
Fines and penalties recovered from insurance companies to..4232

LITERARY PURPOSES
Gifts or devises for 587
—how taken and held 588
—how will probated 589
—trustees 590
—power of General Assembly to suspend or repeal 593

LITERARY SOCIETY
See also **"Corporations"**
Property and trustees 47-49
Incorporation 3872-3880
Disturbance of, punishment 4576

LIVERY
Estates lie in grant as well as in livery 5146

LIVERY STABLE KEEPERS
Injury to horse or vehicle hired of 4567
—fraudulent hiring 4567
—rehiring 4567
Lien 6445
—how enforced 6449

LIVE STOCK
See **"Feeding Stuffs"; "Quarantine"; "State Live Stock Sanitary Board"**
Special laws as to running at large prohibited....Va. Const., § 63
Diseased, not to run at large.... 917
—sale 917
—disposition of 917
Tuberculosis 920
Test for tuberculosis 1224
Re-acting animals, surrender of.1225
—compensation for 1225
—sale, proceeds 1226
—expenses 1227
Listing for taxation 2307
Distrained or levied on, officer to provide sustenance for 2831
Report to land owner when caught in trap 3350

Sec.

LIVE STOCK—Con.
In streets of town 3538
Trespass by, impounding 3541
—damages, proceeding to recover, lien, sale, etc.....3541
—of non-resident 3542
—distress of 3543
—sale 3544-3546
Running at large in counties in which boundary lines are lawful fences 3548
—damages 3552
Running at large in village or unincorporated community, penalty 3550, 3551
Killed or injured by railroad, appraisal of value 3994, 3997
—fees 3996
—suit to recover for 3995
Transportation of by railroad...4006
Turnpike lots on 4083
—on valley turnpike 4083
Burning or destroying building containing, punishment 4428
Larceny of 4449
Registration, obtaining by false pretenses 4460
Giving false pedigree of.....4460
Poisoning, punishment 4467
Cutting, stabbing, shooting, punishment 4467
Transportation of on Sunday.....4572
—by steamboats 4575

LOAN
Statute authorizing to provide for sinking fund..Va. Const., § 187
Governor may raise temporary loans for State 2640
By banks 4111, 4113
—amount to one person, firm, etc. 4115
—what not construed as loan....4115
—to stockholders of on bank stock 4115
By savings banks 4143
By building and loan associations 4154-4156, 4166
Of goods and chattels, when void as to creditors 5183
Of funds of ward, time allowed guardian for 5325
Of fiduciary funds on real estate, certificate of title, fire insurance policy, etc. 5431
Rate of interest 5551, 5552
—by banks 5553
For gaming, void 5558

LOBBYING
With General Assembly.....4499
—employing persons to lobby with 4500
—exceptions 4501

LOCAL BOARDS OF HEALTH
See **"Health Commissioner"; "Public Health"; "State Board of Health"; "State Registrar of Vital Statistics"; "Vital Statistics"**
Appointment 1492
President 1492
Powers and duties 1493
Rules and regulations 1494
—penalties 1495
Reports to State Board 1497
When State Board of Health to perform duties of.....1496, 1497
—expense 1496
Secretary, term, removal.....1492
—duties and compensation.....1493
Quarantine or vaccination regulations, penalty for violation..1505
Public aid to indigent consumptives 1506
Establishment tuberculosis sanatorium 1510, 1511

Digitized by Google

Sec.
LOCAL BOARDS OF HEALTH—Con.
—management, &c. 1510
—advice of State Board....1511
—admission, care, treatment of patients 1512
Report by physician of person suffering from contagious disease 1515
—penalty 1515
Restraining tubercular patient from menacing health of others 1516
Nuisance source of filth, cause of sickness, proceeding to remove 1518
—expense, how paid 1519
Inspection of construction camps.1531
—vaccination 1531
—fees 1531
Quarantine of vessel and cargo..1536
—refusal of master to answer inquiries, penalty 1537
—master to deliver bills of health, etc. 1538
—penalty 1538
—expenses 1541
Quarantine of travelers....1540
—violation 1540
Plumbing and sewers, inspection.1544
Laundries and wash houses, regulation and inspection....1545
Tuberculosis patient, disinfecting apartment 1548
License to practice embalming, registration of 1720
Maternity hospital, license for...1925
—report of 1928-1930
Local Registrar of Vital Statistics
Executive officer of local board of health as 1564
Burial or removal permit for dead bodies, 1565, 1566, 1569, 1570, 1571, 1728
Registry of still born child....1566
Certificate of death, 1565, 1566, 1567, 1568, 1569
Death without medical attendance 1568
Registration of births....1572-1575
—certificate, form 1574
Forms supplied by 1578
Records 1578
Transmission of certificates to State registrar 1578
Fees 1579
Neglect of duty, penalty....1581
Enforcement of law 1582
Permit for transportation of dead body 1728

LOCAL BOARDS OF REVIEW
See also **"Commissioner of the Revenue"; "Taxation"**
Appointment 2226
Oath 2226
Organization, chairman 2226
Clerk 2226
—records 2226, 2227
—compensation 2226
Sessions 2226
Compensation 2226
—how paid 2226
Powers and duties 2227
Removal from office, proceeding for 2215
Correction of assessment by, 2227, 2248
Assistance by examiners of records 2228
Penalty for refusing to furnish information to 2229
Interrogatories returned to by commissioners of revenue....2231
Interrogatories, delivery to commissioner of revenue 2254
—returned 2255
—correction 2255

Sec.
LOCAL BOARDS OF REVIEW—Con.
—examination of 2256, 2257, 2258
—returned to commissioner, 2256, 2259
Report to court, neglect, misconduct, etc., commissioner of revenue 2255
—to notify State tax board....2255
Investigation by, fair market value of tangible personal property 2257
—intangible personal property, money, income 2258
Report to by examiners of records 2259
—review of 2259
—report to commissioner of revenue 2259
—report to Auditor 2259
Examination of books of commissioner of revenue 2260
Aid by examiner of records....2262
Erroneous assessment of personal property, correction of..2262
—appeals 2263
Reports by, to court of misconduct of commissioners of revenue or examiner of records....2265
Abstract of land grants furnished to 2277
Assessment of land divided among different owners, correction of erroneous 2285
—notice 2285
—appeal 2285
Land book, copies of laid before..2299
—examination of 2299
—certifying to 2299
Complaint to court for removal of commissioner of revenue....2315
Report by commissioner of own property 2327
Examination and correction of personal property book....2340
Investigation of purchases by merchant 2366
—report 2366

LOCAL IMPROVEMENTS
Assessments for by cities and towns 3067-3071
—Va. Const., § 170
—purposes 3067
—notice 3607, 3068, 3069, 3071
—assessment of damages 3067
—appeal 3070-3071
—judgment, enforcement 3071

LOCAL LAWS
Reference to standing committee, Va. Const., § 51
When prohibited ....Va. Const., § 63
General laws having effect of, Va. Const., § 64
By counties, cities and towns, General Assembly may authorize ....Va. Const., § 65

LOCKS
Burning or destroying, punishment 4432

LOCOMOTIVES
Removing packing from journal boxes, punishment 4472

LODGES
See also **"Corporations"**
Incorporation 3872-3880
Keeping ardent spirits at, punishment 4606
Rooms used in violating prohibition law, nuisance 4622
—closing up 4622
—bond of owner 4622
—injunction against 4630
Not a home within meaning of prohibition law 4662

Digitized by Google

Sec.

LOGS
Floating in Louisa river, to be branded 3579
—brand recorded 3580
— —penalty for altering, etc....3581
— —fee for catching adrift.....3579

LONDON PURPLE
Sale of 1681

LORD FAIRFAX
Land titles through 414

LOST INSTRUMENTS
Recordation of copy 5212
Actions on, indemnity 6242

LOST RECORDS
Establishment 6201-6204
Re-entry, effect 6201-6203
Certified copies, when may be used as evidence 6241
Commencement of new suit.....6241
New pleadings 6241
Authenticated copies 6241
Proof of contents 6241
Evidence, copies of deeds, wills, &c. 6241

LOTS
Fraudulent sale of, scheme for, etc., punishment 4465
In city or town, plat 5217
—description of lots on in conveyances 5217
— —attested by clerk, evidence..5217
—what plat to contain....5217, 5218
— —signature, acknowledgment 5218
—effect of recording 5219
—alteration and vacation of streets 5220, 5221
— —of plat in whole or in part, 5221, 5222

LOTTERY
See also **"Gambling"; "Gaming"**
Prohibited .....Va. Const., § 61
Conducting or permitting, punishment 4693
—forfeiture of property 4694
Search warrant for tickets, materials, etc. 4820-4822
Forfeiture, how enforced.....4986

LOUDOUN COUNTY
Fees of Commonwealth's attorney 3505

LOUISA COUNTY
Fees of Commonwealth's attorney 3505

LOUISA RIVER
Saw logs in, branding 3579
—recording brand 3580
—penalty for injury to brand....3581

LUMBER
See **"Timber"; "Timber Dealers"**
Inspection of 1400, 1401
Cullers 1403
Offered for inspection, dimensions and quality 1413
Brand, certificate 1426
Adrift, proceedings to sell.....1446
Unbranded, sale of when not claimed 1454
Burning, punishment 4431

LUMBER YARD
Children, employment of, 1809-1811, 1814-1816
—penalty 1814
— —by parent 1815

LUMPY JAW
See **"Actinomycosis"**

LUNA CREEK
Obstruction of navigation of, punishment 4752

LUNATIC ASYLUMS
See **"Insane Hospitals"**

Sec.

LUNATICS
See **"Insane Persons"**

LUNENBURG COUNTY
Fees of Commonwealth's attorney 3505

LYING-IN ASYLUM
See **"Maternity Hospital"**

LYNCHBURG
City of first class 5905
Courts in continued 5905
Corporation court 5905-5910
—judge, salary 3468
— —increase 3469
— —decrease 3469
Circuit court 5887
—territorial jurisdiction 5904
Treasurer, statement and payment of taxes collected 2412
—penalty 2412
Fees of Commonwealth's attorney 3505

LYNNHAVEN BAY
Planting oysters or placing stakes within limits of fishery, penalty 3191

LYNNHAVEN RIVER
Use of pound nets in.....3173
Use of gill nets or crab lines in at night 3173
—penalty 3173
Pollution of, penalty 3290
Falsely designating oysters and clams as Lynnhaven oysters and clams, penalty 3291

MACADAMIZING
Roads, power of supervisors.....1993

MACHINERY
For roads, purchase by supervisors 1986
—duty of superintendent of roads 2024

MADISON COUNTY
Commonwealth's attorney, fees..3505

MAGAZINES
Purchased or leased by United States 17, 19
At Westham, no land grant to include 459
For gunpowder, in cities and towns 3030
Primary elections, receiving money for advocating candidates at 231
—paid advertisements 231
Sale of by boys under ten years of age and girls under sixteen years of age prohibited 1813

MAGISTERIAL DISTRICTS
Continued .....Va. Const., § 111
Condemnation of land for cemetery in 53, 56
Officers, election, term 127
—general provisions as to, 2696-2709
Supervisor from 127
—Va. Const., § 111
Separate school districts.....668
—Va. Const., § 133
Registration district, vital statistics 1563
—registrar 1564
Commissioners of the revenue for 2252
Establishment 2687
Number 2688
Cities not included in 2691
Surveys 2691
Names of published with Acts of Assembly 2695
Contingent fund for care of poor 2806
Lawful fences in 3547
Return of warrant of arrest in..4824

Digitized by Google

Sec.

MAGISTERIAL DISTRICTS—Con.
Removal of trial 4824
Warrant for small claim returnable in 6020
Rearrangement
Petition 2688
Contest 2689
Judgment 2690
Commissioners 2691
Surveyor 2691
Map 2691
Commissioner's report 2692
Report and map recorded....2693
Expenses 2694
Roads
Macadamized roads in 1993
Road tax 1987
—on segregated intangible personal property 2209
Division of into road districts, 2025-2027
Classification of roads 2026
Roads forming dividing lines....2027
Maps of roads 2025, 2026
Road supervisor 2038, 2039
—duties, compensation....2038, 2039
Proportion of expense of improvement of road borne by 2104
Bond issue for improvement of roads and building bridges, 2123, 2124
—election 2123
—form of bonds, issuance, sale..2124
—tax, property subject to levy..2123
Taxation
Levy to reimburse county for expense and damages of destruction of diseased cedar trees, 892, 893
Road tax 1987
—for interest on bonds 2123
—on segregated intangible personal property 2209
Rolling stock, electric railways..2208
—ascertainment of value 2208
Fund for care of poor 2805
Levy for extension of turnpike..4093

MAGISTRATES
See **"Justices of the Peace"**

MAGNETIC VARIATIONS
Land office surveys 435
Surveyors to certify 2841
Meridian line 2847
County surveyors to record....2849

MAIL
Process from beyond county or corporation, officer may return by 2828
Notice to non-resident by, assessment for local improvement...3069
Process, clerk of court may transmit to officers by 3403
Notice to corporation by, amount of registration fee 3748
Notice by to stockholders of corporation 3829
—of stockholders' meeting, 3780, 3781, 3783
—of sale of stock for failure to pay subscription 3807
—of meeting to dissolve corporation 3810
—of meeting to obtain new charter after dissolution 3811
Process against foreign corporation, by Secretary of Commonwealth 3846
Request by for reason for refusal of surety company to become surety on bond of employee of common carrier....3935
—statement of reason 3935
By State Corporation Commission to banks, assessment of fee for examination 4122

Sec.

MAIL—Con.
Notice by of sale by treasurer, bonds of insurance or guaranty company 4213
Application by for forms for proof of loss by insured....4221
Notice by of meeting, co-operative life insurance or casualty company 4265
—to consider adoption or amendment of by-laws 4265
— —transfer or reinsurance of risks 4266
Notice by of assessment by mutual fire or storm insurance company 4334
—of exclusion of member by....4335
Transporting on Sunday 4572
Notice by of dishonor of negotiable instrument, 5658, 5665, 5666, 5670
—when deemed to have been given 5667
—deposit in post-office, what constitutes 5668
Persons engaged in care and conveyance of, exempt from jury service 5985
Copy of order of publication by..6070
Decisions of Supreme Court of Appeals transmitted by....6368
Notice by, time and place for answering interrogatories in capias proceedings 6421

MAIMING
Shooting, etc., with intent to maim 4402
Horses, cattle, or other beasts....4467
Verdict of guilty of shooting, etc., with intent to maim on indictment for shooting, etc., with intent to kill 4920

MAJORITY
Words giving authority to three or more public officers construed as giving authority to majority, when 5
Of school trustee electoral board to act 633
Of board of supervisors 2717
Of city or town council to determine annexation of territory..2956

MALES
Word may include female 5

MALFEASANCE
Of officer, impeachment for, Va. Const., § 54
Of public officer, interfering with or refusing information to Board of Charities and Corrections 1900

MALICIOUS CUTTING
With intent to maim, etc....4402

MALICIOUS DESTRUCTION
Of dwelling house, etc., by explosives 4428

MALICIOUS INJURY
To horse, cattle or other beast...4467
To canal or railroad 4468
To railroad fences or cattle stops 4476
To railroad switch-lamp, signal post, etc. 4474
To telephone and telegraph lines 4477
To meter, etc., of electric or gas company 4478
To property 4479
To monument, tree, etc....4479
To public buildings 4482

MALICIOUS SHOOTING
With intent to maim, etc....4402

MALICIOUS STABBING
With intent to maim, etc....4402

Digitized by Google

Sec.

MALICIOUS TRESPASS
Dogs, subject of.....2324, 2325, 3711
Costs 3523

MALICIOUS WOUNDING
With intent to maim, etc.....4402

MALPRACTICE
Disbarment of attorneys for, 3423, 3424

MALT
Bushel, standard 1470
Grinding to be used in manufacture of ardent spirits, prohibited 4671
—burden of proof in prosecution for 4671

MALT LIQUORS
See "Intoxicating Liquors"
As ardent spirits 4581

MANCHESTER
Compensation of certain officers of former city of 5931

MANDAMUS
To city council.....Va. Const., § 121
From Supreme Court of Appeals to State Corporation Commission .....Va. Const., cl. d, § 156
To enforce judgment, proceeding by railway or canal corporation for relief from excessive taxation .....Va. Const., § 180
To enforce law relating to primary elections 224
To compel officers to adopt system of accounting 555
Against drainage district to enforce payment of bonds 1774
Against municipal corporation to compel obedience to order of board of health 1794
To establish roads and bridges between counties 1992
To compel erection or repair of jail or courthouse 2865-2867
To compel city or town to carry out terms of order annexing territory 2965
To compel revision of registration books 2978
To compel reapportionment of representation to city wards, 2978, 2981
—Va. Const., § 121
To compel redistricting of city into wards 2978, 2981
To compel compliance with law relative to franchises 3023
To compel compliance with terms of franchise 3023
State Corporation Commission against public service corporation 3902
To compel railroad to erect and maintain fences and cattle guards 3946
Petition for 5831
—what petition to state 5832
—amendment of 5834
Award of 5833
Defense, how made 5834
Adjournment 5835
Judgment 5836
Court of Appeals, proceedings for 5837
—where issued and tried.....5872
—original jurisdiction 5864
— —Va. Const., § 88
Vacation proceedings, how certified and entered 5839
Service of writ 5840
Enforcement, contempt 5840
Venue 6053
Jurisdiction of courts and judges of the city of Richmond..5922, 5928
—of court of law and chancery of Norfolk 5935

Sec.

MANDAMUS—Con.
—of court of law and chancery of Roanoke 5947
—of Supreme Court of Appeals, original 5864
— —Va. Const., § 88
—of circuit courts 5890

MANIFESTS
Tobacco 1360, 1367

MANSLAUGHTER
Voluntary, punishment 4396
Involuntary, punishment 4397
Death out of State, where punished 4398
Death of traveler, employee, &c., caused by injurying or destroying railroad switch lamp or signal 4474
Warrant of arrest for issued by coroner 4813
Verdict of guilty of, on prosecution for homicide, when.....4920

MANUAL TRAINING
See "Education"; "High Schools"
General Assembly may establish schools for .....Va. Const., § 137
—appropriation to by counties, cities, towns, districts, Va. Const., § 141
In schools 664

MANUFACTORY
Burning or destroying, punishment 4431

MANUFACTURE
Of ardent spirits, prohibited.....4583
Of Jamaica ginger 4589
Of toilet articles and patent medicines, purchase of alcohol, license for 4590

MANUFACTURE OF FISH OIL AND MANURE
Non-residents not to catch fish for 3184
Resident not to be interested with non-resident in fishing for.....3184
License required for fishing for, 3185, 3187
—application, certificate....3186, 3187
—contest of application 3188
—issuance of license 3186, 3189
Boats engaged in fishing for, how marked 3187
Penalties for violation of law..3190

MANUFACTURER
Of fertilizers, statement to Commissioner of Agriculture 1110
Of adulterated or misbranded foods, penalties 1177, 1189-1203
—guaranty by, relieves dealer when 1184
Failing or refusing to comply with laws as to food, etc., penalty 1187
Of oleomargarine, display of sign 1200
Ice cream, or milk not meeting standard, sign 1216, 1217
Of flour, etc., brands on barrels, 1416, 1417
False marks, recovery of penalties from 1440
Of salt, statement to inspectors..1442
Of drugs, when guaranty by exempts dealer from liability for adulteration or misbranding 1659
Employee, discharged, preventing from obtaining employment...1817
—payment of, time and manner, 1818, 1819
—sale of goods to, price.....1817
Of alcohol, license to 4600
—bond 4602

Digitized by Google

Sec.

MANUFACTURING
Special acts regulating, prohibited .....Va. Const., § 63

MANUFACTURING COMPANIES
Tramways or railways of crossing highways, regulation of..2006, 2007
—condemnation of private property for 2008
Foreign, authorization to operate in State 3844
Liens of employees 6438-6442
—of persons furnishing supplies, 6438-6442

MANUFACTURING ESTABLISHMENT
Female employees, hours of labor of 1808
Stairs, handrails, doors opening outward 1828, 1829
—penalty for failure to provide 1832
Appeal from ruling of commissioner of labor 1831
Safety appliances, guarding machinery, lighting 1830
—penalty for failure to provide..1832
Fire escapes 3141
—penalty for failure to provide..3141

MANUFACTURING PLANT
Special police for 4804, 4805

MANURES
See also **"Fertilizers"; "Manufacture of Fish Oil and Manure"**
Measures 1126
Labeling 1126
—failure to label, or false labels.1127
—recovery of damages for false..1128
Construction of term "commercial manures," etc. 1129
—"soluble phosphoric acid".....1130
—"insoluble phosphoric acid"...1130
Adulterating, using false brand..1131
Manufacture from fish.....3184-3190
Removal of by tenant as waste..5510

MANUSCRIPT
Of record on appeal, when court of appeals may direct clerk to destroy 6371

MAPS
See also **"Books and Maps"**
Belonging to committees of General Assembly, duties of clerks.. 309
Published by State, sale of for library fund 349
Furnished to colleges and academies 356
By State Geological Survey..... 829
Of drainage district by reviewers in proceeding to establish drainage district 1743, 1750
Production of in proceeding before board of health 1791
Of coal mines 1838
With report of viewers in proceeding to establish road 1978
By superintendent of roads 2025, 2026
State Corporation Commission may compel production of in proceeding to adjust assessment of mineral lands 2239
Of magisterial districts.....2691
—recordation 2695
By county surveyor 2841, 2845
—magnetic variation recorded on 2845
Of districts in cities and towns providing for segregation of races 3045
—certified, corrected 3045
—effect as evidence 3045

MARINES
Residence of for purpose of voting 82
—Va. Const., § 24
Pensions 2642
Not qualified for jury service..5984

Sec.

MARINE INSURANCE
See "Insurance"

MARINERS
Will of 5231
Exempt from jury service.....5985

MARION
Southwestern State Hospital for Insane at 1004

MARKETS
See also **"Board of Agriculture"**
Division of, director 1250
Cities and towns may provide....3030

MARRIAGE
See also **"Divorce"; "Husband and Wife"; "Vital Statistics"**
Of parties, defense to prosecution for seduction 4413
—abduction 4413
—rape 4414
Records, false entries in.....4491
—giving false information for..4492
During life of former husband or wife, punishment 4538
—qualification 4539
—after divorce, but before end of term at which decree was entered 4539
Within prohibited degrees, punishment 4540
—leaving State to evade law....4540
—evidence of marriage.....4540
Miscegenation 4540, 5087, 5089
Between white and colored person, punishment 4546
—person performing ceremony...4547
—leaving State to evade law relating to, punishment 4540
—evidence of marriage 4540
License required for 5071
—where and by whom issued....5072
—certificate with 5074
—return of to clerk's office.....5074
—registration of 5075
—filing, recording 5076
—defect in, effect of 5082
—when issued to minor.....5078
—falsely making oath to age, perjury 4493
—clerk issuing contrary to law, punishment 4541
—celebrating without, penalty..4542
Certain marriages validated, 5073, 5084
—slave marriages 5091
—Va. Const., § 195
Evidence of, record of celebration as 5074
Consent of parent or guardian when required 5078
Between members of religious society having no ordained minister, how solemnized 5081
Register 3393, 5075, 5076, 5092
—index 5076
—copy to Bureau of Vital Statistics 5096
—as evidence 5098
—foreign, as evidence 6207
Minister authorized to celebrate, bond 5079
—forfeiture of bond 5093
Celebration, authority for, 5079, 5080, 5081
—fee for 5083
—return 5074
—penalty for failure to return..5074
—out of State, returning and recording 5077
—between members of religious society having no ordained minister 5081
—by unauthorized person, validity 5082
—without license or contrary to law, penalty 4542

Digitized by Google

Sec.

MARRIAGE—Con.
Prohibited degrees of affinity or consanguinity 5084, 5085
—effect of dissolution of marriage 5086
—void, from what time....5088, 5089
Void without decree, when, 5087, 5089, 5090
—between white person and colored person 5087, 5089
—of party below age of consent..5090
Effect of leaving State to evade law 5089
Colored persons not married, when deemed husband and wife.....5091
—children legitimatized 5091
—Va. Const., § 195
Age of consent 5090
Forms, instructions, Bureau of Vital Statistics to furnish 5095
Abstract for General Assembly..5097
Clerks of courts, fees.....5099
—neglect of duty by, penalty..5094
—issuing license contrary to law, penalty 4541
Suit to affirm or annul, 5100, 5101, 5102
—jurisdiction 5105
—how instituted and conducted..5106
—allowances 5107
Remarriage after divorce, when permitted 5113, 5114
Transfer on consideration of marriage, effect as to creditors....5185
Contract in respect to real estate or personal property in consideration of when void as to creditors and purchasers 5192
—valid when recorded.....5193, 5196
Will revoked by 5232
—in exercise of power of appointment 5232
Legitimation of children by.....5269
Issue legitimate though marriage null 5270
Of ward, proceeding to sell or lease real estate abated by, revival 5336
Of female personal representative, extinguishment of authority 5373
Promise upon consideration of, writing required 5561
Of female plaintiff or defendant in action or suit, effect of 6166
Of widow or minor children, effect on homestead exemption 6550

MARRIAGE REGISTER
See also **"Marriage"**
Kept by clerks of courts 5092
Entries in 3393, 5075, 5076
As evidence 5098, 6207

MARRIED WOMEN
See also **"Husband and Wife"**
Infected with dangerous disease expense of removing and maintaining 1519
Separate estate, listing for taxation 2307
—general provisions 5134-5140
Trust company as trustee and agent of 4148
Action for damages by intoxicated person against person causing intoxication 4675

MARSH
Land to remain in common 421
Setting fire to, punishment.....4435

MARSH LANDS
To remain in common 421

MARSHALS
See **"United States Marshals"**
Fire, see **"Fire Companies"**
Ex officio game wardens.....3323

Sec.

MARSHALLING
Claims as to which homestead is waived 6549

MARYLAND
Jurisdiction over crimes in Chesapeake Bay 14
Boundary and compact between Virginia and 15
Reciprocal rights and powers between Virginia and 15
Concurrent legislation entered into with Virginia relative to fish and shellfish industry in Potomac river 3299

MASCULINE GENDER
Words importing, may include feminine gender 5

MASONS
Chapter 171 not to apply to.....4302

MASSEURS
Laws relative to practice of medicine, when applicable to 1618

MASTER AND SERVANT
See also **"Apprentices"; "Employer and Employee"**
Railroad employee, action for death or injury, fellow servant doctrine .....Va. Const., § 162
—assumption of risk.Va. Const., § 162
Vice-principal, mine foreman, boss or assistant in mine as....1885
Non-assignable duties, mine operator 1885
Railroad employees, danger signals for at overhead bridges, &c. 3970
—effect of failure to provide....3970
Corruptly influencing servant to prejudice of master 4712
—agent receiving reward for....4712
—witness testifying, immunity..4713
Authority of master over minor servant 5301

MATERIALITY
Of alternation of negotiable instrument 5687

MATERIALS
See **"Mechanics' Liens"**
Condemnation for public use....4382
Purchase of for penitentiary....5035
Furnished to transportation company, manufacturing company, etc., lien for 6438

MATERNITY HOSPITAL
License for 1925
Infant delivered in, when may be placed out 1926, 1927
Reports to local health officer, 1928, 1929
Penalties for violation of law..1930

MATTHEWS COUNTY
Assignment of oyster grounds..3229
Commonwealth's attorney, fees..3505

MATRON
See **"Jails"**

MATRON OF PENITENTIARY
Salary 3449
Appointment, removal 5034
Oath 5034

MATTAPONI RIVER
Fishing in 3262
—penalty for unlawful 3262
Sora, hunting at night 3359
Obstructing navigation in, penalties 4748

MATURING CAUSES
In court 6112
Compelling 6139

MAYHEM
Punishment 4402

Digitized by Google

Sec.

MAYOR
Election 129
—Va. Const., §§ 120-122
Term 129
—Va. Const., §§ 120-122
To send copies of official publications of cities and towns to State Library 353
—penalty for failure 355
Acts of Assembly furnished to.. 388
Not eligible to office of superintendent of schools, or clerk.. 779
Member of board of health....1492
Fines imposed by, security for..2549
—endorsement on warrant.....2549
—commitment to jail 2549
—execution for 2549
Fire escapes, notice to by commissioner of labor 3141
Member of committee to inspect buildings as to exits and doors opening outward 3143
Fees, in criminal cases, payment from treasury 3504
Warrants, pilot, conducting vessel without or employing unauthorized person as.....3621
Complaint to State Corporation Commission for examination of transportation or transmission line 3721
Intoxicating liquor law, jurisdiction of cases arising under....4614
—appeal 4614
—under city ordinances 4615
—territorial extent of.....4615
—notice to Commissioner of Prohibition 4615
—warrant for arrest of person bringing ardent spirits into State 4636
—duty to enforce 4655
—failure to enforce as misfeasance 4655
—fee 4655
—recognizance of accused to answer indictment 4613
—recognizance of witness 4613
—bond of accused not to violate law 4613
—commitment of accused to jail..4613
—search warrant, for violations of 4612
Acknowledgment before 5206
Service of notice or process on..6063
Of town, election 2994
—oath 3002
—vacancy, filling 3003
—powers 3011
—violations of ordinances, trial of 3011
—appeal 3011
—to preside over council 3028
—salary, fees 3028
—vacancy 3028
Of town becoming city of second class 2887
Of city of second class, election, term 2892
Of city or town changing form of government 2931, 2935, 2946
—powers and duties 2950, 2951
—salary 2951
Of city adopting modified commission plan 2941
Of city, election, term.....3010, 3012
—Va. Const., §§ 120-122
—powers and duties 3010
— —Va. Const., § 120
—removal 3010
—appeal from removal 3010
—vacancy 3010
—veto power 3013
— —Va. Const., § 123
—ordinances presented to and signed by 3013
— —Va. Const., § 123
To sign bonds 3084

Sec.

McCLURE RIVER
Obstructing navigation, penalty..4752

MEAL
See **"Inspection"; "Inspectors"**
Not ground in this State or ground from corn not grown in this State, deception in sale of, penalty 1195
—prima facie evidence.....1195
Inspectors of 1400-1402
Quality offered for inspection....1406
Barrels for 1407, 1408
—forfeiture for deficiency 1408
—owner to mark weight and tare 1415
—penalty 1417
Brand 1416, 1419
—penalty 1417
How marked by inspector when unfit to pass 1428
Bushel, standard 1470

MEASURES
See **"Weights and Measures"**

MEAT
See **"Food"**

MECHANICAL COLLEGE
See **"Virginia Agricultural and Mechanical College and Polytechnic Institute"**

MECHANICAL ARTS
Instruction of convicts in.....5009

MECHANICS' LIENS
Creation 6426
General contractor, definition....6426
—lien inures to subcontractors.6434
—assignment by, effect of.....6435
Effect of assignments by contractor or sub-contractor 6435
Interest subject to 6436
Priorities 6436, 6437
For repairs 6426
—to personal property 6443
Perfecting 6427
Recording 6427
—book in which recorded.....3393
Memorandum for 6427
Affidavit, form 6427
Notices, by whom served.....6430
Inaccuraries immaterial, when..6431
Subcontractor, definition 6426
—lien, perfecting 6428
—memorandum, affidavit, form..6428
—notice, form 6428
—extent of lien 6428
—priority over assignments by contractor 6435
—priority over contractor's lien.6437
Person performing labor or furnishing materials for subcontractor, perfecting 6429
—memorandum, affidavit, notice, form 6429
—extent of lien 6429
—priority over assignments by contractor or subcontractor....6435
—priority over subcontractor's lien 6437
Contractor failing to complete work, priority of owner's expenditures for completing.....6422
Enforcement 6437
—limitation 6433
Rights of assignee of 6440
Satisfaction, entry of.....6441, 6455
—penalty for failure to have entered 6441, 6455
Effect of death, bankruptcy, absconding 6442
Contesting 6450
Appeals 6451
Release 6456
Presumption of payment 6456
Assignment of debt, entry on record 6457

Digitized by Google

Sec.

MILEAGE—Con.
—establishment of roads.....1983
—of viewers, establishment of roads 1983
Of witnesses 3529
—in contested election.....261, 264
—for Commonwealth 3512
—before State Corporation Commission 3744
—criminal case removed to United States court 4971
—prepayment 6220

MILESTONES
On turnpikes 4076
Injury to or destruction of, penalty 4730

MILFORD HAVEN
Oyster grounds in, assignment of.3229

MILITARY
Militia proper defense, Va. Const., § 13
Standing armies to be avoided, Va. Const., § 13
Subordination to civil power, Va. Const., § 13
Governor to be commander-in-chief .....Va. Const., § 73

MILITARY BOARDS
Approval of expenses of adjutant-general 3444

MILITARY FUND
Salary and expenses of adjutant-general paid out of 3444

MILITARY SERVICE
Privilege of voter from during election .....Va. Const., § 29
Allowance of bounty land for, certificate 418
Paper used in claiming benefit, no tax on seal 2402

MILITIA
Members of not disqualified to hold public office 291
Officers, member of Congress may be 291
—not disqualified to hold public office 291
Appointment of by Governor.... 314
—duty 315
—failure to attend, appointment of others 316
—copy of militia laws furnished to 317
—may attend Virginia Military Institute 846
Called out by Governor, when.... 313
—provision for transportation, equipment, etc. 314
—appointment 314, 316
—orders to, notification of place of rendezvous 315
Staff, appointment by Governor.. 314
Commissaries, appointment of by Governor 314
Quartermaster, appointment of by Governor 314
Distribution of militia laws and articles of war 317
Governor's staff 319
—expense of 319
Offices of Virginia Military Institute to hold commissions in.. 843
State cadet at Virginia Military Institute, service of enlistment in 849
Acts concerning continued in force 2673

MILK
See also **"Dairies"; "Dairy and Food Commissioner"**
Adulterated, sale of, penalty....1197
—strippings 1197
Containers, sterilization of.....1204
Measuring utensils, testing and marking 1205
Centrifugal machines and scales, inspection 1206, 1209
—fee 1206
—condemnation of 1206
—certificate of operator....1207, 1208
—revocation 1207
Standard of measure, samples....1208
Improper test, penalty, evidence..1210
—exception 1211
Varieties, definition of 1215
—condensed milk 1215
—evaporated milk 1215
—concentrated milk 1215
—sweetened condensed milk.....1215
—condensed skimmed milk.....1215
Below standard, sale of, label or sign 1216
—penalty 1217

MILLS
Jurisdiction of Supreme Court of Appeals in controversies concerning 6336
—Va. Const., § 88
Inspection of by factory inspector 1799
Fire escapes for 3141
—penalty for failing to provide..3141
Dam interfering with navigation, notice to owner 3578
Grinding, tolls 3594
—penalties 3594
—grain to be ground in turn....3594
—exemption from grinding other grain than wheat 3595
Dams and canals for, proceedings for erection of 3582-3593
Canals, trunks or culverts under to drain adjoining land, procedure 5297
Burning or destroying, punishment 4439

MILLERS
Registration with Dairy and Food Commissioner 1239
—fee 1239
Exempt from jury service.....5985

MILLER FUND
Separate account of kept by treasurer 2195

MILLER MANUAL LABOR SCHOOL
Continuation of 1000
Acts in force 1001
Jurisdiction over 1002

MILLET
Seed, bushel, standard 1470

MILLFEED
Adulterated, sale or manufacture.1196
—penalty 1196

MINERALS
Sale or lease of by State Geological Commission 531
Assaying for owner, by State Board of Agriculture 1281
Taxation, separate assessment of 2235

MINERAL LANDS
Taxation, assessment 2234, 2238
—Va. Const., § 172
—separate 2235
—correction 2236
—remedy of person aggrieved....2237
— —appeal 2237, 2240
—mineral assessors 2238
—basis on which tax extended..2251

MINERAL RIGHTS
In lands of infant, insane person or trust estate, suits for sale or lease of.....5335-5347

MINERAL WATERS
Taxation, separate assessment of.2235

Digitized by Google

Sec.

MINES
See also "Bureau of Labor and Industrial Statistics"; "Commissioner of Labor"; "Employers and Employees"
Special laws regulating, prohibited .....Va. Const., § 62
Department of 1835
Certificate of inspection, posting..1837
Explosives, quantity allowed in, etc. 1851
—penalty 1851
Old workings, protection from gas in 1854
—penalty for failure to comply with law 1856
Gas, protection from.....1854, 1855
—fans 1857
—inspection for and removal of by fire boss 1859
Blast, resumption of work after..1855
—penalty for failure to comply with law 1856
Fans in, use of 1857
—penalty for violation of law relating to 1860
Fire boss, employment 1858
—duties, inspection for gas, etc..1859
—penalty for violation of law relating to 1860
Lamps required in 1861
—penalty 1862
Condition and operation 1863, 1864
Stretchers and equipment required 1866
Working place, number of persons employed in 1867
Duty of operator when notified by foreman of inability to comply with requirements 1868
Penalty for sundry violations of law 1869
Closing of by inspector 1870
—petition to reopen 1870
Liability for death of or injury to employee 1872
Explosions or accidents in, report of to inspector 1873
Reports to inspector 1874
—of accidents or explosions.....1873
—penalty for failure to make, 1873, 1874
Tamping, blasting 1876
Steam locomotive, use of in.....1877
Rules, adoption and posting.....1878
Wires, voltage, protection 1879
Oil used in 1880
—cotton seed oil, test for standard 1881
—penalty for using improper oil 1882
—testing 1883
— —penalty for refusing to permit 1883
—when provisions not to apply..1884
Duties and liabilities 1885
—non-assignable 1885
Vice-principal, mine foreman, boss and assistants as 1885
Mines to which chapter 76 applies 1887
Railroad, construction and operation of by company operating mine 4000
Excavating near adjoining owner prohibited 5287
—survey by adjoining owner, 5288, 5289
— —refusal to print, penalty...5288
— —how entry for compelled....5289

Coal Mines

Map of 1838
—contents, delivery of copy to inspector, etc. 1838
—made by inspector 1839

Sec.

MINES—Con.
Condition of place of work in, 1840, 1841
—penalty 1842
Machinery, signals, inspection of.1843
—penalty for violations of law relating to 1844
Condition of slopes, engine planes, and motor road, refuge holes..1845
—penalty for violating law relating to 1846
Engineer, qualification of.....1845
—duties 1845
—penalty for interference with..1846
— —for failure to perform duty.1846
Dust, prevention of accumulation of 1849
—penalty for violating law relating to 1850

Employees

Employment of children in, 1809-1811, 1814-1816
—penalty 1814
—by parent 1815
Payment of, time and manner, 1818, 1819
Sale of goods to, price 1820
Law relating to mines furnished to 1840
Instruction of, as to risks..1840, 1841
Copy of law and rules of mine furnished to 1840, 1841
Condition of mine, place of work, 1840, 1841
—penalty for violating duty as to 1842
Boys under fourteen years of age, employment prohibited 1871
—affidavit of age 1871
Females, employment prohibited.1871
—penalty 1871
Liability of operator for death or injury of 1872
Acts and conduct of prohibited..1872

Foreman

Duties and powers 1863, 1864
Assistant foreman 1865
Examinations by 1867
Notice to operator of inability to comply with requirements.....1868
Penalty for violations of duty by 1868
Violation by of law relating to employment of minors, penalty 1871
Report by of accident or explosion in mine 1873
As vice-principal, duties 1885

Inspectors

Appointment 1835
Report of 1835
Removal 1836
Qualification 1836
Records kept by 1836
Inspection by 1837
Certificate, posting 1837
Penalty for failure to perform duty 1837
Map made of coal mine by.....1839
Closing mine 1870
Explosion or accident, report of to 1873
—investigation of 1873
Instructions of, penalty for violating 1875

Ventilation of

Ventilation of 1847, 1848, 1852
Persons employed in same air current 1848
Penalty for violating law relating to 1850, 1853
Against fire damp 1852
—penalty for failure 1853
Fans 1857

Digitized by Google

Sec.

MINING
Special act regulating prohibited, Va. Const., § 63

MINING COMPANIES
Foreign, authorization to conduct operations in State 3844
Railroad, construction and operation by 4000
Liens of employees....6438-6442
—of persons furnishing supplies, 6438-6442

MINISTER
Of religious body, residence of exempt from taxation 2272
—Va. Const., § 183
—furniture and furnishings in...2301

MINISTER OF THE GOSPEL
Conveyance or devise for residence 38
Residence of exempt from taxation 2272
—Va. Const., § 183
—furniture and furnishings in..2301
Privilege from arrest....2823
Reduced rates of transportation to 3918
Celebrating marriage, false record by, punishment 4491
—return of license and certificate 5074
— —penalty for failure 5074
—fee for celebrating....5083
—how authorized to celebrate....5079
—bond 5079
— —how forfeited 5093
May visit penitentiary, when....5025
Exempt from jury service....5985

MINISTERS PLENIPOTENTIARY
Acknowledgments before 5206
Depositions before 6226

MINORS
See also **"Children"; "Infants"; "Parent and Child"**
Corporal punishment of when convicted of misdemeanor 1924
Listing property of for taxation..2307
Eligible to office of notary....2851
—actions to recover fees....2852
Taking bar examination, certificate 3419
Bank deposit by 4126
—check on 4126
Ardent spirits, giving to, punishment 4639
—sending to obtain 4639
—possession of by, penalty....4641
Action to recover damages caused by intoxicated person against person causing intoxication....4675
—disposition of amount recovered 4675
Furnishing tobacco or cigarettes to 4695
Furnishing pistol, dirk or bowie knife to 4695
Furnishing toy firearms using explosive charges to 4697
Student, giving credit to, penalty.4707
Recognizance for, how taken....4975
To sue by next friend....5331
Wages, exemption from garnishment 6558

MISCARRIAGE
Attempt to produce 4401
Encouraging by publication, lecture, etc. 4401

MISCEGENATION
Punishment 4546
Leaving State to evade law....4540
Performing marriage ceremony, punishment 4547
Marriage void without decree, 5087, 5089

Sec.

MISCELLANEOUS LIEN BOOK
What recorded in 3393
—contracts reserving title to chattels 5189
—mechanics' liens 6427
—labor and supply liens....6435
—lien on colt 6446
—lien on calf 6447
—agreement for lien on crop for advances 6452
Index for 3394

MISDEMEANOR
Impeachment of officer for, Va. Const., § 54
Person sentenced to road force for, State convict road force....2073
Person convicted of may be sentenced to work on public road..2096
Jurisdiction over, in police justice 3094
—civil and police justice....3102
—circuit court 5850
— —special term 5896
Fees, of officers, payment from treasury 3504
—of Commonwealth's attorney...3505
What crimes are....4758
Limitation of prosecution for....4768
How punished 4782
Arrest for by conservator of the peace 4789
Bail, by justice 4826
Trial for by justice on charge of felony 4845
Compromise of 4845
Capias or summons when indictment or presentment found, or information filed 4881
—when to issue 4889
Capias to lear judgment unnecessary, when 4883
Judgment in absence of accused, 4883, 4888, 4889
—arrest of accused 4883
—presentment for fine or forfeiture 4888
Accused admitted to bail by officer making arrest on capias or attachment 4887
Challenges in trials for 4898
Trial of on indictment or presentment 4899
—by court on plea of guilty....4927
— —Va. Const., § 8
—on plea of not guilty 4927
— —Va. Const., § 8
—by jury 4927
—on warrant 4987-4992
—without warrant, when....4992
Conviction of on charge of felony 4918
Concurrent jurisdiction of courts and justices over 4987
Appeal from conviction for..4989, 4990
Abortion, encouraging by letter, advertisement, etc. 4401
Abduction, inmate of State hospital 4412
Abusive language, use of....4536
Accessary after the fact guilty of 4764
Adultery 4543
Advertising offers to procure divorces, &c. 5116
—unauthorized use of name or picture of person for 5782
Agricultural lime, selling without certificate 1134
Agent, employee or servant, corruptly influencing to prejudice of principal, etc....4712
—agent, etc., receiving reward for 4712
Agricultural seeds, violations of law with reference to 1150

Digitized by Google

Sec.

MISDEMEANOR—Con.
Anchoring small boats in channels of Norfolk harbor.....3687
Animals, dying from disease, failure to bury 1554
—cruelty to 4554
—interference with officer of Society for Prevention of Cruelty to 4556
—running at large in village or unincorporated community, 3550, 3551
Apprentice, enticing 5313
Assigning, transferring, &c., claim against laborer to evade exemption laws 6557
Attempts, generally 4767
—to commit larceny 4767
—to commit misdemeanor 4767
—to usurp government 4391
Automobile, operation without license 2132
—using wrong number plate on..2133
—violation of laws relative to..2145
—operating for hire without license 2153
—taking without consent of owner 4480
Ballast, vessel unloading without notice 3655
—failing to produce certificate..3657
Ballast master, refusing to serve as 3652
—for failure of duty 3653
Bank, failing to furnish statement of financial condition of..4124
—failing to publish statement...4124
—officer, refusing assistance to examiner 4124
—unlawful use of terms bank, banker, trust company, etc....4131
—unlawfully engaging in business of 4131, 4136
Begging on the street 2804
Betting on elections 4692
—on horse race run on road, street, bridge or landing 4741
Birds, killing, destroying nests, selling plumage 3364
—shooting for amusement 4566
Bran, selling adulterated 1196
Brand, imitating or altering 1438
Bribery of officer to prevent service of process 4502
—of commissioner, auditor, juror, etc. 4503
Bridge, county, using as wharf..1995
—making vessel fast to.....1995
—fast driving on.....4740
Bucket shop, keeping, etc...4714-4718
—bucketing 4714-4718
Building association, foreign, officers and agents failing to comply with law 4162
Bull, permitting to run at large.4744
Candy, sale of adulterated 1193
Capitol, wilful and malicious injury to 4482
Capitol Square, bringing dog into. 412
—offenses committed in, jurisdiction over 413
—property in, injury to.....4482
—grounds, trees, shrubbery, etc., in, injury to 4483
Carrier of passengers, operating excursion when prohibited.....4010
Cedar trees, failure to treat for rust 887
Cemeteries, graveyards, etc., malicious injuries to 4553
Certified public accountants, violation of laws relative to..... 572
Cheese, impure, selling 1171
Child labor laws, violation of....1814
Children, placing in homes for gain or without due inquiry....1934

Sec.

MISDEMEANOR—Con.
—violations of law relating to placing in homes 1935
—inducing child under 18 years of age to commit misdemeanors, etc. 1923
Cider, sale of misbranded 1192
Clams, staking in natural clamming grounds 3232
—inspector assigning natural clam bed 3234
—taking with rakes or scrapes in Accomac or Northampton counties 3238
—taking with drag-box 3245
—catching on Sunday 3251
—catching in night time.....3251
—citizen interested with non-resident in catching 3253
—non-resident catching 3254
—falsely designating as Lynnhaven 3291
—violation of law relative to taking, &c. 3294
Clerk of the court, failure of duty as to list of paid poll taxes.... 113
—failing to certify abstract of votes 185
—failing to make and deliver certificate of election 186
—failing to verify records.....3401
—failing to make marginal note of release of deed of trust, etc. 3402
—issuing duplicate certificate of allowance without order of court 3404
—failing to report to Legislature 3406
—failing to furnish list of officers to Secretary of Commonwealth 3407
—improperly acting as attorney..3426
—issuing marriage license contrary to law 4541
—failure to perform duty as to marriages 5074, 5094
—failing to furnish copies of convictions to superintendent of penitentiary 4948
—false certificate to special commissioner 6271
—failing to give notice of appointment of person to receive proceeds of sale 6272
Coal, dealer refusing to weigh, at buyer's request 1475
Cocaine, prescription for, unlawful signing and filling 1698
Cock fighting 4550
Commission merchants, offenses by 1264
Commissioner of Labor, failure to answer questions or interrogatories of 1802
Common carrier violating regulations relating to quarantine of live stock 912
—failing to receive and account for freight 3927
—refusal to accept bond of employee 3935
Compounding offenses 4513
Condimental stock and poultry food, sale of without certificate 1249
Conspiring to commit person to institution for feeble-minded..1084
Contagious disease, person infected with going to prohibited public place 1503
—going from place to place in State 1504
—violating quarantine or vaccination regulations 1505
—physician failing to report 1515
Convict, importing into State....4709

Digitized by Google

Sec.

MISDEMEANOR—Con.
Co-operative casualty company, fraudulently procuring policy in 4269
—procuring money from 4269
Co-operative life insurance company, fraudulently procuring policy in 4269
—procuring money from 4269
Corn meal, deception in sale of..1195
Coroner, failing to perform duty..4816
Coroner's inquest, officer failing to execute and return process....4808
Corporation, engaged in fish business, failing to file list of officers, directors, stockholders..3254
—failing to obey order of State Corporation Commission 3726
—failing to obey rules and regulations 3925
County treasurer failing to pay bonds issued by drainage district 1771
Coupons from State bonds, tendering twice 2610
—officer receiving 2611
Crabs, staking in natural crabbing ground 3232
—taking with rakes or scrapes in Accomac or Northampton counties 3238
—catching on Sunday 3251
—catching in night time 3251
—citizen interested with non-resident in catching 3253
—non-resident catching 3254
—violations of law relative to taking 3292
Crop Pest Commissioners, obstructing 878
—violation of rules of 871
Cursing or swearing in public..4568
—over telephone 4569
Dairy, keeping in unsanitary condition 1172
Dairy and Food Commissioner, hindering or obstructing, 1169, 1213, 1218, 1220
Dead bodies, removal or burial without permit 1581
—embalming without permission of coroner or justice 1727
—violation of law relating to transportation of 1728
—trafficking in 1734
—failure or refusal to perform duty relating to 1736
Defacing, injuring taking, etc., personal and real property....4479
—monuments, trees making boundaries, etc. 4479
Dental corporation or association, failure to display sign....1652
—failure to make required report 1652, 1653
Dentistry, practice of without license 1641
—commissioner of revenue improperly issuing certificate 1648
Disorderly conduct on railroad train or street car 4533
Diseased domestic animal, bringing into State 915
—shipping, selling, giving away.. 917
—running at large 917
Divorce, advertising offers to procure 5116
Dogs, ordered killed, concealing..1559
—larceny of 4445
—maliciously wounding, poisoning, etc. 4467
—fighting 4550
Drainage district, injuring works of 1769
Drinking water, pollution of....1783
Drugs, sale of adulterated or misbranded 1657, 1659

Sec.

MISDEMEANOR—Con.
—violation of laws relative to....1692
—placing samples of on private property 1701
—adulteration of 1702
Drunkenness 4565
Duel, fighting or sending challenge 4419
—accepting or bearing challenge..4420
—leaving State to evade law....4421
—posting or upbraiding another for not fighting 4423
Elections, refusing to serve as registrar 86
—registrar failing to deliver poll books to judges of election.... 104
—hindrance or disturbance of registrar 106
—list of paid poll taxes, failure of duty with respect to by treasurer, clerk, or sheriff.... 113
—electoral board failing to appoint judges of election and clerks 148
—violation of law with respect to printing election ballots..... 156
—violation of duty by officers of election or tampering with ballots 159
—assisting or advising voter.... 163
—carrying away or copying ballot 163
—assisting voter to prepare ballot 166
—crowds congregating at poling places 167
—counterfeiting, giving away, or selling ballots 167
—violations of election laws not otherwise provided for 169
—clerk of court failing to certify abstract of votes 185
—clerk of court failing to make and deliver certificate of election 186
—intimidation of voter 194
—intimidation of election officer. 195
—newspaper or periodical advocating election or defeat of candidate at primary 231
—candidate at primary failing to file statement of expenditures.. 233
— —exceeding limit of expenses.. 234
—influencing vote at primary by soliciting, money, etc..... 235
—secretary of board of commissioners of election at primary, violation of duty by 241
—stealing, mutilating, etc., ballot box or poll book or making fraudulent entry, etc. 244
—improper expenditures by candidate 251
— —by another in behalf of..... 252
—candidate failing to file statement of expenditures 255
—betting on 4692
—judge, clerks, or commissioner failing to perform duty 4723
—neglect of duty or corrupt conduct by officer or messenger....4724
—voting illegally 4725
—influencing voter 4725
—furnishing false ballot 4725
—changing ballot of....4725
—fraudulently putting ballot in box 4725
—voting by non-resident 4726
—giving or receiving bribe for vote 4727
—altering or destroying books or lists of registration 4729
—wilfully rejecting or corruptly registering voter 4728
Electric light company, injury to or destruction of property of..4478

Digitized by Google

Sec.

MISDEMEANOR—Con.
—unlawful interference with meter 4478
Electric railway, failure to use vestibuled fronts on cars 3977
—failing to separate white and colored passengers 3978
—conductor, failing to assign seats 3980
—passenger, failing to take seat assigned 3983
—operating excursion when prohibited 4010
Employees, female, violation of law relating to hours of labor of 1808
—preventing discharged employee from obtaining employment....1817
—violation of laws relating to time and manner of payment of 1819
—sale of goods to by employer..1820
—failure to provide sanitary arrangements for 1827
—failing to furnish dust shield to 1821
Employment agency, violation of law relative to 1806
Engines, threshing machines, &c., not provided with spark arresters 546
Embalming, practicing without license 1723
Escape, aiding prisoner in....4504
—officer permitting 4506
—of prisoner from jail....4507, 4508
—officer failing to execute process of arrest 4510
—refusing to aid officer in preventing 4511
Escheators, failure to perform duty 511
Eucaine, prescription for, unlawful signing and filling 1698
Exits, etc., of theatres, public halls, etc., violation of law relative to 3144
Expectorating in public place....1550
Explosives, transportation of....3923
Express company, violations of law relating to 4034
Extortion by officer 4514
Factories, shops, etc., failure to provide safety appliances....1832
Fee bills, fraudulent issue of....4515
Feeble-minded, conspiring to place person in institution for.1084
—private institution for, operating without license 1903
"Feeding stuffs" laws, violation of 1230, 1240, 1242
Ferries, competing with 2063
Fertilizers, adulteration, false branding 1131
—sale, receipt, removal, transportation, delivery, of unregistered and unbranded 1118
—false labels on....1127
Fiduciary failing to file inventory 5403
—failing to exhibit accounts....5408
Fires, setting on State reservation 544
—negligent escape of 545
—setting to woods, marsh, grass, etc. 4435
Fire escapes, owners of buildings failing to provide....3141
Fishing, violations of law relating to 3175
—taking food fish for manufacture into guano or oil 3176
—in spawning locality 3180
—violations of law relating tc Accomac and Northampton counties 3181

Sec.

MISDEMEANOR—Con.
—within regularly hauled fishing landing 3182
—for menhaden out of season....3183
— —using improper net for....3183
—non-resident catching fish for or manufacturing into oil or manure 3184
—manufacture of fish into oil or fertilizer, or taking therefor, violations of law as to 3190
—obstruction of fisheries in Chesapeake, Lynnhaven, Willoughby's bays 3191
—fishways in dams, failure to construct and maintain....3193
—unlawful, use of explosives, injury to fish-boxes or eggs....3196
—obstructing passage of fish by nets 3198
—erecting fish dams in certain rivers 3199
—with seines in Holston and New Rivers 3200
—unlawful, in Powell's River....3201
—unlawful, in Mattaponi, Pamunkey, York and Elizabeth Rivers 3202
— —Back Bay 3203
— —Elizabeth River 3204
—unlawfully taking trout or bass 3210
—non-resident fishing without license 3210
—unlawful, by non-resident....3211
—boat engaged in, name or number concealed 3263
—violations of law applicable to Potomac River 3303, 3305
—disturbing fishing shores..5291, 5292
Flour, adulterated, failure to brand 1194
—sale of in barrels below standard 1474
Food, violations of pure food laws, 1160, 1187
—selling misbranded or adulterated 1177, 1189
—sale of diseased or unwholesome 1218, 1219
—transportation or storage under unsanitary conditions 1220
—adulteration of 1702
Fornication 4543
Foundry, failure to provide ventilation 1833
—toilets and wash rooms....1834
Fowl, dying from disease, failure to bury 1554
—shooting for amusement 4566
—maliciously wounding, poisoning, etc. 4467
Fraternal benefit society, fraud in securing certificate of membership 4304
—unlicensed, soliciting membership in 4304
—violation of law relating to..4304
Fraud, buying or receiving house fixtures with intent to defraud.4449
—obtaining registration of live stock by false pretenses....4460
—giving false pedigree of live stock 4460
—fraudulent sale of goods marked "Sterling" or "Sterling Silver"...4461
— —of goods marked "Coin" or "Coin Silver" 4462
— —of articles made of gold....4463
—defrauding hotel or boarding house 4464
—removing baggage from hotel..4464
—fraudulent sale of stocks, bonds, town lots, etc....4465
Gambling, keeping gaming table, &c. 4676, 4685
—permitting on premises....4677

Digitized by Google

Sec.

MISDEMEANOR—Con.
—acting as doorkeeper, etc.....4678
—hindering arrest or seizure....4678
—betting or playing at, 4686, 4679, 4681
—in public place 4679, 4681
— —what is public place 4680
—bookmaking, pool selling, etc..4682
— —on race outside of State....4683
—keeping or exhibiting slot machine 4676, 4685
—betting or wagering 4686
—conducting or being interested in game played for money....4687
Game laws, officer failing to perform duty 3341
—violation of law relating to transportation of game.....3361
Gaming, keeper of ordinary permitting at 4688
— —letting out-house, etc., for..4690
—winning at by cheat or fraud 4691
—betting on election 4692
—conducting lottery or raffle....4693
Gas company, injury to or destruction of property of.....4478
—unlawful interference with meter 4478
Gensing, digging out of season..4710
Grand jury, officer failing to summon and return 4862
—juror failing to attend.....4862
Guaranty company, agent of doing business while company is in default 4209
Guardian, permitting boy under ten or girl under sixteen to sell newspapers, etc. 1813
Harbor laws, violation of.....3630
Harbor master, failure to perform duty 3691
Heroin, sale of 1695
—furnishing to habitual user....1695
Horse race, entering horse disguised or under false name... 4684
—betting on, etc.....4682, 4683, 4781
Hotels, destructing inspector of..1593
—failing to pay fee for inspection 1593
—failing to disinfect rooms.....1594
—failing to post warnings and directions as to use of gas....1607
House of ill-fame, keeping.....4548
House of prostitution, violation of injunction against 1524
Hunting without license 3337
—transferring license 3337
—using another's license 3337
—on land of another without permission 3338
—procuring license by false statement, altering or changing....3339
—unlawful 3356
Husband, deserting or failing to support wife 1936
Hypnotism, mesmerism, practice of 4721
Ice cream, selling or serving below standard 1217
Insane persons, mistreatment of..1062
—aiding in escape of.....1063
—disorderly conduct on hospital grounds 1064
—giving ardent spirits or narcotics to 1065
—violation by officers of law with reference to 1060
Insignia of trade's union, society, association, unauthorized wearing or use of 4719
—Southern Cross of Honor.....4719
Inspectors, false marking or branding 1441
Insurance, officers failing to perform duty under law relating to 4192

Sec.

MISDEMEANOR—Con.
Insurance company, agent doing business while company is in default 4209
—doing business illegally.....4222
—refusing to exhibit book.....4224
—promoter selling stock in violation of law 4239
—publishing false or misleading statement 4241
Intoxicated person running automobile, engine, &c.....4722
Intoxicating liquor, selling, keeping or storing for sale, soliciting or receiving orders for, manufacturing or transporting. 4584, 4585
—acting as agent of buyer or seller 4584, 4585
—drinking, giving away....4584, 4585
—violation of law by druggist..4593
—prescription for unlawfully issued by physician 4598
—druggist or hotel keeper violating law as to shipment.....4605
—keeping, selling, etc., at lodges, fraternity houses, clubs, etc....4606
— —in house of prostitution....4607
—violation of law relating to advertisement of 4609
—handling draft in payment for..4610
—common carrier receiving orders or collecting money for.....4611
—drinking in public place.....4631
—transportation company or employee failing to keep record...4632
— —delivering without affidavit.4634
— —delivering to person other than consignee 4634
—procuring delivery of by transportation company by false affidavit 4634, 4638
— —failure to make affidavit in duplicate 4654
—giving to person of intemperate habits, drug addict or minor....4639
—sending minor or female to obtain 4639
—possession by minor 4641
— —as agent of another person..4641
—female ordering, receiving or having in possession 4642
—hotel, employee, assisting guest to obtain 4650
— —proprietor permitting employee to assist guest to procure 4651
— —failure to discharge convicted employee 4651
—hotel or boarding house, keeping ardent spirits in 4652
—failure of physician to make prescription in duplicate 4654
—transporting in vehicle 4657
—transferring estate to evade law 4670
—grinding malt to be used in manufacture of 4671
—false affidavit to purchase from druggists 4597
Involuntary manslaughter.....4397
Jack, permitting to run at large..4744
Jail prisoner, escaping from State convict road force 2079
—improperly communicating with 2858
Junk dealer, failing to keep books 4711
—failing to report to police....4711
—changing form of article bought 4711
Juror, officer corruptly summoning to act partially 4519
—procuring to be summoned....4520
—intimidating or impeding.....4525
—fraud in drawing 4520

Digitized by Google

Sec.

MISDEMEANOR—Con.
—on inquest out of court, failure to attend 4984
Justice, failing to assist in preservation of the peace 4511, 4512
Landings, obstructing by throwing oyster shells into water....4751
Larceny, petit 4440
—of dogs 4445
—of oysters 3233, 3237
Laundry, violation of regulations.1545
Law, practicing without being licensed and qualified 3422
Lewd and lascivious cohabitation 4545
License, applicant failing to answer interrogatories 2366
—of merchant, refusal to testify in investigation of purchases..2366
Life insurance, agent or physician fraudulently causing procurement of policy 4248
Literary society, disturbing.....4577
Live stock, diseased, obstructing inspector of 916
—obtaining registration of by false pretenses 4460
—giving false pedigree of.....4460
—unlawfully wounding 4467
Lobbying with General Assembly, 4499-4501
Log brand, altering, erasing, &c..3581
Malicious trespass, dogs as subject of 4445
Marriage, within prohibited degrees 4540
—leaving State to evade law....4540
—clerk of court issuing license contrary to law 4541
—without license or contrary to law 4542
—between white and colored person, performing ceremony.....4547
—failing to return license and certificate to clerk's office.....5074
—failure of clerk to perform duty, 5074, 5094
Maternity hospital, violations of law by 1930
Meat, unsound, selling 1183
Medicine, violation of laws relative to practice of 1623
Mercantile establishment, failing to provide seats for female employees 1807
Milk, impure, selling 1171
—keeping dairy in unsanitary condition 1172
—sale of adulterated 1197
—cheese manufacturer improperly disposing of 1197
—improper testing for milk fat, 1210, 1211
—selling or serving below standard 1217
Millfeed, bran, etc., selling adulterated 1196
Minors, furnishing cigarettes, tobacco, pistols, dirks, etc., to....4695
—furnishing toy firearms using explosive charges 4697
—student, giving credit to.....4707
Mines, inspector, failure to perform duty 1837
—employees, failure to instruct..1842
—employees, failure to provide required conditions of labor for 1842
—coal, violations of law relating to machinery, appliances, signals, inspection, etc.....1844
—coal, employment of incompetent engineer 1846
—coal, interference with engineer or machinery 1846
—coal, failure to provide roadways and refuge holes.....1846

Sec.

MISDEMEANOR—Con.
—violation of law relating to ventilation 1850, 1853
—permitting accumulation of coal dust 1850
—explosives in 1851
—violation of law relating to protection of employees from gas, 1856, 1860
—fire boss, violations of law relating to 1860
—violation of law relating to safety lamps 1862
—violations of law relating to..1869
—employment of minors or females in, false affidavit....1871
—employees, doing prohibited acts 1872
—failure to report accident in....1873
—failing to make report to inspector 1874
—violating instructions of inspector 1875
—illegal blasting 1876
—steam locomotive, use in.....1877
—failing to adopt and post rules 1878
—electricity, prohibited voltage, failure to protect wire.....1879
—sale or use of improper illuminating oil in 1882
—refusing to permit inspector to test oil 1883
Morphine, sale of 1695
—furnishing to habitual user....1695
Motor vehicles, taking without consent of owner 4480
Name, unauthorized use of.....1463
—unauthorized use of for advertising purposes 5782
—unlawfully changing or assuming another 5983
Navigation, obstruction of water course by dam or other thing..4747
—obstruction of on Mattaponi or Pamunkey River 4748
Obstructing on Sycamore Mill Creek 4749
—placing weir or hedge in Rappahannock Creek 4750
—obstructing on prongs of Big Sandy River 4752
—failure of land owners in Rockingham County to keep streams free from obstructions.....4753
—placing dam or obstruction in Sandy River 4754
—interference with or destruction of United States buoy, &c....4756
—anchoring on range of lights..4756
Non-resident holding stock in corporation engaged in fish business 3254
Notes to circulate as money, issuance 4698
—passing or receiving in payment 4699
—issued by bank for less than five dollars, bringing into State or passing 4700
—for less than five dollars, issuing 4701
—scrip 4703
Nuisance, maintaining 4622
Nursing, violation of law relating to 1710
—false representation in applying for license 1712
Nursery stock, transporation of uncertified 874
—delivering or giving away uninspected 879
—selling, etc., without certificate of registration 882
Obscene literature, printing, publishing, distributing 4549

Digitized by Google

Sec.

MISDEMEANOR—Con.
Obstructing justice by intimidating or impending judge, justice, juror, etc. 4525
—fraud in drawing jury 4526
Officer, State, failure to produce books and vouchers for inspection 558
—violation of law relating to insane persons 1060
—failing to account for fines collected 2546
—receiving other than United States currency for taxes and debts due State 2606
—buying or selling coupons from State bonds 2606
—failing to keep account of coupons received 2606
—failing to perform duty, election for forming new county..2678
—with process, failure to assist..2822
—failing to assist in preservation of the peace 4511, 4512
—failing to execute process of arrest 4510
—extortion by 4514
—corruptly summoning juror to act partially 4519
—interest in contract with State institution, etc. 4706
—failing to execute and return process for coroner's inquest..4808
—failing to return recognizance or taking insufficient bail....4887
Oleomargarine, unlawfully keeping, selling or using 1201
—sale of unbranded or unlabeled..1203
Opium, sale of 1695
—furnishing to habitual user....1695
—use of in manufacture of cigarettes 4696
Optometry, violations of law relative to practice of....1636, 1637
Orchard inspector, refusal to obey order of 901
Oysters, inspector failing to report, account, etc. 3222
—staking in natural oyster rock..3232
—larceny of 3233, 3237
—inspector assigning natural oyster rock 3234
—injuring or removing boundary marks on oyster grounds 3235
—taking with rakes or scrapes in Accomac or Northampton county 3238
—buyer, packer or shucker dealing without license or making false report 3239
—taking in closed season or with patent tongs 3240
—failing to register boat used in taking 3241
—catching without license 3242
—taking or selling under size..3244
—taking with drag-box 3245
—illegally taking with scrapes and dredges 3246, 3248
—aiding and abetting carrying seed oysters out of State without permit 3249
—buying or carrying seed oysters without permit 3250
—carrying out of James River during closed season without permit 3251
—catching on Sunday 3251
— —in night time 3251
—using illegal measure for 3252
—citizen interested with nonresident in catching or planting 3253
—non-resident catching 3254
—resistance to officer enforcing laws 3265

Sec.

MISDEMEANOR—Con.
—officers failing to perform duty in enforcing law 3267
—catching for converting into lime 3272
—inspector, failing to inspect and seal measures 3273
—roughing or taking without culling 3274
—having scrape or dredge in Pocomoke Sound 3280
—removal from polluted area....3287
—interference with officer enforcing law 3287
—falsely designating as Lynnhaven 3291
Parent, deserting or failing to support child 1936
—permitting boy under ten or girl under sixteen to sell newspapers, magazines, &c....1813
Peach trees infected with yellows, shipping or selling.... 905
Pension, purchase of 2658
—falsely certifying facts in application for 2660
Perjury, false statement to collector of canal tolls 4020
Pharmacy, violation of law relative to practice of 1657
Physicians and surgeons, division of fees 1639
Picture of person, unauthorized use of for advertising purposes.5782
Pigeons, shooting for amusement.4566
—renting premises for....4566
—homing or Antwerp, killing, entrapping, etc. 4446
Pilots, conducting vessel without or employing unauthorized person 3621, 3623
—exception as to vessel in distress 3622
Polluting Lynnhaven River....3290
Prohibited district in city or town, residing in....3060
Property owner, failure to obey order to remedy inflammable condition 4190
Public buildings, wilful and malicious injury to....4482
Public nuisance, maintaining....1520
Public officer, making false entries in or destroying records..4516
—stealing, secreting or destroying records 4518
—interest in contract with State institution, public trust, &c....4706
Quarantine, regulation, violation of 1535
—master of vessel or passenger refusing to answer inquiries....1537
—master failing to deliver bill of health, log book, etc....1538
—person under, traveling in State 1540
Railroad, receiving fee or commission other than regular rate.3939
—failure of duty relating to ticket offices and waiting rooms....3940
—failing to announce trains....3940
—failing to post notice of delayed train 3941
—failure to transport troops and munitions 3942
—dispatcher or operation failing to report arrival and departure of trains 3945
—failing to equip locomotives with spark arresters 3952
—employee, failing to give signal at crossing 3960
—failure to furnish separate cars for white and colored passengers 3964
—discriminating between white and colored passengers 3964

Digitized by Google

Sec.

MISDEMEANOR—Con.
—conductor, failing to assign white and colored passengers to respective compartments 3966
—failing to keep grade crossing in repair 3973
—failure to equip engine with headlight 3976
—passenger, failing to take seat assigned 3983
—operating excursion when prohibited 4010
—violating law relating to caboose car 4015
—making, buying, etc., duplicate keys to switch locks 4019
—person being on track in front of approaching train 4469
—leading or driving animal on track 4469
—trespassers jumping on or off trains 4470
—trespassing on trains 4471
—destroying fences along, or cattle stops of 4476
—train obstructing street or road.4734
—standing vehicle or wagon on track of 4734
Records, public officer making false entries or destroying.....4516
—stealing, secreting or destroying 4518
—of marriages, births and deaths, false entries in 4491
— —giving false information for.4492
Religious worship, disturbance of 4576
Riot 4532
—judge or justice failing to suppress 4529
Roads, violation of local and special road legislation 2013
—killing or injuring trees near..4730
—injury to or destruction of bridge 4730
— —to signboard, milestone or post 4730
—obstructing road or ditch.....4730
—riding or driving on sidewalk 4730, 4733
—injury to sidewalk in unincorporated town 4732
—encroachment on or obstruction of 4731
—violations of regulation for moving steam engines on.....4735
—bicycles violating regulations for overtaking and passing vehicles, etc. 4736
—vehicles failing to pass to right 4739
—driving sheep along without branding 4742
—casting dead animal into road.4743
—leaving sick or disabled animal in 4743
—casting glass, nails, tacks, &c., in 4745
Roads and streets, obstruction of by railroad trains 4734
—leading bear along.....4737
—shooting in or along 4738
—highways, driving vehicles on at excessive speed 4741
—driving animal on at dangerous speed 4741
—horse racing on 4741
Robins, killing, destroying eggs, etc. 3360
Scallops, violation of law relative to taking, &c.....3294
Schools, officer or teacher having interest in school contract..... 682
—failing to make, post, publish, annual statement of school board 751

Sec.

MISDEMEANOR—Con.
—malfeasance or neglect by officers 686, 687
—disturbing 4577
Seal, unauthorized use of.....1463
Seed cotton, buying, selling, storing for sale at night.....4720
Sheriff, failure of duty as to list of paid poll taxes 113
Shooting in public place.....4404
Sidewalks and shade trees on, in unincorporated town, injury to.4732
—riding or driving on....4730, 4733
Slaughter house, sausage factory, etc., operating unlicensed.1220
Smallpox, improper inoculation..1532
Soft drinks, sale without license, etc. 4665
Sora, unlawful hunting 3359
Special commissioner acting without giving bond 6271
—failure to account for money..6273
Stallion, permitting to run at large 4744
State Board of Health, violation of rules of 1487, 1495
State Entomologist, obstructing.. 890
State hospital, abducting, kidnapping or unlawfully aiding escape of inmate of 4412
State Institution, failure to furnish copies of publications to State Library 355
State Library, defacing books, etc., in..... 367
—removing books from 367
—failing to return books to..... 367
State Live Stock Sanitary Board, violating regulations of..... 919
State officer, failure to produce books and vouchers for inspection 558
State reservation, violating regulations governing 543
—damaging timber on..... 544
Steamboat, officer failing to separate white and colored passengers 4023
—passenger failing to occupy place assigned 4024
— —disorderly conduct of 4024
—separate accommodations at wharves, failing to provide....4026
Steamboat company, operating excursion, when prohibited 4010
—failing to provide separate accommodations at wharves.....4026
Streets, unauthorized use of.....3024
Sunday, working or transacting business on 4570
—persons excepted 4571
—transportation by railroad on..4574
—transportation by steamboat company on 4575
Superintendent of Public Printing, being interested in certain contracts 380
Superintendent of roads, malfeasance or misfeasance of....2033
Supervisor's failing to publish statement 2768
Surety company, failure to give reason or refusing bond to employee of common carrier 3935
Surveyor, failure to correct plat or to perform duty 465
—failure to deliver books to clerk 2844
Taxation, refusing to furnish local board of review access to books.2227
—refusing to furnish information to local board of review or examiners 2229
—taxpayers' interrogatories, abstracting, mutilating or destroying 2261

Digitized by Google

Sec.

MISDEMEANOR—Con.
—taxpayer rendering false and fraudulent return 2397
—officer collecting taxes failing to deliver dated tax ticket....2409
—purchaser of delinquent land demanding for redemption greater sum than allowed by law 2478
Telephone, cursing, using profane, vulgar or indecent language over 4569
Telephone companies, violations of law by 4057
—failing to report to State Corporation Commission 4057
—obstructing commission 4057
Telegraph and telephone line, stringing wires across works of internal improvement company 4049
—injury to lines, wires, &c., of..4477
—cutting or tapping wires....4477
—copying messages 4477
—obstructing transmission of messages 4477
Terrapins, citizens interested with non-resident in catching 3252
—non-resident catching 3254
—taking out of season, disturbing eggs, etc....3297
—diamond-back, taking out of season or under size 3298
Timber, on State reservation, damaging 544
—marked, destruction or conversion of 1447
—brand, defacing or fraudulent use of 1447
—unauthorized use of brand or trade mark 1450
—fraudulent branding 1452
—unmarked failure to cause sale of 1454
—casting into river or creek, injuring bridge or boat....4746
Tobacco, false marking or branding 1358, 1359
—sold, failure to keep account of 1365
—sampler, division of fees....1384
—warehouseman giving bonus or rebate 1384
—person receiving bonus or rebate 1384
—sending to wrong warehouse..1397
Tolls, ferries and bridges, refusal to pay 2071
Towel, furnishing for common use in public place 1517
Trade mark, counterfeiting, etc..1456
—fraudulent representation in procuring registry of 1459
—displaying without authority..1461
Transportation company, officer or agent, transporting at less than regular rates 3912, 3918
—discrimination by 3914
—person falsely obtaining transportation at less than regular rate 3913
—failure to obey trackage regulations 3921
—transportation of explosives...3923
—obstructing or hindering State Corporation Commission....3924
—failing to furnish reports to commission 3924
—failing to obey rules and regulations of commission 3925
Trapping animals, violations of laws relating to 3354
Treasurer, failure of duty as to list of paid poll taxes 113
—giving false certificate of payment of poll tax 115
—violating law 2790

Sec.

MISDEMEANOR—Con.
Truck barrel, use or sale of below standard 1473
Trustee, failing to make statement of disbursements, &c....5408
Tuberculosis suspect in State institution, failure of officer to report 1546
—failure to segregate 1547
—failure to disinfect apartment.1548
—letting apartment previously occupied by patient 1549
Turnpike company, violating law relating to tolls 4084
Underwriters' agency, violation of law by 4314
Unlawful assembly 4532
—judge or justice failing to suppress 4529
Vagrancy 2809
Vessel, licensed for fishing, concealing name or number....3177
—having scrape, dredge or patent tongs on board 3177
—improperly burying dead bodies from 3659
—landing sick seaman 3660
—landing passenger without provision for maintenance 3660
—obstructing ferry-boat 3686
—destroying or injuring vessel or property on 4466
—failing to sound steam whistle on James River 4755
Veterinary medicine and surgery, illegal practice of 1279
Vinegar, manufacture or sale of adulterated 1191
Vital statistics, certificates, failure to make 1581
—false 1581
—altering 1581
—violations of law with reference to 1581
Warehouse, depositing another's goods in or negotiating receipt for mortgaged goods 1344
Warehousemen, receipt containing false statement 1340, 1342
—delivering goods without obtaining receipt 1343
Warrants, purchasing at discount 684
Water courses, pollution of....1782
Waterworks, failure to obtain permit to supply water....1792
—disobeying orders of board of health 1793
Water supply of cities and towns, pollution of 1783
Weapons, carrying concealed....4534
—blackjack, knucks, etc., selling, furnishing, etc. 4535
—carrying on Sunday or to place of religious worship 4578
Weights and measures, superintendent and sealers, neglect of duty 1482
—use of not sealed 1483
Wharves, building without authority of harbor commissioners 3675
—failure to repair 3676
—failure to provide accommodations for passengers at 4026
—failure to provide separate accommodations for white and colored persons 4026
Wild turkey, buying or selling..3358
Wrecks, failure to render aid to.3680
—disobeying orders of commissioner of 3682
—interfering with 3685

MISJOINDER
Effect of 6163

Digitized by Google

Sec.

MISNOMER
To designate railway company as railroad company or vice-versa not misnomer 5
In indictment 4875
—amendment of 4875
Not ground for plea in abatement 6101
Amendment of declaration for..6101

MISPRISION OF TREASON
Definition, punishment 4390

MISTAKE
In land grant 475
Defense to negotiation of warehouse receipt 1336
In land books, correction 2286
In debts due State, correction..2516
In cancellation of negotiable instrument, burden of proof.....5685
Money paid by, when right to recover accrues 5811
In deeds, pleading 6145
In judgments 6353
In record on appeal 6342

MITIGATION
In action for defamation, evidence 6240

MITTIMUS
Of justice, what to state.....4841

MONDAY
When holiday 5758

MONEY
See also **"Currency"**
Special law regulating interest on prohibited .....Va. Const., § 63
Assessment for taxation 2312
Bills to circulate as, corporation not to issue 3782
Loans of, law applicable to building and loan associations 4154
Embezzlement of 4451, 4452, 4870
—sufficiency of indictment for....4870
—sufficiency of proof of.....4870
Obtaining by false pretense.4459, 4870
Larceny of 4870
Forfeited for gaming, how disposed of 4986
Due at fixed periods, apportionment on death of person interested 5544-5547
Money of account 5548
—need not be so expressed.....5549
Foreign, judgment for, how expressed 5550
Designation of particular kind not to affect negotiability 5568
—alteration of 5687
Paid by fraud or mistake, when right to recover accrues 5811
New promise to pay, effect on limitation 5812
Levy of execution on.....6485
On which execution levied, how accounted for.....6487
—delivered to officer, disposition of 6504
Received under execution, repayment to debtor 6495

MONEY HAD AND RECEIVED
Action against land owner by owner of adrift property 3571
—burden of proof 3572

MONOPOLIES
Prevention of .....Va. Const., § 165

MONTGOMERY COUNTY
Reversion of property to, Virginia Polytechnic Institute.... 855
Commonwealth's attorney, fees..3505

MONTH
Calendar month 5
Tenancy from month to month, termination 5516, 5517

Sec.

MONUMENTS
To Confederate soldiers, erection and care of by counties 2742
Acquisition by city or town of property adjacent to 3065
Defacing or removing, punishment 4479
Wilful and malicious defacement or destruction of, in graveyard, etc., punishment 4557

MORGUE
Dead bodies for State Anatomical Board 1737

MONUMENTAL ASSOCIATIONS
Injuries to lots, &c., of, punishment 4553

MORPHINE
Label on drugs containing 1664
Selling, giving away, etc.....1693
Proprietary medicine containing..1693
Prescription for 1693, 1694
Penalty for violating law as to...1695

MORTGAGES
See also **"Chattel Mortgage"; "Deeds of Trust"; "Recordation"**
Estate not to escheat because of alien mortgagee 514
Petition by committee to mortgage property of insane person 1055-1057
Warehouse receipt, warranty.....1335
List of furnished by clerk to Auditor and commissioner of revenue 2274
No bar to distress for taxes.....2443
Of personal property, book recorded in 3393
Of real estate, recorded in deed book 3393
—releases of 3393
Of corporation, sale under, purchaser becoming corporation..3817
—compromise of claims by mortgagee 5440
—limitation on 5827
Of public service corporation....3895
Of non-stock corporation.....3876
Trustee, trust company as 4148
Fraudulent removal of personal property subject to.....4455
By life tenant, when to defeat remainder 5147
Void as to creditors and purchasers unless recorded 5194
—where to be recorded.....5195
—when goods removed from county, when and where recorded 5196
—when goods moved into State..5197
Ejectment by mortgagee, performance of trust as defense 5472
Satisfaction of as defense to ejectment 5472
Suit to recover land, liability of mortgagee for rents, profits and improvements 5499
Goods on leased premises, liability for rent 5523-5525
Relief of mortgagee against forfeiture of land for non-payment of rent, breach of covenant or condition 5532
—time for 5538
Limitation on 5827
—executed by corporation.....5827
— —extension of 5827
Sale under, recitals in conveyance as evidence 6196
Satisfaction, duty of creditor to enter on record 6456
—penalty for failure 6456
—proceeding to enforce 6456
—presumption of payment.....6456

Digitized by Google

Sec.

MORTGAGES—Con.
Transfer of debt secured, entry on margin of record.....6457
Homestead waived in debt secured by, enforcement 6549
On exempt property, void.....6564

MOTIONS
Notice of, see "Notices"
For appointment of trustees for gift, devise, etc., for literary or educational purposes 590
—jurisdiction 590
To restrain tuberculosis patient from menacing health of others.1516
For revocation of license 2378
To recover from clerk penalty for failing to remit State funds....2406
For apportionment of taxes when property partitioned 2449
For deed to land purchased at sale for delinquent taxes 2482
To contest application to purchase delinquent land 2495
To correct mistake, debt due State 2517
Against personal representative of purchaser of land sold on execution for debt due State....2526
For recovery of fines, 2543, 2544, 2545
For removal of officer.....2705
In appeal from disapproval by attorney of title to real estate purchased by county or school board 2709
Against person begging on street, for recovery of fine 2804
For annexation of territory to city or town 2957, 2958
For bill of particulars or grounds of defense, in trial before civil and police justice 3105
To quash fee bill 3495
Costs on 3521
—who to recover 3525
—suit in name of one for another.3526
For appointment of arbitrators to assess value of division fence.3557
—to settle dispute as to 3558
For forfeiture of charter of corporation for misuse or non-use.3831
By Commonwealth's attorney for increase of bail 4833
For change of venue in criminal case 4914
To instruct jury to disregard faulty count in indictment....4923
For assignment of dower.....5125
In proceedings for probate, hearing on 5256
—ex parte 5256
For surrender or renewal of lease, by or on behalf of infant or insane person 5334
To revive suit to sell lands of infant, insane person, trust estate 5336
To revoke powers of female personal representative, on marriage 5373
For distribution of decedent's estate 5439
In lieu of action at law generally 6046
—notice of 6044, 6046
— —where executed 6046
— —return 6046
—how defense made 6046
—affidavit to account 6046
—joint and several proceedings..6047
—when trial by jury 6048
To require bond of trustee....6301
To dissolve injunction.....6317, 6326
To enlarge injunction 6317
To correct errors in judgment or decree in same court, 6329, 6333, 6334

Sec.

MOTIONS—Con.
For ascertainment of damages, affirmance of judgment for specific property 6377
To quash attachment 6403
To mark judgment satisfied....6467
To mark judgment "discharged in bankruptcy" 6467
For new execution by obligor in indemnifying bond 6498
To quash execution 6499
To amend for misnomer 6101
To strike out answer 6123
Revival of action by.....6168
—time for 6171
To reinstate case stricken from docket for failure to prosecute..6172
For removal of cause to another court 6176
For new trial, when unnecessary.6254
To disregard faulty counts in declaration 6258
For appointment of successor to trustee 6298

Motion for Judgment
Jurisdiction of circuit courts.....5890
—special term 5896
—of court of law and chancery of Norfolk 5935
—of court of law and chancery for Roanoke 5947
On bonds taken by court and officers 286
To recover fine from escheator for failure to perform duty... 511
To recover money due literary fund 603
To recover money paid on void school contract 683
Against treasurer for failure to to pay school funds to depositary 737
Against board of poor commissioners to recover forfeiture for failing to perform duty 1904
Against delinquent treasurer....2432
For debts due State 2511, 2513
—judgment 2513, 2514
Against officer for failing to deliver goods to sheriff with writ of venditioni exponas 2528
By Auditor against officers, etc., for violations of revenue laws..2544
Against officer failing to account for fines 2546
Against justice for failing to pay fines to clerks 2556
Against officers for illegal interest in contracts with counties 2707
Against city or town officer for illegal interest in contract or claim 2708
Against treasurer for money collected on illegal levy 2762
On bond of deputy treasurer....2776
Against county treasurer failing to pay warrant 2787
On bond of county or city treasurer 2789
—for using public money 2788
Against officer for failing to return process 2826
Against officer failing to make return of money collected....2825
By officer against deputy for default, etc. 2836, 2837, 2838
By jailor for fees 2878
By creditor paying fees of person confined in jail on civil process 2879
Against attorney for money received for client 3427
Against sheriff or constable failing to account for fee bills....3499
On bond given by non-resident as security for costs 3519

Digitized by Google

Sec.

MOTIONS—Con.
Costs, who to recover.....3525
—suit in name of one for another 3526
For forfeiture by pilot receiving or demanding unlawful fees..3642
On bond of suspended pilot....3644
On bonds taken by State Corporation Commission 3735
To recover money forfeited to State Corporation Commission.3766
—due State from internal improvements 3766
Against public service corporation for failing to establish wagon-way 3883
Against railroad, forfeiture for failing to receive, transport or deliver property 3938
—failing to take up or set down passenger 3938
—demanding or receiving more than is lawful 3938
—forfeiture for violation of law relating to transportation of live stock 4006
Against canal company receiving unlawful tolls 4021
Against turnpike company receiving more than lawful toll..4087
By State Corporation Commission against bank to recover fee for examination 4122
Or certificate of deposit issued by savings bank 4142
Against insurance company, proceeding to collect assessment for expenses of Bureau of Insurance 4195
To recover money due by master for apprentice 5308
By surety against principal for money paid 5777, 5778
Against officer failing to return execution, limitation on.....5816
Against officer failing to return execution or pay money collected on 6033
On bonds taken by officers.....6045
On bond of sheriff 6045
—sergeant 6045
—constable 6045
In lieu of action at law generally 6046
—notice of 6044, 6046
— —where executed 6046
— —return 6046
—how defense made 6046
—affidavit to account 6046
—joint and several proceedings..6047
—when trial by jury.....6048
Against parties liable on joint or joint and several contracts....6265
Judgment against less than all liable on contract.....6263
Damages after affirmance of judgment for personal property or dissolution of injunction....6377
Against officer failing to endorse on execution time of receiving.6488
On forfeited forthcoming bond..6521
—taken under distress warrant, defenses 6521
—for rent on affidavit by tenant.6519
—before justice 6526

MOTOR BICYCLES
See **"Automobiles"**

MOTORCYCLES
See also **"Automobiles"**
Riding on sidewalk in unincorporated town or village 4733

MOTOR TRICYCLES
See **"Automobiles"**

MOTOR VEHICLES
See also **"Automobiles"**
Unauthorized use of 4480

Sec.

MOTOR VEHICLES—Con.
Running while intoxicated, punishment 4722

MOTORMAN
Electric railway, conservator of the peace 3980

MOULDING SHOPS
Ventilation of 1833
—penalty for failure to provide..1833
Toilets, wash rooms 1834
—penalty for failure to provide..1834

MOUNT VERNON LADIES' ASSOCIATION OF THE UNION
Property of exempt from taxation 2272, 2301
—Va. Const., § 183
Inheritance tax on gifts to.....2272

MOUTH
Definition 3181

MUDHENS
Unlawful hunting 3356

MULES
See also **"Domestic Animals"; "Live Stock"**
Sale of on execution, distress warrant, etc. 2833
Trespass by, impounding 3541
—damages, proceeding to recover, lien, sale, etc. 3541
—of non-resident 3542
—distress 3543
—sale 3544-3546
Running at large in county in which boundaries are lawful fences 3548
—damages 3552
Running at large in villages or unincorporated communities, penalty 3550, 3551
Turnpike, toll on 4083
—on valley turnpike 4083
Larceny of 4440
Poisoning, punishment 4467
Shooting, stabbing, cutting, punishment 4467
Hired, injury or damage to, punishment 4567
—re-hiring 4567
—with intent to cheat 4567

MUNICIPAL CORPORATION
See **"Cities and Towns"**
Officer of not to purchase warrants at discount 684
—penalty 684
Mandamus against to compel obedience to order of board of health 1794
Charter, provisions in conflict with chapter 73 repealed.....1796

MUNITIONS
Transportation of, duty of railroad 3942

MURDER
Degrees defined 4393
First degree, punishment.....4394
Second degree, punishment.....4395
Death out of State, where punished 4398
By duel without the State.....4416
—accessories to murder by.....4417
—venue of prosecution 4418
—former conviction or acquittal as defense 4422
Entering building, etc., with intent to commit 4438
Death of passenger on railway caused by injuring switch, engine, etc. 4468, 4474
—on railroad train or vessel by shooting or throwing missles at 4473
Petit treason punished as.....4761
Jurisdiction when committed out of State 4770

Digitized by Google

Sec.

MURDER—Con.
—of murder in one county from cause in another 4772
Warrant of arrest issued by coroner 4813
Verdict of guilty to specify degree and punishment of 4919
Duty of court on confession of guilt 4919
Indictment for, of what crime accused may be found guilty..4920
By convicts 5049
When to bar acquisition of estate of person killed 5274

MUSKRATS
Unlawful hunting 3356

MUTUAL ASSURANCE SOCIETY
See also **"Insurance"**
Liens of, protection of bona fide purchasers of property subject to 6458

MUTUAL COMPANY
See also **"Insurance"**
Certificate of incorporation, what to contain 4202

MUTUAL FIRE, LIGHTNING, STORM INSURANCE COMPANIES
See also **"Insurance"**
Definition 4327
Incorporation, organization.....4327
Restrictions on 4327
Prerequisites to beginning business 4328
Policies, provisions of 4329
—by-laws and regulations of company to be part of.....4329
Members, obligations on 4330
—notice of loss 4330
—exclusion for failure to pay assessment 4335
—admission and withdrawal of..4339
—non-resident may not hold office 4339
Classification of risks, rates....4331
Assessments 4332
—how made 4332
—limit to rate of.....4333
—for current expenses 4332
—notice of 4333, 4334
— —how served 4334
—expense of collection 4334
—action to recover 4335
—exclusion of member and cancellation of policy for failure to pay 4335
What property may be insured..4336
Directors, election of.....4337
Meetings 4337
—voting by proxy 4337
Annual report 4338
Risks limited to those specified..4340
Officers, personal liability of....4340
—penalty for violating law as to risks assumed 4340

NAMES
Private act naming or changing name of corporation or association prohibited..Va. Const., § 63
General Assembly may confer power on courts to change, Va. Const., § 63
In which commissions and grants to run .....Va. Const., § 75
Of Commonwealth, writs to run in .....Va. Const., § 106
Denny Martin authorized to take name of Fairfax 414
Of school board in cities 777
—in counties 639
—in districts 652
Corporate, of Board of Visitors of Virginia Agricultural and Mechanical College and Polytechnic Institute 860

Sec.

NAMES—Con.
Of William and Mary College.. 936
Unauthorized use of, penalty....1463
—for advertising purposes.....5782
Of Board of Drainage Commissioners 1759
Writs issued by State tax board to run in name of Commonwealth 2216
In license 2364
—change of 2365
In which judgment rendered, action to enforce debts due State 2513
Of town, in order incorporating..2881
Of boat engaged in fishing, to be kept in view 3263
Of corporation, what to contain..3850
Of co-operative associations.....3855
Bank, banker, trust company, etc., unlawful use of 4131
Of trust company, what to contain 4145
Of bank, word corporation not necessary 4145
Change of on adoption of child..5323
Of real claimant in action of ejectment stated in declaration 5456
Proceedings for change of.....5983
Unlawful change of, penalty....5983

In Which Actions Brought
For debts due State 2512
For recovery of fines.....2543
On bonds of treasurers.....2789
For recovery of money forfeited to State Corporation Commission 3766
For money due State from internal improvements 3766
To forfeit charter of corporation 3831
Against bank for fee for examination 4122
Proceeding to recover assessment against insurance company, expense of Bureau of Insurance..4195
To enjoin advertising in violation of prohibition law 4609
To abate nuisance under prohibition law 4630
By superintendent of penitentiary 4993
On contract or covenant by one not a party thereto.....5143
By beneficial equitable owner of claim or chose in action.....5144
Signing negotiable instrument in trade or assumed name 5580
Of payee in negotiable instrument, misspelling, etc.....5605
Actions and suits by and against unincorporated association 6058
Action on suspending or forthcoming bond 6156
For recovery of property subject to lien of execution or judgment 6514

NANSEMOND COUNTY
Act providing for poor of, continued in force 2811
Commonwealth's attorney, fees..3505

NANSEMOND RIVER
Use of pound nets in 3173
—penalty 3173
Taking oysters with patent tongs prohibited 3240
Use of oyster scrape or dredge in, permit 3248

NAPHTHA
Not to be used in lighting passenger cars on railroad 3975

NARCOTICS
Giving to inmates of insane hospital, punishment 1065

Digitized by Google

Sec.

NATIONAL BANKS
Powers as trust companies.....4149
Stock, transfer to foreign personal representative 5348, 5349

NATURAL PERSON
Seal of, what includes..... 5
May take and hold gift or devise for educational or literary purposes 588
—how will probated 589
—trustees 590
—power of General Assembly to suspend or repeal 593

NAVIGABLE WATERS
See also **"Navigation"**
Special acts declaring streams navigable, etc., prohibited, Va. Const., § 63
Erection of wharf or bulkhead by riparian owner 3269
Dams in 3577
—when a nuisance 3577
—locks in 3577
Right of way of railroad over..3999

NAVIGATION
See also **"Canals"; "Ferries"; "Harbor Masters"; "Navigable Waters"; "Pilots"; "Water Courses"**
Special act prohibited, Va. Const., § 63
Land for use in aid to, lease, etc., to United States 18, 19
—reversion to State 18
—jurisdiction over 19
Abatement of wharf, pier or bulkhead obstructing 1997
Laws declaring rivers and streams highways, continued in force..2003
Obstruction by toll bridge 2068
Rights of State to open, extend or improve preserved 3576
Dams, powers of courts to grant leave to erect 3577
—duties of millowner 3578
—interfering with, notice to relieve against 3578
Harbor masters, removal of obstructions, etc. 3668
Tolls, State Corporation Commission to fix 3771
Dam or other thing obstructing as nuisance 4747
Obstruction by dam, etc.....4747
—in Mattaponi or Pamunkey River 4748
—on Sycamore Mill Creek.....4749
—in Rappahannock Creek 4750
—on prongs of Big Sandy River.4752
—in Sandy River 4754
Interference with or destruction of United States buoy, etc.....4756
Anchoring on range of range lights 4756

NAVIGATION COMPANY
See also **"Navigation"**
Tolls, when fixed by State Corporation Commission 3771

NAVY YARD
Employees, eligibility as State and county officers..... 291

NEGLIGENCE
See also **"Contributory Negligence"; "Railroads"**
Action against railroad by employee, effect of fellow servant doctrine and assumption of risk .....Va. Const., § 162
—effect of contract of employee, Va. Const., § 162
Liability for escape of fire by.... 545
Evidence of in action against common carrier or railroad for loss or damage to goods.....3926

Sec.

NEGLIGENCE—Con.
Actions against railroads for injuries on enclosed portion of track 3948
—on track not enclosed 3949
Contract against, by telegraph or telephone company 4050, 4051
Liability of fiduciary, agent or attorney at law for money lost by 5406
Contribution between persons liable for 5779
Action for death caused by, 5786-5790
—death or injury of employee of intrastate railroad 5791-5796
Contributory, in action for death or injury to employee of intrastate railroad 5792
—defense of stated in writing..6092
Assumption of risk, in action by employee of intrastate railroad 5793
Averment of, failing to state particulars 6118

NEGOTIABLE INSTRUMENTS
See also **"Notes"**
Warehouse receipts, see **"Warehouses and Warehousemen"**
Savings bank, investment of funds in 4143
Discount, rate of 5553
Accommodation instrument, liability of accommodation party 5591
—discharge by payment of accommodated party 5681
— —accommodated party may not reissue 5683
Acceptor, contract of 5624
—of acceptor for honor.....5727
Application of negotiable instrument law 5755
Time, computation of 5755
Law merchant, when governs....5757
Waiver of homestead exemption in 6548
—enforcing claims 6549

Actions on
By holder 5613, 5619
By holder not in due course....5620
—defenses to 5620
Debt or assumpsit 5759
Parties, judgment 5760
Damages 5760
On note payable to dead person..5761
By assignee 5768-5770
Motion by indorser to recover money paid 5777, 5778
Interest, judgment for 5760
Against personal representative of joint party 5762
At written request of indorser..5774
—effect of failure to sue.....5775
Proof of writing when averred in pleading 6125
Inquiry of damages 6133
On lost instrument 6242
On instrument waiving homestead 6551

Bills of Exchange
Definition 5688, 5752
—not an assignment 5689
—inland bill 5691
—foreign bill 5691
Addressed to more than one person 5690
When may be treated as promissory note 5692
Referee in case of need 5693

ACCEPTANCE
How made 5694
Definition 5694, 5752
By separate instrument 5696
On face of bill, holder entitled to 5695

Digitized by Google

Sec.

NEGOTIABLE INSTRUMENTS—Con.
—sale of collateral securities....5567
—authorizing confession of judgment 5567
—waiving benefit of law 5567
—giving holder election 5567
Seal, effect of 5568
Signature, necessity 5563
—blanks over, authority to fill..5576
—ambiguity in 5579
—in trade or assumed name....5580
—by agent, how authority shown 5581
— —personal liability of agent..5582
— —by procuration, notice of limit of authority 5583
—forged, effect of 5585
Terms, when sufficient 5572
Time of payment, certainty.....5563
—fixed period after date or sight 5566
—fixed future time specified.....5566
—fixed period after specified event 5566
—based on contingency 5566
—when payable on demand.....5569
Writing 5563

Indorser

Who deemed to be 5625
Irregular, liability of.....5626
Warranty of qualified 5627
—of general indorser 5628
Liability where instrument negotiable by delivery.....5627, 5629
Order of liability, evidence as to 5630
When joint and several 5630
Presentment for payment, when necessary to charge 5632
—when not necessary 5642
When liability accrues.....5646, 5713
Notice of dishonor, when required to charge 5651
—discharged if notice is not given 5651
—when not required 5674, 5677
—delay in giving, when excused 5675
—notice of non-payment when acceptance refused 5678
Discharge of 5682, 5706
—negotiation after 5683
—payment by does not discharge instrument 5683
—qualified acceptance, rights as to 5704
Discharge, failure to negotiate bill or present for acceptance..5706
—for failure to treat bill as dishonored on non-acceptance 5712
When protest necessary to charge 5714
Liability for indorsing parts of bill in sets 5742
Release of when check certified..5750
Requiring creditor to sue.....5774
—effect of failure to sue.....5775
Remedy against principal for money paid 5777, 5778

Liabilities of Parties

Agents 5582
Ambiguity of capacity in which signature made 5579
Where signature forged or without authority 5584
—in trade or assumed name.....5580
Accommodation parties 5591
—irregular indorser 5627
Special indorser of instrument payable to bearer 5602
Release by striking out indorsement 5610
Instrument negotiated back to prior party 5612
Maker 5622

Sec.

NEGOTIABLE INSTRUMENTS—Con.
Drawer 5623
—stipulations limiting liability..5623
Acceptor 5624
Indorsers, who deemed to be....5625
—irregular 5626
—qualified 5627
—general, warranties 5626
—of instrument negotiable by delivery 5627
—order of liability of 5628
—joint payees or indorsers.....5630
Definition of indorsement 5752
Person negotiating instrument by delivery, warranties 5627
Agents or brokers negotiating without indorsement 5631
Person primarily liable, definition 5752
Person secondarily liable, definition 5752
Discharge of instruments...5681-5687
Personal representative of party jointly liable 5762

Maker

May be payee 5570
Engagement and admissions of..5622
Presentment for payment not necessary to charge 5632
Note to order of not complete until indorsed 5746

Negotiation

What constitutes 5592
—instrument payable to bearer, 5592, 5602
—instrument payable to order...5592
Of instrument indorsed in blank 5596
Of instrument bearing restrictive indorsement 5599
Of instrument bearing qualified indorsement 5600
Transfer without indorsement...5611
By prior party.....5612
After completion 5576
Incomplete instrument without delivery 5577
Delivery, when effectual, when presumed 5578
By indorsement 5592
—by infant or corporation 5584
—how made 5593
—must be of entire instrument..5594
—special, in blank, qualified, conditional 5595
—special, definition of 5596
—blank, definition of 5596
— —how changed to special.....5597
—when restrictive 5598
— —rights conferred by 5599
—qualified, form and effect of..5600
—conditional, effect of 5601
—instrument payable to bearer..5602
—instrument payable to two or more persons 5603
—instrument drawn or endorsed to cashier 5604
—where name of payee misspelled, &c. 5605
—in representative capacity.....5606
—time of, presumption 5607
—place of, presumption 5608
—negotiation possible until restrictive endorsement or discharge 5609
—struck out by holder 5610
—transfer without endorsement, effect 5611
—indorsement, definition 5753
Instrument drawn or indorsed to officer of bank or corporation 5604
Presumption as to time.....5607
—place 5608
By fraud or breach of faith, effect 5617

Digitized by Google

Sec.
NEGOTIABLE INSTRUMENTS—Con.
Takes effect from time indorsement is made 5611
By party secondarily liable paying instrument 5683
Of bill of exchange, in reasonable time, discharge for failure....5706
Bills drawn in sets.....5741, 5742

Notice of Dishonor
To whom given 5651
—party or agent 5659
—when party dead 5660
—partners 5661
—persons jointly liable.....5662
—when party bankrupt 5663
By whom given 5652
—agent 5653, 5656
—holder, enures to whose benefit 5654
—by person entitled to give, enures to whose benefit.....5655
Effect of failure to give 5651
By agent when instrument dishonored in his hands 5656
When party is bankrupt or has made assignment 5663
Written, need not be signed.....5657
—supplemented by verbal 5657
Misdescription of instrument, effect of 5657
May be oral or written 5658
Must identify instrument and indicate that it has been dishonored 5658
Personal 5658
By mail 5658
—when sufficient 5667
—deposit in post-office, what constitutes 5668
—where sent 5670
Time within which must be given.5664
—parties residing in same place..5665
—parties residing in different places 5666
—to antecedent parties 5669
—delay, when excused 5675
Effect of actually receiving.....5670
Waiver, time for, how made....5671
—who affected by 5672
—by waiver of protest.....5673
When dispensed with 5674
Delay in giving, when excused...5675
When need not be given drawer..5676
When need not be given indorser 5677
When unnecessary on dishonor by non-payment, after notice of dishonor by non-acceptance....5678
Omission of, when dishonor by non-acceptance, not to prejudice holder in due course 5679

Payee
Fictitious person, as 5571
—presentment dispensed with where drawee is 5644
—notice of dishonor dispensed with where drawee is....5676, 5677
Drawee 5692

Payment and Discharge
Payment to holder, discharge by..5613
—readiness to pay as tender....5632
—presentment for 5632-5647
—time for, how computed, 5647, 5648, 5755
— —falling on Sunday or holiday 5755
—when instrument payable at bank 5649
—in due course, what constitutes 5650
Discharge by failure to give notice of dishonor 5651
—by payment 5681
— —by party secondarily liable..5683
—by cancellation.....5681, 5682
— —burden of proof 5685

Sec.
NEGOTIABLE INSTRUMENTS—Con.
— —unintentional, effect of.....5685
—when principal debtor becomes holder 5681
—of party secondarily liable.....5682
— —cancellation of his signature.5682
— —discharge of prior party....5682
— —tender by prior party.....5682
— —release of principal debtor..5682
— —agreement to extend time of payment 5682
—renunciation by holder 5684
— —when in writing 5684
—alteration 5686
— —what constitutes material..5687

Presentment for Payment
Not necessary to charge parties primarily liable 5632
—exception 5633
Necessary to charge drawer 5632
—when not required 5641
Necessary to charge indorsers..5632
—when not required 5642
Time for 5633, 5634
—instrument payable on demand, 5633, 5647
—instrument payable at bank..5637
—bill of exchange 5633
Who may make 5634
To whom made 5634
—when principal debtor is dead.5638
—when persons liable as partners 5639
—to joint debtors 5640
Place for 5634, 5635
Instrument must be exhibited....5636
Delay in, when excused 5643
When presentment dispensed with 5644
Instrument dishonored by non-payment 5645
—liability of persons secondarily liable 5646
Grace not allowed 5647
When instrument due on Saturday, Sunday or holiday ...5647, 5755
Time for payment, how computed 5648, 5755
Waiver by waiver of protest....5673
Checks 5748

Presumptions
As to date 5573, 5579
Delivery 5578
Consideration 5586
Indorsement, time of 5607
—place of 5608
Holder in due course 5621
Cancellation of instrument.....5685

Promissory Notes
Promissory note, defined...5746, 5752
—note, means promissory note..5752
When instrument may be treated as bill or note 5579, 5692
To maker's order, not complete without indorsement 5746

Protest
Waiver of, includes what 5673
When may be made 5680
When must be made 5680, 5714
How made 5715
By whom made 5716
When to be made 5717
Where made 5718
For non-acceptance and non-payment 5719
For better security 5720
When dispensed with 5721
Of lost, destroyed or wrongly detained bill 5722
Certificate of as evidence 5680
Bill accepted for honor 5729, 5732
Attestation of payment for honor with 5734
Charges, judgment for 5760

Rights of Holder
Insertion of date by 5575

Digitized by Google

Sec.

NEGOTIABLE INSTRUMENTS—Con.
Filling blanks 5576
Holder for value, what constitutes 5588
—to extent of lien 5589
—liability of accommodation party to 5591
Instrument ante-dated or post-dated 5574
Instrument improperly delivered, 5575, 5576
After restrictive indorsement....5599
Instrument payable to bearer, against special indorser.....5602
Right to strike out indorsements.5610
Transferee without indorsement.5611
Prior party to whom instrument negotiated back 5612
When may treat instrument as bill or as note 5579
Suit on instrument by.....5613
When title defective 5617
Notice of defect, what constitutes 5618
Other than in due course, subject to original defenses 5620
May convert blank indorsement into special 5597
Holder in due course, who is, 5614, 5615, 5620
—blanks filled without authority.5576
—erroneous date inserted.....5575
—delivery presumed 5578
—instrument payable on demand 5615
—effect of notice of infirmity in instrument or defect in title..5616
— —what constitutes notice....5618
—holds free of defects and defenses, and may enforce payment 5620
—presumption, burden of proof..5621
—determined as of time of indorsement 5611
—title acquired through 5620
—not prejudiced by omission of notice of dishonor by non-acceptance 5679
—alteration, effect of 5686
—renunciation by prior holder..5684
—priority over attachment 6393
Principal debtor becomes holder, instrument discharged 5681
Cancellation by, effect.....5682, 5685
—burden of proof.....5685
Extension of time for payment..5682
Release of principal debtor.....5682
—reservation of right of recourse against party secondarily liable 5682
Renunciation of rights by.....5684
Alteration of instrument, effect of 5686
Holder, defined 5752

NEGRO REFORMATORY ASSOCIATION
Acts relating to continued in force 1961

NELSON COUNTY
Commonwealth's attorney, fees..3505

NETS
Taking fish with, application for license 3166
—license, fee, tax 3168
— —form, display 3168
Taking fish with purse nets, license for 3167, 3168
Penalty for using without license 3169
—forfeiture and sale of property 3169
Size of mesh 3171
Waters in which use of pound nets is prohibited 3173, 3174
Use of at night in Lynnhaven river 3173
Stakes, when withdrawn 3173

Sec.

NETS—Con.
—not to be placed between Cape Henry and Norfolk county line.3173
Penalty for violation of law....3175
Taking food fish with for purpose of manufacturing into guano or oil prohibited 3176
—penalty 3176
Pound net, what is 3178
Use of in spawning locality.....3180
—forfeiture of nets for.....3180
Use of in Accomac and Northampton counties 3181
—forfeiture for 3181
Used for catching menhaden, size of 3183
—penalty 3183
Non-resident taking fish with for or manufacturing into, oil or manure, forfeiture of.....3184
Forfeiture of, for violations of law relating to taking for or manufacturing fish into, oil or manure 3190
Obstructing passage of fish by, penalty 3198
Fishing with in Holston River and in tributaries of New River prohibited 3200
—in Powell's River 3201
— —forfeiture 3201
Fishing with in Mattaponi, Pamunkey, York and Elizabeth Rivers 3202, 3204
—in Back Bay 3203
—forfeiture of nets, boats, etc..... 3202, 3203
Use of in Potomac River....3205, 3303
—seizure, forfeiture 3302
For crabs, location of 3292
Forfeiture of for taking terrapins out of season 3297
For fur-bearing or hair-bearing animal, setting on land of another, consent of owner.....3348
—on one's own land 3353
—season for 3348, 3353
—report to land owner of stock, fowl or dog caught 3350
—destruction when placed in violation of law 3352
—law in effect when adopted by supervisors 3355
—penalty for violation of laws relating to.....3354
Used in unlawful hunting, seizure and forfeiture 3356

NEW KENT COUNTY
Taking terrapins in, penalty....3297
—disturbing eggs 3297
—forfeiture of boats 3297
Commonwealth's attorney, fees..3505

NEW PARTIES
When brought in 6102
Judgment for when found not liable 6106
How brought in suit.....6139
Continuance, when action revived in name of 6168
—amendment of pleading.....6168

NEWPORT NEWS
Quarantine act relative to continued in force.....1512
Hearing by Commission of Fisheries as to size of oysters that may be taken 3244
—on shipment of seed oysters out of State 3249
Corporation court judge, salary..3468
—increase, decrease 3469
Commonwealth's attorney, fees..3505
Deputy sergeant, allowance to..3515
Pilot regulations 3623, 3624
Harbor master 3678
—duties 3678, 3681
—term 3680
Circuit court 5887
City of first class 5905

Digitized by Google

Sec.

NEWPORT NEWS—Con.
Courts continued 5905

NEW PROMISE
Effect on limitations.....5812, 5813

NEW RIVER
Fishing with seines in tributaries of unlawful 3200

NEW TRIAL
Petition for redress against escheat 498
Costs on granting 3522
—order granting set aside for failure to pay 3522
In action to recover damages for wrongful death 5787, 5788
For irregularity in venire facias or in empanelling jury 6002
Civil warrant before justice 6026
When not granted after verdict set aside 6251
—assessment of damages 6251
Declaration containing faulty counts 6258
Motion for, when unnecessary....6254
Power of court to grant 6260
Number of 6260
Rule against commissioners, receiver or purchasers, judicial sales 6276
Attachment proceedings....6411, 6412
In criminal cases, for irregularities in venire facias, impanelling jurors, etc.....4894
—where accused convicted of part of offense charged 4918
—to person sentenced to death, reconveyance to place of trial..4944

NEWSPAPERS
Unlawful publications with reference to candidate at primary election 231
—paid advertisement 231
Sale of by boys under ten years of age and girls under sixteen prohibited 1813
License tax, counties, cities and towns not to require 3062
Advertisement in of intoxicating liquors prohibited 4609
—injunction 4609
—statement for which compensation is paid 4609
Advertising offers to procure divorces, &c., penalty 5116
Certificate of publication in as evidence 6224

Publication in
Report of auditing committee, Va. Const., § 68
Orders and regulations of State Corporation Commission, Va. Const., cl. b., § 156
Discontinuance of public tobacco warehouse 1348
Insurance by tobacco warehouseman 1395
Proceeding to sell unclaimed tobacco in warehouse 1398
Proceeding to sell lumber found adrift 1446
Board of health, rules 1494
State Board of Examiners of Graduate Nurses, list of officers, rules and regulations of.....1705
Process in proceeding to establish road 1979
Local road legislation by board of supervisors 2014
Schedule of Chesapeake Bay ferries 2044
Annual statement, Treasurer, Auditor and Second Auditor....2202
Delinquent tax list 2429
List of delinquent real estate..2460
Proceeding to purchase delinquent land.....2495

Sec.

NEWSPAPERS—Con.
County ordinance and by-law....2744
Report, superintendent of the poor 2798
Ordinance for contracting corporate limits 2969
Statements by supervisors 2768
Order in proceeding for discharge of treasurer 2792
Grant of franchise by city or town 3018
—amendment 3022
Statement of disbursements by city council 3078
Petition to declare stream or canal a lawful fence... ..3553, 3554
Appraisal of estrays or adrift property 3566
Suspension of pilot 3644
General order, State Corporation Commission 3711
Regulation of State Corporation Commission 3726
Establishment of office by consolidated corporation 3321
Process against dissolved public service corporation.....3899
By State Corporation Commission, rules for transportation of explosives 3922
Certificate to do business, by bank or trust company 4105
Statements of financial condition by banks 4120
Revocation of license of insurance company, guaranty company, etc. 4180
Revocation or suspension of license of life insurance company for deficiency of assets..4250
Revocation or suspension of license of co-operative life insurance or casualty company..4270
Revocation of license of fire insurance company assuming excessive risks 4307
List of persons holding internal revenue tax receipts for sale of ardent spirits 4660
Order to show cause against distribution of decedent's estate..5439
Certificate of re-entry on land....5536
Proclamation changing place of session of Supreme Court of Appeals 5967
Order of publication to commence suit 6070
By Supreme Court of Appeals....6073
Order striking cases from docket for failure to prosecute 6172
Advertisement of contract for public printing 382
—contract for paper 383
—by sealer of weights and measures of time of trying and proving 1477
—for bids for improvement of road with State aid 2102
—purchase of bonds by commissioners of sinking fund.....2625
—of loss of State bond 2639
—death of inmate R. E. Lee Camp 2672
—sale of property from wrecks..3608
—for bids on printing records in appeals 6358, 6359
Notice, proceeding to establish drainage district, against unknown owner 1740
— —of hearing on report..1745, 1755
— —of letting contract 1761
— —of issuance of bonds 1772
—of letting contract for road maintenance 2029, 2031
—of redemption of road bonds....2119
—of sale of automobile on judgment against owner 2147
—of redemption of State bonds..2586

Digitized by Google

Sec.

NEWSPAPERS—Con.
—of sale of property of county.2723
—of completion of courthouse....2747
—of contested election, removal of courthouse 2754
—in proceeding to incorporate town 2881
—of special election in city of first class 2919
—in proceeding by city or town to annex territory 2957
—to abutting owners when streets graded 3037
—application by city to erect dam in water course 3054
—assessment for local improvements 3069
—by Commission of Fisheries of hearing on size of oysters that may be caught 3244
— —on shipment of seed oysters out of State 3249
—proceeding for forfeiture for violation, fish, game and oyster laws 3367
—proceeding by supervisors for declaring lawful fences 3547
—corporation, meeting for amendment of charter.....3780
— —decrease of capital stock....3781
— —creating or increasing bonded indebtedness 3783
— —of stockholders 3786
— —sale of stock for failure to pay subscription.....3807
— —meeting to dissolve corporation 3810
— —to obtain new charter after dissolution 3812
— —meeting for consolidation of corporations 3822
— —meeting, stockholders, corporation purchasing property of public service corporation 3896
—of sale of works of railroad, canal, turnpike, etc., in which State is interested.....3889
—of sale of unclaimed goods by transportation companies for charges 3933
—of application by turnpike company for permission to change toll-gate 4077
—of failure of bank to furnish financial statement 4124
—of sale by treasurer of bonds of insurance company or guaranty company 4213
—of suspension of license of insurance company 4223
—of failure of insurance company to report 4229
—of sale of vehicle or animal to enforce lien of Society for Prevention of Cruelty to Animals.4561
—ardent spirits, license to sell, application of druggist for....4599
— —application of hotel keeper.4602
—sale of vehicle used in transportation of ardent spirits....4658
—by trader of name of principal or partner 5224
—transfer of stock, &c., to foreign personal representative...5348
—proceedings to transfer out of State property of infant or insane person 5352
— —property held in trust, 5352, 5354
—proceeding to administer estate of person presumed to be dead, 5362, 5363
—as to non-resident.....6043
—infant doing business as trader.6108
—of taking account before commissioner 6180

Sec.

NEWSPAPERS—Con.
—of proceedings for payment of unclaimed court funds into treasury 6311

NEXT FRIEND
Proceeding by infant married woman, receiver for estate....5136
—sale of estate 5137
Minor to sue by 5331
Proceeding to adopt child 5333
Proceeding by to compel fiduciary to account 5410
Application for change of name of infant 5983
Consent to vacation proceedings.6308
Homestead exemption set apart by 6541

NIGHT-TIME
Setting gill nets or crab lines in Lynnhaven River in 3173
Larceny of oysters in, punishment 3237
Catching oysters, clams or crabs in, prohibited 3251
Unlawful to hunt in 3356
—counties excepted 3357
Hunting sora in 3359
Burning dwelling house, asylum, jail, &c., in.....4428
Entry of dwelling house in with intent to commit felony or larceny 4437
Entry of dwelling house or other house in with intent to commit murder, rape, robbery 4438
—with intent to commit larceny..4439
Seed cotton, selling, buying, storing for sale in.....4726

NITRE
Spirits of, sale 1681

NITRO-GLYCERINE
Destroying dwelling house, hotel, vessel, jail, etc., by, punishment 4428
—other houses 4430, 4432
—bridge, lock or dam 4433

NOMINATION
Of candidates for public office, method of, how determined.... 222
—vote required for 225
—tie, how determined 225
—chapter on primary elections inapplicable to what nominations. 226
—right and power of political party to provide for 227
—vacancy, how filled..... 227
Of pupils in William and Mary College 938
Of members of State Board of Dental Examiners 1642
Of members, Board of Pharmacy.1666
Of members, State Board of Examiners of Graduate Nurses.1703
Of members, State Board of Embalming 1716
Of guardian, by minor 5317

NON COMPOS MENTIS
See "Insane Persons"

NON EST FACTUM
In assumpsit on sealed instrument 6088
Plea of, verification 6124

NONJOINDER
Effect of 6102
—new parties brought in.....6102

NON-RESIDENTS
Insane persons 1030, 1036, 1052
Deportation of by Board of Charities and Corrections 1903
Service of process on in proceeding to establish road 1979
Automobiles, operation of by....2137
Listing property of for taxation..2307
Application to purchase delinquent land of, order of publication on 2496

Digitized by Google

Sec.

NON-RESIDENTS—Con.
Applicant to purchase delinquent land, to designate agent.....2495
—service on.....2495
Abutting owner, notice to when street graded.....3037
Notice to, assessment for local improvement.....3069
Fishing by, license for....3168, 3209
—without license, penalty.....3210
—counties excepted from law as to.....3210
—unlawful, penalty.....3211
—definition of non-residence, burden of proof.....3212
Fish, manufacture into oil or manure.....3184
—catching for.....3184
—penalty.....3184, 3190
—interest in corporation engaged in.....3254
May be stockholder in corporation engaged in oyster business.3224
Assignment of oyster grounds to.....3228
Employment in dredging or scraping for oysters.....3248
Citizen not to be interested with in catching crabs, clams, oysters, terrapins or other shellfish or in planting oysters, penalty.....3253
Crabs, clams, oysters, terrapins, catching by prohibited.....3254
—buying.....3255
—owning stock in corporation engaged in, prohibited.....3254
—who deemed non-resident.....3255
Hunting by, license for, how obtained.....3330
—on own land, without license..3330
—by tenant of.....3330
—by alien non-residents owning land in State.....3331
Shipment of game from State by.....3361
Officer may require security from for fees.....3502
Suits by, security for costs.....3519
—judgment on bond for.....3519
—bond to indemnify surety in..3520
Animals of, trespass by, damages.3542
—distress of.....3543
—sale of.....3544-3546
Voting in election, penalty.....4726
Will of, when valid as to personal property in this State.....5231
Bill by to impeach or establish will, when filed.....5260
Disturbing fishing shores, penalty.....5292
How foreign personal representative of may transfer stock or certificates of debt of.....5348
Limitation on claim against.....5825
Notice against, publication of....6043
—in eminent domain proceedings.....4365
—in divorce suit.....5108
Venue of actions against, generally.....6049, 6050
Service of process on by individual out of State.....6071
Service by publication.....6069, 6070
—in Supreme Court of Appeals..6073
Abatement of suit as to.....6080
Affidavit as evidence of non-residence.....6224
Witness, depositions.....6226
Notice to take depositions served on counsel of.....6229
Party to suit, production of books and writings, service of summons.....6237
—interrogatories to.....6236
Attachment against estate of, 6378, 6379

Sec.

NON-RESIDENTS—Con.
Notice to of motion to mark judgment satisfied or discharged in bankruptcy.....6467
Garnishment.....6509

NON-SUIT
See also **"Dismissal"**
For failure to file declaration or bill.....6078
After demurrer to evidence.....6117
At rules, when to become final..6134
Reinstatement.....6140
After set-off.....6149
When taken.....6256

NON-SUPPORT
Of wife or child.....1936-1944

NORFOLK CITY
See also **"Board of Harbor Commissioners of Norfolk, Portsmouth and Norfolk County"; "Court of Law and Chancery of the City of Norfolk"**
Ferries to Accomac and Northampton Counties and Hampton and Yorktown.....2040
—special leave to ferry.....2046
—penalty for operating without license.....2047
Treasurer, statement and payment of taxes collected, penalty.2412
Advertisement in newspaper in, proceeding to sell lumber found adrift.....1446
—hearing of Commission of Fisheries as to size of oysters that may be taken.....3244
— —on shipment of seed oysters out of State.....3249
—suspension of pilot.....3644
Commonwealth's attorney, fees..3505
Deputy sergeant, allowance to..3515
Board of harbor commissioners of Norfolk, Portsmouth and Norfolk County, members from....3665
—vacancy.....3666
—expenses, assessment for.....3674
Harbor masters.....3673
—duties.....3673, 3681
—term.....3680
Wharves, unauthorized erection..3675
Docks, examination and repair..3676
Harbor commissioners, report of.....3678
Circuit court.....5887
—chancery docket.....6245
City of first class.....5905
Courts in continued.....5905
Court of law and chancery..5934-5945
Corporation court, jurisdiction..5936
—judge, absence or inability to sit.....5943
— —salary.....3468
— —increase, decrease of salary.3469
—clerk, to be clerk of court of law and chancery of Norfolk..5944
—commissioners to examine pilots, appointment.....3613
— —removal, vacancies.....3614
Sergeant, to attend and execute process of court of law and chancery.....5941
List of jurors, number to contain.....5988

NORFOLK COUNTY
See **"Board of Harbor Commissioners of Norfolk, Portsmouth and Norfolk County"**
Ferries, continuation of.....2049
—ownership.....2049
—regulation and management....2050
—leasing.....2050
—disposition of profits.....2051
—penalty for obstructing ferry boats.....3686

Digitized by Google

Sec.

NORFOLK COUNTY—Con.
Bond of agent or lessee of ferry across Elizabeth River payable to 2048
Circuit court, leasing out or appointing agent to operate ferries across Elizabeth River..2048
—judge, report to by harbor commissioner 3677
Commonwealth's attorney, fees..3505
Board of harbor commissioners of Norfolk, Portsmouth and Norfolk County, members from....3665
—vacancy 3666
—expenses, assessment for.....3674
Harbor master 3673
—duties 3673, 3681
—term 3680
Docks, examination and repair...3676

NORFOLK COUNTY FERRIES
See **"Ferries"; "Norfolk County"**

NORFOLK HARBOR
Anchoring small boats in channel, penalty 3687

NORMAL SCHOOLS
See also **"Education"; "State Female Normal School"; "State Normal Schools"; "Summer Normal Schools"; "Virginia Normal and Industrial Institute"; "William and Mary College"**
General Assembly may establish, Va. Const., § 137
Duties of State Board of Education 613
Summer schools for teachers..695-698
In cities, power of trustees to establish 786
State Normal Schools for Women, 939-946
Virginia Normal and Industrial Institute 947-969

NORTHAMPTON COUNTY
Ferries to Norfolk, Hampton and Accomac County 2040
—not to interfere with Accomac County ferries 2045
—special ferry to Norfolk 2046
—operating without license 2047
Hauling seines or setting traps for fish in waters of 3181
Fishing within regularly hauled fishing landings 3182
Assignment of oyster ground to riparian owner 3223
Taking oysters, crabs, clams or shells with rakes or scrapes, penalty 3238
Oysters, culling 3243, 3244
Use of oyster scrape or dredge in, permit 3248
Seed oysters, license to carry from 3250
Taking terrapins in, penalty....3297
—disturbing eggs 3297
—forfeiting boats, &c....3297
Game laws in 3347
How funds from hunters' licenses disposed of 3347
Commonwealth's attorney, fees..3505
Waters in, obstructing landings in by throwing oyster shells into..4751
Citizens of certain islands in exempt from jury service....5985

NORTH CAROLINA
Boundary line 11

NORTHERN NECK
Records of land titles in 414

NORTHUMBERLAND COUNTY
Assignment of oyster ground to riparian owner in 3223
Taking terrapins or disturbing eggs, penalty 3297
—forfeiture of boats, nets, etc....3297
Commonwealth's attorney, fees..3505

Sec.

NORTHWEST TERRITORY
Cession of 10

NORTHWESTERN TURNPIKE
Interest of State in transferred to State Corporation Commission 4095
Powers and duties of State Corporation Commission as to.....4097
—repair, appropriation for, tolls..4096

NORTHWESTERN TURNPIKE COMPANY
State Corporation Commission to execute powers of 4097

NOT GUILTY
Trial without jury on plea of...4927
—Va. Const., § 8
Plea, of in action of unlawful entry or detainer 5446
—in action of ejectment 5463
— —what may be proved 5463
—quo warranto proceeding....5846

NOTARIES PUBLIC
Eligibility 2851
—Va. Const., § 32
Word notary construed as.... 5
Depositions before in contested election 260
May administer oath to member of General Assembly 272
Oath or affidavit before.... 274
Affidavit before in another State. 275
—how authenticated 275
Qualification of as division superintendent of schools 624
Fertilizer, drawing sample for analysis 1119
—fee 1119
Certificate of age of infant employee 1811
—proof of age 1811
Seal, when no tax charged on..2402
Proceeding against by Auditor for violation of revenue law....2544
Number 2850
Appointment 2850
Removal 2850
Bond 2850
Qualification 2850
Residence, removal 2850
Report of vacancy to Governor..2850
Powers 2850
Fees 3480
—statement of on depositions and affidavits 3483
—suit for 2852
Fee book 3494
Forgery of certificate or attestation of 4484
Conservator of the peace....4789
—duties as, arrests by....4789
—proceeding to require recognizance of person about to commit crime 4790-4792
— —of person going armed....4795
— —of person about to commit breach of peace 4796
Acknowledgments before, form of 5205
—of deed or writing of corporation when officer or stockholder of 5209
—recital in certificate, when term of office expires 5210
— —female notary changing name 5210
— —forfeiture for failure 5210
Seal of, annexed to certificate of protest, judicial notice taken of 5680
Protest of negotiable instrument 5716
—certificate, effect as evidence..5680
—seal, judicial notice of....5680

Digitized by Google

Sec.

NOTARIES PUBLIC—Con.
Attestation of payment of negotiable instrument for honor, 5734, 5735
Attestation of copies of foreign records 6207
Depositions of witnesses taken before 6225
—out of State 6226

NOTES
See also "Negotiable Instruments"
Subject to order of court, taxation 2308
Of corporations, power to issue..3777
Embezzlement of 4451
Fraudulent sale of, scheme for, &c., punishment 4465
Issuing for circulation, punishment 4698
Passing or receiving for payment note issued for circulation....4699
Of bank for less than five dollars, bringing into State, passing, receiving 4700
For less than five dollars, issuing for circulation 4701
—action against maker 4702
For circulation, acts relating to construed as remedial.....4703
Defined 5746, 5752
Actions on 5759, 5760
—on lost note 6242
Promisee dead at time of making 5761
Liability of personal representative of one bound on.....5762
Non-negotiable, action on by assignee 5768-5770
Waiver of homestead exemption in 6548
—enforcing claims 6549
—judgment, execution 6551

NOTICES
Time in which to be given, computation of 5
Fee when officer fails to serve....3489
In legal proceeding, cost, taxation of 3535
Possession of real estate not notice to purchaser 5194
Lien of purchaser for payments made before receiving notice...5200
Recordation of will as 5262
Records of chancery court of Richmond as, south of James River 5932
Records of hustings court of Richmond, Part II, as, north of James River 5932
Absence of Auditor of Public Accounts, Second Auditor, State Treasurer, to Governor 340
—of Secretary of the Commonwealth 346
Assignment and transfer of debt secured by mortgage, deed of trust, vendor's lien, &c.....6457
Attorney-at-law, lien of.....3429
Ballast, unloading 3655, 3656
Bank, by State Corporation Commission, to correct irregularities 4120
—assessment of fees for examination 4122
—failure of to furnish financial statement 4124
Board of Charities, of children placed in homes 1933
Commission merchant, complaint against 1260
Condemnation of school building.. 673
Contract for public printing..... 382
Contract to furnish paper..... 383
Death, given by undertaker.....1568
Dentist, proceeding to revoke license of.....1650

Sec.

NOTICES—Con.
Depositions, taking 6228
—of non-resident party 6229
Eminent domain, company taking or condemning sand, gravel, water, etc. 4382
Employer, to comply with law relating to sanitary facilities for employees 1825
Escheator's request..... 493
Fire escapes, to cities, towns and counties failing to provide for..3141
Food, to dealer, manufacturer, etc., of analysis of 1178
Graduate nurses, examinations by State Board of Examiners 1706
—proceeding to revoke certificate of 1713
Harbor commissioners, to repair wharf 3676
Infant doing business as trader..6108
Insane person, convicted of crime, restoration to sanity 1045
—to committee of action against..1054
Intention to build or repair division fence 3561
—to let land lie open 3561
—to rely on new promise when limitation is pleaded 5812
—to rely on writing as proof of release, payment, or set-off....6093
Land grant, location of warrant on land in possession of another 428, 430
—by surveyor of survey on warrant 433
—of intention to locate warrant on surplus land in grant..... 471
—to correct mistake in 475
Lime, assessment for deficiency in analysis of 1137
Literary fund, failure to pay interest and principal of loan to school board from 761
Mill owner, dam interfering with navigation 3578
Mines, inspector of, that law as to oils is applicable 1884
Negotiable paper, to transferee before completing payment....5616
—what constitutes notice of defect in 5618
—of dishonor of 5651-5680
Optometrist, proceeding to revoke certificate of 1635
Orchard inspector, to owner..... 899
Oysters, hearing on size of that may be caught 3244
—shipment of seed oysters out of State 3249
Oyster grounds, assignment of....3226
—to oyster inspector, sub-renting or assigning 3228
—to remove stakes, &c., from natural oyster beds, crabbing grounds, &c. 3232
—of re-survey of Baylor Survey..3257
—erection of bulkhead or wharf over 3269
Oyster laws, seizure for violation of 3279
Pharmacist, proceeding to revoke license of 1677
Pilots and masters, trial of controversy between 3638
Physician, proceeding to review refusal of admission to examination, refusal or revocation of certificate 1614
—proceeding to try right to practice 1614
Recognizance, default on.....4978
Record, cost of printing.....3486
Redemption of bonds for roads..2119
—of bonds for State debt.....2586
Revenue laws, seizure of property forfeited for violation of.....3217

Digitized by Google

Sec.

NOTICES—Con.
Society for Prevention of Cruelty to Animals, when taking charge of animal or vehicle 4559
—of sale to enforce lien on.....4561
State depository, issuance duplicate warrant 2184
—of insolvency of 4120
State Entomologist, for destruction of cedar trees 886, 888
Street grading, to abutting land owner 3037, 3038
Sub-contractor, to perfect mechanic's lien.....6428
—person performing labor or furnishing material for 6429
—party absconding, becoming bankrupt or dying 6442
Superintendent of penitentiary, of person sentenced to work on public roads or quarries 2094
Supervisors, local legislation by..2014
—complaint for failure to issue bonds for roads of magisterial district 2124
—of ordinance or by-law proposed 2743
—of disallowance of claim.....2761
— —in case of appeal 2763
—to person obstructing road....4731
Surety, on non-resident's bond for costs, for indemnity.....3520
—to creditor to sue principal debtor 5774
—petition for indemnity by on bond given under decree or order of court 5776
Teacher, removal of from retired list 801
Tenant, in default on rent, city or town property 5448
—to terminate tenancy 5516
Trader, of name of principal or partner 5224
Transfer of stock, etc., to foreign personal representative 5348
Tobacco warehouse, public, discontinuance of 1348
University of Virginia, declination of gift to..... 824
Vacancy in city, county, district office 3407
—of filling vacancy 3407
Vessel in quarantine, by pilot to health officer of.....3645
Virginia Normal and Industrial Institute, vacancies, State students 954
Warrant against receiver 6293

Appeals

Of bidder on contract for public printing 382
—for paper 383
To circuit court from order of State Entomologist..... 891
From orchard inspector 900
To Board of Agriculture from commissioner 1120
By supervisors from disapproval by attorney of title to real estate purchased by county or school board 2709
From allowance of claim by supervisors 2759, 2763
—from disallowance of claim, 2761, 2763
From assessment of damages, street grading 3038
From justice, trial of 6039

Applications

For ascertainment of damages by Coast Survey 21
To establish new ferry 2054
To increase rates of ferriage....2058
By city to erect dam in water course 3054

Sec.

NOTICES—Con.
For license to catch fish for, or to manufacture into oil or manure 3188
For payment of attorney's fee out of funds in court 3430
For leave to erect dam....3583, 3586
For injunction against railroad violating law as to transportation of live stock 4006
Of turnpike company for permission to change toll-gate.....4077
For appointment of commissioners in eminent domain proceedings 4365
For release of prisoner confined for failure to pay fine and costs 4952
For new trial before justice....6026
For transcript of record on appeal 6339

Appointments and Removals

To judges, proceeding for removal .....Va. Const., § 104
Of proceedings to suspend or remove members of police or fire department .....Va. Const., § 120
Appointment of President, etc., University of Virginia 811
—of State cadets at Virginia Military Institute 845
—of person to receive proceeds of sale of property 6272
Removal of division superintendent of schools 607
—tobacco sampler, proceeding for 1388
—treasurer, clerk or other officer, proceeding to suspend.....2201
—of town officer 3004
—city officer, proceeding for....3010
—Commissioner of Insurance, proceeding for 4193
— —deputy 4198

As to Corporations

By State Corporation Commission 3729
—where returnable 3697
—of hearing before 3711
—to transportation or transmission company of violation of law 3719
—to railroad, etc., to make repairs and improvements.....3720
—to transportation or transmission company, examination of on complaint of supervisors, mayor or council 3721
—before making order, rule, etc. 3726
—to transportation company, to refund after appeal 3736
To State Corporation Commission of accidents 3988
—of failure of co-operative life insurance company or casualty company to pay policy.....4270
To insurance company violating law 4222
—of hearing 4222
—of suspension of license, publication 4223
—proceeding to revoke license for assuming excessive risk...4307
—to assessment against, expense of Bureau of Insurance 4195
—motion to recover assessment.4195
Of amendment of franchise 3022
To corporations of registration fee 3748
Of establishment of office by consolidated corporation 3824
In proceedings against dissolved public service corporation 3899
By transportation company of advance in rates.....3909

Digitized by Google

Sec.

NOTICES—Con.
—to consignee of arrival of freight 3916
Proceeding for revocation of license or certificate of insurance company, guaranty company, etc. 4180
To railroad, proceeding to enforce construction of cattle guard..3950
—to maintain gates and flagman at crossing in city or town....3998
—of prohibition of excursions...4009
To steamboat company, of prohibition of excursions 4009
Co-operative life insurance company or casualty company, assessments by 4267
To fraternal benefit society, quo warranto proceedings 4297
Mutual fire or storm insurance company, assessment by 4334
—of exclusion of member by....4335

As to Elections

Of registration of voters..... 98
In appeal from denial of registration 103
Of application to enter omitted name on list of paid poll taxes.. 110
Election for free school purposes 131
Change of election district..... 144
Intention to be candidate for election to office 154
—elections in towns..... 168
Of contested election, 259, 260, 264, 266, 267
—for removal of courthouse....2754
Special election for issue of school bonds..... 769
Of election for removal of courthouse 2745
Of special election of council, city of first class 2919
Of town election 2999

Meetings

Of State Board of Education..... 601
Of school trustee electoral board. 633
Of visitors of University of Virginia 809
Of visitors Virginia Military Institute 836
Of visitors of Virginia Polytechnic Institute..... 863
Of Board of Medical Examiners, to examine candidates 1610
Of commissioners, proceeding to establish road 1980
Of supervisors, special 2715
—adjourned 2715
Of commissioners, application to erect dam, etc.....3584
Of organization meeting of corporation 3778
Corporation, stockholders for amendment of charter 3780
—for decrease of capital stock..3781
—creating or increasing bonded indebtedness 3783, 3786, 3796
—for dissolution.....3810
—to obtain new charter for corporation after dissolution 3811
—for consolidation of corporations 3822
—mailing notice 3829
—of corporation purchasing property of public service corporation 3896
Of co-operative life insurance company or casualty company..4265
—to adopt or amend by-laws....4265
—to consider transfer or reinsurance of risks 4266

Miscellaneous Proceedings

Automobile, proceeding to sell for violation of law 2146

Sec.

NOTICES—Con.
Canal company receiving excessive tolls, proceeding against..4021
Capias proceedings, answering interrogatories in 6421
—quashing 6423
Chattels, proceeding before justice to enforce contract reserving title to 5190
Child, proceeding by mother for custody of 5329
—petition to vacate adoption of..5333
City or town, proceeding to annex territory to 2957
Commissioner, taking account before commissioner 6186
Convict, suit by or against....4999
County, petition to General Assembly to create new.....2674
Decedent's estate, proceeding to grant administration on estate of person presumed to be dead, 5362, 5363
—revocation of.....5366
—of time and place of proof of debts against 5420
Detinue, action of, exception to bond for possession of property 5799
—contest of right of plaintiff to have property taken from defendant 5800
Drainage, proceeding to drain land through land of another, 5293, 5294
Drainage district, hearing on report of reviewers in proceeding to establish, 1745, 1755, 1756, 1761, 1767
—assessment of land benefitted.1757
—of letting contract by board of drainage commissioners 1761
—to railroad, location of on right of way 1765
— —assessment of benefit to 1766
—of issuance of bonds 1772, 1777
Ejectment, action of 5461
—return 5461
—of equitable defense to.....5473
—of claim for improvements in..5483
Fences, lawful, proceeding by supervisors for declaring 3547
—petition to establish stream or canal as 3553, 3554
Fine, petition for remission of..2570
—proceeding to collect from commissioner for failure to report on treasurer's bond 2778
Forfeitures for violation of fish, game or oyster laws, proceeding to enforce 3367
—for gaming, lottery, raffle, &c. 4986
Garnishment, proceeding to exempt wages from 6556
Guardian, proceeding by to spend more than income of ward's estate 5321
House of prostitution, injunction against 1522
Infant or insane person, proceedings for transfer of property of out of State.....5352
Infant married woman, proceeding to sell estate of 5137
Landlord, to take possession of deserted premises 5518
Lien, proceeding to mark satisfied 6456
Mine closed by inspector, hearing on petition to reopen 1870
Officer failing to return execution or pay money collected, proceeding against 6033
—of proceeding against for violation of revenue laws 2544

Digitized by Google

Sec.

NOTICES—Con.
Public accountant, proceeding to forfeit certificate of 570
Records, lost, proceeding to establish 6203, 6204
Rent not payable in money, proceeding to sell goods distrained or attached for.....5529
Timber found adrift, proceeding to sell 1446
Treasurers, delinquent, proceeding against 2432
Trust property, proceeding to transfer out of State....5352, 5354
Turnpike, petition for examination of 4078
Turnpike company receiving more than lawful tolls, proceeding against 4087
Vacation proceedings in chancery causes 6307
Village or unincorporated community, petition to fix boundaries of 3550
Wharf, petition to erect at county landing 1998
Wharf, pier, or bulkhead, proceeding to abate 1997

Motions

Bail, motion by Commonwealth's attorney to increase.....4833
Board of poor commissioners, motion for judgment against..1904
Damages, motion for ascertainment of, affirmance of judgment for specific property....6377
Debts due State, motion to enforce 2513
—motion to correct mistake in..2517
Division fence, motion to appoint arbitrators to assess value.....3557
—to settle dispute as to 3558
Errors in judgment or decree, motion to correct in same court, 6329, 6333, 6334
Escheator, motion against to recover fine for failure of duty.. 511
Fee bill, motion to quash.....3495
Forthcoming bond, motion for judgment on 6526
Indemnifying bond, motion for new execution by obligor in....6498
Injunction, motion to dissolve, 6317, 6326
—to enlarge 6317
—of application for 6322
Internal improvement, motion for money due State from 3766
Jailor, motion by for recovery of fees 2878
Judgment for money, motion for..6044
—in lieu of action at law.....6046
—where executed 6046
—joint and several proceedings..6047
—motion to mark satisfied or discharged in bankruptcy.....6467
License, motion for revocation of 2378
Literary fund, motion for recovery of money due 603
Removal of cause to another court, motion for 6175
Sheriff or constable failing to account for fee bills, motion against 3499
State Corporation Commission, motion to recover money forfeited to 3766
Treasurers, motion for recovery on bonds of 2789
—motions for discharge of 2792
Trustee, motion to substitute....6299

Sales

Of automobile on judgment against owner.....2147

Sec.

NOTICES—Con.
Of bonds deposited by foreign express company, by State treasurer 4029
—of insurance or guaranty company 1213
County, property of.....2733
Of forfeited property 3377
—nets and seines 3180
Of merchandise sold in bulk, notice to creditors 5187
By officer, goods levied on..2832, 2843
—horses, mules, oxen.....2833
Of personal property to satisfy lien 6449
Of real estate, execution on judgment, debt due State 2520
Of school property 649
By State Geological Commission, of timber 530
—sale or lease of gas, oil or minerals 531
Of stock for failure to pay subscriptions 3807
Of timber, unbranded 1454
By trustee in deed or trust to secure debt 5167
Of unclaimed goods by transportation companies for charges:..3933
By warehouseman to satisfy lien, 1322, 1323
Of works of railroad, canal, turnpike, etc., in which State is interested 3889
Wreck, property from 3608

Service of

How served 6041
—evidence 6041
—reaching destination though not properly served 6041
—in divorce cases 6042
— —convicts 6042
—on non-resident by publication.6043
— —by individual 6071
Canal company receiving excessive tolls, proceeding against..4021
Cedar trees, to destroy or treat for rust 887
On common carrier other than corporation 6067
On corporations 6063
—domestic 6063
—foreign 6064
—operated by trustee, lessee, receiver 6065
—how served 6066
Deposition, taking 6228
—non-resident party 6229
Divorce, suit for, to affirm or annul marriage 5106, 6042
Ejectment, in action.....5451
Land grant, location of warrant on land in possession of another 428
—to correct mistake in..... 475
On non-resident, by individual..6071
Personal property to satisfy lien, proceeding to sell 6449
By tenant 5516
On tenant 5516
Turnpike company receiving more than lawful tolls, proceeding against 4087

Under Tax Laws

Application of railroad or canal corporation for relief from assessment .....Va. Const., § 180
Application to court for correction of assessment of land....2248
—hearing on motion or petition for 2237
Apportionment of taxes when property partitioned 2449
—of city taxes 2495
Assessment of taxes on railway or canal companies..Va. Const., § 179

Digitized by Google

Sec.

NOTICES—Con.
—by city or town for local improvement 3067, 3068, 3069
— —appeal from 3071
Collection of taxes, renting or leasing property for 2439
Land, to owner to enter on land book 2452
Minerals, assessment of, disagreement between assessor and commissioner of revenue, proceeding to settle 2238
—appeal, proceeding to correct..2240
Sale of land for delinquent taxes 2460
—to owner to redeem land sold..2470
—proceeding to correct treasurer's report of 2472
—proceeding for relief against...2474
—application for deed to land sold 2482
—application to redeem part of land sold 2493
—contest of application to purchase 2495
State tax board, notices issued by 2216

NOTTOWAY COUNTY
Commonwealth's attorney, fees..3506

NOTTOWAY RIVER
Act for protection of fish in continued in force.....3218

NUISANCE
Proceeding to abate, by health officer 1518
—expense 1519
—by citizens, presentment, trial, liability of owner.....1520
—judgment, how enforced, penalty 1520
—by cities and towns 3030
Buildings, boats, etc., used in violating prohibition law.....4622
—punishment for maintaining...4622
—closing up 4622
—bond of owner.....4622
—injunctions against 4630
Dam obstructing navigation or passage of fish 3577, 4747
—when not to be rebuilt.....4747
House of prostitution, abatement, 1521-1528
Streets, unauthorized use of....3024

NUMBER
Words importing singular may include several 6
Words importing plural may be applied to one 6

NUNCUPATIVE WILL
See "Wills"
Of personal property, by soldier or seaman 5231

NUNNERIES
Property of exempt from taxation 2272, 2301
—Va. Const., § 183
Inheritance tax on gifts to.....2272

NURSES
See also **"State Board of Examiners of Graduate Nurses"**
Laws relative to practice of medicine, when applicable to.....1618
Graduate, register of 1704
—examination, rules for.....1705
— —holding 1706
—certificate, license 1706
—qualification of applicant.....1707
—fee 1708
—false representtaion in application 1712
—practice without license 1709
— —penalty 1710
— —to whom law not applicable..1711

Sec.

NURSES—Con.
—certificate or license, revocation 1713
— —procedure for 1713
— —when issued to graduate nurses of other States.....1714
Claims against estates of decedents 5390, 5391, 5395

NURSERIES
Establishment of by State Geological Commission 536

NURSERY STOCK
See **"State Entomologist"; "State Board of Crop Pest Commissioners"**

NUX VOMICA
Sale, label 1691

OAKWOOD CEMETERY
Employment of convicts in.....5015

OATH
Of members of General Assembly .....Va. Const., § 34
Of executive and judicial officers .....Va. Const., § 34
Of senators trying impeachment, Va. Const., § 54
To support constitution, officers to take...Va. Const., Schedule, § 22
Includes affirmation, cl. 6 5
When affirmation may be made instead of 278
To account rendered by register of land office to Auditor 2507
Who may administer to officers, 273, 274
—generally 274
—officer of another State or county 275
Administered by Auditor of Public Accounts and Second Auditor 2178
—by bank examiner 4120
—by Board of Charities and Corrections 1902
—by board of health 1791
—by Board of Medical Examiners 1610
—to challenged voter at election. 175
—by city or town councils.....2952
— —by clerk of..... 274
—by clerk of the court..273, 274, 3389
—by Commission of Fisheries....3258
—by Commissioner of Insurance.4189
—by Commissioner of Labor....1799
—by commissioner of revenue, 2306, 2310
—by commissioners to examine pilots 3640
—by county surveyors 2840
—by Dairy and Food Commissioner and assistants 1158
—by mayor of city 3010
—by State Accountant 559, 565
— —deputy accountant.....559, 565
—by State Board of Dental Examiners 1650
—by State Tax Board 2216
—to witnesses 6222
—under prohibition law 4667
Of administrator 5369
Of administrator with will annexed 5358, 5359
To answer, in proceeding to enforce forfeiture 3370
To answer, to petition for release of dower of insane wife or curtesy of insane husband.....5346
To answer, in petition for transfer of property of infant or insane person out of State 5350
To answer in prohibition or mandamus proceedings 5834
To appraisal of property forfeited, game, fish, oyster laws.....3368
Of appraisers of decedent's estate.5376

Digitized by Google

Sec.

OATH—Con.
Of arbitrators and umpires, loss on insurance policy 4309
In attachment proceedings, to answer or grounds of defense....6382
—to petition 6415, 6383, 6388
—of defense to 6385
—issuance or execution on Sunday 6392
—for rent 6416
Of attorney at law 3421
Presumption of authority of person making for another..... 276
Of bank examiners 4121
—clerk 4121
To bill to sell or lease real estate of infant or insane person or trust estate 5335
To bill to sell estate of infant married woman 5137
To bill for sale of fee simple, filed by remainderman or life tenant 5161
Of members, secretary and assistant, Board of Charities and Corrections 1892
Of Board of Medical Examiners..1610
Of Board of Pharmacy.....1666
Of Board of Veterinary Examiners 1275
Of chain carrier 436
By chairman of board of supervisors 2713
Of city school trustee 786
Of civil and police justice.....3099
Clerk of city council may administer 274
Clerk of court may administer, 273, 274, 3389
Of clerk of civil justice's court..3118
Of commissioners in proceeding by city or town for leave to erect dam 3056
Of commissioners, proceeding for erection of dam.....3585
Of commissioners in eminent domain proceedings 4367, 4376
To commissioner's list of license taxes 2374
Of commissioner appointed by Governor 272
—administered by 274
Commissioner in chancery may administer 274
Of commissioner of revenue to land book 2299
—to personal property book....2340
Of Commission of Fisheries.....3146
Of Commissioner of Game and Inland Fisheries 3309
Of Commissioner of Insurance....4171
—deputy 4171
—administered by.....4189
Of committee to inspect jails....2862
To complaint in contested election 267
To complaint against vagrant....2809
To complaint on which information filed 4866
Of coroner's jury 4809
Of town councilmen 3002
To statement of treasurer failing to pay school warrant 731
Of county and city treasurer to report of violation of duty of commissioner 2384
Court may administer 273, 274
Of Dairy and Food Commissioner 1157
—assistants 1158
To deposition of witness residing out of State 6226
Of deputies of officers 2701
Of director of bank 4117
Of division superintendent of schools 625

Sec.

OATH—Con.
Duelling, oath of officer against, 270, 271
Of electoral board 84
—for pay and mileage 89
— —of secretary of 89
For registration as voter..... 92
—form 95
Of registrar of election 96
—filing 88
Of clerk of election 148, 149
Of judge of election 149
—of primary election..... 224
Of printer of ballots for election 156
As to defacement of ballot..... 165
—false swearing deemed perjury. 165
Of challenged voter 175
Of commissioner of election..... 182
Of candidate to statement of expenditures 232, 253
Of person appointed to fill vacancy in board of commissioners of election for primary 239
For contested election 259
—to complaint 267
Of enumerators of population of town 2973
—of cities.....2976
Of executor 5357, 5359
Of fire marshal 3140
Form of oath administered to officers 269
—against duelling 270
—modification of 271
—to commissioners 272
—for registration of voter..... 95
Of forest wardens 540
Of grand jurors 4856
To information, forfeiture for violation of hunting, fishing or oyster laws 3366
Of jury commissioners 5987
Justice may administer.....273, 274
Of justice of juvenile and domestic relations court.....1946
For renewal of license to foreign insurance company 4226
To list of creditors, sale of merchandise in bulk 5187
Of mayor of town 3002
Of person licensed to practice medicine 1612
Of member of State Board of Education 598
Of member of State Board of Embalming 1718
Of members of State Board of Examiners of Graduate Nurses.1704
Of members of State Coroporation Commission 3696
To memorandum for mechanic's lien 6427, 6428, 6429
—for labor and supply lien..6439, 6440
Notary public may administer, 273, 274, 275
Of officers, form 269
—against duelling 270
—modification of 271
—of commissioner 272
—who may administer 273, 274
— —officer of another State or country 275
Before officer of another State.. 275
—how authenticated 276
Of public officers, where certificate of recorded..... 277
Penalty for officer failing to take. 288
Of person appointed to vacancy in public office 331
Of officers of local board of review 2226
Of county, city, town, district, officers 2696
Of officers of trust company.....4148
Of officer to written act of reentry on land 5536

Digitized by Google

Sec.

OATH—Con.
Of oyster inspector....3219
—of deputies....3219
To report to oyster inspector of oysters shucked or packed..3239
For permit to buy or carry seed oysters....3250
To petition to have person declared feeble-minded....1078
To petition for establishment of boundary of village....3550
To plea in abatement....6124
To plea of non est factum....6124
Of penitentiary guard....5040
—of assistant superintendent....5034
—of clerk, keepers, matron....5034
Pro tempore judge....5900
Under prohibition law, who may administer....4667
Of purchaser of trespassing animals of non-resident....3546
—certificate of....3546
To reports by officers and State institutions to Governor.... 320
To return of process served out of State....6071
Of school trustee....632, 638
Of Superintendent of Public Printing.... 380
Of Superintendent of Public Instruction.... 621
State Corporation Commission may administer, Va. Const., cl. c, § 156
—oath of members of....3696
Of State Highway Commissioner.1965
Surveyor may administer.... 274
Of treasurer to list of persons who have paid poll tax.... 109
—Va. Const., § 38
Of collector of city and town taxes to delinquent list....3076
Of assessors of land for taxation, 2233, 2241
Taxpayer, interrogatories..2254, 2310
—firm, corporation....2310
To treasurer's list of delinquent and uncollectible taxes....2415, 2416
To treasurer's report of sale of delinquent land....2468
Of tobacco sampler, deputy....1352
Of viewers, in proceeding to compel repair of turnpike....4079
Of weigher of tobacco....1355
Of witness before General Assembly.... 304
Of witness before school trustee electoral board.... 632
Of witnesses in investigations by directors and visitors of State institutions....1096
To witnesses by president of State Board of Embalming....1719
Of witnesses in investigation by inspector of accidents in mines.1873
Of witness, for entry of fees....3529
Of witness to written consent to marriage of minor....5078
To witness, who may administer.6222
To deposition of witness residing out of State....6226

OATS
Bushel, standard....1470

OBLIGATION
See **"Bail"**
Taken by officer from person in custody, when void....2824

OBSCENE LITERATURE
Printing, publishing, distributing, punishment....4549
Search warrant for....4820-4822

OBSTRUCTING JUSTICE
Punishment....4526

ODD FELLOWS
Property of.... 47

Sec.

ODD FELLOWS—Con.
Land.... 48
Books and furniture.... 49
Trustees.... 49
Chapter 171 not to apply to....4302

OFFICE BUILDING
Fire escapes....3141
—penalty for failing to provide..3141

OFFICE JUDGMENT
See also **"Default Judgments"; "Judgments"**
In action of ejectment....5462
In clerk's office, entry of....6131
—inquiry of damages....6131
—when not necessary....6132
— —assumpsit, action of....6133
When to become final....6134
When set aside....6135

OFFICES
See **"Officers"**
Of Board of Charities and Corrections....1890
Of State Highway Commission....1966
Of county treasurer, where located....2774
—removal by court....2774
For county and city officers, how provided....2854
For civil and police justice....3109
For clerk of civil justice's court.3118
Of Commission of Fisheries....3150
Of Commissioner of Game and Inland Fisheries....3308
Of clerks, Supreme Court of Appeals, where to be kept....3385
—of circuit and corporation courts....3386
— —examination of....3383
Of clerk of House of Delegates, when kept open....3456
Of document clerk and librarian of Senate, when kept open....3457
Of State Corporation Commission in city of Richmond....3697
—in capitol....3698
—when to be kept open, Va. Const., § 155
Of corporation....3847
Ticket office of railroad....3940
—express office of....4004
Of Commissioner of Insurance...4170
Of fraternal benefit society....4289
Entry with intent to commit murder, rape or robbery....4438
—with intent to commit other crime....4439

OFFICERS
See **"Elections"; "Primary Elections"; "Removals"**
Particular officers, see their respective titles
Hereditary offices, prohibited, Va. Const., § 4
Of United States, when not deemed to have gained residence for purpose of voting, Va. Const., § 24
When not eligible to serve on electoral board or as registrar or judge of election..Va. Const., § 31
Eligibility....Va. Const., § 32
Terms, when to begin and end, Va. Const., § 33
Oath....Va. Const., § 34
Disqualification of member of General Assembly..Va. Const., § 44
Statute creating office, vote necessary to pass....Va. Const., § 50
Impeachment....Va. Const., § 54
General Assembly may declare when offices deemed vacant, Va. Const., § 56
Compensation, laws granting extra, prohibited....Va. Const., § 63

Digitized by Google

Sec.

OFFICERS—Con.

—changing during term of office prohibited .....Va. Const., § 63
Suspension by Governor, Va. Const., § 73
—appointment by during recess of General Assembly..Va. Const., § 73
Handling State revenue, General Assembly to provide system of checks and balances for, Va. Const., § 84
—bonds of .....Va. Const., § 85
Of Supreme Court of Appeals, duties, compensation, etc., prescribed by law.....Va. Const., § 92
New bond required of, Va. Const., § 113
—office vacated for failure to give .....Va. Const., § 113
Of city or county, General Assembly may provide for examination of books and accounts of .....Va. Const., § 115
Passes and free transportation to prohibited .....Va. Const., § 161
Accounts of, examination by auditing committee of General Assembly .....Va. Const., § 68
—by Governor .....Va. Const., § 74
Accounts, audited and settled with supervisors 2719
—audit of by order of court....2756
Accounts payable from contingent expenses, examination and certification of 339
Acknowledgments, who may take.5205
Actions by to recover property on which execution or judgment is lien 6514
Annual reports, printing and distribution of 393
Appearing before Governor..... 321
—producing books and papers before 321
Appointed by councils of cities and towns 2988
Arrests and seizures by for violations of oyster laws 3266
Who may require advice and opinion of Attorney General.. 375
Bonds of 279, 2696-2700
—of officer handling State revenue .....Va. Const., § 85
—copies to Auditor 2700
—new bond, when required.280, 5771
— —Va. Const., § 113
— —removal for failure to give, 280, 5773
— —Va. Const., § 113
— —effect of new or additional.. 281
—how sued on 286
—action on, judgment 2514
—motion for judgment on.. ...6045
—liability on for failure to collect or account for fines.....2554
—recorded in bond book.....3393
—fidelity and guaranty companies as surety on 4346
— —when accepted 4350
—petition of surety to be relieved from 5771
Of bank, penalty for refusing information to examiner 4124
—making false statement of condition of.....4124
—receiving deposits when bank is insolvent, penalty 4132
Of building association, penalty for false statement 4165
—foreign, failing to comply with law 4162
Of cities, election, term.....3012
Of towns 3001
Of cities of second class....2892-2894
Of cities adopting modified commission form of government...2938

Sec.

OFFICERS—Con.

Collecting taxes and debts due State, currency received for...2604
—penalty for receiving other than currency 2606
—unlawful to buy or sell coupons from State bonds 2604
— —penalty 2606
—blanks furnished to by Auditor.2170
—record of coupons tendered in payment of debts due State....2608
— —use as evidence 2619
—account of amount received in coupons 2605
— —penalty for failure to keep..2606
—failing to settle with State, report of 2201
— —suspension 2201
— —appointment of person to perform duties of 2201
— —bond of 2201
Continuance in office when territory annexed to city or town..2967
—change of residence 2967
Effect of Code 6571
To furnish information to Commissioner of Labor 1800
Commission to consider compensation of, act to continue in force 3516
Of corporations 3789
--liability for false statements..3505
When not entitled to Confederate pension 2647
Contracts by with State institutions prohibited 998, 4706
Disqualification 289-293
—duelling 289
—holding office under United States 290
—accepting office under United States 290
—pensioner 291
—member of militia in federal service 291
—of registrar 86, 97
—to serve on electoral board, or as registrar or judge of election .....Va. Const., § 31
—to act as judge or clerk of election 149
—for fraud in election..... 219
—for crime against primary election law 244
—by sentence for felony..... 292
—validity of acts 293
—to be school trustees 637
— —deputy 637
—as city school trustee 786
—for conviction of perjury or subornation of perjury 4495
— —accepting bribe 4497
—for altering or destroying records 4517
—for corruptly summoning juror to act partially 4519
Duties, when to begin..... 132
—Va. Const., § 33
—holding over 132
Election of 87-109
—when held when not otherwise provided for 130
—for free school purposes..... 131
—special election, writ for..... 147
—certificate of election 186, 191
—fees for service and tax on seal 198
—party nomination for 222
—declaration of candidacy at primary election 229
— —petition 229
—abstract of votes cast for at primary election forwarded to Secretary of the Commonwealth 241

Digitized by Google

Sec.

OFFICERS—Con.
—contested election of at primary, how and where conducted 247
—prohibited expenditures by candidates for 251
— —by another on behalf of..... 252
— —penalty 252
— —statement of expenditures... 252
— —when and where filed..... 253
— —what to contain 253
— —oath to 253
— —penalty for failing to file.... 255
— —not to qualify until filed.... 256
— —nor receive salary 256
—election on bond issue for roads, duty of 2112
Election, qualification, etc., when city of first class formed, 2920, 2921, 2922
—form of government changed, 2931, 2935
Election of officers of cities....3012
Eligibility .....Va. Const., § 32
—of registrar of election to other office 97
Escape of prisoner, permitting, 4505, 4506
Levying execution, on property subject to prior lien 6486
—on defendant's equitable interest 6486
—endorsement of time of receiving execution 6488
— —penalty for failure 6488
—several executions, order in which satisfied 6489
—right to break into house to levy 6490
—levy on property in personal possession of debtor 6490
—return, what to show 6491
— —when property not sold....6492
—sale 6485, 6486, 6508
—re-sale 6492
—venditioni exponas 6493, 6494
—repayment to debtor, surplus..6495
— —on injunction or supersedeas 6495
—liability for proceeds to person in different county or corporation 6496
—property transferred to by debtor 6504
—arrest of debtor failing to answer interrogatories 6506
—disposition of property surrendered by debtor 6508
—conveyance of real estate.....6508
—payment to by garnishee.....6512
—return of, payment of proceeds 6515
Commission 6515
Execution against, when forthcoming bond not taken..6524, 6525
How to execute writ of possession 6483
Fees of, certified to clerk, liability of State for 2550
—none charged to applicant for pension 2658
—when not paid out of treasury in Commonwealth's cases 3493
—payment in advance 3495
—constructive fees 3495
—taxed in costs 3501, 3535
—entry of in order book and execution book 3501
—how paid 3501
—when may require security for.3502
—non-resident 3502
—persons suing in forma pauperis 3517
—in contempt proceeding, not paid from treasury 3514
—for executing venire facias.....4927

Sec.

OFFICERS—Con.
—in criminal cases, payment by clerk of court.....3513
— —in prosecutions for violations of game laws 3343
— —for executing process in criminal case out of county....4960
— —certificate for 4961, 4962
— —effect of failure to present claim for in time 4965
Fee bills, what to contain.....3495
—penalty for violating law relating to 3495
—quashing 3495
—to whom delivered for collection 3498
Fines collected by, receipts.....2546
penalty for failure to give....2546
—report 2546
— —penalty for failing to make.2546
—misappropriating 2546
—failing to collect or account for, liability on bond.....2554
Fines for violations of oyster laws paid to 3264
—payment to of fine for removal
—of oysters from polluted area..3288
— —effect as evidence 3288
Of foreign corporation, when personally liable 3848
Forgery of certificate, return, attestation, etc., of 4484
Of General Assembly, mileage allowed 3455
—how paid 3472
—disqualification of..Va. Const., § 44
Garnishment of wages and salary of 6559-6561
Homestead not to be claimed against liability incurred by....6531
—Va. Const., § 190
Indemnity to, tender of coupons in payment of taxes.....2619, 2620
Inspection of list of income tax returns 2344
Judgments in favor of against deputy 2836, 2837
—courts having jurisdiction.....2838
—against county officers, when no execution on 2764
Jurisdiction on when new county formed 2682
Law libraries, use of 371
Levy or distress, unreasonable, prohibited 2831
—removal of goods 2831
—horses, live stock, sustenance..2831
Limitation of motion against for failure to return execution....5816
Malfeasance, interfering with Board of Charities and Corrections 1900
—refusing to disclose information 1900
Oath 269, 2696, 2697
—Va. Const., § 34
—form 269
—against duelling 270
—modification of 271
—who may administer 273, 274
—record of 277
—penalty for failure to take.... 288
Obligations taken by from person in custody, when void....2824
Penalty, for failure to take oath or give required bond..... 288
—of State institution failing to report 987
—for failure to keep register of State property 999
—for failing to furnish dated tax ticket 2409, 2829
—for failure to perform duty as to sale of delinquent lots....2503
—for receiving other than currency for taxes, etc.....2606

Digitized by Google

Sec.

OFFICERS—Con.
—for buying or selling coupons from State bonds 2606
—for failing to keep account of amount received in coupons....2606
—for receiving coupons for taxes of debts due State.....2611
—for failure to perform duty relating to election for formation of new county 2678
—for failing to give receipt for taxes, fines and fees 2829
—for resistance to officer enforcing oyster laws 3265
—for failure to perform duty under oyster laws 3267
—for violation of duty under game laws 3341
—bribes, giving or offering to..4496
— —accepting 4497
— —to prevent service of process 4502
—for embezzlement of fines by..4452
— —default as evidence of.....4452
—for permitting escape of prisoner 4505, 4506
—for extortion by 4514
—for refusal to execute process for criminal 4510
—for failure to assist officer in preservation of peace 4511
—for making false entries in or destroying records 4516
—forfeiture of office for.....4517
—disqualification to hold office for 4517
—for corruptly summoning juror to act partially 4519
—forfeiture of office 4519
—disqualification to hold office..4519
—for contempt by, summary punishment of 4521
— —penalty 4524
—for impending or intimidating court officer 4525
—for neglect of duty, by election officer 4724
—for failing to execute and return warrant and process for coroner's inquest 4808
—for failing to summon grand jury 4862
—for failure of duty relating to juries 6004
Privilege from arrest on civil process 2823
Process, delivery to by clerk....3403
—receipt for 3403
—return on 2825
—forfeiture for failure or false return 2825, 2826
—rule against 2825
—motion against 2826
—forfeiture credited on judgment 2826
—judgment against 2835
—sent from other jurisdiction, fees and postage 2827
— —return of by mail.....2828
—taking goods from leased premises on process, duty.....5524
—for witness, where to execute..6218
Qualification 2696, 2697
—Va. Const., § 32
—member of General Assembly, Va. Const., § 44
—as division superintendent of schools 624
— —deputy 624
Receipts given for taxes, fines and fees 2829
—forfeiture for failing to give, 2409, 2829
Removal, cause for, procedure..2705
—order, motion, complaint.....2705
—rule against officer.....2705

Sec.

OFFICERS—Con.
—who to represent Commonwealth 2706
—when trial may be by jury....2706
—appeal 2706
—for interfering with Board of Charities and Corrections 1900
—for refusing to disclose information to.....1900
—collecting State revenue, removal by Governor.....2791
—for disclosure of information relative to banks 4124
Removal of residence vacating office 2704
Reporting violations of law to Commonwealth's attorney.....4864
Reports to Governor 320
Residence of officers.....2703
—removal, vacating office.....2704
Salaries, how paid 3472
—laws granting extra compensation prohibited....Va. Const., § 63
—changing during term, Va. Const., § 63
—deduction from of debt due State 3476
Sale of goods levied on 2832
—notice 2832
—horses, mules and oxen.....2833
—adjournment 2834
Of savings bank, appointment..4140
Seizure of property in action of detinue 5797
—return of 5798, 5800
—sale of 5798
State Accountant to devise system of accounting for.....552, 554
—mandamus to compel adoption. 555
—inspection of accounts of..557, 558
—duties and penalty 558
—inspection on request of officer. 564
State library, use of 360
Of State institution, public trust, etc., interest in contract prohibited 998, 4706
Stationery for 384
—payment of bills for..... 385
Terms, when to begin..... 132
—Va. Const., § 33
—holding over 132
—elected to fill vacancy..... 133
—appointed to fill vacancy..134, 136
—when vacancy filled by Governor 332
—officers of towns.....3001
Vacancy 120, 121, 122, 2697
—General Assembly may declare when office deemed vacant, Va. Const., § 56
—how filled 136, 138
—elected to fill, term..... 132
—appointed to fill, term.....134, 136
—filled by Governor, term..... 332
—when and how appointee to qualify 139
—when person holding declared insane 137
—for failure to give new or additional bond 260
— —Va. Const., § 113

OIL.
Sale or lease of by State Geological Commission 531
Mines, use of in 1880-1884
Taxation, separate assessment of 2235
Manufacture of from fish. .3181-3190
On trust estate, or on land of infant or insane person, suit to lease or sell.....5335-5347

OLD PLANTATION CREEK.
Use of nets and traps for fish in 3181

OLEOMARGARINE.
How kept and sold 1198

Digitized by Google

Sec.

OLEOMARGARINE—Con.
Display of signs by hotels, etc..1199
—by manufacturers, dealers or agents 1200
Penalties for unlawfully keeping or selling 1201
Branding, label.....1202
—penalty, evidence 1202, 1203

OMISSIONS
What not to affect negotiability.5568

ONIONS
Bushel, standard 1470

OPENING STATEMENT
In criminal case 4905

OPERA HOUSES
Exits for 3142
—inspection of 3143
—penalty for failing to provide..3144

OPIUM
When deemed adulterated 1663
Label on drug containing.....1664
Sale, label 1691
Selling, giving away, etc., penalty 1693, 1695
—proprietary remedies containing 1693
—prescription for 1693, 1694
—penalty 1695
Use of in manufacture of cigarettes, prohibited 4694

OPOSSUM
Hunting for on land of another..3338

OPTOMETRY
See **"Virginia State Board of Examiners in Optometry"**
Definition 1624
Registration, examination for, 1628, 1629
—requirements 1629
—certificate of 1629
—fee 1630
Certificate of registration 1629
—filing, fee, recordation.....1633
— —penalty 1633
—annullment 1633
—display and use of 1634
—revocation, new certificate....1635
Annual fee of practitioner.....1631
Violations of law.....1636
—penalty 1637
To whom law not applicable....1638

ORANGE COUNTY
Fees of Commonwealth's attorney 3505

ORCHARDS
See **"State Crop Pest Commissioner"; "State Entomologist"**;
Inspector of, see **"Inspectors"**
Inspection of 898
—destruction 899-901
Inspector 895-904

ORCHARD GRASS
Seed, bushel, standard 1470

ORDERS
See **"Decrees"; "Judgments"; "Motions"; "Process"; "Publication"; "Rules"**
Appeals from to Supreme Court of Appeals 6336
--suspending bond 6337
In appeal from sentence by justice for contempt 4523
Assessment of property for taxation, for correction of, 2386, 2389, 2390, 2391
For payment of attorney's fee out of funds in court 3430
Bond required by, condition of.. 279
Fixing boundaries of village or unincorporated community....3550
Changing name of person.....5983
From civil justice, to whom directed 3120

Sec.

ORDERS—Con.
In contested election is final.... 268
Of court changing election districts 144
—to destroy poll book and ballots 181
—in appeal from State Entomologist 891
—ratifying action of supervisors putting into effect law relating to orchard inspectors 904
—for removal of officer 2705
—when location of courthouse changed 2747
—incorporating town 2881
—confirming ordinance contracting corporate limits 2971
—taking recognizance, what to state 4973
—changing day for commencement of term of circuit court.5893
— —corporation or city court....5909
—appointing special term of....5894
— —adjourning 5895
—changing place of holding court 5965, 5966
—removing cause to another court 6175, 6176
Of court ceasing to exist, how executed 5974
For creditors to show cause against distribution of decedent's estate 5439
For distribution of decedent's estate 5439
For transfer of stock and certificates to foreign personal representative 5348
For execution of deed to purchaser at delinquent tax sale..2432
—compelling execution 2485
For taking deposition of prosecutrix in rape case 4415
In prosecution of husband or parent for desertion or non-support 1938-1940
Disobedience to as contempt....4521
In suit for divorce, allowance for maintenance of woman, custody of children, etc.....5107
—of publication against non-resident defendant 5108
For costs and expenses in proceeding to establish drainage district 1756
For election on bond issue for roads 2110
For election on bond issue by city or town 3083
—following election 3088
Embezzlement of 4451
Staying execution on motion to quash 6499
Allowing executions during term.6500
Fee when officer fails to serve..3489
Final, for purpose of appeal in proceeding for enforcement of forfeitures 3376
By Governor for sale of escheated land 505
Of Governor, remitting fine....2575
Of Governor, return of.....5070
Setting apart homestead or directing investment of estate in....6546
Index of by clerk of the court..3391
Right of infant to show cause against 6305
—time for 6305
Information in nature of quo warranto, directing, filing and awarding summons 5844
To show cause why insurance company should not be liquidated 4242
—directing commissioner to take possession 4243

Digitized by Google

Sec.

ORDERS—Con.
—filing or recording, effect.....4243
Interpleader, for party to appear and state nature of claim....6151
—claim of third person to property levied on 6152
Satisfaction of judgment to be entered on record.....6467
—discharge in bankruptcy.....6467
Approving adjustment of judgment against treasurer.....2737
For special jury 6005
For additional justices of the peace in cities 3092
Of justice, committing accused, what to show 4841
To mark lien satisfied on record.6456
On petition for rearrangement of magisterial district.....2688, 2690
Superseding commitment of person for misdemeanor 4849, 4850
—discharging recognizance4849, 4850
—dismissing prosecution..4849, 4850
Order book, index.....3394
—judgment on petition to establish boundary recorded in....5490
Negotiable instrument payable to order 5563, 5570
Oyster law, for disposition of proceeds of forfeitures for violation of 3275
In proceeding to compel parent to support child 1909
—recognizance 1909
To bring new parties into suit..6140
To be served on party, delivery by clerk to officer.....3403
Directing payment of pension from local fund 2664
Designating person to sit for police justice 3096
Proceeding to enter name on list of paid poll taxes..... 110
Pending hearing in prohibition proceedings 5838
Of publication, in suit by Commonwealth to recover derelict or escheated property 519
—by State tax board.....2216
—on application to purchase delinquent land 2495
—against corporation in criminal proceeding 4892
—by State Corporation Commission 3729
— —form of, how issued and served 3730
—in eminent domain proceedings.4365
—in suit for divorce, or to affirm or annul marriage 5108
—in probate proceedings.....5255
To settle accounts of receivers of courts 6289
Recordation of, in partition of land, assignment of dower or for recovery of land 5216
For reissue of lost stock certificate 3819
Reviving action when parties changed by death or otherwise 6168
Revoking establishment of stream or canal as lawful fence.....3554
On report of enumerators showing population of five thousand or more 2975
Return on by officer 2825
—forfeiture for false return. 2825, 2826
In proceeding to establish road.1980
For sale or exchange of school property 649
For sale of trespassing animals of non-resident 3544
For sale of goods distrained or attached for rent not payable in money 5529

Sec.

ORDERS—Con.
Disposition of surplus after sale under execution, distress warrant or attachment 6158
Of sale, in attachment proceedings 6397, 6405, 6406
For sale of personal property to enforce lien 6449, 6450
For sale of property delivered to officer by execution debtor....6507
Of court for seizure of gambling devices, &c. 4676
Seizure of goods in action of detinue 5797
—how right to contested.....5800
—for sale of goods 5798
Service by officer 2822
Of State Corporation Commission 3729
—form, how issued and served..3730
—closing wharf affected with public use 3669
—transferring interest of State in turnpike to county.....3755
Of State Tax Board, issuance, service, etc. 2216
Requiring supervisors to proceed with bond issue 2114
—after contested election.....2115
Supreme Court of Appeals, for special session 5884, 5885
—certified from one place of session to another 5871
—in appeal, proceeding to annex territory to city or town.....2962
For removal of office of county treasurer 2774
Requiring treasurer to give new bond 2777
Proceeding for discharge of county or city treasurer from liability 2792
For completion of turnpike, or section thereof 4077
Entered in vacation, effect of. 6308, 6309
—in mandamus or prohibition....5839
— —service of 5840
Forbidding waste by tenant....5511

ORDINANCES
See **"Cities and Towns"**
Enactment .....Va. Const., § 123
How passed over veto of mayor, Va. Const., § 123
To grant franchise or sell property of city or town, Va. Const., § 125
Appended to constitution, effect of .....Va. Const. Schedule, § 2
For annexation of territory.....2956
—publication 2957
Appropriating money, imposing taxes or authorizing borrowing, time required for passage of 2956
—vote for passage of 3013
Prohibiting manufacture, sale, etc., of ardent spirits, jurisdiction of mayor and police justice to enforce 4615
—territory contiguous to city or town 4615
—authority of cities and towns to enact 4617
—effect of prohibition law on....4673
For bond issue 2952
City or town changing plan of government, effect on 2934
For contraction of corporation limits 2969
Copies as evidence 6193
Councils of cities and towns may make 2934
For election to adopt special form of charter 2925
Relating to fire companies.....3127

Digitized by Google

Sec.

ORDINANCES—Con.
Granting franchise 3016-3022
—Va. Const., § 125
Jurisdiction of Supreme Court of Appeals in controversy concerning construction of.....6336
—Va. Const., § 88
Jurisdiction of circuit court in cases involving validity of....5890
Jurisdiction of appeal from justice of case involving 6037
For local assessment, improvement of streets, etc.....3067
Offense against two or more, proceeding on one as bar to others 4775
Providing pensions for members of fire and police departments 3035
Preventing interference with pupils attending or boarding at female schools 3063
Providing segregated districts for white and colored persons in cities and towns 3043-3046, 3053
Permitting awnings, fire escapes, etc., over streets 3015
To grade streets 3036
Consent to use of streets, parks, etc., by telegraph and telephone companies 4037, 4038
Of supervisors 2743
Of town, fixing voting place....2999
Of town, trial by mayor of violations 3011
—appeal 3011
Of town, levying tax or contracting debt 3028
Veto 3013
—Va. Const., § 123

ORDINARY
Keeper permitting unlawful gaming at, punishment 4688-4690
—revocation of license.....4688

ORPHAN ASYLUMS
Property of, exemption from taxation 2272, 2301
—Va. Const., § 183
—inheritance tax on gifts to..2272
Fire escapes 3141
—penalty for failing to provide..3141

OUTLAWRY
Proceeding of abolished 4891

OVERSEER OF THE POOR
See **"Poor"**

OWL
Premium on scalps 2729
Killing 3364

OWNERSHIP
Of lumber, changed by branding..1453
Proof of in criminal prosecutions 4872
Of property or instrumentality averred in pleading, proof not required unless denied by affidavit 6126

OXALIC ACID
Sale, label 1691

OXEN
Sale of on execution, distress warrant, etc 2833

OYER
Defendant may have 6082

OYSTERS
See **"Clams"; "Commission of Fisheries"; "Crabs"; "Inspectors"; "Potomac River"**
Oyster beds, natural rocks, not to be leased, rented or sold, Va. Const., § 175
—survey of .....Va. Const., § 175
No land grant to include....459, 3573
Common rights as to.....3573

Sec.

OYSTERS—Con.
Arrests for violation of laws relating to 3266
—seizure of boats, cargoes, etc..3266
Baylor Survey, re-establishment of lines 3163
—application, bond, cost.....3163
Boat engaged in taking, name and number to be kept in view 3263
Catching at night 3251
—on Sunday 3251
—penalty 3251
Commission of Fisheries may take 3260
Cost and expenses, of enforcing law, payment by Auditor.....3268
Employment of resident labor by corporation engaged in oyster business 3224
Fines for violations of law, payment to officers.....3264, 3288
Forfeitures for violations of law relating to 3366-3377
—of boat, tackle, cargo, etc.....3275
Oyster fund, appropriation.....3160
—funds accounted for in.....3169
—proceeds from licenses paid into 3239
—proceeds of forfeited property paid to 3262
—fines for violations of law as to oysters, proportion to.....3262
—proceeds from seizure of vessels and equipment for violating oyster law paid into 3275
Jurisdiction of proceedings under laws relating to 3256
Larceny of, punishment 3233, 3237
License, of packer or shucker..3239
—of buyer in barrels for marketing 3239
—to tongers 3242
—to catch with dredge or scrape.3246
— —display of number, etc.....3246
— —fee 3246
— —tax 3247
—to carry seed oysters from certain localities to be planted in State 3250
Marketing in barrels, license to engage in 3239
Measures for 3252
—destroying illegal measures....3252
—inspector failing to inspect, penalty 3273
—seizure and destruction of.....3273
Non-resident, catching, penalty.3254
—renting oyster ground or planting oysters 3254
—buying 3255
—employment in dredging or scraping 3255
—citizen interested with non-resident in catching or planting, prohibited 3253
Obstructing fishing ground by planting 3173, 3191
Packing, license to engage in..3289
Patent tongs, season for use of..3240
—registration of boat using....3241
—license to use 3242
Penalty, for injuring or removing stakes, buoys, etc., on planting ground 3235
—for taking with scrapes and rakes in Accomac and Northampton Counties 3238
—for failing to register boat or display mark 3241
—for taking or selling, under prescribed size 3244
—for taking with drag-box.....3245
—for catching at night or on Sunday 3251
—non-resident catching 3254

Digitized by Google

Sec.

OYSTERS—Con.
—for catching to convert into lime 3272
—for inspector failing to inspect and seal measures 3273
—for roughing or taking, without culling, from natural beds.3274
—for having dredge or scrape in possession in Pocomoke Sound.3280
—for falsely designating as Lynnhaven 3291
Permit to carry seed oysters out of State 3249
—to carry seed oysters for planting in State 3250
—to carry from James River during closed season 3251
Planting in Chesapeake Bay between Cape Henry and Norfolk County line 3173
Planting ground, assignment of..3224
—notice by inspector to Commissioner of Fisheries 3165
— —list by clerk 3165
—application, posting.....3224, 3225
—number of acres 3225
—survey 3224, 3225
—stakes 3224
—filing, recordation.....3225
—fees, rental 3226
—reported to Commission of Fisheries 3226
—in Chesapeake Bay 3225
—assignment to riparian owner.3223
—renter 3225, 3227
— —rental 3225
— —rights of, renewal 3227
— —sub-renting or assigning...3228
— —interest of to be a chattel real 3227
— —erection of piers, &c.....3231
— —list of, posting, correction..3271
— —failure to pay rent, marking plat "abandoned" 3271
—resurvey, removal of oysters..3233
—natural rock not to be assigned, penalty 3234, 3573
— —Va. Const., § 175
— —not to be staked off or used, penalty 3232
— —removal of oysters on resurvey 3233
—injuring or removing stakes, buoys, etc., penalty 3235
—non-resident renting, prohibited 3254
—resurvey by Commission of Fisheries 3257
—unlawful to interfere with surveyor 3259
—bulkhead or wharf, right of riparian owner to erect.....3269
— —notice to lessee 3269
—plats endorsed "abandoned" for failure to pay rent 3271
— —re-renting 3271
—examination and analysis by Dairy and Food Commissioner..3281
—designation of polluted areas..3282
—removal of shellfish from 3283
— —from private grounds 3284
— —from public grounds.....3285
—unlawful to store or sell oysters unlawfully removed from contaminated beds.....3286
—penalty for violation of law, seizure of vessel, etc.....3287
—payment of fine.....3288
—who to enforce law 3289
—natural beds, rocks or shoals
—not to be granted 3573
— —Va. Const., § 175
Police, captain to countersign permit to carry seed oysters out of State 3249
—permit to buy or carry seed oysters to be planted in State..3250

Sec.

OYSTERS—Con.
—permit to carry oysters out of James River during closed season 3251
—designation of 3276
—captains to be game wardens..3323
Police fleet 3261
—funds for policing waters.....3261
Possession while taking clams, effect as evidence 3294
—penalty 3294
Registration, of boat used in catching 3241
—display of mark on 3241
—penalty for failing to register..3241
Resisting officer enforcing laws relating to 3265
Rights of riparian owner in cove, creek or inlet 3229
Sale of for default in payment of rent and taxes 3220
Scrapes and dredges, where may be used 3246-3248
—on planting ground 3248
— —bond 3248
Season for taking from natural rocks 3240
—with patent tongs 3240
—penalty for violating law.....3240
—possession of tongs as prima facie evidence 3244
Seed oysters, carrying or buying to carry out of State, permit, tax, penalty 3249
—to be planted in this State, license 3250
—law applicable to Potomac River 3299
Seizure of boats, cargoes, etc., engaged in violating law.....3266
—warrant 3277
— —proceeding on 3278, 3279
—of illegal measures 3273
Size of that may be taken, sold, etc. 3243, 3244
Shucking, license to engage in..3239
Tidewater Virginia, definition of term 3162
Violation of law as to, affidavit..3277
—warrant of seizure and arrest..3277
—proceedings on 3278, 3279

PACKER
False marks, recovery of penalties from 1440

PAGE COUNTY
Fees of Commonwealth's attorney 3505

PAGES
In General Assembly, number of, salary 3462

PALACE CAR
Exclusion from 4007

PAMUNKEY RIVER
Fishing in 3202
—penalty for unlawful 3202
Obstructing navigation in, punishment 4748

PANDERING
Definition, punishment 4579
Jurisdiction of prosecution.....4579
—Female as witness.....4579

PANORAMA
License for 2373

PAPERS
See **"Books and Papers"; "Records"; "Writings"**
State Corporation Commission may compel production of, Va. Const., cl. c, § 156
Preservation of in clerk's office..3386
—removal from county or city prohibited 3387
Court permitting withdrawal of original 6200

Digitized by Google

Sec.

PAPERS—Con.
Jury may carry from the bar....6257

PARDON
Sealing 30
Not to remove disqualification to hold office 292
Of minors in custody of prison association 1959
By Governor 5069
—Va. Const., § 73
—not before conviction 5069

PAREGORIC
Sale of 1681

PARENT AND CHILD
See **"Apprentices"; "Children"; "Infants"; "Minors"**
Allowing boy under ten years of age or girl under sixteen years of age to sell newspapers, penalty 1813
Penalty for violations of law relating to employment of children 1814
—prima facie evidence of guilt..1815
Employment of child in factory mill, mine, laundry, etc., by parent 1815
Petition to have child released from operation of child labor laws 1816
Affidavit of age of child employed in coal mines 1871
—penalty for false affidavit.....1871
Order of court for support of dependent child 1909
—recognizance 1909
Dependent or neglected child, petition of probation officer or other person for disposition of..1915
—penalty for failing to abide order of court 1915
Desertion or non-support of child, 1936-1944
—recognizance for support..1939, 1940
—jurisdiction of prosecution, 1937, 1942
Listing property of minor child for taxation 2307
Consenting to female child's being taken for prostitution or sexual intercourse, punishment 4579
Action by parent or child to recover damages by intoxicated person, against person causing intoxication 4675
Consent to marriage of minor child 5078
Binding child as apprentice.....5298
—money due from master, how paid 5306
Guardians, appointment by will..5314
—when appointment void.....5315
—custody of child 5320
Earnings of child, who entitled to 5320
Custody of child when parents separated 5327-5330
Adoption of child 5333
Funds of child, when paid to child by court 5343
—when paid to parents 5343
Damages for death.....5787, 5788
Application to change name of child 5983

PARIS GREEN
Sale of 1681

PARKS
Sale of rights of city or town in, Va. Const., § 125
In cities and towns, establishment and maintenance 3032
Acquisition by city or town of property adjacent to 3064
Telegraph and telephone lines in.4035

Sec.

PARKS—Con.
—consent by supervisors or councils 4037-4038
—restrictions on use.....4037, 4038
Pipes or conduits in by public service corporation 4059
Right of way of electric railroad 4063

PARLIAMENT
Writs given by, preserved..... 3

PARLOR CAR
Exclusion from 4007

PARSNIPS
Bushel, standard 1470

PARTICULAR ESTATE
Remainder valid without.....5153
Transfer or merger of not to defeat remainder 5154

PARTICULARS, BILL OF
See also **"Grounds of Defense"**
Before civil and police justice..3105
In prosecution for embezzlement.4451
In proceeding by notice of motion for judgment.....6016
Court may require 6091
Declaration averring negligence..6118

PARTIES
See also **"Pleading"**
Bonds executed by persons not parties to proceeding 6375
Production of books, writings, etc., by adverse party, summons for.....6237
—bill in equity for 6238
Change of, after verdict.....6164
—abatement and revival....6165, 6168
— —by scire facias 6168, 6169
— —by motion 6168
—defendant's power ceasing.....6170
—necessity for revival 6171
—parties exceeding thirty.....6173
Death after verdict 6164
—pending appeal 6167
Death of joint plaintiff or defendant 6165
Marriage of female 6166
Deeds good between 5169
Not error to describe railway company as railroad company or vice versa .....cl. 19, 5
Guardian ad litem for infant or insane defendant 6098
How infant may sue 5351
Interrogatories to adverse party in action at law 6236
Judgments against less than all defendants 6263
—action against wrongdoers....6264
Misjoinder, effect of 6102
New parties, how brought in, 6102, 6139
—judgment for when found not liable 6106
Non-joinder, effect of 6102
Privilege, attending court during elections .....Va. Const., § 29
Tenants in common joined as plaintiffs or defendants.....6099
Unknown, order of publication against 6069
—when number of defendants exceeds thirty 6069
Unknown, in suit for partition..5284
Competency as witnesses.....6208
—judgment on testimony of party when adverse party is incompetent 6209
—refusal to testify, suit dismissed or plea struck out.....6213

To Particular Actions or Proceedings
Proceedings by and against churches and religious societies, 42, 44

Digitized by Google

Sec.

PARTIES—Con.
Suit to vacate cemetery and sell land 58
Suits on bonds taken by courts and officers 286
Bill in equity to supply links in titles 479
Suit by Commonwealth to repeal grant 486
Petition for relief against escheat 497
Suit by creditor to subject escheated land to decedent's debts 516
Bill to recover derelict or escheated property for Commonwealth 518
Plaintiff in suit by unincorporated association or labor union for infringement of trade mark 1462
Proceeding by Board of Pharmacy to recover penalty 1675
Proceeding to establish drainage district 1738-1741
Condemnation of property to establish drainage district 1747
Proceeding to correct assessment of land for taxation 2237, 2248
Proceeding to enforce payment, debts due State 2512
Motion to recover debt due State.2513
Proceeding to recover claim against State.....2578, 2579
Board of supervisors may sue and be sued 2710
Contested election on removal of courthouse 2754
Actions on treasurers' bonds....2789
Proceedings by and against superintendent of the poor.....2797
Petition for incorporation of town 2881, 2883
Proceeding by city or town to annex territory 2957
Proceeding to contract corporate limits of city or town.....2970
Proceeding by city or town for leave to erect dam.....3054
Proceeding to enforce forfeitures, violation of fish, game and oyster laws 3366, 3370
To petition by officer claiming salary withheld for debt due State 3476
Proceedings to establish boundary of village or unincorporated community 3550
Proceeding to establish stream or canal as lawful fence 3553
Proceedings before State Corporation Commission 3722
—to appeals from, Va. Const., cl. d, § 156
Suits against unincorporated carriers, transportation lines, etc..3931
Action against telegraph or telephone company to recover forfeiture for failing to receive, transmit or deliver message....4042
Proceeding to recover examination fee from bank 4122
Suit by State to recover capital stock of company acting as bank of circulation 4152
Motion to recover assessment against insurance companies for expense of Bureau of Insurance 4195
Suits to enforce lien of policy holders on bonds deposited by insurance company or guaranty company 4214
Suit by Commissioner of Insurance to administer assets of insurance or guaranty company..4215
Eminent domain proceeding.4365, 4383

Sec.

PARTIES—Con.
Suit to enjoin violations of law relating to advertisement of intoxicating liquor 4609
Suit to abate nuisance under prohibition law 4630
Suits by and against married women 5134
—to sell estate of infant married woman 5137
—petition for receivers of.....5136
Action on contract made for benefit of third person 5143
Action by equitable owner of chose in action 5144
Proceeding to sell fee simple on bill by life tenant against remainderman 5161
—by remainderman against life tenant 5161
Proceeding to enforce contract reserving title to chattels.....5190
Petition by guardian to spend more than income of ward's estate 5321
Suit to sell or lease real estate of infant, insane person or trust estate 5335
Petition for release of dower of insane wife 5346
—for release of curtesy of insane husband 5346
Petition to transfer property of infant or insane person out of State 5350
—for transfer of trust estate out of State 5351, 5353
Action on refunding bond of legatee or devisee 5438
Action of unlawful entry or detainer 5445
Action of ejectment 5452, 5454
—defendants 5455
—real claimant 5456
—how several parties named as plaintiffs 5460
—co-tenants 5466
Petition to establish boundaries of land 5490
Action on negotiable instrument 5760
Action on writing payable to person dead at time of execution..5761
Choses in action, action by assignee on 5768
—by assignee of against assignor.5769
Action to recover damages for death by wrongful act.....5787
—to proceeding to compromise for 5789
Proceeding by notice of motion for judgment 6047
Actions and suits against unincorporated associations or orders..6058
Petition filed in pending chancery suit 6096
Suit in name of dead obligee on official bond 6100
To set-off 6144
—how assignor made a party... 6150
To interpleader proceeding 6151
—claim of third person to property levied on 6152
In equity, exceeding thirty, decree notwithstanding death of party 6173
Absent, rehearing 6174
Proceeding to establish lost records 6203
Scire facias to judgment on bond 6262
To actions on joint or joint and several contracts 6265
To rule against commissioner, receiver, or purchaser at judicial sale 6275

Digitized by Google

Sec.

PARTIES—Con.
Proceeding to substitute trustee 6299
Attachment proceedings.....6378
—defendants 6382-6383
—who may make defense to, 6402, 6403, 6407
Suit to enforce mechanic's lien...6437
Action by officer to recover property subject to execution on judgment 6514
Petition by widow and children to sell estate set apart as homestead 6542

PARTITION
Jurisdiction 5279
Who may compel 5279
Laying off shares together.....5280
Sale where partition cannot be made 5281
—ascertainment of liens.....5281
—protection of creditors.....5281
—distribution of proceeds.....5281
—bars right of dower and curtesy 5281
—proceeds as personal property..5283
—lessee's rights 5285
—goods and chattels.....5286
—proceeds to pass as real estate, when 5347
Decree vests legal title.....5282
Shares of unknown parties.....5284
Of goods and chattels by sale..5286
Judgment and decrees for, list of furnished by clerk to commissioner of revenue 2275
—recordation 5216
— —in deed book 3393
Apportionment of taxes.....2449
Voluntary, by co-partners, necessity for deed 5141
Of real estate in which homestead exemption is claimed....6534

PARTNERS
See **"Partnership"**
Trader failing to disclose name of, liability of property for debts 5224, 5194
Liability of personal representative 5761
Limitation of action between for settlement of accounts.....5810
Defendants sued as, proof of partnership not required unless denied by affidavit 6127

PARTNERSHIP
See **"Partners"**
Word "person" includes, when....1188
License to, what to contain.....2364
—change in members or name..2365
Presentment of negotiable paper to for payment 5639
—notice of dishonor given to....5660

PARTRIDGES
Unlawful hunting, buying, selling 3356
Shipment from State 3361

PASSENGERS
See **"Common Carriers"; "Railroads"**
Landing from vessels without provision for maintenance.....3660
Separate waiting rooms for, State Corporation Commission may require 3716
Reduced rates of transportation.3918
Passes 3918
—Va. Const., § 161
Railroad refusing to take or set down, forfeiture for 3938
Separation of white and colored in street cars.....3978-3981
Failing to take seat assigned by conductor, penalty 3983
—ejection for 3984

Sec.

PASSENGERS—Con.
Exclusion from sleeping cars, dining cars, palace cars, etc....4007
On steamboats, separation of white and colored.....4022-4024
—penalty for failing to occupy place assigned 4024
—ejection 4024
Transportation of on Sunday....4572
—by steamboats 4575

PASSES
Issued by transportation companies 3918
—Va. Const., § 161

PATENTS
See **"Land Office"**

PATENT MEDICINES
Containing alcohol, sale of..4588, 4589
—manufacturer of buying and storing alcohol 4590
—license 4590

PATENT TONGS
See also **"Oysters"**
Vessel fishing for menhaden having on board, penalty.....3177

PATRICK COUNTY
Fees of Commonwealth's attorney 3505

PAWN
See also **"Pledge"**
Of mortgaged goods fraudulently.4455

PAYMENT
Allowance to witnesses.....3530
Allowances to jurors 5991, 6010
Amount found due to officer indebted to State 3476
From banking fund.....4122
Bonds issued for roads.....2118
Bonds of State 2633
Bureau of Insurance, salaries and expenses of 4172
Certificates for transportation of convicts and insane 3740
Claims against school district.... 662
Claims against State, on direction of Governor 2176
From civil contingent fund..... 318
By clerk, taxes and money collected, belonging to State, 2405, 2406
—delinquent taxes collected....2419
—taxes collected, redemption of delinquent land sold to State..2491
—levies collected on delinquent land 2502
—amount received for hunting licenses 3333
By Commissioner of Insurance, money collected 4197
Compensation of officers, etc., of penitentiary 5041
—of State prison farm 5047
Compensation and mileage, judge holding court other than his own 5898
Compensation and expenses of orchard inspector 897
Compensation of examiners, office of clerk of the court.....3383
On contract for improvement of roads with proceeds of bond issue 2120
Of contractors for road maintenance 2034
Of money into court 6142
—plea of 6142
—proceedings on 6143
Costs of printing records on appeals 6360
Of costs in Commonwealth's cases into treasury 3536
Costs and expenses, enforcement of forfeitures 3374

Digitized by Google

Sec.

PAYMENT—Con.
Cost of publication, notice of special election, city of first class.2919
County demonstration work..... 924
County levy with county warrant 2782
By county or city treasurers warrants on State school tax funds 747
County treasurers, out of funds created by dog tax 2321
Damages, eminent domain proceedings 4369
—disposition of 4374
—for taking sand, gravel, water, etc. 4382
Debts of decedent's estate, 5434-5436
—order of payment of claims against 5390, 5391, 5395
Of debt secured by incumbrance, proceeding to satisfy on record.6456
By defendant in prosecution of husband or parent for non-support 1939
Of employees in certain occupations, time and manner of.1818, 1819
Of escheator to treasury, proceeds of sale of escheated land..... 510
—penalty for failure to make.... 511
Of debts of decedent whose land has escheated 516
Proceeds of sale of escheated land to person entitled 521
Contingent expenses of office of Superintendent of Public Instruction 616
Expenses, State Board of Education 620
Expenses of school trustee electoral board 634
Expenses of summer school..... 698
Fees to jailor 2878
Fees of sheriffs and sergeants from State treasury 3503
Fees in criminal cases from State treasury 3504-3514
Fee to attorney appointed to defend poor person.....3518
Fees to witnesses in criminal cases 4957-4959
—compensation of officers.....4964
Fees of clerks for marriages reported to 5099
Of fines to clerk 2562
—by justices 2556
—by sheriffs and other officers..2568
Fines or violation of law as to oysters 3264
Fine for removing polluted oysters 3288
By garnishee 6512
Interest on bonds of State.....2597
—to colleges, etc..... 990
Jail, cost of guard for.....4955
—medical attendance, medicines, clothing for prisoners 4956
To jailors for Federal prisoners 2876
Of judgments, entry of....6455, 6457
To judgment debtor, effect of lien of execution 6501
License taxes 2372
—into treasury 2381
Of loans made by building associations 4156
By master to apprentice 5303
—bond for 5303, 5304
—how paid 5306, 5307
Musicians at Virginia Military Institute 851
Of negotiable instrument, in due course 5613
—discharge by 5681, 5682
—for honor 5733-5739
—dishonor by non-payment.....5645
—bill drawn in sets.....5744, 5745

Sec.

PAYMENT—Con.
—check, on death of drawer....5718
Fine for violation of laws as to oysters, etc. 3264
—cost and expenses 3268
—proceeds of forfeitures 3275
—fine for removing polluted oysters 3288
Of pensions 2661
—to retired teachers 794
Of pilots' accounts 3636
Plea of 6141, 6144
—procedure on 6146-6150
When proof of signature not required 6093
For public printing 385
By register of the land office into treasury 2509
Salary, division superintendent of schools 626, 627
Salaries of Governor's secretary, assistant secretary, messenger.3432
Salaries of officers and employees at seat of government 3453
Salaries, judges, Supreme Court of Appeals 3464
Salaries of circuit judges.....3456
Salaries, judges of city courts...3468
Salaries and mileage, of State officers 3472
State and for improvement of roads to county treasurer.....2105
—by county treasurer 2106
By State Geological Commission of proceeds of sale of timber.. 530
—of proceeds of sale of gas, oil or minerals..... 531
To State treasury, effect of failure to make 2163
—by check, draft or certificate of deposit 2165
—of taxes by treasurers.....2412
—of capitation taxes by treasurers 2420
—proceeds of sale of wrecks and property from 3609
By surety on recognizance as discharge 4979
Taxes, on rolling stock of railroad 2208
—by collector of delinquent capitation taxes, collected.....2422
—in advance 2438
—of delinquent taxes, report of, 2465, 2466
—to redeem land sold for delinquent taxes.....2475, 2476, 2477
—for redemption of delinquent land purchased by State.....2491
Of unclaimed court funds into treasury 6311, 6312
—to person entitled to recover...6314
Warrant, for expense of Summer Normal School 613
Warrants of State Live Stock Sanitary Board 908
Warrants on county treasurer....2782
Warrants by county treasurer..2786

PEACE OFFICERS
Inspectors of Bureau of Animal Industry as 1289
To be ex officio game warden....3322
Intimidating, punishment 4525

PEACH TREES
Inspection of diseased 897-902
—bringing, shipping into State.. 905

PEACHES
Bushel, standard 1470

PEANUTS
Bushel, standard 1470

PEANUT-CLEANING ESTABLISHMENT
Employees, dust shield furnished to by employer 1821
—penalty 1821

Digitized by Google

Sec.

PEAS
Bushel, standard 1470

PEDIGREE
Of animals, false, punishment....4460

PENAL BOND
Scire facias on judgment assigning further breach, limitation on 6478
Jurisdiction of action on.....6374

PENAL INSTITUTIONS
State Accountant to devise system of accounting for 553, 554
—mandamus to compel adoption.. 555
Inspection of accounts of....557, 558
—duty and penalty 558

PENALTIES
See also **"Crimes"; "Criminal Procedure"; "Fines and Penalties"; "Forfeitures"**
Action to recover for nonperformance of condition, covenant or agreement 6262
Of bond, in action on lost instrument 6242
—of administrator 5370
—on appeal, writ of error or supersedeas 6351
—of person arrested for violation of license or revenue laws....2397
—assessor o fland for taxation..2241
—of plaintiff, in attachment proceedings 6384, 6385
— —of defendant 6394
— —when property sold....6397, 6406
—bank examiners 4121
— —clerks 4121
—for capias 6420
— —of defendant 6421
—claimant of property forfeited under game, fish, oyster laws..3368
—civil and police justice.....3099
—clerk, civil justice's court.....3118
—delinquent capitation taxes....2421
—collector of city or town.....3034
—commission merchant 1259
—Commissioner of Agriculture and Immigration 1105
—Commissioner of Fisheries.....3146
—Commissioner of Insurance....4171
— —deputy 4171
—Commissioner of Prohibition..4626
—Commissioner of State Hospital 1011
—Commissioner of Wrecks.....3597
—committee of convict's estate..4998
—committee of insane person....1053
—contractor for public printing.. 382
—contractor to furnish paper.. 383
—contractor for improvement of roads with State aid.....2102
—county or city treasurer, loss of school warrant 2185
—person obtaining dead bodies from Anatomical Board.....1734
—depositary 734
—of depository of moneys of Virginia Normal and Industrial Institute 955
—depository of State hospitals...1013
—plaintiff in action of detinue....5797
— —defendant for return of goods 5798
—examiner of records 2219
—when execution stayed.....6499
—executor or administrator.....5370
—proprietor of ferry 2041
—game warden 3322
—general receiver 6285, 6287
— —new bond 6290
—harbor masters, cities of Richmond and Alexandria 3664
—indemnifying bond 6154
—to indemnify surety in nonresident's bond for costs.....3520

Sec.

PENALTIES—Con.
—In injunction proceedings, 6323, 6324
—jurisdiction for enforcement...6374
—person doing business without license 2369
—notary 2850
—officers, Society for Prevention of Cruelty to Animals 4555
—oyster inspector 3219
—petitioner, quo warranto proceedings 5843
— —information in nature of..5844
— —of defendant to re-open judgment 5846
—pilot 3615
—printer of records on appeal....6360
—person convicted of violating prohibition law 4643
—public officers 2698, 2699
—Secretary of the Commonwealth 2134
—special commissioners ...6266, 6269
—special police 4800
— —for watering place, university, college, manufacturing plant 4805
—before State Corporation Commission 3735
— —of clerk and bailiff of.....3708
—State depository 2158
—superintendent of roads.....2019
— —contractor 2035
— —foreman 2032
—superintendent of construction.1760
—clerks, Supreme Court of Appeals 3384
—suspending bond 6156
—treasurer, Hampton Normal and Agricultural Institute 928
—treasurer, Virginia Military Institute 840
—treasurer, Virginia Normal and Industrial Institute..... 950
—treasurer, Virginia Polytechnic Institute 866
—tobacco sampler 1351
—person to whom duplicate warrant on State Treasurer issued..2184
Of recognizances.....4973
—how remitted after forfeiture..4980
—of person convicted of violating law as to working on Sunday..4570
—on appeal from sentence of justice for contempt.....4523
Recovery of in action for damages for violation of statute..5785

PENITENTIARY
See also **"Convict Lime Board"; "State Convict Road Force"; "State Prison Farm"**
Constitutional provisions, Va. Const., §§ 147, 148
Branch prisons and prison farms .....Va. Const., § 147
Child under 18 years of age not to be confined in 1908
Coroner's inquest over body in....4806
Crimes by convicts.....5049-5052
—proceedings on 5053-5058
Dead bodies in, delivery to Anatomical Board 1731
—inquest over 4806
Examination by joint committee of General Assembly.....4995
Funds, application of 5026
—payment of witness fees.....5028
—accounting for 5031
—receipts paid to treasury.....5036
—payments from 5036
— —expenses of State prison farm 5047
—proceeds sale of bloodhounds..5048
Imprisonment in as ground for divorce 5103
Inventories of property.....5029

Digitized by Google

Sec.

PENITENTIARY—Con.
Inspection, by Board of Charities and Corrections 1894
—information and statistics furnished to 1894
—by accountant 557, 558
Hospital, room set apart for....5023
—cleaning 5012
—record of convicts in 5023
—directors to visit and make report on 5024
—under control of surgeon 5013
—steward 5013
Record of conduct of convicts....5017
—when submitted to Governor....5018
Real estate of 4993
Register of offenses by convicts and punishments for 5017
Reports to Auditor 987
—to Board of Charities and Corrections 1895
Reward for escaped convict....5043
—how paid 5043
—who entitled to 5044
Rules 4996
—subscribing by male convicts..5007
—directors to make and enforce..5016
—relating to allowance for good conduct, etc., to be posted in cells 5020
Sanitary regulations 5013
—adoption and enforcement by surgeon 5013
State Accountant to devise system of accounting for 553, 554
—mandamus to compel adoption.. 555
Inspection of accounts of....557, 558
—duties and penalty 558
Use appropriated to 4994
Whitewashing, washing floors, etc. 5012
Visitors 5012, 5025
—permit 5025
—not to converse with convicts..5025

Convicts

Quarantine 1543
Confinement 4994
Prisoners sentenced in United States courts 4994
—pay for support of 4994
Record of conviction 4997
Register of 4997
Estates, committees, etc. 4998-5004
—Va. Const., § 101
—maintenance of family, wife's portion 5000
—delivery to convict on discharge 5002
—when and how real estate sold or encumbered 5004
Transportation, expenses of....5005
Treatment on arrival 5006
Disposition of clothing....5006
Subscribing rules 5007
Insane, disposition of....5007
Separation of male and female..5008
Shaving males 5008
Uniform 5008
Infants of convict mother....5008
Labor of, instruction in mechanical art 5009
Social intercourse, regulation of..5010
Diet of 5011
—change of 5012
Hours of labor, regulation of..5012
Privileges of sick 5013
Hospital steward 5013
Rules and regulations for....5016
—punishment for violation of....5016
Employment of 2073, 5009
—in repairs, &c., to property of penitentiary 4993
—on public buildings and grounds 5014
—at Hollywood and Oakwood cemeteries 5015

Sec.

PENITENTIARY—Con.
—tasking, compensation for work in excess of 5045
—when not to be employed on contracts 2080
—in quarries 2073
—at State farm 2073
—by convict lime board....1267
—State convict road force....2073
— —kept in penitentiary when not at work 2080
— —not subject to contract of hire 2080
— —discharge 2082
— —allowance to 2082
— —trusties 2085
— —requisition of to work on road 2088
Record of conduct 5017
—submission to Governor....5018
Allowance for good conduct....5017
Register of offenses 5017
When term of confinement to begin 5019
Laws as to punishing and rewarding to be posted in cells..5020
Discharge, allowance to on....5021
—certificate of transportation....5021
—clothing 5021
—when term expires on Sunday or holiday 5046
Visitors, not to converse with....5025
—regulations for 5012
In hospital, reports on 5024
Guard for 5040
—when employed outside of penitentiary 5042
Escape 5049
Escaped, reward for 5043
—how paid 5043
—who entitled to 5044
Crimes by 5049-5052
—what offenses amount to felony, 5049, 5050
— —conspiracy 5050
—how punished 5051, 5052
—proceedings on 5053-5058
Previous sentence, proceedings to impose additional punishment for 5054
Pardon or reprieve by Governor..5069
—Va. Const., § 73
Commutation of death sentence..5069
—order for receiving convict in penitentiary 5069
Tubercular, examination of, report 1546
—segregation 1547
Committee, appointment, bond...4998
—Va. Const., § 101
—powers and liabilities....4999-5003
—service of process on in divorce suit....6012
Divorce suit against, how process served 6042
—guardian ad litem 6042

Officers and Employees

Appointment and removal...5027, 5034
—Va. Const., § 148
Compensation, how paid 5041
Bookkeeper, salary 3449
—how paid 5041
Keepers, appointment, oath....5033
—compensation, how paid 5041
—record of oath 277
Matron, appointment, oath....5034
—compensation, how paid....5041
—salary 3449
—record of oath 277
Steward, detail of convict as....5013

CLERK

Duties 5031
—investigations by directors....5028
—record of oath 277
Assistants 5032
—appointment 5032, 5034

Digitized by Google

Sec.

PENITENTIARY—Con.
—removal 5027, 5034
—record of oath 277
Appointment 5034
Removal 5027, 5034
Oath 5034
Compensation 3449
—how paid 5041
Record of convictions 4997
Register kept by 4997
Bertillion clerk, salary 3449
—how paid 5041
Recording clerk, salary 3449
—how paid 5041

DIRECTORS
Appointment, term 333
—Va. Const., § 148
Vacancy in office..... 333
Qualification 333
—record of oath..... 277
Removal of..... 336
Appointments by to fill vacancies 333
Powers and duties.....5027
—Va. Const., § 148
Regulation of diet.....5011
Allowance to convict on discharge 5021
To make and enforce rules and regulations 5012, 5016, 5025
Examination of hospital.....5024
Annual report 5030
—to show condition, etc., of hospital 5024
Application of funds.....5026
—report of disbursement of..... 987
Quorum 5027
Meeting 5027
Inspection and supervision of penitentiary and prison farm...5027
Reports 5027, 5030
Removal of superintendent and surgeons 5027
Investigations 5028
Annual inventory 5029
Journal 5031
Employment of clerical assistance, approval of 5032
—of other officers 5034
Reports to 5027, 5035
Examination of superintendent's annual account 5039
—incorporation of in annual report 5039
Salary 3450

GUARDS
Employment, dismissal 5040
Number of 3451, 5040
Carrying weapons 5040
Compensation 3451, 5040, 5041
—how paid 5041
—vacation 5041
Substitute, pay 3451
Detailed with convicts employed outside of penitentiary 5042
Convict, killing or injuring.....5049
Exempt from jury service.....5985

SUPERINTENDENT
Appointment, qualification, term.. 333
—Va. Const., § 148
Vacancy 333
Removal 336, 5027
—Va. Const., § 148
Record of oath taken by..... 277
Exempt from jury service.....5985
Salary 3449
Member, convict lime board.....1266
Residence, fuel, etc.....5033
Assistant, appointment, oath....5034
—Va. Const., § 148
—duties 5034
—record of oath taken by..... 277
—salary 3449
—residence, fuel, etc.....5033
—removal 5027, 5034

Sec.

PENITENTIARY—Con.
—Va. Const., § 148
—exempt from jury service.....5985
Appointment by of clerks, assistant, keepers, matron..5027, 5034
—Va. Const., § 148
—removal of 5027, 5034
—of guards 5040
Removal of officers and employees by 5027, 5034
—Va. Const., § 148
Quarantine of convict 1543
Employment of convicts in quarries, at State farm, on road force 2073
Schedule of routes for transportation of convicts filed with....3739
—certificate, presented to.....3740
—how paid 3740
To provide and maintain death chamber 4941
Death penalty, execution of..4941-4947
Transportation of convicts to penitentiary 4948
—of person sentenced to death, 4942, 4948
Custody of property of penitentiary 4993
—authority to institute suit for recovery of 4993
Power to employ convicts on property of penitentiary.....4993
To keep account of expenses of delivering convicts to penitentiary 5005
To provide employment for refractory convicts 5007
Insane convict, report of to Governor 5007
Whitewashing hospital and cells, and washing floors 5012
Change of diet of convicts.....5012
May allow convicts to walk for their health 5013
Detail of hospital steward.....5013
Employment of convicts on public buildings, grounds and property.....5014
Record of conduct of convicts....5017
—submitted to Governor.....5018
—credit for good behavior.....5017
Transportation and clothing furnished to discharged convict....5021
Examination of hospital 5024
—report on 5024
Reports, to directors.....5027
—of receipts and disbursements..5035
—annual account 5038
—on examination of hospital.....5024
—of tubercular convict.....1546
— —penalty 1546
— —segregation 1547
Purchase of material and supplies 5035
Duties, generally 5033
Information to bidders for supplies 5036
Payment of money into treasury..5036
—how paid out 5036
Annual account, how made up, what to show 5038
—examination of by directors...5039
Employment of guards.....5040
—detail with convicts employed outside of penitentiary 5042
Certificate for payment of compensation to officers and employees 5041
Reward for escaped convict.....5043
May establish system of tasking convicts and payment of compensation for work in excess of 5045
Order for payment of expenses of State prison farm 5047
Raising and training bloodhounds for police purposes 5048

Digitized by Google

Sec.

PENITENTIARY—Con.
—furnishing to sheriffs and sergeants 5045
State road force, employment of convicts on 2073
—notice by to courts of needs of convict road force 2074
—request to courts for prisoners in jails 2075
—delivery of prisoners.....2075
—receipt for prisoner.....2076
—report to by jailor 2076
—accounts, fees, warrant, payment 2077
—return of prisoners to jail.....2077
— —when ill or not at work.....2080
—fees, for supporting prisoners on convict road force 2077
—disposition of funds 2081
— —how paid out.....2092
—discharge of prisoners on.....2082
— —allowance to 2082
—assistant, appointment 2083
— —salary 2083
— —discharge 2088
—clerks, appointment 2083
— —salary 2083
— —discharge 2088
—guards, appointment of 2083
— —wages 2084
— —discharge 2088
—trusties, appointment of.....2085
—to furnish equipment, quarters, etc., for prisoners 2086
— —clothing, food, quarters, guards, when working on roads in counties 2089
—transportation of prisoners.....2087
—prisoners sent to counties to work on roads, requisition for, etc. 2088
—how road force fund paid out..2092
—notice to by judge or justice when prisoner sentenced to work on public road or in quarry 2094
—delivery to of prisoners sentenced by court or justice to work on roads 2096

SURGEON
Appointment, qualification, term.. 333
—Va. Const., § 148
—record of oath 277
Vacancy 333
Removal 336, 5027
—Va. Const., § 148
Salary 3449
Control of hospital department..5013
Adoption and enforcement of sanitary regulations by.....5013
Daily visits 5022
Notice to superintendent of absence 5022
Aid to convicts 5022

PENSIONS
See also **"Board of Pension Commissioners"**
Special act granting prohibited, Va. Const., § 63
General Assembly may make appropriations for....Va. Const., § 189
Person receiving may hold office. 291
Of retired school teachers....787-805
Seal on paper, no tax charged on 2402
To whom paid, classification.....2642
Re-rating 2643
—application for 2643
Construction of total and partial disability 2644
Matrons who served in Confederate hospitals.....2645
Funeral expenses of pensioners..2646
Affidavits with application.....2648
—after application allowed.....2650
—perjury 2660

Sec.

PENSIONS—Con.
Applications for 2648, 2650
—affidavits accompanying 2648
—certificate of physician.....2648
—forms furnished by Auditor....2651
—examination of by Auditor.....2652
—lists of prepared by clerk.....2655
— —copies, how disposed of.....2655
— —posting 2655
—examination by court 2656
—hearing on, endorsement, disallowance 2656
—examination by commissioners.2657
— —report on 2657
—no fees to be charged in connection with 2658
—perjury 2660
—falsely certifying facts in connection with 2660
—from local pension fund..2662-2667
To whom not payable 2647, 2649
Requisites to entitle person to....2648
—after application approved and allowed 2650
Forms furnished by Auditor.2652, 2659
Pensioners not entitled to aid until compliance with requirements 2654
Pension rolls, how kept.....2652
—certified to clerks 2653
—entry of name on 2652
—erasure of names from, 2650, 2653, 2657
—names enrolled under previous statutes to remain 2654
—examination by commissioners.2657
— —report on 2657
Fees not to be charged 2658
Purchase of claims prohibited...2658
Exemption from levy, &c.....2658
Payment, prorating 2661
Local levies for 2662
—collection and disbursement, 2663, 2664
—application for aid from..2664, 2665
—committee, appointment..2665, 2666
—who to receive benefit.....2667
Artificial limbs for pensioners, 2667, 2671
—cost of deducted from pension 2669
—appropriation for 2670
Of members police and fire departments 3035

PENSION COMMISSIONERS
See **"Board of Pension Commissioners"**

PER CAPITA
Descents 5266

PER CENT
Definition of, equivalent to per centum, cl. 11..... 5

PERISHABLE PROPERTY
Sale of by warehouseman 1323
Taken on execution or distress warrant, sale of....2832, 6157, 6519
Sale of forfeited 3369
Transportation of by railroads on Sunday 4572
—loading and unloading on steamboats 4575
Sale of in detinue 5798
Seized on attachment, sale of....6397

PERJURY
Disfranchisement for..... 82
—Va. Const., § 23
Exclusion from registration for.. 93
—Va. Const., § 23
Sufficiency of indictment.....4869
Limitation of prosecution for....4768
Person convicted of a competent witness 4779
What deemed to be 4493
Making false oath for marriage license 4493

Digitized by Google

Sec.

PERJURY—Con.
Penalty 4494
Subornation of 4494
—penalty 4494, 4495
Conviction to disqualify to hold office 4495
—to act as juror 4495, 5984
—to disfranchise 82, 93
— —Va. Const., § 23
Violation of oath by printer of ballots for election 156
False oath with reference to defacement of ballot 165
False statement by challenged voter at primary election.... 228
False swearing before State Accountant 559
False affidavit by dealer in food..1184
In application for pension 2660
Of witness before city council, fire or police commissioners....2985
Before State Corporation Commission 3724
False statement to collector of canal tolls 4020
False swearing in investigations by Commissioner of Insurance..4189
False swearing by officer, director or incorporator of insurance or guaranty company 4206
False statement in report by officer of insurance company....4230
Co-operative life insurance or casualty company, false statement to as to death or disability of insured 4269
Fraternal benefit society, fraudulently obtaining money from....4304
—making false statement in report of 4304

PERMITS
To physicians by Board of Pharmacy 1673, 1674
—compounding and selling medicines and poisons 1681
Dead bodies, burial or removal, 1565, 1578
—burial, indorsement and return.1571
—transportation of 1728
To waterworks to supply water for drinking purposes....1787-1793
By Commission of Fisheries, to take oysters under prescribed size 3244
—to employ non-resident crew in dredging or scraping.....3248, 3255
—to use scrape or dredge in certain localities 3248
—to carry seed oysters out of State 3249
—to buy or carry seed oysters for planting in State 3250
—to carry oysters from James River during closed season....3251
—to remove oysters and clams from polluted area 3284, 3285
Of harbor commissioners to build wharf 3675
To carry concealed weapon.....4534
To visit penitentiary 5025
To survey mine 5288

PERPETUATING TESTIMONY
Proceedings for....6235

PERPETUITIES
Gifts for religious purposes..... 38
Cemetery property 59

PERSON
Definition 5
—Va. Const., § 153
—pure food laws 1188
—in law relative to drugs, pharmacy, &c. 1664
—in law as to corporations.....3693

PERSON OF INTEMPERATE HABITS
Who deemed to be....4649

Sec.

PERSON OF INTEMPERATE HABITS—Con.
Giving ardent spirits to, punishment 4639
Required to disclose from whom ardent spirits were obtained....4640
—penalty for refusal 4640

PERSONAL ESTATE
See also **"Personal Property"**
Definition 5
Amount church may hold 43
Land office warrant as 462
Transferring or encumbering to evade prohibition law, penalty..4670

PERSONAL INJURY
To married woman, right to recover for....5134
Action to recover damages for, effect of death of plaintiff pending action 5790
—by employee of intrastate railroad 5791
— —contributory negligence.....5792
— —assumption of risk.....5793
— —contracts exempting from liability, void 5794
— —set-off, payment by railroad to insurance or indemnity company 5795

PERSONAL PROPERTY
Action by officer to recover....6514
Attachment against 6386
—levy on 6389, 6390
—lien of 6393
—sale 6397, 6406
— —rehearing 6411, 6412
Bequest of, extent and operation..5241
Claims for, or for damages to, jurisdiction of justice of the peace 6015
Of convict, committee for.....4998
—sheriff or sergeant as 5003
—maintenance of family from....5000
—delivery to after discharge.....5002
Distribution of 5273
—property of infant 5273
—property of married woman....5273
—homicide, when to bar acquisition of estate by distribution or will 5274
—right of State, if no other distributee 5275
—rights of husband or wife as distributee of barred by adultery 5277
Dogs as 2324, 2325
Exemptions 6531-6566
—Va. Const., §§ 190-193
Gifts of, when invalid.....5142
Of husband, conveyance of rights of wife in 5211
Judgment for affirmed, damages for detention of.....6377
—when injunction dissolved.....6377
Lien on for repairs 6443
—how enforced 6449-6451
Loans on by building and loan associations 4151
Mortgages of, book recorded in..3393
—bills of sale, contract, reservation of title, liens 3393
—on property moved into State, recordation of 5197
—on property moved from one county to another 5196
Offenses relating to, burning, punishment 4431
—with intent to injure insurer..4436
—embezzlement of 4451
—failure to fulfil promise to deliver in return for advance of money 4454
—fraudulent sale, removal, etc., when mortgaged, punishment..4455
—delivery on approval, penalty for failing to pay for or return 4456

Digitized by Google

Sec.

PERSONAL PROPERTY—Con.
—obtaining by false pretense or token, punishment 4459
—unlawfully injuring, taking or carrying away 4479
—prosecution for, what proof of ownership sufficient 4872
Partition sale, proceeds as.....5283
Public service corporation, interest of purchaser of works and property of as 3896
Sale, of by personal representative 5380-5382
—to enforce lien 6449
Shares of stock as 3794
Subject to lien, levy of execution on 6486
—on equitable interest in.....6486
—how subjected 6486
—lien of execution on.....6485, 6501
—delivery to officer.....6504
— —order for sale of 6507
— —sale, disposition of, etc.....6508
Subsequently acquired, deed may pass 6502
Taxation, segregation 2205, 2206
—for schools 2205
—by cities 2209
—by counties 2209
—by towns 2209
—investigation of value of..2257, 2258
—ascertainment of value for....2211
—liability of for taxes on decedent's realty 2287
—what exempt from 2301, 2302
—assessment for 2312
—rate of assessment by cities and towns 3073
Of ward, when sold to pay expenditures by guardian...5321, 5322
Will of, by minor 5228
—by soldier, mariner or seaman in actual service 5231
—of non-resident, how validity of determined 5231
—bequest, extent and operation of 5241
Writ of possession in action to recover 6483
—how enforced 6483
—execution for alternate value, damages and costs.....6484

PERSONAL REPRESENTATIVES
See also **"Decedents' Estates"; "Descents and Distributions"; "Fiduciaries"; "Wills"**
Of assignee of lease, rights of....5512
Of clerk of court, compensation paid to successor for making out fee bills 3497
Of Confederate pensioner, tax on qualification 2646
Of dowress, right to crops.....5130
Of grantee of reversion, rights..5512
Of lessee, rights against grantee of reversion 5513
Of member of General Assembly, apportionment of salary to....3454
Of obligor, bond of purchaser of land sold under execution for debt due State, proceeding against 2526
Of officer, collecting taxes or public money, judgment on bond..2514
—liability for officer's failure to make return of money 2835
—execution against, when forthcoming bond not taken..6524, 6525
Of party to proceeding for enforcement of mechanic's lien...6442
Of person liable to State, motion to enforce payment 2513
Of person presumed to be dead, appointment 5361-5368
—distribution of estate, investment 5365

Sec.

PERSONAL REPRESENTATIVES—Con.
—revocation of authority, effect on previous acts 5366
Of sheriff or sergeant, appointment or removal of deputy....2816
Of tenant of life estate, etc., apportionment of rent to.....5543
—proportion of rent, money, hire, etc., to, on death of one interested 5544
— —remedy for recovery of.....5545
Of treasurer, delivery of books and papers to successor..2779, 2786
—settlement with supervisors....2786
Of trustee, when to execute trust.6300
Accounts, settlement before commissioner 5408, 5410
—how compelled 5410
—penalty for failure 5408, 5410
—forfeiture of commissions 5409
—receipt of administrator de bonis non as voucher.....5377
Administrator, oath, bond..5369, 5370
—when grant to cease 5369
Administrator de bonis non.5372, 5373
—bond 5377
—duties 5377
—delivery of assets to, effect of..5377
—scire facias, when may have....5387
Administrator with will annexed, 5358, 5372
—oath, bond 5358
Appointment 5360
—jurisdiction of clerks of circuit courts .....Va. Const., § 101
—new personal representative....5418
—appeal 6336, 6337
— —jurisdiction of Supreme Court of Appeals .....Va. Const., § 88
Appraisement of estate 5376
—effect as evidence 5376
Arbitration, power to submit to..6163
Assets, estate for life of another as 5383
—real estate devised to be sold, sale of 5393
— —payment over of proceeds..5394
—real estate, for payment of debts 5395
— —how administered 5396
—real estate, liability of heir or devisee for sale of.....5397
—suits against heirs or devisees.5398
— —for less than $20 5399
—recovery for wrongful death as.5788
Bank deposit, payment to 4125
Bond, penalty 5370
—no security required, when....5371
—action on when execution on personal judgment against returned unsatisfied 5388
—judgment on as evidence against sureties.....5389
—examination of by commissioner 5416
—new bond, when required 5417
—limitation of actions on 5811
Claims against estate, priority....5390
—payment 5391
—liability for improper payments.5391
—liens, not affected by priority, 5392, 5400
Compensation, expenses 5425
Covenant in deed construed as binding, form of 5170
—general warranty 5171, 5173
—special warranty 5172, 5173
—further assurances 5176
—order for payment 5434
—how paid 5435, 5436
Debts due by, priority of, payment from decedent's estate, 5390, 5391, 5395
—order for payment.....5434
—how paid.....5435, 5436
Distribution of estate, when made, 5437, 5439

Digitized by Google

Sec.
PERSONAL REPRESENTATIVES—Con.
—refunding bond of distributee, 5437, 5438
—effect of bond on liability of personal representative 5438
Duties 5377
Executors, qualification 5357
—powers before qualification 5357
—bond 5357, 5370, 5371
—of executor, no authority over first estate 5372
—debtor as, debt not extinguished 5377
Female, effect of marriage 5373
—revocation of power and authority of 5373
Foreign, transfer of certificate of debt or stock to.....5348, 5349
Heirs, list of, furnishing to clerk 5379
—recording, cost of 5379
—as evidence 5379
—penalty for failure to furnish 5379
Inventory filed by 5403
—proceeding to compel filing....5403
—penalty for failing to file.....5403
—appraisement as 5403
Investment, order of court for....5430
—securities approved for.....5431
Judgment, proceeding to mark satisfied or discharged in bankruptcy 6467
Letters of administration, necessity for, how made out.....5375
—profert of not necessary.....6082
Liability, for taxes on decedent's realty 2287
—not to exceed assets 5389
—for debts lost by negligence, or failure to make defense 5406
—for rent 5521
—on joint obligations of decedent 5762
License assigned by 2377
Listing property of deceased person for taxation 2307
Negotiable instrument, bill of exchange presented to for acceptance 5707
—presentment to for payment....5638
—notice of dishonor given to....5660
New promise to pay debt.....5813
Notice of motion for execution by obligor on indemnifying bond..6498
Oath 5359
Oyster grounds, interest in to pass to 3227
Promise to answer debt or damages out of own estate, writing required 5561
Real estate, sold by decedent under written contract, execution of deed to 5378
—devised to be sold, sale of....5393
—receiving rents 5393
—payment of proceeds, rents and profits 5394
Recordation of copies of wills, duty as to 5262
Rent, recovery of by 5520
—liability for 5521
Resignation 5419
Revocation of authority 5417
Sales by 5381, 5382
—what estate not to be sold....5380
—real estate devised to be sold..5393
Sergeant acting as 5374
Sheriff acting as 5374
—tax, payment of 5374
Term construed to include, cl. 4. 5
Taxes, decedent's realty, liability for 2287
—payment of before administration by sheriff or sergeant....5374
Who entitled to be 5360, 5369
Writings to promisee dead at making, enforcement of 5761

Sec.
PERSONAL REPRESENTATIVES—Con.
Actions by or against
Damages for withholding dower.5127
On judgments or contracts of decedent 5384
For taking or carrying away goods of or by decedent 5385
For waste, destruction of or damage to any estate of or by decedent 5385
Against personal representative of executor or administrator for waste 5386
When administrator de bonis non may have scire facias 5387
On bond of personal representative 5388
—extent of liability 5389
—effect as to sureties 5389
Judgments against 5407
—as evidence against heirs or devisees 5398
For death by wrongful act.5787-5790
—distribution of damages..5788, 5789
—compromise.....5789
—employee of intrastate railroad, 5791-5796
Limitation of 5811
—suit to surcharge or falsify accounts 5811
Notice of motion for judgment against 6047
—judgment on 6047
Revival of action against on death of party 6165
—how action to proceed against..6165
—how revived, for or against, 6168-6171
Action or scire facias on judgment against decedent, time for 6477
On forthcoming bond 6521
PER STIRPES
Descents 5266
PEST HOUSE
Location of 1560
PETERSBURG
Central State Hospital at.....1004
Treasurer, statement and payment of taxes collected.....2412
—penalty 2412
Corporation court, judge, salary..3468
—increase, decrease 3469
Commonwealth's attorney, fees..3505
Deputy sergeant, allowance to..3515
Larceny of dogs in 4445
—malicious trespass 4445
Circuit court 5887
City of first class 5905
Courts continued 5905
PETIT LARCENY
Disfranchisement for 82
—Va. Const., § 23
Exclusion from registration for.. 93
Defined and punished 4440
Of dog 2324, 2325, 4445
Attempt to commit, punishment.4767
Limitation of prosecution for....4768
Sentence of person previously convicted 4785
Conviction of on prosecution for grand larceny 4921
—when thing stolen be of value of fifty dollars or more 4921
Conviction of disqualifies for jury service 5984
PETIT TREASON
Punished as murder 4761
PETITION
Accounts of officers, audit of....2756
For appeal.....6336, 6337
—time for 6337
—transcript of record with..6339-6342
—how prepared and certified....6346
—presentment 6347, 6348

Digitized by Google

Sec.

PETITION—Con.
In attachment proceedings..6382, 6415
—form of 6383
—amendment 6388
—of third person 6407
—in pending suit 6410
—for rehearing 6411
Bonds for roads, election for issue of 2110
—in magisterial district 2123
—for removal of county court-house, election for issue of in towns 2749
Cedar trees, diseased, by voters for adoption of law relative to.. 893
City, of first class, appeal from proceeding forming 2912
—of over 50,000 inhabitants, for election to change form of government 2925, 2926, 2928
Cities and towns, to change form of government 2930
—to abandon changed form of government 2954
—for annexation of territory to..2956
Child, for release of from operation of child labor law.....1816
—for disposition of dependent or neglected 1915
—by mother for custody of..5327-5330
— —for access to 5328
—for adoption of.....5333
—for vacation of adoption of....5333
Church property, to sell or encumber 46
In condemnation proceeding.....4364
Contract reserving title to chattels, enforcement of 5190
County, for formation of new, 2674, 2675
Court house, for election for removal of 2745
Curtesy of insane husband, for release of 5346
Dower of insane wife, for release of 5346
Drainage, by land owner for establishment of ditches or drains over land of another 1770
Drainage district, for establishment of 1738, 1739
—for issue of additional bonds by.1777
Election, for General Assembly, contested 262
Election, primary, filed by candidate for public office 229
—by candidate for House of Representatives 229
—filed by candidate for United States Senate 229
Election districts, to increase or diminish 144
Escheats, for relief against 497
—for recovery of proceeds of sale of escheated land 521
Feeble-minded, to have person declared 1078
—for committee or guardian of..1080
Fence, lawful, determination of what is in election district....3547
—to establish stream or canal as 3553
—to revoke order establishing..3554
Filing in pending suit, procedure on 6096
Fines, relief from 2570
Fraudulent transfer, creditor filing in suit to set aside.....5186
Grade crossing of road by railroad, elimination of 3974
By guardian, to spend more than income of ward's estate.....5321
Homestead, by widow and children to have set aside 6537
—to sell 6542
Infant married woman for receiver of estate of 4136

Sec.

PETITION—Con.
Infant or insane person, for surrender or renewal of lease by or on behalf of 5334
—non-resident, for transfer of property of to foreign guardian or committee 5350-5356
Insane person, to mortgage, lease, or sell real estate of.....1055-1057
—of person adjudged insane to determine legality of detention 1029
—for admission of to hospital without commitment 1032
Insane hospital, transfer of patient from to institution for feeble-minded 1086
Intoxicating liquors, against issuing license to druggist to sell 4599
Land grant or consolidation of land grants, correction of error in 475
By land owners for local assessment for imprisonments 3067
Lien, for sale of property to satisfy 6449
—disputing validity of.....6450
Lost records, proceeding to prove.6203
Lost records or papers, for trial of cause on reproduction of.....6241
Magisterial districts, rearrangement of 2688
Medical practice, person refused admittance to examination for..1614
—certificate revoked 1614
—certificate refused 1614
Mechanic's lien, suit to enforce...6437
Mine closed by inspector, to reopen 1870
By officer claiming salary withheld for debt due State 3476
—procedure and judgment.....3476
—time within which to be filed..3477
Order of publication in proceeding by 6069
By personal representative for approval of compromise of action for wrongful death 5789
For quo warranto 5842
—for leave to file information in nature of 5844
—to open default judgment.....5846
Real estate, to establish boundary 5490
—for allowance for improvements to 5491
For rehearing, by party not served with process 6072
By railroad to State Corporation Commission to authorize running of trains on Sunday.....4573
Registration, appeal from denial of 103
San José scale, for investigation of 880
Sanatorium for tuberculosis, election for establishment 1507
—to permit counties or cities to unite in establishment of 1513
Of school board to sell or exchange property 649
State, proceeding to recover claim against 2578-2583
State bonds, forged, for seizure of 2613
State Corporation Commission, for supersedeas to order of.....3734
Of stockholder contesting election of director 3804
Stock certificate, lost, for reissue of 3813
Supervisors, appeal by from disapproval by attorney of title to real estate purchased by county or school board 2709

Digitized by Google

Sec.

PETITION—Con.
Of surety for relief from bond of officer, etc. 5771
—bond of State depositaries....5772
—of surety on bond given under decree or order of court for indemnifying bond 5776
Tenant committing waste 5511
Testimony, to perpetuate 6235
Towns, for incorporation..2881, 2883
Trust estate, for transfer of property of to non-resident trustee 5351, 5353
Turnpike, for examination of....4078
Venue in criminal case, change of 4914
Village or unincorporated community, establishment of boundary of 3550
Taxation, for reference to voters, increase of levy for school purposes 740
—correction of assessment of land or minerals 2237
—against person filing false list of property 2328
—for rehearing in proceeding to correct assessment....2301
—to ascertain delinquent taxes due on real estate 2455
—for correction of treasurer's report of sale of delinquent land 2472
Wharf, erection at county landing 7998
For writ of error, in criminal case 4933
—to whom presented 4934
—procedure on 4935
For writ of habeas corpus.5848-5861
For writ of mandamus....5831-5840
For writ of prohibition...5831-5840

PHARMACY
See also **"Board of Pharmacy"; "Virginia Pharmaceutical Association"**
Certificates, grades 1673
—registered pharmacist 1673
—registered assistant pharmacist 1673
—registered apprentice 1673
—permits to physicians 1673
—surrender of when revoked..1678
—display of 1683
—issue of 1688
Dealer, exemption from liability for adulteration or misbranding by guaranty of manufacturer or wholesaler 1659
Investigations of violations of law relative to 1675
License, recognition of those already issued 1676
—refusal to grant 1677
—revocation 1677
— —notification of 1678
—surrender of certificate....1678
—issued without examination, to whom 1680
—examination for 1681
—qualification for 1684
—fee 1687, 1689
—issue 1688
—to resident practicing in adjoining State 1700
Penalty for violation of laws relative to 1692
Person, meaning of term....1665
Pharmacists, qualifications of..1685
—assistant, qualification of....1686
— —examination 1686
— —license 1688
—employment 1690
—annual registration of 1674
—apprentice, registration 1689
— —certificate 1689

Sec.

PHARMACY—Con.
— —employment 1690
—exempt from jury service....5985
Pharmacy, place deemed to be..1681
—supervision of by registered pharmacist 1691
— —by registered assistant....1681
Practice of, regulation of by Board of Pharmacy 1672
—forbidden to whom 1682
Practitioner in adjoining State, license of to practice in Virginia 1700
Principal, liability of for act of agent 1665
Registration, applicants to practice, examination, fee, 1673, 1674, 1684, 1686, 1689
—of pharmacists, annual....1674

PHEASANTS
Unlawful hunting....3356
Shipment from State....3361

PHENOL
Sale, label 1691

PHOTOGRAPH
Of person licensed to practice medicine transmitted to Superintendent of Public Instruction 1611
Of person convicted of felony, when taken 4787

PHYSICANS AND SURGEONS
See also **"Board of Medical Examiners"**
Alcohol, purchase of by....4594
Analysis of poison in criminal case by, compensation 4956
Board of health, local, membership on 1492
Board of medical examiners, members 1608
Certificate by, of birth....1573, 1574
—penalty for failure to make..1581
—of death 1567
— —penalty for failure to make.1581
— —when body is to be transported 1728
—filed with application for pension 3648
—for admission of patient to insane hospital without commitment 1032, 1033
—of stillborn children....1566
Coroner, acting as 4818
—inquest of, attendance, pay...4815
Dead bodies furnished to..1732, 1733
—bond 1734
Decedents' estates, claims against 5330, 5331, 5395
Examination of for license.1610-1618
—fee 1615, 1616
—qualifications 1615
—conduct of 1617
—certificate to practice....1617
—exemptions from 1618
Examinations made for by board of health 1499
Feeble-minded, proceeding to have person declared 1079
Fees, division of prohibited, penalty 1639
Inebriate or drug addict, proceeding to commit....1070, 1071
Inspection by of laborers constructing works of public improvement 1531
Intoxicating liquors, prescriptions for 4591, 4598, 4654
Jails, committee to inspect....2863
—to attend prisoners in, appointment, compensation 4956
License, issuance of..1613, 1615, 1617
—registration of....1612, 1613
—when not to be issued....1614

Digitized by Google

Sec.
PHYSICIANS AND SURGEONS—Con.
—revocation 1614, 4598
—refusal to grant.....1614
—fee 1612, 1613
—new license.....1614
—who not required to have....1618
— —exceptions 1618
—annulment of for violation of law 1623
—to physicians from other States 1618
Lunacy proceedings 1017
—fees and expenses 1021
Offenses by, failure to make certificate of birth 1581
—failure to make certificate of death 1581
—failure to report contagious and dangerous diseases.....1515
—practicing in violation of law.1623
—fees, division of 1639
—prescriptions for morphine, opium, heroin, etc. 1693-1695
— —for cocaine or eucaine.....1698
—fraudulent procurement of life insurance policy 4248
— —in co-operative life insurance or casualty company....4269
—false statement as to death or disability of insured.....4269
—presence at duel.....4431
—making false entry in record of marriages, births and deaths 4491
—as to intoxicating liquors, 4598, 4654
Optometry, laws relative to not to apply to 1638
Penitentiary, salary 3449
Permits to by board of pharmacy 1673
—compounding and selling medicines and poisons 1681
Poor, appointment, compensation 2796
Practice of medicine, definition of 1622
—trial of right to, jurisdiction, burden of proof, etc.....1614
Prescription for morphine, opium, heroin, etc 1693-1695
—for cocaine or eucaine, what to contain 1698
—for alcohol, brandy, wine, whiskey, what to show.....4591
— —when unlawful to issue..4598
— —to be made in duplicate..4654
Registration of license to practice 1612, 1613
—oath, penalty for false.....1612
—duplicate 1613
—fee 1612, 1613
Registrar of vital statistics, duty to assist 1577
Report by of contagious and dangerous diseases 1515
State farm, salary 3152
Teeth, extracting, license as dentist 1641

PIANKITANK RIVER
Taking oysters with patent tongs prohibited 3240

PICNIC PARTIES
To towns, villages, etc., prohibition of 4038

PICKEREL
Potomac River, season, manner of taking 3305

PICTURES
Photographs of persons convicted of felonies 4787
Unauthorized use for advertising purposes 5782

Sec.
PIER
Erection of by land owner.....1996
Abatement of 1997
Erection by renter of oyster ground 3231
In Elizabeth River, lines within which may be erected.....3657
—removal of when obstructing navigation 3658

PIGEONS
Antwerp or homing, shooting, killing, maiming, detaining, punishment 4446
Shooting for amusement, etc...4566
—renting premises for 4566

PIG IRON
Buying or receiving with intent to defraud 4450

PIKE
Potomac River, season, manner of taking 3305

PILOTS
Commissioners to examine, appointment 3613
—meetings, quorum 3613
—removal, vacancy 3614
—fees 3615, 3641
—decision of controversies....3637
—judgment, notice 3637, 3638
—limitation of powers 3639
—clerks, duties, fees.....3640, 3641
—suspension of pilots, 3638, 3642-3644
Examination 3615
—certificate of character.....3615
—fee 3615
Bond 3615
Fees, license taxes 3615
Apprentice, examination..3615, 3620
—suspension 3643, 3644
Classification 3616, 3617
Boats 3618
—name and port, how marked..3619
—attending vessels, compensation 3629
Acting without authority, penalty 3621
—vessel in distress 3622
Vessel towing without, penalty 3621
—employing unauthorized person 3621
When not required.....3623, 3624
Signal for 3625
Vessels required to take.....3626
—coastwise vessels exempt....3626
—concealing name 3627
—following another with pilot, pay 3630
—waiting for pilot to be taken off at station 3631
—delivery to pilot 3633
—conducted to quarantine.....3645
Detention, pay for 3628
Pilotage, liability for.....3635
—rates 3626
—vessels to Potomac exempt..3647
Controversies with masters.3637, 3638
Suspension 3638, 3642-3644
Penalty for receiving unlawful fees 3642
Pay, detention 3628
—attending vessel with boat..3629
—carrying to sea 3629
—vessel following another with pilot 3630
—detention on sea-going vessel 3631
—for pilotage from anchorage to navy yard 3632
—collection 3636
—for conducting vessel to quarantine 3645

Digitized by Google

Sec.

PILOTS—Con.
— —detention on 3646
Preference 3633
Duties 3634
Misconduct 3643
When to produce branch.....3646
Exempt from jury service.....5985

PIPES
Public utility company, laying in roads, streets, alleys, parks, etc. 4059
Contracts with water companies, etc., to lay water pipes along roads and turnpikes 4060
Condemnation of land to be used in conducting water by.....4382
Water, gas, etc., receiving or buying with intent to defraud 4445

PIPE LINE COMPANY
As public service corporation.3881

PISTOLS
Carrying concealed, punishment.4534
—permit to carry 4534
Carrying to place of religious worship or on Sunday, punishment 4578
Furnishing to minor 4695
—toy, using explosive charge...4697

PITCH
See **"Inspectors"; "Inspection"**
Inspection of.....1400-1402
—barrels for 1411
—owner to mark weight and tare 1415
—penalty 1417
—brand 1420
—how marked when unfit to pass 1428

PITTSYLVANIA COUNTY
Commonwealth's Attorney, fees.3505

PLAGUE
Body dead of, transportation, rules for 1728

PLANK ROAD
Transfer of State's interest in to county 3758

PLANS AND SPECIFICATIONS
Public service corporation crossing works of another.....3884
—crossing county road or changing course of 3885

PLATS
See **"Land Office"**
Of land condemned for school house 672
Of survey of land sold for delinquent taxes.....2480, 2481
Of survey of new county.....2680
Of survey, disputed boundary between counties 2685
By county surveyor.....2841, 2849
With petition by city or town for leave to erect dam 3054
—in condemnation proceedings 4364
—to establish boundary of real estate 5499
By surveyor appointed by Commissioner of Fisheries 3163
Of oyster ground assigned to riparian owner 3223
—assigned to renter.....3224, 3225
—on chart in clerk's office.....3226
Of crabbing or clamming ground 3295
Recordation of by clerk of the court 3302
—re-delivery 3302
—indexing 3302
Of sub-division of land into city or town lots.....5217
—what to contain 5218
—signature, acknowledgment...5218

Sec.

PLATS—Con.
—recordation 5218, 5219
—effect of recording.....5219
—alteration and vacation of streets 5220, 5221
— —of plat in whole or in part, 5221, 5222

PLAYGROUND
Establishment and maintenance in cities and towns.....3032

PLEAS
See also **"Plea in Abatement"; "Pleading"**
Objection that railway company is designated railroad company, or vice versa, cannot be raised by 5
Of benefit of clergy, not allowed 4761
Of guilty, conviction of felony on 4776
—trial on 4900
— —Va. Const., § 8
—to indictment for murder, court to ascertain punishment.....4919
—in case of misdemeanor, trial by court 4927
Of not guilty, in criminal case, when court to enter 4894
—trial by court 4927
— —Va. Const., § 8
Number of pleas in criminal cases 4907
In action of unlawful entry or detainer 5446
In action of ejectment 5463
—statement of claim for improvements with 5483
Of usury 5554
Of limitation, how replied to.....5812
In quo warranto proceeding.....5846
In assumpsit on sealed instrument 6088
To petition 6096
Several 6107
Filing pleas in abatement and in bar 6107
Order of trial of 6107
Not rejected because provable under general issue 6107
Of infancy, when not allowed....6108
—in action on bond of State cadet at Virginia Military Institute.. 849
Unnecessary allegations in.....6109
How to commence 6113
Subsequent, unnecessary averments 6114
Defects in for which verdict not set aside 6119
Denying writing 6125
Denying ownership of property or instrumentality 6126
Denying partnership or incorporation, verification 6127
To declaration in assumpsit, when affidavit required.....6133
Not received after attachment to answer interrogatories 6136
When money paid into court....6142
—proceedings on 6143
Of payment 6141, 6144
Of set-off 6144
Special plea of set-off 6145
—proceedings on 6146-6150

PLEA IN ABATEMENT
See also **"Pleas"; "Pleading"**
Objection that railway company is designated railroad company or vice versa cannot be raised by 5
Costs when demurrer to sustained 3521
In criminal case, when filed and tried 4907
For misnomer, not allowed.....6101

Digitized by Google

Sec.

PLEA IN ABATEMENT—Con.
Defects available by plea in abatement only 6103
Time for filing 6106
Filed with pleas in bar.....6107
—order of trial of 6107
Verification 6124

PLEADING
See also **"Declaration"; "Equity"; "Issue"; "Pleas"; "Plea in Abatement"**
Costs, when pleading adjudged insufficient 3521
Mistakes or omissions in, extent of liability of personal representative and surety by reason of 5389
Supreme Court of Appeals may make regulations and rules for practice 5960
Notices and motions.....6041-6048
Nonsuit for not filing.....6078, 6079
Not necessary to plead where contract made or act done....6081
Jurisdiction, allegation of.....6082
Profert 6082
Oyer 6082
Allegations not traversable, omitted 6083
Action not to abate for want of form 6085
Bill of particulars 6091
—declaration averring negligence 6118
Joinder of tenants in common...6099
Suit in name of dead obligee on official bond 6100
Non-joinder or mis-joinder, effect of 6102
—how new party brought in....6102
Protestation unnecessary 6110
Proceeding without similiter or joinder in demurrer 6112
Default in, judgment 6131
Court's control over 6140
Harmless error 6331, 6332
Inquiry of damages.....6131-6133
Striking out, for failing to testify 6213
Dismissal of suit of or judgment against party refusing to answer interrogatories 6236
—refusing to produce books and papers 6237
Faulty counts, instruction to disregard 6258

In Particular Actions or Proceedings
Contest of election 259, 267
Pleading anew or amendment by new parties to suit 6168
Office judgment, finality, entering, lien 6134
—setting aside 6135
Recovery of penalties for violation of revenue laws....2394, 2395
Recovery of debts due State, 2513, 2514
For recovery of fines 2543
For remission of fines.....2570, 2573
Recovery of unpaid subscriptions to stock of corporation 3843
To enforce lien, etc., on chattels 5190
Sale or lease of lands of persons under disabilities....5335-5338
Actions by or against personal representatives 5389
Unlawful entry or detainer, 5445, 5446
In action of ejectment....5460, 5463
Debt or assumpsit on negotiable instrument, or writing for payment of money 5759, 5760
In action for seduction 5780
Action for insulting words.....5781
Quo warranto proceedings 5846

Sec.

PLEA IN ABATEMENT—Con.
In action of trespass.....6089
In action on insurance policy....6094
Contempt, insufficient answer....6137
In attachment proceedings..6382, 6383
In action on instrument waiving homestead or demand as to which homestead cannot be claimed 6551

Allegations as to Particular Facts, Acts, or Transactions
Of consideration in action on note or writing 5759
Of new promise 5812
Of place where contract made or act done 6081
Of jurisdiction 6082
Not traversable, omitted 6083
Of grounds of defense 6091
Of contributory negligence, to be stated in writing 6092
Plea of infancy, when not allowed 6108
To demurrer 6115
Of making, signing or indorsing writing, when proof of not required 6125
Of ownership or control of property or instrumentality, when proof not necessary 6126
Of partnership, when proof not necessary 6127
Of incorporation, when proof not necessary 6127
Payment before action brought..6141
Payment after action brought, 6142, 6143
Private or local act, not necessary to plead 6190

Amendment
Transfer of case from law to equity or equity to law.....6084
Of declaration or bill.....6095
For variance between writ and declaration 6103
General provision for 6104
After demurrer, right to insist on original pleading 6116
Of plea 6123
Of answer 6123
When action revived in name of new party 6169
After variance 6250
To conform to judgment 6333

Declaration
In ejectment 5456
—real claimant to be named in..5456
—what to be stated in 5457-5460
—several counts 5460
—notice 5461
—pleading or demurring to.....5463
—claim of profits and damages..5481
In action of unlawful entry or detainer 5445
In action to recover for death or injury of employee of railroad may embrace cause of action under act of Congress 5796
Rule to file.....6078
Non-suit for failure to file.....6078
Account filed with 6090
On insurance policy.....6094
Amendment 6095
—for misnomer 6101
—for variance 6103
Varying from writ, plea in abatement for 6108
Alleging negligence, bill of particulars 6118
In assumpsit, verification 6133
Faulty count in, when disregarded 6258
On bond payable in instalments..6262
For penalty for breach of condition or covenant 6262

Digitized by Google

Sec.

PLEADING—Con.

Demurrer

In criminal cases 4907
To indictment containing several counts 4923
To declaration in ejectment.....5463
Action for insulting words.....5781
To petition for mandamus or prohibition 5834
Quo warranto proceedings 5846
Proceeding without joinder in...6112
Form of 6115
Form of joinder in 6115
Amendment 6115
Grounds for 6116
To evidence 6117
—grounds of 6117
—withdrawal 6117
Defects disregarded on.....6118
—allegation of negligence 6118
Set down to be argued 6120
After attachment to answer interrogatories 6136
Attachment proceedings.....6382
To declaration containing faulty counts 6258

Plea or Answer

Number of pleas in criminal cases 4907
In action of unlawful entry or detainer 5446
To declaration in ejectment.....5463
—statement of claim for imments 5483
Of usury 5554
Of limitation, how replied to....5812
Answer to petition for writ of mandamus or prohibition.....5834
In quo warranto proceeding.....5846
In assumpsit on sealed instrument 6088
Several 6107
Filing pleas in abatement and in bar 6107
Order of trial of 6107
Not rejected because provable under general issue 6107
Of infancy, when not allowed....6108
Unnecessary allegations in.....6109
Traverse, how to conclude.....6111
How to commence 6113
Subsequent, unnecessary averments 6114
Defects in for which verdict not set aside 6119
After demurrer overruled.....6120
In equity, set down for argument 6120
—jury trial 6121
Jury trial 6121
Time for filing 6122
Testing sufficiency of 6123
Amendment 6123
Non est factum, verification.....6124
Denying writing 6125
Denying ownership of property or instrumentality 6126
Denying partnership or corporation, verification 6127
Effect as evidence when oath waived 6128
Not received after attachment to answer interrogatories 6136
Payment 6141, 6144
When money paid into court, 6142, 6143
In attachment proceedings.....6382
—of garnishee 6398

PLEA IN ABATEMENT

Misnomer not ground for.....6101
Defects available by plea only..6103
Plea to jurisdiction 6105
Filed with pleas in bar 6107
—order of trial of 6107
Verification 6124

Sec.

PLEADING—Con.

PLEA IN BAR

No plea in abatement after.....6105
When not allowed in assumpsit..6133

PLEA OF SET-OFF

Description 6144
Special plea 6145, 6146
To part of demand 6148
No dismissal after.....6149
Defendant becomes plaintiff.....6149
Proceedings on plea 6150
Assignor, when made party 6150

Replication

To plea of usury 5554
To plea of limitation 5812
Unnecessary allegations in 6109
When clerk to enter 6138
To plea of set-off 6146
Want of, not ground for reversal 6382

Verification

Plea in abatement 6124
Plea of non est factum.....6124
Plea denying writing 6125
—denying ownership of property or instrumentality 6126
—denying partnership or incorporation 6127
—of set-off 6145
Verification before clerk.....6129
—belief sufficient 6129
Declaration in assumpsit.....6133
—plea 6133

PLEDGE

Of warehouse receipt, warranty..1335
Of State bonds, transfer 2636
Of corporation stock, voting....3800
—transfer on books of corporation 3839
Of goods of another and failing to pay over proceeds, punishment 4453
Of mortgaged goods, fraudulently, punishment 4455
Of exempt property, void.....6564

PLOVER

Unlawful hunting 3356
Shipment from State 3361

PLUMBING

License 1544
Inspector, appointment, duties, salary 1544

POCOMOKE RIVER

Compact as to 14

POCOMOKE SOUND

Use of oyster scrape or dredge in, permit 3248
Dredges or scrapes, having in possession while taking oysters in 3280
Taking clams in, regulations for:.3293

POISON

Sale of, regulation by Board of Pharmacy 1672
—by physicians.....1681
For destruction of pests, etc....1631
—label on bottle, box, vial, etc., antidote 1691
—who may sell 1682
Administered in State, death outside, jurisdiction of prosecution 4398
—in county or corporation, death in another 4772
Attempt to administer, punishment 4400
Administering to live stock, fowls, dogs, punishment 4467
Analysis of in criminal case, compensation for 4956

POLICE

See also **"Cities and Towns"**
Suspension and removal of officers .....Va. Const., § 120

Digitized by Google

Sec.

POLICE—Con.
Free transportation to, Va. Const., § 161
At capitol 402
—salary 302, 3446
—powers, duties and functions, 411, 413
Appointment of as probation officer, salary 1912, 1943, 1944
Enforcing laws relating to automobiles and motor vehicles ...2144
State library, salary 3446
Officers not to be interested in contract with county 2707
Powers and duties.....2991
Compensation 2991
Fee, as witness 2991
Expenses 2991
Reward, right to receive.....2991
At race courses, fair grounds, &c. 3005
Suspension and removal 3010
Pension for members 3035
Commissioners, investigations, witnesses, etc. 2985
Bailiff, civil and police justice, to have authority of 3110
Employed by Commission of Fisheries 3154
—arrest and seizure by.....3165
—authority to compromise.....3156
Designation of by oyster inspector 3276
Ex officio game wardens 3323
Allowance to in lieu of fees....3511
Sergeant, fees, how paid.....3511
Captain, fees, how paid.....3511
Conductors and motormen of electric railways as 3981
Executions of search warrant, violation of law relating to cruelty to animals 4557
Appointment of for religious meetings 4580
To remove advertisement of intoxicating liquor from public place, billboard or sign.....4609
To enforce prohibition law.....4655
—fees 4655
Chief, to prescribe form for reports by junk dealers 4711
Search warrant directed to.....4821
—disposition of property.....4822
Direction of warrant of arrest to 4824
When person arrested by tried without warrant 4992
Exempt from jury service.....5985

POLICE AGENT
Appointment by railroad company 3944
—powers 3944
For steamboat wharf, appointment, removal 4025
—powers, duties 4025

POLICE COMMISSIONERS
See **"Board of Police Commissioners"**

POLICE COURT OF RICHMOND
See also **"Police Justices"**
Jurisdiction 3094, 4987
—of proceeding to collect fine for failure of State institutions to furnish copies of publications to State Library 355
—over offenses in Capitol Square. 413
Appeals from 5913
Salary of police justice.....3095

POLICE DEPARTMENT
See **"Police"**

POLICE JUSTICES
Vacating office by holding certain other public offices.....3093

Sec.

POLICE JUSTICES—Con.
Election 3094
Term 3094
Powers, jurisdiction 3094, 4987
Appeals from 3094
Salary 3095
—how paid 3507
Designation of person to sit for..3096
Fees, payment from treasury.....3504
Appeals from 4989, 4990
When to try misdemeanor without warrant 4992

Jurisdiction
Jurisdiction 3094, 4987
Trial of misdemeanor on warrant 4987
—without warrant, when 4992
Condemnation of adulterated, misbranded or substituted food....1164
—judgment, sale 1165
—appeal 1165
—proceeds 1166
Prosecution for selling unsound meat 1183
Sale of deleterious or unwholesome food 1218
Physicians, proceedings to test right to practice 1614
Delinquent, dependent or neglected children committed to Board of Charities and Corrections or institution by.....1905
Child under 18 years of age not to be committed to jail....1908, 1914
—commitment of to Board of Charities and Corrections or institution 1908, 1914
—appeal 1914, 1915
Delinquent children, appointment of physician to examine.....1910
—placing in hospital 1910
—delivery to probation officer....1913
—report of probation officer, proceedings 1913
—petition of probation officer for disposition of 1915
— —proceedings on 1915
— —contempt 1916
— —appeal 1917
Children convicted of misdemeanor, corporal punishment of 1924
Prosecution of husband or parent deserting or failing to support wife or child 1937-1944
Intoxicating liquors, violations of law as to 4614
—of ordinances relating to 4615
—territorial extent of jurisdiction 4615
—notice of prosecutions to Commissioner of Prohibition.....4615
—search warrant for violations of law.....4612
—warrant for arrest of person bringing ardent spirits into State 4636

POLICE OFFICERS
See **"Police"**

POLICE POWER
Over corporations....Va. Const., § 159
Chapter on intoxicating liquors deemed exercise of 4659

POLICY
See also **"Insurance"; "Life Insurance"**
Of insurance, type printed in....4227
—limitation in of time in which acton to be brought.....4227
—conditions, when violation of no defense 4227
Life insurance, when incontestable 4228
Of accident insurance, type to be printed in 4315

Digitized by Google

Sec.

POLITICAL DISABILITIES
Power of Governor to remove, Va. Const., § 73

POLITICAL PARTIES
See **"Primary Elections"**
To determine method of nominating candidates 222
Chairmen of to receive abstract of votes cast at primary election. 241
—to publish in newspaper names of persons receiving nominations 241
—when to dispatch special messenger for abstract of votes... 241
No primary held, when..... 246
Duty to notify Secretary of the Commonwealth of adoption of direct primary 248
Fees paid by candidates, when fixed by 249
Members, on Board of Agriculture 1099
Members, local board of review 2226

POLLS
See **"Elections"**

POLL BOOKS
See **"Elections"**

POLL TAX
Payment of prerequisite to registration .....Va. Const., §§ 18, 20
—to voting .....Va. Const., § 21
—who exempt .....Va. Const., § 22
When payment enforced, Va. Const., § 22
Duty of officers as to list of paid, Va. Const., § 38
Payment by voter..73, 82, 83, 93, 109
List of paid, treasurer to furnish 109
—white and colored persons separate 109
—correction of 110
—copies of, to whom delivered.. 111
—effect as evidence 111
—fee for making, certifying, posting 112, 114
—residents of incorporated town. 114
Treasurer, clerk, sheriff, violation of duty as to, penalty..... 113
Evidence of payment of when voter is transferred 115
—treasurer to furnish certificate.. 115
Assessment of for omitted years 116
—on person becoming of age after first of February in any year.. 116

POLYTECHNIC INSTITUTE
See **"Virginia Agricultural and Mechanical College and Polytechnic Institute"**

PONIES
Running at large in villages and unincorporated communities, penalty 3550, 3551

POOL ROOM
Revocation of license for violation of prohibition law 4653

POOL SELLING
Punishment 4682, 4683

POOL TABLES
License for 2373

POOR
See also **"In Forma Pauperis"**
Disqualification of as voters..... 82
—Va. Const., § 23
Exclusion from registration..... 93
County school board to apply funds donated for education of, 648, 650
Consumptives, maintenance at State institution 1506
Vaccination, free 1530

Sec.

POOR—Con.
Physician for, to attend sick prisoner in convict road force..2091
—fee 2091
Legal settlement 2800
Removal to place of last settlement 2802, 2803, 2804
Relief of 2800, 2803, 2805
—court may direct 2801
—application for 2800
Begging, preventing 2804
—penalty for 2804
Contingent fund for care of.....2805
Vagrants, who are 2808
—proceeding against 2809
—bond 2809
—punishment 2809
—discharge 2810
Farm for, purchase of by supervisors 2723
Contracts to provide subsistence for 2730
Gloucester charity school 2811
Nansemond County 2811
Glebe lands, Essex County.....2811
James City County 2812
Reduced rate of transportation to 3918
Exemptions 6552-6566

Board of Poor Commissioners
Organization 1904
Officers 1904
Meetings 1904
Reports, form 1904
—penalty for failure to make....1904

Overseers of Poor
Glebe land used by 36
Donations received by..... 37
Election 127
Term 127
Property held by vested in school boards 648
Idiots returned from hospitals to 1039
Member of Board of Poor Commissioners 1904
Bond 2698
Not to be interested in contracts with county 2707
Application to for relief....2800, 2801
Removal of poor to place of last settlement 2802, 2804
Provision for poor on removal..2803
To prevent begging 2804
Provision for poor outside of poorhouse 2805
Pay 2806
Construction of word 2813
Placing minor in institution or binding out as apprentice, 5299, 5300
—bond 5303, 5304
Execution against, no forthcoming bond taken.....6524, 6525

Poor Houses
Feeble-minded women, when not received in 1090
Inmate, tubercular, examination and report 1546
—penalty 1546
—segregation 1547
Records of 1576
Dead bodies, delivery to Anatomical Board 1731
Reports by to Board of Charities and Corrections 1895
Plans for, submitted to Board of Charities and Corrections 1896
Inspection of by local committee of visitors 1897
Erection or repairing, loan for by supervisors 2738
—approval of court, order for election 2738
—election 2739
—bond issue 2740, 2741

Digitized by Google

Sec.

POOR—Con.
Superintendent to have charge...2794
Poor to be kept at 2805
Conservator of peace for....2807
Superintendent of Poor
Election 126
—Va. Const., §§ 110, 112
Term 126
—Va. Const., §§ 110, 112
Member of board of poor commissioners 1904
Qualification 2696, 2697
—oath 2696, 2697
—bond 2696-2698
—vacancy for failure to qualify..2697
Holding other office, prohibited..2702
—Va. Const., § 113
—office vacated thereby 2702
Not to be interested in contract with county 2707
Recommendation for appointment 2716
Audit of accounts of by supervisors 2719
Duties 2794
Receipts, disbursements, account of funds 2795, 2797
Suits by or against 2797
Annual report 2798
Salary 2799
Application for appointment of conservator of peace at poorhouse 2807

POOR DEBTOR
See **"Exemptions"; "Homestead Exemptions"**

POQUOSIN RIVER
Use of pound nets in 3173
—penalty 3173

PORK
See also **"Inspectors"; "Inspection"**
Inspectors of 1400-1402
How packed for inspection....1410
—owner to mark weight and tare 1415
— —penalty for failure 1417
—brand 1419
—how marked when unfit to pass.1428

PORT WARDENS
For city of Richmond 3658

PORTER
See also **"Intoxicating Liquors"**
As ardent spirits 4581

PORTRAIT
Unauthorized use of for advertising purposes 5782

PORTSMOUTH
See also **"Board of Harbor Commissioners of Norfolk, Portsmouth and Norfolk County"**
Norfolk County ferries, property in 2049
—leasing, schedules, bonds....2050
—committee, appointment....2050
—profits 2051
Judge of corporation court, salary 3468
—increase 3469
—decrease 3469
Commonwealth's attorney, fees..3505
Deputy sergeant, allowance to..3515
Board of Harbor Commissioners of Norfolk, Portsmouth and Norfolk County, members from....3665
—vacancy 3666
—expenses, assessment for....3674
Harbor masters 3673
—duties 3673, 3681
—term 3680
Wharves, unauthorized erection of 3675
Docks, examination and repair..3676
Report of harbor commissioners..3677

Sec.

PORTSMOUTH—Con.
Circuit court 5897
City of first class 5905
Courts in continued 5905

PORTSMOUTH HARBOR
Anchoring small boats in channel, penalty 3687

POSSE COMITATUS
Summoning to aid in service of process 2822
—in arrest for violation of fishery laws 3155
—in enforcing oyster laws....3266

POSSESSION
See also **"Adverse Possession"; "Writ of Possession"**
Of Governor's house when office vacant 491
Location of land warrant when land in possession of another, 428-431
Location on land warrant, when invalid because already settled. 457
Land in possession not to escheat. 492
When given to claimant pending petition for redress against escheat 500
By escheator 501
Of adulterated flour, effect as evidence 1194
Effect of as evidence in prosecutions for sale of meal....1195
Of timber, changed by branding..1453
Of land purchased at delinquent tax sale 2470
Of tools with intent to commit burglary, robbery, larceny....4437
Of certain house fixtures, as evidence of buying or receiving with intent to defraud 4449
Of pig-iron or other metal, as evidence of buying or receiving with intent to defraud....4450
Of forged bank notes, base coin, punishment 4490
Of anything designed for forging, punishment 4488
Of black jack, metal knucks, etc., evidence of intent to sell....4535
Of obscene literature, punishment 4549
Of ardent spirits as prima facie evidence of intent to sell....4666
Of slot machine, as evidence 4685
Of stolen article by junk dealers, when larceny 4711
Proof of in criminal prosecutions.4872
By convicts, instruments for purpose of escape, etc....5049
—punishment 5051
Gifts of personal property....5142
Transfer of by conveyances to uses 5155
Of loaned chattels, rights of creditors 5188
Of real estate, as notice to purchaser of interest therein 5194
Of apprentice, proceeding for enticing or harboring 5313
Unlawful detainer, proceeding to recover 5445-5450
—for non-payment of rent....5448
Proof of in action of ejectment..5464
Of part of land, when not deemed possession of whole 5470
Right of landlord to on desertion of premises by tenant 5518
Suit by person out of possession, to remove cloud on title....6248
Personal property, lien for repairs 6443
Levy of execution on property in personal possession of debtor..6490
Writ of, when issued....6483
—how enforced 6483

Digitized by Google

Sec.

POSTAGE
Allowed register of land office for return of defective plat..... 466
Allowed register of land office mailing list of grants 2277
Of commissioner of revenue, how repaid 2350
Of clerk of the court 2350
On process sent out of jurisdiction 2827
For Commission of Fisheries....3159
On decisions transmitted to lower court 6368

POSTHUMOUS CHILDREN
Pretermitted 5242, 5243
Inheritance by 5271

POSTING
Agent, appointment of to conduct mercantile business 5223
Appraisal of estrays or adrift property 3565
Attachment before justice 6415
—for rent 6418
Automobile, notice of sale of on judgment against owner.....2147
Banks and trust companies, rules for deposit in 4147
Board of health, rules 1494
Cities, ordinance to contract corporate limits 2969
—of first class, notice of special election 2919
—statement of disbursements by councils 3078
County, petition to create new..2674
—notice of sale of property of....2723
Children, list of employed in factory, workshop, &c.....1810
Court, order or warrant for special term of 5894
—order changing place of holding 5966
Courthouse, notice of election for removal of 2745
—notice of completion of.....2747
—notice of contested election, removal of 2754
Debts due State, notice of sale of real estate on execution.....2520
Decedent's estate, notice of time and place of proof of debts against before commissioner...5420
Drainage district, publication against unknown owner in proceeding to establish.....1740
—notice of hearing on report of viewers 1745, 1755
—notice of proposal to issue bonds by drainage commissioner 1772
Duel, person refusing to fight..4423
Elections, list of persons admitted to registration to vote..... 98
Eminent domain proceedings, order of publication in.....4355
Expectorating in public places, copy of law prohibiting.....1550
Fences, lawful, notice of proceeding by supervisors for declaring 3547
—notice, proceeding to establish stream or canal as.....3553, 3554
Ferry, copy of order requiring proprietor of to give bond....2042
Fiduciaries, list of 5423
Fines reported by justices, list of.2551
Fish, notice of application for license to catch for, or to manufacture into, oil or manure....3188
Forfeitures, notice in proceeding to enforce for violation fish, game and oyster laws 3367
—notice of sale of forfeited property 3377

Sec.

POSTING—Con.
—notice of enforcement of for gaming, lottery, raffle, &c.....4986
Hotels, list of charges 1586
—warnings and directions as to use of gas 1607
Infancy, notice of by trader... 6108
Intoxicating liquors, notice by druggist of application for license to sell 4599
—by hotel keeper, application for license to sell 4602
—advertisement of sale of vehicle used in transporting 4658
Jails, rules in 2859
Land grant, notice of application to correct mistake in 375
Land warrant, notice of time of survey on 433
Landlord, notice by to take possession of deserted premises...5518
Magisterial districts, petition for rearrangement of 2688
Mechanic's lien, notice in proceeding to perfect or enforce..6442
Mine, certificate of inspection of.1837
—rules in 1878
Notice, service by 6041
Order of publication to commence suit 6070
—in Supreme Court of Appeals..6073
Oyster planting ground, application for assignment of 3225
—memorandum of assignment of.3225
—list of parcels and plats of rented 3271
Penitentiary, rules for 4996
—certain sections of Code in cells 5020
Pensions, list of applications for..2655
Poor, report of superintendent of.2798
Process 6070
Railroad and transportation companies, laws posted by.....3741
Roads, process in proceeding to establish 1979
—notice of application for discontinuance of 1984
—local road legislation by supervisors 2014
—notice of letting contract for maintenance of 2029
—report of superintendent of...2037
Sale, by officer of goods levied on, notice of 2832, 2833
—of personal property to satisfy lien, notice of 6449
School bonds, notice of election for issuance of 769
School property, notice of sale or exchange of..... 649
State forrester, notices by..... 538
Supervisors, statement of receipts, disbursements and estimates..2768
Taxation, treasurer's list of uncollectible taxes 2126
—delinquent tax list.....2129
—notice of renting or leasing real estate for collection of taxes..2439
—delinquent real estate, list of..2460
— —notice of sale 2460, 2461
—order of publication, proceeding to purchase delinquent land...2495
Towns, writ of election on bond issue 2749
—petition to incorporate.....2881
—notice of election 2999
Treasurers, statement of delinquent 2413
—notice of motion for discharge of 2792
Turnpike company, rates of toll..4085
—receiving more than lawful tolls, notice of proceeding against 4087

Digitized by Google

Sec.

POSTING—Con.
Village or unincorporated community, notice of petition for establishment of boundary of.3550
Tobacco warehouse, public, notice of discontinuance of....1348
Wharf, notice of petition to erect at county landing 1998
Wrecks, law as to 3611

POSTMASTERS
Duties of with respect to absent voters 206, 210
Disqualification for State and city offices 291
Qualification of as division superintendents of schools..... 624
Qualification of as school trustees 637
Exempt from jury service.....5985

POSTOFFICES
See also **"Mail"; "Postmasters"**
Condemnation of land by United States for 19
Officers and employees of exempt from jury service 5985

POSTRIDERS
Exempt from jury service.....5985

POSTS
Injury to or destruction of, penalty 4730

POTATOES
Bushel, standard 1470
Levy or distress on 2830

POTOMAC RIVER
Citizens of Virginia and Maryland, rights in..... 14
Quarantine in 14
Vessels to or from exempt from pilotage 3647
Ballast, illegally unloading in...3655
—failing to produce certificate..3657
Taking, stealing, carrying away sand from banks of, punishment 4441
Culling oysters caught in estuaries of 3244
Oysters, concurrent legislation with Maryland relating to 3299
—who may take, penalties..§ 1, 3299
—restrictions as to time and manner of taking .....§ 2, 3299
—cull law, penalties .....§ 3, 3299
—taking seed oysters, penalty .....§ 4, 3299
—buying or carrying seed oysters, permit, penalty....§ 5, 3299
—concurrent jurisdiction for punishing offenses .....§-7, 3299
—penalties, forfeiture of boat, net, &c. .....§ 8, 3299
—failure of officer to perform duty, penalty .....§ 9, 3299
—time of taking effect....§ 10, 3299
—contract of March 28, 1785, not affected .....§ 11, 3299
—when Governor to issue proclamation .....§ 12, 3299
—inconsistent acts repealed, § 13, 3299
Fish and fishing in, taking fish with nets, etc. 3205
—killing with explosives, poisons.3205
—penalty 3210
—concurrent legislation with Maryland relating to 3299
—who may take, penalties..§ 1, 3299
—regulations for taking, license, § 6, 3299
—concurrent jurisdiction for punishment of offenses....§ 7, 3299
—penalties, forfeiture of boat, nets, &c. .....§ 8, 3299
—failure of officer to perform duty, penalty .....§ 9, 3299

Sec.

POTOMAC RIVER—Con.
—time of taking effect....§ 10, 3299
—contract of March 28, 1785, not affected .....§ 11, 3299
—when Governor to issue proclamation .....§ 12, 3299
—inconsistent laws repealed, § 13, 3299
—shad, herrings, season for.....3300
—within regularly hauled fishing landing prohibited 3301
— —how law enforced 3302
—on Sunday 3301
—with gill nets and seines, restrictions on 3303
—jurisdiction for enforcing penalties 3304
—bass, season for, manner of catching 3305
—pike, season for, etc.....3305
—penalties 3305

POULTRY FOOD
Samples, analysis 1245
Application to sell 1246
Inspection, fee.....1246
Certificate 1246, 1248
When agent need not pay fee....1247
Revocation of certificate 1248
Penalty for violations of law as to 1249

POUND RIVER
Obstructing navigation of, punishment 4752

POWDER
Use of to destroy fish.....3195
—penalty 3196

POWDER MAGAZINES
Power of cities and towns to regulate 3030

POWELL'S RIVER
Erection of fish dams in.....3199
—penalty 3199
Fishing in 3201
Obstructing navigation of, punishment 4752

POWER
See also **"Public Service Corporations"; "Public Utility Companies"**
Provided by cities of second class.2906
Furnishing, as public utility....4067
Of disposition in life tenant, when not to defeat remainder.....5147

POWER COMPANIES
See **"Corporations"; "Public Service Corporations"; "Public Utility Companies"**

POWER OF APPOINTMENT
How executed by will 5230
—marriage not to revoke will....5232
When devise or bequest construed as execution of 2541

POWER OF ATTORNEY
For transfer of State bond or certificate 2635
To convey real estate, recordation in deed book.....3393
For transfer of stock on books of corporation 3839
Designating Secretary of the Commonwealth as agent on whom process may be served against foreign corporation...3845
—copy as evidence 3845
Appointing agent on whom process against corporation may be served 3854
—recordation, revocation 3854
Of foreign express company appointing Secretary of Commonwealth agent on whom process may be served 4027
—authorizing State Treasurer to transfer bonds 4028

Digitized by Google

Sec.

POWER OF ATTORNEY—Con.
To State Treasurer, to transfer bonds deposited by insurance companies, guaranty companies, etc. 4211
To execute bonds for guaranty or surety company 4349
—acknowledgment, recordation..4349
—revocation, acknowledgment, recordation 4349
Deed made by attorney, effect of.5145
Where recorded 5203
Of attorney in fact for married woman 5215
Foreign, admissibility as evidence 6207

POWHATAN COUNTY
Commonwealth's attorney, fees..3505

PRACTICE OF LAW
See also **"Attorney at law"; "Board of Bar Examiners"**
Examination, license, etc., of attorneys 3408-3430
Supreme Court of Appeals may prescribe rules for 5960
Judges not to engage in 5975
—Va. Const., § 105

PRECINCTS
See also **"Elections"**
Removal of voter from not to deprive of right to vote.... 82
—Va. Const., § 18

PRECLUDI NON
Unnecessary 6109

PREGNANCY
Divorce for, when 5103

PREJUDICE
Of jurors 6900

PREMISES
Firemen may enter 3130
Description of in declaration in ejectment 5458
Breaking and entering to execute writ of possession 6483
—to execute fieri facias 6490

PREMIUMS
On bond, of Secretary of Commonwealth, payment of 2134
—of officer 2698, 2699
—of officers of State Corporation Commission 3708
—of bank examiner and clerk, how paid 4121
For scalps, supervisors may award 2729
Of building and loan associations 4154
For insurance, refunding 4306
—reserve of 4311, 4322

PRESCRIPTIONS
See also **"Pharmacy"; "Physicians and Surgeons"**
For morphine, opium, heroin, etc. 1693-1695
For cocaine, eucaine, etc....1698
For intoxicating liquor, when unlawful to issue 4598
—what to show 4591
—to be in duplicate 4654
—filing in clerk's office 4654
—penalty for failing to make in duplicate 4654
—stamp on 4668

PRESENTMENT
See also **"Indictment"; "Information"; Negotiable Instruments"**
Duty of grand jury to make....4859
How made 4860
Effect of irregularity in selecting grand jurors 4861
Prosecutions to be by 4865
Process for appearance of accused 4866

Sec.

PRESENTMENT—Con.
Name of prosecutor to be written on, when 4867
Amendment of 4876
Discharge of accused for failure to find, time for 4880
Process on, capias or summons..4881
—how awarded, directed, returned, executed 4882
—when issued 4889
—mailing to officers in other counties 4884
—execution throughout State....4885
When information need not be filed on 4888
Trial on 4888
Against corporation, summons on 4892
—trial 4892
For recovery of fine.....2543-2545
—for refusing to testify in investigation of merchant's purchases 2366
For recovery of penalty for violation of license or revenue laws 2394, 2396
Jurisdiction of circuit courts, 5890, 5892
—of hustings court of city of Richmond 5913
—of hustings court of Richmond, Part II 5914
For violation of rules of Crop Pest Commissioners 871
For public nuisance 1520
For fraudulent sale of stocks, bonds, town lots, &c.....4465
For violation of law relating to cruelty to animals 4564
For misdemeanor, trial 4889

PRESIDENT
Of Senate, Lieutenant-Governor, compensation .....Va. Const., § 79
—vote in case of tie..Va. Const., § 79
—pro tempore .....Va. Const., § 47
—when to issue writ of election to fill vacancy in Senate 81
—to act as Governor, when..... 120
—to act as Lieutenant-Governor, when 121
—calling election to fill vacancy in office of Governor or Lieutenant-Governor 120
—special election ordered by.... 146
—appointment of auditing committee 311
—to certify bills for public printing 385
—to designate office hours of Legislative Reference Bureau.. 575
—salary, mileage....3454
Of State Board of Education..600, 623
Of Board of Agriculture, election 1101
Of State Board of Health 1486
Of bank or banking institution..4109
Of savings bank 4140
Of Supreme Court of Appeals....5862
—who to preside in absence of..5863
—salary 3463
—convening court to try habeas corpus 5858

PRESIDENT OF THE UNITED STATES
Electors for, number 74
—how and when chosen 74
—election and meeting 75, 76
—vacancies 76
—compensation 77
Ballots and voting for 157
Certificate of election of..... 191
Tie vote for, how determined... 192
Law as to primary elections not applicable to 226
Privilege from arrest 2823
Exempt from jury service 5985

Digitized by Google

Sec.

PRESIDENTIAL ELECTORS
Number, choice of, etc.....74-77
List of furnished to Secretary of Commonwealth 157
Ballots, vote 157
Certificate of election of..... 191
Tie vote for, how determined... 192
Law relative to primary elections not applicable to..... 226

PRESS
Freedom of.....Va. Const., § 12
—law abridging prohibited, Va. Const., § 58

PRESTON AND OLIN INSTITUTE
Name changed to Virginia Agricultural and Mechanical College and Polytechnic Institute..... 853
Reversion of property to..... 855

PRESUMPTION
See also **"Evidence"**
Of authority of person making affidavit for another 276
In prosecution for unlawful sale of oleomargarine 1203
Of wilful desertion in prosecution of husband or parent....1941
—of abandonment 1942
As to rates established by State Corporation Commission 3920
—for telephone company.....4056
Of chastity of female in prosecution for seduction.....4410
In prosecution of druggist for unlawful sale of intoxicating liquor 4595
In prosecution of keeper of ordinary for permitting gambling, 4689, 4690
Failure of accused to testify not to create 4778
Of authority of agent of mercantile business 5223
Negotiable instrument, as to date of 5573, 5579
—delivery 5578
—consideration 5586
—time of indorsement 5607
—place of indorsement.....5608
—of holder in due course.....5621
—order of liability of indorsers..5630
—cancellation 5685
Of regularity of sale under deed of trust, mortgage or in judicial proceeding 6196
Failure of husband or wife to testify not to create 6211
Of death from absence 6239
Of payment of debt secured by mortgage, deed of trust, vendor's lien, etc.....6456

PRETERMITTED CHILDREN
Provision for 5242, 5243

PRIMARY ELECTIONS
See also **"Elections"; "Pure Elections"**
Who may vote .....Va. Const., § 35
General Assembly to enact laws to regulate.....Va. Const., § 36
General provisions for 221-250
Construction of words 221
Nominations of what candidates applicable to 222
—to which not applicable 226
When held 223
How held 224
Jurisdiction of courts to enforce law relating to 224
Clerks, appointment of 224
—duties 224
—not to influence voter 224
—penalty for violating law.... 224
Electoral boards to appoint judges 224
Vote required to nominate 225

Sec.

PRIMARY ELECTIONS—Con.
—tie, how determined 225
—abstract of, to whom forwarded 241
— —delivery to special messenger 243
Parties, rights and powers of... 227
Electoral board, duty to print and deliver ballots to judges of election 236
Poll books 237
—sealing 238
—delivery to clerk of court.... 238
—penalty for stealing, destroying, etc. 244
Special messenger, when sent for returns 238
—penalty 238
—compensation 238
—when sent for abstract of votes, 241, 243
—expense 241, 243
Irregularities in returns, how corrected 240
Abstract of votes cast 241
—forwarded to whom 241
—delivery to special messenger. 243
Publication of names of persons receiving nominations 241
Expenses, how paid 245, 248
When no primary shall be held.. 246
Contest of election, how and when conducted 247
—immunity of witnesses 257
Polls, candidates to have representative at 248
—preservation of order at 250
Certificate of election not to issue until statement of expenses and oath filed by candidate 154
Declared void if chapter 16 has been violated 257

Ballots
When name of candidate printed on 229
How arranged, printed and provided 236
Form 236
Number of 236
Delivery to judges 236
Disposition of unused 238
Delivery of to clerk of court.... 238
Ballot boxes 237
—penalty for stealing, breaking, etc. 244

Candidates
Declaration to be made by....229, 230
—form of 229
—acknowledgment of..... 229
—receipt for fee to accompany.. 249
When names printed on ballot.. 229
Names of furnished to electoral boards 230
Statement of expenditures...232, 253
—when and where filed 253
—what to contain..... 253
—oath to 253
—penalty for failing to file..232, 255
—officer not to qualify nor receive pay until filed..... 256
Expenditures, limit of 234
—penalty for exceeding 234
—when prohibited 251
—by another in behalf of 252
Order of names on tally sheets.. 237
When declared nominee without primary 246
Representative of at polls 248
Fees of 249
—to whom paid 249

Judges
Appointment 224
Duties 224
Not to influence voter 224

Digitized by Google

Sec.

PRIMARY ELECTIONS—Con.
Oath 224
Vacancies 224
Penalty for violating law..... 224
To seal poll books 238
To deliver poll books and ballots to clerk of court..... 238
Disposition of unused ballots.... 238
Appointment of constable..... 250
Preservation of order at polls.. 250

Offenses Relative to
False statement by challenged voter 228
Publications advocating election or defeat of candidates 231
Stealing, mutilating, etc., the ballot box, poll book, or making fraudulent entry, etc..... 244
Candidates, failure to file statement of expenditures 233, 255
—exceeding limit of expenses.. 234
—improper expenditures by..251, 252
—improper expenditure by another for 252
Influencing vote by soliciting, money, etc. 235

Commissioners of Election
Appointment 239
Quorum 239
Duties 239
Ascertaining vote 239
Abstract of votes 239
Vacancy, how filled 239
Oath, powers, penalties 239
Irregularities in return corrected by..... 240
Summoning judges, clerks..... 240
Abstract of votes, signed and certified by 241
—to whom forwarded 241
Secretary, appointment 239
—to make out abstracts and certificates of vote cast 241
—penalty for violating duty.... 241

Voters
Who may vote 228
Challenge 228
Disqualification of 235, 244
Penalty for soliciting, money, etc. 235
May serve summons to correct returns 240
—fee 240

PRINCE EDWARD COUNTY
Commonwealth's attorney, fees..3505

PRINCE GEORGE COUNTY
Commonwealth's attorney, fees..3505

PRINCE WILLIAM COUNTY
Commonwealth's attorney, fees..3505

PRINCESS ANNE COUNTY
Season for taking oysters from natural rocks 3240
Law relating to water fowl in Back Bay 3347
How funds from hunters' licenses disposed of 3347
Commonwealth's attorney, fees..3505

PRINCIPAL AND AGENT
See also "Agents"
Affidavit by agent, presumption of authority to make 276
Sale of agricultural seed, liability of principal as guarantor.....1154
Liability of principal for agent's violation of pure food laws....1188
Liability of principal for act of agent, law relative to drugs, pharmacy, etc. 1665
Service of process on agent in proceeding to establish road..1979
Corruptly influencing agent to prejudice of principal, punishment 4712
—agent receiving reward for....4712

Sec.

PRINCIPAL AND AGENT—Con.
—witness testifying, immunity to 4713
Agents, disclosing name of principal 5194, 5224
—failure to disclose, liability of property 5194, 5224
—auctioneer, commission merchant 5224
Mercantile business, presumption of authority of agent 5233
—recordation of appointment..5233
Signature by agent to contract required to be in writing.....5561

PRINCIPAL AND SURETY
See "Sureties"

PRINCIPAL IN SECOND DEGREE
How punished 4764

PRINTER
Of ballots, oath of 153
—violation of oath, penalty.... 156

PRINTING
See also "Printing Fund"; "Publication"; "Superintendent of Public Printing"
Statute, prior to passing, Va. Const., § 50
Ballots 156
—oath of printer 156
Expenditures for by candidates for office 251
Journal and document of house.. 306
Acts of Assembly 307
Journal and documents of Senate 308
Militia laws and articles of war. 317
Annual reports of Secretary of the Commonwealth 344
Of historical works by State Library Board..... 362
Public printing, supervision of.. 379
—contracts for 382
For State officers and institutions 384
—payment of bills for 385
Annual reports of State departments 393
Committee of General Assembly on 397
Annual statement of school board 750
Report of State Geological Survey 832
Report of Auditor 2202
Report of Second Auditor 2202
Report of Treasurer 2202
For Commission on Fisheries....3159
For State Corporation Commission 3750
Reports of condition of works, improvements in which State interested 3773
For Bureau of Insurance 4172
Conflict between written and printed provisions of negotiable instrument 5579
Definition, negotiable instrument law 5752
Record on appeal 6357-6360
—cost of, fees 3486
—in criminal cases 4938

PRINTING FUND
Funds credited to by Auditor of Public Accounts 391
Payments from for printing and stationery for Legislative Reference Bureau 580

PRIORITIES
Between warrants for land 423
When writings admitted to record on same day 5198
Of liens, property distrained for rent 5523
Enforcement of mechanics' liens.6437

Digitized by Google

Sec.

PRIORITIES—Con.
—expenditures of owner to complete contract 6432
—liens on property of transportation companies, mining and manufacturing companies 6438
Lien on crops for advances.....6455
Of judgment liens 6470
—liability between alienees of real estate 6476
—on homestead exemptions 6550
Several writs of fieri facias.....6489

PRISON
See also **"Jails"; "Penitentiary"; "Prison Association of Virginia"; "State Prison Farm"**
Dead body in, delivery to Anatomical Board 1731

PRISON ASSOCIATION OF VIRGINIA
Minors committed to 1954
—compensation for care of.....1954
—age of person committed..1954, 1955
—sentence indeterminate 1955
—discharge 1955
— —conditional 1955
—re-arrest 1955
—notice of commitment 1956
—expenses, how paid 1956
—aiding or inducing escape of, penalty 1957
—escapes, arrest and return of..1957
—proceedings to test right of association to, jurisdiction 1958
—pardoning power of Governor..1959
Escape of person in custody of, 1957, 4505-4509
Charter continued in force.....1960
Negro Reformatory Association of Virginia, acts concerning, continued in force 1961

PRISON FARM
See **"Penitentiary"; "State Prison Farm"**

PRISONERS
See also **"Convicts"; "Jails"; "Penitentiary"; "State Convict Road Force"; "State Prison Farm"**
Quarantine of 1543
Time may be required to work on road or in quarry for non-payment of fine 2094
—held to labor in chain gang..2095
—rate at which required to work out fine and costs 2095
Claims of against State, limitation on 2583
In jail, treatment 2857
—control of 2858
—penalty for communicating with 2858
—rules for 2859
—record kept by jailor 2860
—deduction for good behavior..2860
—violation of rules, register....2861
Reports of 2870, 2871
Commitment to other jail adopted by court 2873, 2874
—return 2874
Of United States received in jails 2875
—pay and liability of jailor....2876
Escape of 4507, 4508
—aiding 4504
—officer permitting 4505, 4506
—by setting fire to jail 4509
—minor escaping from Prison Association of Virginia 1957
Confined for non-payment of fine 4949-4953
—hiring out 4950-4951
—obligation of hirer.....4951
—remanding to jail 4951
—release of.....4952, 4953

Sec.

PRISONERS—Con.
Medical attendance, medicines and clothing for 4956
When term of improvement to commence 5019

PRIVATE ACTS
Reference to standing committee, Va. Const., § 51
Pleading, evidence 6190

PRIVATE BANKERS
See **"Banks and Bankers"**

PRIVATE CORPORATIONS
See **"Corporations"**

PRIVATE HOSPITALS
See **"Inebriates"**

PRIVATE LEGISLATION
When prohibited....Va. Const., § 63
General laws having effect of, Va. Const., § 64

PRIVATE ROADS
Maintenance of gates across....2009
—leaving open, penalty 2010
Across road, canal, or works of public service corporation, duty of corporation 3883

PRIVATE PROPERTY
Not to be taken or damaged for public use without just compensation .....Va. Const., § 58

PRIVIES
For employees 1822-1827
Draining into water supply, penalty 1783

PRIVILEGES
Exclusive, prohibited..Va. Const., § 4
—to private corporations, special laws prohibited....Va. Const., § 63
—to corporations, surrender by amendment of charter...3852, 3868
— —Va. Const., § 158
Members and clerks of General Assembly against arrest, 297, 299, 300, 302
—Va. Const., § 48
—liability for speech or debate, Va. Const., § 48
—must obey writ of habeas corpus 301
—continuation of suit where member is counsel 295
Of voters, during elections, Va. Const., § 29
License as personal privilege, 2376, 2377
Granted by cities and towns, 3016, 3018-3020
—Va. Const., §§ 124, 125
From arrest on civil process, who entitled to 2823
Evidence given by officers before mayor not to be used against them in criminal proceedings..3010
Against using in evidence payment of fine for violation of oyster laws 3264
To person paying fine for removal, etc., of oysters from polluted area 3288
Defendants to suit by State to recover capital stock of company acting as bank of circulation 4152
Witness, not compelled to give evidence against himself, Va. Const., § 8
—in prosecution for duelling, or for homicide committed in duel 4425
—in prosecution for bribery.....4495
—in prosecution for corruptly influencing agent, servant, employee 4713
—in prosecution for violation of prohibition law 4674

Digitized by Google

Sec.

PRIVILEGES—Con.
—in prosecution for gaming....4780
Included in deed conveying land.5168

PRIVILEGED COMMUNICATIONS
Surety company refusing to become surety on bond of employee of common carrier, communications between carrier, employer and surety company..3935
Between husband and wife.....6212

PRIZE FIGHTING
Definition 4426
Punishment 4426
Aiders and abettors, punishment 4427

PROBATE
See "Wills"

PROBATION OFFICERS
Appointment, powers, duties, compensation 1911, 1912
Child delivered to care of.....1913
—report, proceedings 1913
Petition for disposition of dependent or neglected child 1915
Penalty for interfering with, 1915, 1916
Desertion or non-support, appointment 1943
—probation of offender to..1936, 1939
—duties of officer 1944

PROCESS
Civil, persons privileged from arrest on 2823
—persons confined in jail on, liability for fees of jailor, 2877-2879
From another jurisdiction, fees and postage 2827
Process book, what to contain..3403
Clerk of the court, duties 3403
—delivery to officer 3403
— —mailing 3403
—receipt for 3403
—process book 3403
Fee when officer fails to serve..3489
Cost of, taxation 3535
Disobedience to as contempt....4521
—fine for, how imposed.....4985
Effect of failure of court to sit at place or time fixed.....5971
Forms of writs retained 6054
When to issue 6055
When returnable 6055
To whom directed 6055
Officers, duty to get from clerk..6060
—penalty for failure 6060
—fee on failure to serve 3489
Commencement of suits.....6061
Summons 6061
Alteration 6061
Executed, effect of failure to file declaration 6079
Defect in must be availed of by plea in abatement 6103
Variance between writ and declaration 6103
—when action or suit dismissed..6103
—when other process issued without payment of writ tax 6103
Amendment 6103
In equity, for new parties.....6139
Or contempt, insufficient answer.6137
On appeals, clerk to issue.....6350
—indorsement on 6352
Effect of Code on pending cases, 6376, 6570
Against property, exemptions, 6531-6566

In Particular Proceedings
In proceeding to correct returns in election 183
—in primary election 240
In proceeding requiring officer to give new bond 280

Sec.

PROCESS—Con.
On caveat against issuing grant on land warrant 446
—when dismissed 454
—new process issued 454
—order of publication 454
Proceeding to abate nuisance....1520
Proceeding to review refusal of admission of physician to examination, etc. 1614
On petition for establishment of drainage district 1738
—service 1738
—return 1738
—publication 1738, 1740, 1745, 1755
In proceeding to establish road..1979
—service on agent or tenant....1979
—publication 1979
—posting 1979
In garnishment proceeding for collection of taxes 2444
—on execution 6509
In proceeding to purchase delinquent land, service 2495
In action against county.....2686
To call meeting of supervisors..2715
In mandamus to enforce compliance with law relative to franchises 3023
In proceeding against corporation for violation of game laws....3340
In proceeding for enforcement of forfeiture for violating fish, game and oyster laws 3367
Summoning coroner's jury.....4806
—how executed 4808
—on Sunday 4817
In proceeding to enforce fine or forfeiture 4888
On forfeited recognizance.....4978
In investigations in penitentiary, issued by clerk 5028
In suit for divorce or to affirm or annul marriage.....5106
In probate of will, citing interested person to appear 5253, 5254
—order of publication 5255
—compelling production of will..5250
In proceeding to compel owner of mine to permit survey by adjoining land owner 5289
In proceeding to compel fiduciary to file inventory 5403
—to exhibit account 5408, 5410
In action of unlawful entry or detainer 5445-5447
In action of ejectment 5456
—notice served with 5461
In action of detinue, for seizure of property 5797
In quo warranto proceeding, to whom directed 5845
—service 5845
—return 5843
In habeas corpus proceeding....5851
Venire facias to summon jury, 5992, 5993
—for grand jury 4852
Interrogatories to adverse party in action at law 6236
For production of books and papers by adverse party 6237
Summoning execution debtor to answer interrogatories 6503

Criminal
Arrest of minors escaping from Prison Association of Virginia without 1957
For arrest, who may issue.....4823
—when to issue, how directed, extended and returned.....4824
—executed anywhere in State...4825
When not necessary after indictment, presentment or information 4866

Digitized by Google

Sec.

PROCESS—Con.
On indictment, presentment or information 4881
—how awarded, directed, returned and executed 4882
—when issued 4889
—mailing to officers in other counties 4884
—execution throughout State....4885
—failure to issue not to cause discontinuance 4890
—how served on corporation....4892
—publication of, expense taxed as costs 4892
On presentment, for fine or forfeiture 4888
On writs of error in criminal cases 4936
In proceeding for trial of crimes by convicts 5056

Issuance
By commissioners of election.... 183
By board of supervisors 2001
By State Tax Board 2216
From civil justice, to whom directed 3120
By commissioners to examine pilots 3640
By State Corporation Commission 3729
—Va. Const., cl. c, § 156
—form, how issued and served..3730
When issued and how directed..6055
Issuance of new 6059
For commencement of suit, order for 6061
—when deemed issued 6061
Without writ tax, when....6103
On appeal 6350

Service
On waters between Virginia and Maryland 14
On United States Government reservation 17
Process of State Tax Board....2216
Rehearing for failure to serve....6072
On agent, in proceeding to purchase delinquent land 2495
On Commonwealth's attorney, action against county....2686
By coroner 2817
By person appointed by court..2821
By officer 2822
—in county or corporation....2822
—assistance to officer 2822
—contempt, punishment 2822
On Sunday 2823
By Commissioner of Game and Inland Fisheries and wardens..3318
By bailiff of State Corporation Commission 3706
Bribing officer to prevent....4502
Delay in or refusal to execute process for criminal 4510
To summon jury and witnesses, for coroner's inquest 4808
—on Sunday 4817
In suit for divorce, or to affirm or annul marriage 5106, 6042
In action of unlawful entry or detainer 5446, 5447
In quo warranto proceeding....5846
In habeas corpus proceeding....5851
Of venire facias to summon jury..5992
—for grand jury 4852
When not executed without county or city of venue....6056
Sheriff of county may execute in city 6057
On unincorporated associations or orders 6058
Execution not returned, new process to issue 6059
Scire facias 6062
On corporations 6063-6067
—domestic 6063

Sec.

PROCESS—Con.
—foreign 3845, 3846, 6064
—trustee, lessee or receiver operating 6065
—manner of service 6066
—for violation of game laws....3240
—dissolved public service....3899
On common carrier other than corporation 6067
By individual on non-resident..6071
In garnishment proceeding....6509
—against State employees....6559

BY PUBLICATION
Process of State Tax Board 2216
Against corporations 6064
—operated by trustee, lessee or receiver 6065
Against common carrier other than corporation 6067
Order for 6069, 6070
—affidavit for 6069
—when issued 6069
—contents 6070
—time before trial 6071
—judgment after 6071
—time for rehearing 6072
—in Court of Appeals 6073
Affidavit for 6069
Grounds for 6069
When dispensed with 6070
Taking depositions after 6071
Rehearing after 6072
Order for by clerk of Court of Appeals 6073

Return
Time for 2825
Signing, deputy 2825
Place 2825
What to show 2825
Forfeiture for failure to return, 2825, 2826
By mail 2828
Issued by State Corporation Commission, where returnable....3697
Quo warranto proceedings 5843
When returnable 6055
Of service on corporations....6066
"Nihil," no judgment on 6068
On process served by individual on non-resident 6071
Process against non-resident....6080
Defect in, available by plea in abatement only 6103
Garnishment proceeding 6509
When place or time for sitting of court changed 5971

For Witnesses
Before General Assembly 303
Before school trustee electoral board 632, 666
Before board of health 1791
By Commissioner of Fisheries..3258
Before coroner's jury 4807
Before justice 4824
—trying civil warrant 6021
Before grand jury 4864
In criminal cases 4969, 6217
Return of summons 6055
How summoned 6217, 6218
Subpoena duces tecum....6219
Disobedience, penalty 6220
Service out of county or corporation 6218

PROCESS BOOK
What to contain 3403

PROCLAMATION
Changing place of meeting of General Assembly 295
By Governor, formation of city of first class....2911
Changing place of session of Supreme Court of Appeals....5967

PROCURATION
Signature by 5583

Digitized by Google

Sec.

PROFANITY
In public, how punished.....4568
Over telephone, punishment.....4569

PROFERT
Pleading, unnecessary 6082

PROFITS
Protection of right to in escheated land 515
Of decedent's estate.....5393, 5394
Action of ejectment, claim for....5481
—assessment of..5481, 5482, 5491-5497
Mesne profits.....5488
Of attached property.....6396
Execution for 6483
From property set apart as homestead exemption 6544

PROHIBITION
See **"Intoxicating Liquors"**

PROHIBITION, COMMISSIONER OF
See **"Commissioner of Prohibition"**

PROHIBITION, WRIT OF
From Supreme Court of Appeals to State Corporation Commission .....Va. Const., cl. d, § 156
To enforce law relating to primary election 224
Against city or town, to carry out order annexing territory.....2965
Petition for 5831
—what petition to state.....5832
—amendment of 5834
Award of 5833
Defense, how made 5834
Adjournment 5835
Judgment 5836
Court of Appeals, proceeding for.5837
Suspension of proceedings.....5838
Vacation proceedings, how certified and entered 5839
Service of writ 5840
Enforcement, contempt 5840
Original jurisdiction of Supreme Court of Appeals 5864
—Va. Const., § 88
—in case of collection of revenue 5864
—for collection of taxes.....5864
—where issued and tried 5872
Jurisdiction of circuit courts....5890
—courts and judges of city of Richmond 5922, 5928
—of court of law and chancery of Norfolk 5935
—of court of law and chancery of Roanoke 5947
Venue 6053

PROMISES
Of marriage, seduction under, 4410, 4413
Action on by one not a party thereto 5143
Writing required, when.....5561
Negotiable instrument to contain, 5563, 5565
To accept bill of exchange....5697
New promise in writing, effect on limitation of action 5812
—limitation of action on.....5812
—by personal representative or joint contractor 5813
—will charging estate with payment of debts 5814
Not to plead limitation, effect of..5821

PROMISSORY NOTE
See also **"Negotiable Instruments"**
Defined 5746

PROOF OF LOSS
Forms for, furnishing to insured..4221

PROPERTY
See **"Adrift Property"; "Personal Property"; "Real Estate"**

PROPRIETARY MEDICINE
See **"Pharmacy"**

Sec.

PROSECUTING WITNESS
Name of to be written on indictment 4867
Required to give security for costs 4867
Judgment against for costs, 4868, 4991

PROSECUTOR
Name of on indictment, information or presentment 4867
—entered on record 4867
Security for costs by 4867
—dismissal for failure to give..4867
Judgment for costs against, 4868, 4991
Payment of witness' fees by.....4958

PROSTITUTION
See also **"House of Prostitution"**
Abduction for purpose of, penalty, 4411, 4413
Ground for divorce 5103

PROTEST
See also **"Negotiable Instruments"**
Of negotiable instruments, waiver of, what includes.....5672
When may be made 5680
When must be made 5680, 5714
How made 5715
By whom made 5716
When to be made 5717
Where 5718
For non-acceptance and non-payment 5719
For better security 5720
When dispensed with 5721
Of lost, destroyed or wrongly detained instrument 5722
Certificate of as evidence.....5680
Of bill accepted for honor..5729, 5732
Attestation of payment for honor with 5734
Charges, judgment for 5760

PROTESTATION
Omission in pleading 6110

PROVISIONS
Unwholesome, sale, penalty.1218, 1219

PROXIES
For State stock in internal improvement 3760, 3761, 3764
Voting by at stockholders' meeting 3795, 3799
—mutual fire or storm insurance company 4337

PUBLIC ACCOUNTANTS
See **"Certified Public Accountants"; "State Board of Accountancy"**

PUBLIC AUCTION
Of property of county 2723
Of wrecks and property from, 3606-3608

PUBLIC BOARDS
May require opinion and advice of Attorney-General 375

PUBLIC BUILDINGS
See also **"Superintendent of Grounds and Public Buildings"**
Condemnation of land by United States for 19
Control of 402
Of cities and towns, powers of councils 3030
Burning or destroying, punishment 4430
—at night, punishment 4428
Unlawful or malicious injury to, punishment 4482
—to trees, shrubbery, fences....4483
Employment of convicts on.....5014

PUBLIC CORPORATIONS
Venue of actions against 6049

Digitized by Google

Sec.

PUBLIC FUNDS
See also **"Taxation"**
School funds, see **"Education"**
Appropriations, limitation on, Va. Const., § 67
—to private educational institutions .....Va. Const., § 141
Examination of accounts of officers collecting and disbursing, Va. Const., § 115
Statement of receipts and disbursements published with Acts of Assembly 306
Collectors, auditor's blanks for use of 2170
Embezzlement of by officers.....4452
—default as evidence of.....4452

PUBLIC GROUNDS
See also **"Superintendent of Grounds and Public Buildings"**
Consent to use of, Va. Const., § 124
Of cities and towns, powers of councils 3030
Injuries to, punishment....4482, 4483

PUBLIC HALLS
Exits for 3142
—inspection of 3143
—penalty for failing to provide..3144

PUBLIC HEALTH
See also **"Contagious Diseases"; "Health Commissioner"; "Quarantine"; "State Board of Health"; "Vaccination"**
Animal, dying from disease, burial or cremation of 1554
Contagious and infectious disease, control and prevention.....1493
—vaccination 1493
—quarantine 1493, 1497
— —persons, goods and animals in transit 1500
—infected persons, places excluded from, penalty 1503
— —going from place to place in State, penalty 1504
—report by physician of.....1515
Dead bodies, burial or removal, permit 1565, 1570, 1573
—burial or removal without permit, penalty 1581
—burial of from vessel.....3659
Expectorating in public place....1550
Hospitals, establishment by counties and cities 1555
—for infectious diseases 1557
—removals to 1559
—location 1580
Hotel, disinfecting rooms..1594, 1596
—sanitary condition, water.....1595
—beds, sheets, pillow-slips, etc..1597
— —airing 1598
—towels 1599
—water closets 1600
—privies 1601
Laundry, regulation and inspection of 1545
Nuisance, source of filth, cause of sickness, proceeding by health officer to abate 1518
—expense, how and by whom paid 1519
Plumbing and sewer connections, regulation of 1541
—inspection 1544
Quarantine, establishment of ground by city or town.....1533
—for vessels 1534-1536
— —duty of pilot to conduct vessel to 3645
—arrest of person escaping from.1539
—of travellers by land 1540
—expense of 1541
—Elizabeth River district.....1542
—Newport News 1542
—of convicts 1543

Sec.

PUBLIC HEALTH—Con.
—regulations, penalty for violation of 1505
Sanitary facilities for employees in factories, shops, offices etc., 1822-1827
Schools, pupils, cleanliness of 1529
—vaccination 1529
Smallpox, inoculation for, penalty 1532
—bringing into State 1532
Towels for common use prohibited 1517
Tuberculosis patient, proceeding to restrain from menacing health of others 1516
—convict, inmate of hospital, etc., examination of, report 1546
—segregation 1547
—disinfecting apartment 1548
—letting apartment occupied by patient 1549
Vaccination, compulsory 1530
—free to poor 1530
—pupils and teachers in schools.1529
—laborers constructing works of public improvement 1531
—regulations, penalty for violation of 1505
Water supply, supervision and control over in board of health 1786

PUBLIC HOSPITAL
Superintendent, exempt from jury service 5985
Servant, exempt from jury service 5985

PUBLIC INSTITUTION
Dead body in, delivery to Anatomical Board 1731

PUBLIC LANDS
Donated by Congress, proceeds to go to literary fund 738
—Va. Const., § 134

PUBLIC LIBRARIES
Property of exempt from taxation .....Va. Const., § 183

PUBLIC OFFICES
See **"Offices and Officers"**

PUBLIC OFFICERS
See **"Offices and Officers"**

PUBLIC PLACE
Drinking ardent spirits in, punishment 4631
Gaming at, penalty 4679
—what is public place 4680

PUBLIC RECORDS
See also **"Records"**
Forgery, punishment 4484
False entries in or destruction of, penalty 4516, 4517
Theft or destruction of, penalty..4518

PUBLIC PRINTING
See **"Superintendent of Public Printing"**

PUBLIC RESORT
Shooting in place of, punishment.4404

PUBLIC REVENUE
See also **"Taxation"**
Appeal allowed Commonwealth in case involving violation of law relating to ....Va. Const., §§ 8, 88
Checks and balances between officers collecting and distributing, General Assembly to provide .....Va. Const., § 84
Violations of laws relating to, to be reported to Auditor....2548
Mandamus or prohibition in cases of collection of 5864

PUBLIC SCHOOLS
See **"Education"**

Digitized by Google

Sec.

PUBLIC SEMINARIES
Professors, tutors and pupils, exempt from jury service.....5985

PUBLIC SERVICE CORPORATIONS
See also **"Corporations"; "Public Utility Corporations"**
Public utility companies deemed to be 4064
Definition 3693, 3881
—Va. Const., § 153
Occupation of streets, compensation 3882
Crossing private lands, wagon ways 3883
Crossing line or works of other corporation 3884
Crossing or changing course of county road 3885
Organization, purposes 3865
Name, articles of association to set forth 3865
Time within which work to be begun and completed 3871
—penalty for failure 3871
—extension of 3871
Directors, number, election, term 3789
Capital stock, articles of association to state amount of.....3865
—increase of to maximum limit.3870
Articles of association, contents 3865
—execution 3866
—acknowledgment 3866
—presentation to State Corporation Commission 3866
—certified to Secretary of Commonwealth 3866
—recordation 3866
Charter, issuance 3868
—amendment, procedure for, 3868, 3871
—surrender of exemptions and exclusive privileges.....3868
—forfeiture of, failure to begin or complete construction within required time 3871
—repeal of 3891
— —compensation for works....3891
Sale of under deed of trust....3895
—property passed by 3895
—purchaser becoming corporation 3895
—debts due to and by corporation sold 3897
Sales of under decree of court, rights of purchaser 3898
Reorganization after sale...3895-3898
—rights and liabilities of new corporation 3896
—franchises 3896
—stock 3896
—meeting of stockholders.....3896
Dissolution 3810, 3899
—payment of debts 3899
—distribution of property 3899
—collection of debts 3899
—suits by or against 3899
— —service of process 3899
Powers, in general 3866
Extension of lines, works, &c., out of State 3867
Construction and operation of branch lines, &c.....3869
Sales by or to 3866
Leases 3866
Consolidation 3866
Condemnation of lands, &c.....3866
In which State interested, sale of under mortgage, &c. 3889
—dividends, to State 3890
—annual report to State Corporation Commission 3892
—annual report of manager or superintendent 3893
Statutory provisions governing..3900

Sec.

PUBLIC SERVICE CORPORATIONS—Con.
Organization, expenses prior to..3901
Remedies of persons aggrieved by acts or omissions of 3902
—complaint to State Corporation Commission 3902
—injunction 3902
—mandamus 3902
—common law remedies not altered 3903
County road crossing railroad..3886
Connections with other companies 3887
Wires crossing works of 3888
Transportation companies..3904-3935
Franchise granted by cities, towns or counties, power of State Corporation Commission.3712
Taxation, segregation of property 2205, 2206
—rolling stock, assessment.....2207
—of electric railways 2208
—assessment, situs for.....2208
—correction of assessment 2392
Warrant for small claim against, where issued and tried 6020
Injuring property of, penalties..3894
Foreign, not permitted to do acts prohibited to domestic corporation .....Va. Const., § 163
—acquiring and operating franchise .....Va. Const., § 163
—Control .....Va. Const., § 164

PUBLIC SHOWS
License for 2373

PUBLIC SQUARE
Injury to 4483
Driving vehicle on at excessive speed 4741

PUBLIC UTILITIES
Cities and towns may acquire...3031

PUBLIC UTILITY CORPORATIONS
See also **"Corporations"; "Public Service Corporations"**
Laws applicable to.....4068
Public utility defined 4067
Service defined 4068
Deemed public service corporations 4064
Pipes and conduits, how laid....4059
—in roads and turnpikes, contracts as to 4061
Electric railway or works corporations, rights, powers, &c..4061
Rights of way, contracts for....4062
—condemnation, compensation of property owners 4063
Service and facilities, duties as to 4066
—test of by State Corporation Commission 4069
—regulation of by State Corporation Commission 4072
Rates and charges, filing with State Corporation Commission.4065
—fixing and regulation by State Corporation Commission 4071
Reports to State Corporation Commission 4070
Units of products or service prescribed by State Corporation Commission 4070
Control and supervision of by State Corporation Commission.4072
Existing remedies as to, retained.4073

PUBLICATION
Acts of General Assembly..... 307
Advertisement, in proceeding to sell unclaimed tobacco in warehouse 1398
—in proceeding to sell timber found adrift.....1446
—for bids for improvement of roads with State aid 2102

Digitized by Google

Sec.

PUBLICATION—Con.
—of wrecks 3606
—in proceeding for payment of unclaimed court funds into treasury 6311
Of analysis, by Dairy and Food Commissioner 1176
Of appointment of president, proctor, or professor at University of Virginia 811
Of appraisal of estrays and adrift property 3565, 3566
By board of drainage commissioners, proposal to issue bonds 1772
Board of health, rules....1494
Of details of execution of death sentence, prohibited 4945
Encouraging abortion, penalty..4401
Evidence of, certificate of editor, etc., affidavit of other person.6224
False information by employment agency 1804
—penalty 1806
Foods, standards of variability of 1185
Insurance company, failure to make report 4223
Of journals of General Assembly, Va. Const., § 49
Laws relating to game, fish and birds 3317
Local road legislation by supervisors 2014
Names of persons receiving nominations at primary elections.. 241
—of magisterial districts....2695
Offers to obtain divorces, &c., penalty 5116
Of ordinance or by-law proposed to be enacted by supervisors..2743
—annexing territory to city or town 2957
—for contraction of limits of city or town 2969
Petition to incorporate town 2881
Proclamation changing place of session of Supreme Court of Appeals 5967
Of proposed amendment to constitution 306, 312
—Va. Const., § 196
Of qualifications of division superintendent of schools.... 624
Of records from library fund.... 349
Revocation of certificate of commission merchant 1261
By State Corporation Commission 3711, 3750
—Va. Const., cl. b, § 156
—rule or regulation of 3726
—rules for transportation of explosives 3922
State Board of Examiners of Graduate Nurses, rules for examinations 1705

Of Certificates

Certificate of escheator, by register of land office 504
Decrease of capital stock of corporation 3781
Bank or trust company, certificate to do business 4105
Certificate of re-entry on land..5536

Lists

Of paid poll taxes..Va. Const., § 38
Of retired teachers 798
Of contagious and infectious diseases by board of health....1488
Delinquent tax lists 2429
—of delinquent real estate....2460
Of commissioners of deeds....2963
Of persons holding internal revenue tax receipts for sale of ardent spirits 4660

Sec.

PUBLICATION—Con.

Notices

Of application by city to erect dam in water course 3054
Of application by druggist for license to sell ardent spirits..4599
—of application by hotel keeper..4602
Of assessment for local improvements 3069
Bank, failure to furnish financial statement 4124
By Board of Medical Examiners, of meeting to examine candidates 1610
Bonds for State debt, redemption of 2586
City or town, proceeding to annex territory 2957
City of first class, special election of council 2919
Commissioner, taking account before 6139
Courthouse, completion of....2747
—contest of election for removal of 2754
Contract for public printing, letting 382
—for paper. 383
Corporation, stockholders' meeting 3786
—for amendment of charter of corporation 3780
—for decrease of capital stock..3781
—for creation or increase of bonded indebtedness 3783
—to dissolve corporation 3810
—to obtain new charter after dissolution 3810
—for consolidation of corporations 3822
—purchasing property of public service corporation 3896
—establishment of office by consolidated corporation 3824
Decedent's estate, transfer of stock, etc., to foreign personal representative 5348
Derelict or escheated property, suit by State to recover 519
Drainage district hearing on report of reviewers in proceeding to establish 1755
—letting contract by board of drainage commissioners 1761
Fence, lawful, proceeding by supervisors for declaring 3547
—petition to declare stream or canal 3553, 3554
Ferry, notice of application to establish new 2054
—notice of application to increase rates of ferriage 2056
Of fire insurance company, revocation of license of for assuming excessive risk 4307
Forfeiture for violation of fish, game and oyster laws, proceeding to enforce 3367
Election for issuance of school bonds 769
Guaranty company, revocation of license 4180
Hearing on size of oysters that may be caught 3244
—on shipment of seed oysters out of State 3249
By infant doing business as trader 6108
Insurance company, revocation of license 4180
—suspension of license of 4223
Judgment, proceeding to mark satisfied 6467
—to mark "discharged in bankruptcy" 6467

Digitized by Google

Sec.

PUBLICATION—Con.
Life insurance company, revocation or suspension of license for deficiency of assets 4250
As to non-residents 6043
Pilot, suspension of 3644
Roads, bids for contract for maintenance of 2029
—acceptance of bid 2030, 2031
Road bonds, notice of redemption of 2119
Sale of timber by State Geological Commission 530
—of gas, oil or mineral by State Geological Commission 531
—by warehouseman.....1322, 1323
—proceeding to sell automobile for violation of law 2146
—of automobile on judgment against owner 2147
—of property of county.....2723
—of property from wrecks.....3608
—of stock for failure to pay subscription 3807
—of railroad, canal, turnpike, &c., in which State interested..3889
—of unclaimed goods by transportation companies for charges 3933
—by treasurer of bonds of insurance company or guaranty company 4213
—of vehicle used in transporting ardent spirits 4658
—of vehicle or animal to enforce lien of Society for Prevention of Cruelty to Animals 4561
State Board of Accountancy, examinations held by 566
Street grading, to abutting owners 3037
For surrender of stock held by non-resident in corporation engaged in fishing, etc., proceeding for 3254
Tobacco warehouse, public, discontinuance of 1348
By trader, of name of principal or partner 5224
Transfer of property of infant or insane person out of State, proceeding for 5352
—property held in trust....5352, 5354
Turnpike company, application for permission to change tollgate 4077

Of Orders

Of State Tax Board 2216
In proceeding to discharge treasurer 2792
Of State Corporation Commission 3711
—Va. Const., cl. b, § 156
—revoking license of co-operative life insurance or casualty company 4270
To show cause against distribution of decedent's estate 5439
Striking causes from docket for failure to prosecute 6172

Of Process

Of State Tax Board 2216
Costs of, taxation 3535
Copy of rates of advertising filed with certificate 3535
By State Corporation Commission 3729
—form of, how executed 3730
Against corporations 6064
—operated by trustee, lessee, or receiver 6065
Against common carrier other than corporation 6067
—dissolved public service corporation 3899

Sec.

PUBLICATION—Con.
—in criminal case, expense of taxed as costs 4892
Affidavit for 6069
Grounds for 6069
When dispensed with 6070
Taking depositions after 6071
Rehearing after 6072
Order for 6069, 6070
—affidavit for 6069
—when issued 6069
—contents 6070
—time before trial 6071
—judgment after 6071
—time for rehearing 6072
—in Court of Appeals 6073
In application to purchase delinquent land 2495
In attachment proceedings.....6401
Caveat, proceeding on 454
Divorce, suit for, or to affirm or annul marriage 5108
Decedent's estate, proceeding to administer estate of person presumed to be dead 5362, 5363
In eminent domain proceedings..4365
Drainage district, petition to establish 1738, 1740
In garnishment 6509
Mechanic's lien, proceeding to perfect or enforce 6442
In probate proceedings.....5255
Real estate, bill to supply records or papers in chain of title to.. 479
Roads, proceeding to establish..1979
Of auditing committee of General Assembly 311
—Va. Const., § 68
Of Dairy and Food Commissioner 1175
Of Commissioner of Game.....3315
Of harbor commissioners.....3677
Of State Corporation Commission.3751
Of superintendent of poor.....2798

Statements

By banks, of financial condition..4120
By city councils, of disbursements 3078
By inspector of flour, meal and bread 1443
Of school board, annual 750
By supervisors, of receipts, disbursements, estimates 2768
Of tobacco warehouse, insurance on 1395
Of Treasurer, Auditor and Second Auditor, annual 2202

PUBLICATIONS
State distribution of by library board 352
Of city or town furnished to State Library 353
—penalty for failure to furnish.. 355
Of institutions of learning to be furnished to State Library.... 354
—penalty for failure 355

PUGILISTIC ENCOUNTER
See **"Prize Fighting"**

PULASKI COUNTY
Commissioner of revenue, how to list town lots in land book....2280
Commonwealth's attorney, fees..3505

PUNISHMENT
See **"Capital Punishment"; "Fines and Penalties"; "Forfeitures"**
Cruel and unusual prohibited, Va. Const. § 8
Of members of General Assembly, Va. Const., § 47

PUPILS
See **"Education"**

Digitized by Google

Sec.

PURCHASERS
See also **"Fraudulent Conveyances"**
Assessment of omitted taxes against .....Va. Const., § 174
Word construed 5200
Of omitted lands, liability for taxes 2293
Of lands delinquent for taxes, 2480-2486
—treasurer not to purchase.....2463
—receipts to 2464
Of land sold for debts due State, 2522-2525
Contracts in respect to real estate or goods and chattels in consideration of marriage 5192
—for conveyance or sale of real estate or term therein for more than five years 5192
—sale of chattels when possession allowed to remain with grantor 5192
—valid when recorded 5193-5196
Deeds, deeds of trust and mortgages, void against until recorded 5194-5197
—possession not notice.....5194
Lien for portion of purchase money paid before notice.....5200
Recordation of what deeds and contracts not to affect.....5201
From heir, protection against devisee 5263
Of real estate of infant or insane person, who not to be.....5341
Of real estate, from heir or devisee 5397
Of land at judicial sale, liability for purchase money 6270, 6272
—rule against 6274-6277
At judicial sale, effect of reversal of decree 6306
At sale in attachment proceedings, effect of rehearing or new trial 6411, 6412
Of calf, lien of owner of bull....6417
Of crop, lien for advances on....6452
Of property subject to lien of mutual assurance society for assessments 6458
Recording lis pendens or attachment as notice to 6469
Of real estate, judgment docketed against 6471
—limitation to suit to enforce judgment 6474, 6475
—order of liability between alienees of real estate 6476
Limitation of lien of judgment on real estate 6477, 6478
At sale on fieri facias, liability on re-sale 6492

PURCHASER FOR VALUE
Of property subject to lien for local assessments for improvements 3071
From heir, when not affected by probate of will of ancestor....5263
Title to goods transferred in fraud of creditors 5184
Loans of chattels, when void as to 5188
Reservation of property in chattels by way of conditions, remainder, etc. 5188
Contract reserving title to or lien on chattels for purchase price, when void as to purchasers....5189

PURE ELECTIONS
See **"Elections"; "Primary Elections"**
Provisions to secure 251-258
Elections declared null and void if chapter 16 violated..... 257

Sec.

PURE ELECTIONS—Con.
Expenditures, by candidates, prohibited 251
—by another in behalf of candidate 252
—penalty for illegal..... 252
Statement of expenditures, candidate to file 253
—when and where filed 253
—what to contain 253
—oath to 253
—penalty for failing to file..... 255
Certificate of election not to issue until statement filed 254
Officer not to qualify or receive salary until statement filed.... 256

QUAIL
Unlawful hunting, buying or selling 3356
Shipment from State 3361

QUALIFICATION
Of tobacco samplers 1351
—deputy 1352
Of sheriff, city of Richmond... ..2814
Justice of the peace in city.....3092
Police justice in city.....3095
Civil and police justice....3098, 3099
Of oyster inspectors 3219
Of attorney at law in court....3421

QUARANTINE
See also **"Contagious Diseases"; "Health Commissioner"; "Public Health"; "State Board of Health"; "State Live Stock Sanitary Board"**
By Board of Crop Pest Commissioners 872
Of animals infected with disease, 907-920
—by Bureau of Animal Industry.1289
Contagious and infectious diseases 1493, 1497
Persons, animals and goods in transit 1500
Penalty for violating regulations.1505
Ground, establishment.....1533
Of vessels, regulations 1534
—to whom and what to extend..1535
—penalty 1535
—when put in, cargo 1536
—inquiries, penalty for refusing to answer 1537
—failing to deliver log book, bill of health, etc. 1538
—when pilot to convey vessel into 3645
Arrest of person escaping from..1539
Of travellers by land.....1540
—penalty 1540
Expense of 1541
Elizabeth River, act with reference to continued in force....1542
Newport News 1542
Acts continued in force.....1542
Of convicts and prisoners in jail 1543
—expense 1543
Regulations by supervisors.....2743

QUARRIES
Land grant embracing, when void 459
Convicts employed in.....2073

QUASHING
Fee bill 3495
Attachment 6403
Capias ad respondendum 6423
—bond 6423
Execution, motion for.....6499
Forthcoming bond, remedy of creditor 6523

QUIT-CLAIM DEED
Recorded in deed book.....3393
Effect of words of release in deed 5164

Digitized by Google

Sec.

QUORUM
Of Art Commission 581
Of Board of Bar Examiners 3413
—of commissioners to examine pilots 3613
—of directors of penitentiary....5027
—of directors, of corporation....3853
—of harbor commissioners of Norfolk, Portsmouth and Norfolk County 3666
—of Medical Examiners 1610
—of Pharmacy 1667
—of Veterinary Examiners 1275
Of city council 2986
Of city school board 778
Of Commissioners of the Sinking Fund 2621
Of directors of insane hospitals..1006
Of district school board..... 651
Of General Assembly, Va. Const., § 46
Of school trustee electoral board. 633
Of State Board of Dental Examiners 1643
—of Education..... 600
—of Embalming 1719
—of Examiners of Graduate Nurses 1705
—of Health 1486
Of State Corporation Commission, Va. Const., § 155
Of stockholder's meeting.....3796
Of Supreme Court of Appeals....5862
Of Visitors of University of Virginia 809
—of Virginia Military Institute, 835, 837
—of Virginia Normal School.... 941
—of Virginia Normal and Industrial Institute 950
—of Virginia Polytechnic Institute 861
—of Virginia State School for Colored Deaf and Blind Children 984

QUO WARRANTO
Against internal improvement company 3757
To forfeit charter of corporation for failure to file list of officers and directors 3854
—for failure to appoint attorney for service of process 3854
Against fraternal benefit society, 4297, 4298
Grounds for 5841
Application for 5842
—by whom made 5842
Award of 5843
Return 5843
Bond of relator 5843
—information in nature of 5844
Writ, issue 5843
—signing, attestation 5843
—how directed 5845
—service 5845
—return 5843
Information in nature of.....5844
—filing, &c. 5844
—trial 5846
—verdict, judgment, costs.....5847
Evidence 5846
Pleadings 5846
Demurrer 5846
Trial 5846
Re-opening default judgment....5846
—bond for 5846
Judgment 5846, 5847
Verdict 5847
Costs 5847
Attorney's fees 5847
Jurisdiction 6052
—of circuit courts 5890
—of courts and judges of city of Richmond 5922, 5928
—of court of law and chancery of Norfolk 5925

Sec.

QUO WARRANTO—Con.
—of court of law and chancery of Roanoke 5947
Venue of proceeding 6052
Appeals 6336, 6337

RABBITS
Unlawful hunting ... .3356
Shipment from State 3361

RABIES
Dog, having, ordered killed 1551
—penalty for concealing 1552
Appropriation for treatment of persons bitten by animals suspected of having 1553

RACE COURSE
City police, authority at.....3005

RACES
Betting on races 4682, 4683
Fraud in entering horse for....4684
On road, bridge, landing, or street, prohibited 4741

RADFORD
Clerk of the court, election, term 129
State Normal School at 939
—name 942
Commonwealth's attorney, fees..3505
Corporation court 5905
—judge, qualification, election..5905
— —term 5906

RAFFLE
Conducting or permitting, punishment 4694
—forfeiture of property 4694
Forfeiture for, how enforced....4986

RAFT
Interfering with or destroying buoy, beacon or day mark, penalty 4756
—lien on for cost of repairing or replacing 4756
—anchoring on range of lights..4756

RAILROADS
See also **"Common Carriers"; "Corporations"; "Electric Railways"; "State Corporation Commission"; "Transportation Companies"**
Definition 5, 3881, 4360
Real estate may acquire.....3961
Insurable interest of in property along its route 4018
In which State interested, sale of 3889
Lien of for charges 3933
Lien on for labor and materials, 6426, 6438
—of employees 6438
—how perfected and enforced..6439

Construction and Equipment
Right to parallel, cross or intersect other railroad, Va. Const., § 166
Air brakes 3989
Bell and whistle on locomotive..3958
Block system 3989
Cars, separate, for white and colored passengers 3962, 3963
—lighting, requirements as to....3975
Caboose cars, duty to use.....4012
—dimensions, construction, &c...4012
—repairs to 4013
—number to be equipped yearly.4014
—when not required 4017
Cattle-guards, duty to erect and maintain 3946, 3950
—gates or bars in lieu of.....3946
—request of land owner for.....3950
—commissioners, report 3950
—penalty for failure 3950
— —appeal 3954
—discontinuance 3951
Change of location 4379
Connection with other railroads, 3887, 3971

Digitized by Google

Sec.

RAILROADS—Con.
Construction across highway, 2006, 3972
—appeal 2007
—private property not to be condemned for 2008
County road, crossing 3886, 3973
Crossings, signal boards at.....3985
—gates and flagmen at.....3986
— —in cities and towns 3998
Crossing canal or water course..3999
Crossing other railroad....3972, 3999
Crossing public road, or changing course of, procedure 3885
Express office 4004
Fences, duty to erect and maintain 3946, 3947
—mandamus 3946
—where not necessary.....3947
Grade crossing 3973
—proceeding to eliminate.....3974
Headlights required on engines..3976
Live stock, facilities for loading and unloading 4006
Mining company may construct..4000
—rights and privileges 4000
Through pass or defile 3953
—use of track by other road....3953
Sale of rolling stock to, reservation of title or lien for purchase price, recordation 5189
—copy of contract filed with State Corporation Commission 5189
—labelling rolling stock 5189
—how contract enforced 5190
Signals at overhead bridge, tunnel, &c. 3970
Spark-arresters, locomotives to be equipped with 3952
Stations, duty to maintain.....3984
—waiting rooms, water closets, &c. 3984
—abandonment, rebuilding 3984
—change of 4379
Switchlock, keys, making, buying, using, &c.....4019
Telephone exchanges, connection with 4011

Employees

Actions for death or injury, fellow servant doctrine, Va. Const., § 162
—assumption of risk, Va. Const., § 162
Injury to through failure to provide danger signals at overhead bridge, etc.....3970
Intrastate railroad, liability for death or personal injury of employee 5791-5796
—time for bringing action 5791
—contributory negligence, effect of 5792
—assumption of risk by employee 5793
—contract exempting 5794
—set-off, insurance 5794
—liability under Federal acts....5796
—violation of safety appliance act, effect of 5792, 5793
—railroads to which applicable..5795
Lien of 6426, 6438
—how perfected and enforced...6439

Liability

For loss or injury to goods.3926, 3929
—contract for exemption from liability 3926, 3930
—evidence of negligence in actions for 3926
For loss or injury to goods by connecting carrier 3926
—contract for carriage to destination over connecting carrier, 3926, 3929
—when presumed 3929

Sec.

RAILROADS—Con.
For goods delivered to express company 4031
Claim for goods lost or damaged, when and where filed 3928
—penalty for failing to pay.....3928
—claims for demurrage 3928
When persons or property are injured on enclosed track.....3948
—on track not enclosed.....3949
Statutory signals not given at crossing, death of or injury to traveller 3959
—destruction of property 3959
For ejecting passenger refusing to disclose race 3965
For injury to or death of employee, failure to provide danger signals at overhead bridge, &c. 3970
For fires 3991
For stock killed or injured..3994-3997
—board of appraisers 3994
— —fees 3996
— —report 3994
—damages, payment.....3995
—action, costs 3995
—where fences and cattle guards maintained 3997

Offenses Against

Switchlock keys, making, buying, using, etc. 4019
Cars, burning or destroying, punishment 4425
—entry with intent to commit murder, rape or robbery.....4426
—entry with intent to commit other crime 4439
Equipment, etc., obstructing, removing, injuring, punishment..4468
—tampering with switch, &c....4468
—switch lamp or other signal....4474
Being on track 4469
Leading or driving animal on track 4469
—with view to recover damages..4475
Trespasser jumping on or off cars of 4470
Trespassing on trains 4471
Removing packing from journal boxes 4472
Shooting at trains, throwing stones or other missiles at.....4473
Destroying fences or cattle stops 4476
Riotous or disorderly conduct on cars, etc. 4533
Drinking ardent spirits in station or cars 4631
Standing wagon or vehicle on track 4734

Offenses by

Bell and whistle on locomotive, failure to provide 3960
—failure to use 3960
Caboose cars, violation of law as to 4015
Cattle guard, failure to construct 3950
Chapter 155, violations of.....4003
Charges, demanding and receiving more than lawful.....3938
—charging or receiving fee or commission other than regular rate 3939
Claim for loss or injury of goods, failure to pay 3928
County roads, failure to maintain grade crossings and approaches of 3973
Depots, waiting rooms, ticket offices, failure of duty as to....3940
Engines, failing to equip with headlight 3976
Excursions, violation of law relating to 4010

Digitized by Google

Sec.

RAILROADS—Con.
Explosives, failure to observe regulations as to transportation of 3923
Fertilizer, transporting unbranded and untagged....1118
Food, allowing to become contaminated in transit 1226
Freight, failure to receive and receipt for 3927
Freight trains, renting out tonnage of 4032
Live stock, failure to receive, transport, deliver 4006
—failing to disinfect cars used in transporting 911
—violating regulations relating to quarantine of.... 912
Nursery stock, transportation of uncertified 874
Passengers, failure to take up or set down 3938
Property, failure to receive, transport or deliver 3938
Repairs, additions, &c., ordered by State Corporation Commission, failure to make 3932
Signals, statutory, failure to give 3960
Spark arresters, failure to equip locomotive with 3952
State Corporation Commission, failure to obey order of..4001, 4003
—failure to give information to..4002
Stations, failure to announce....3940
Street or road, obstructing free passage on 4734
Sunday, transportation on ..4573, 4574
Telegraphic or telephonic offices, failure to maintain 3945
—operators and dispatchers, failure of duty 3945
Towels, common use of in trains, stations, etc. 1517
Trains, failure to announce destination of 3940
—delayed, failure to post notice of 3941
Troops, failure to transport....3942
—unnecessary delay in transporting 3942
White and colored passengers, failure to provide separate cars for 3964
—conductor failing to assign to proper car 3966

Operation

Accidents, reports of to State Corporation Commission 3938
Baggage, checking 3990
Bell and whistle, use of 3958
Cars, forwarding to destination..4005
—duty to heat 3979
Charges, charging fee or commission other than regular rate..3939
—when permitted 3939
Connections with other railroads.3936
—duty to accept traffic from connecting line .. ...Va. Const., § 166
Conservators of the peace for, appointment 3944
—conductors and agents as....3944
Contract or lease under which operated, filing with State Corporation Commission..... ..3993
Crossing of other road, duty to stop trains at 3987
Depots, keeping open 3940
Excursions, prohibition of..4008-4010
Explosives, rules for transportation of 3922
—penalty for violating 3923
Express office and agent, maintaining 4004
Farm produce, transportation and storage of 3956

Sec.

RAILROADS—Con.
Fires, liability for 3992
—insurable interest in property along route 4018
Freight, duty to receive and receipt for 3927
Intoxicating liquors, duty as to transportation of 4632-4638
—record kept of ardent spirits transported, what to show, 4632, 4634, 4638
— —effect as evidence 4632
— —penalty for failure to keep, 4632, 4634
—regulations for transportation of 4638
—affidavit by consignee, 4634, 4635, 4638
— —filing with clerk of court, 4634, 4654
— —to be in duplicate 4654
—delivery to other than consignee, hours of delivery....4635
—record open to public inspection 4632, 4637
Live stock, duty to transport, &c. 4006
—penalties, action against for failure 4006
—disinfecting cars used in transporting 911
Passengers, furnishing sufficient accommodations for 3990
—exclusion from sleeping, dining, palace or compartment cars....4007
Persons and property, duty to transport 3937, 3938
Sale of unclaimed goods for charges 3932
—disposition of proceeds 3934
Signals, failure to give, effect of in action for damages at crossing 3959
Stations, announcing 3940
Telephone and telegraph lines, construction and operation of..3943
Telephonic or telegraphic offices, duty to maintain 3943
—duty of operators and dispatchers 3945
Ticket offices, keeping open....3940
Trains, announcing destination of 3940
—delayed, posting notices of....3941
Troops, duty to transport....3942
—tolls on 3942
White and colored passengers, assignment to proper compartments 3965
—ejection of person refusing to disclose race 3965
—when part of compartment may be assigned to other race....3967
—when not required 3968
—penalty for failure of passenger to obey conductor 3982

Right of Way

Use of streets, etc..Va. Const., § 124
Establishment of drainage affecting, procedure 1765-1768
—manner of crossing right of way, cost 1768
Along highways 2006
Crossing road or highway, 2006, 3886, 3972, 3973
—canal or water course....3999
—other railroad 3972, 3999
Through pass or defile 3953
Manner of keeping 3991
Exercise of power of eminent domain 4360-4388
Abandonment 4379
Change of location 4379

Taxation

Re-assessment of real estate, Va. Const., § 171

Digitized by Google

Sec.

RAILROADS—Con.
Assessment for, Va. Const., §§ 176, 179
Franchise Tax, Va. Const., § § 177, 178, 181
Reports .....Va. Const., § 179
Application to court for relief from .....Va. Const., § 180
Lien of taxes.....Va. Const., § 179
Segregation of property for, 2205, 2206
Tangible personal property 2205
Rolling stock 2206
—assessment 2207
—rate 2207
—payment of tax 2207
Exemption, surrender by amendment of charter 3859, 3862

Railroad Companies
Describing railroad company as railway company, not error.... 5
Definition 3881
Directors, number, election, term.3789
Name, articles of association to set forth 3856
Powers 3857
Merger 3857
Consolidation 3857
Sale 3857
Lease 3857
Extension of lines out of State..3858
Articles of association, contents..3856
—execution 3857
—acknowledgment 3857
—presentation to State Corporation Commission 3857
—certified to Secretary of Commonwealth 3857
Recordation 3857
Charters, amendment or extension 3859, 3864
—certificate of to State Corporation Commission 3859
—surrender of exemptions, exclusive privileges, &c....3859, 3862
—effect as evidence.....3859
Capital stock, articles of association to state amount of....3856
—increase of to maximum limit.3863
—disposal of increase.....3863
Condemnation of land, sand, gravel, water, &c.....3857
Surrender of exemptions and exclusive privileges 3859, 3862
Construction and operation of branches, extensions 3860
Construction, purchase, or lease of connecting line.....3861, 3862
—sale of 3861
Entry by on land of another to obtain wood, gravel; water, etc.4382
—condemnation of, proceedings for 4382
Time within which construction must be begun and road finished 3864
—penalty for failure 3864
—extension of 3864
Separate waiting rooms for white and colored persons 3716
Demurrage and storage, rate fixed by Corporation Commission....3774
—detention charges 3774
—placing cars, regulations for..3774
Repairs and improvements, State Corporation Commission compelling 3720
—hearing 3720
Contracts with by State Corporation Commission for transportation of convicts, insane persons, etc. 3738
—route for 3739
—certificates, payment.....3740
Becoming surety on bonds of other companies 3828

Sec.

RAILROADS—Con.
In which State interested, sale of under mortgage, &c. 3889
—dividends 3890
—annual report to State Corporation Commission 3892
Foreign, chartering under laws of this State.....3955
Guaranteeing bonds of steamboat company 3957
State Corporation Commission, examination by 3717, 3718, 3721
—notice by of violation of law...3719
—notice by before making order regulation, etc.....3726
—copies of laws furnished by..3741
—information to be furnished to..4002

RAILROAD CARS
Used in transporting live stock, disinfecting 911
Separate for white and colored passengers 3962, 3963
Passenger cars, requirements as to lighting 3975
—duty to heat 3979
Forwarding to destination 4005
Sleeping, dining, palace, or compartment, exclusion of passengers from 4007
Caboose cars, duty of railroad to use 4012
—dimensions, construction, etc..4012
—repairs to 4013
—number to be equipped yearly.4014
—when not required 4017
—violation of law as to.....4015
Burning or destroying, punishment 4428
Entry with intent to commit murder, rape or robbery 4438
—with intent to commit other crime 4439
Trespasser jumping on or off of 4470
Riotous or disorderly conduct on, penalty 4532
Drinking ardent spirits in, punishment 4631

RAILROAD COMMISSIONER
State Corporation Commission to perform duties of, Va. Const., cls. a, k, § 156
Records, copies as evidence....6197

RAILROAD IRON
Buying or receiving with intent to defraud 4450

RAILROAD SHOPS
Employees, payment of, time and manner 1818, 1819
—sale of goods to, price 1820

RAILS
Unlawful hunting 3356

RAKES
Taking oysters, crabs, clams or shells with, in Accomac or Northampton County, penalty..3238

RANGE LIGHTS
Anchorage on range of, punishment 4756

RAPE
Homicide in attempt to commit..4391
Punishment 4414
Marriage of parties as bar to prosecution 4414
Deposition of prosecutrix.....4415
Entering building, &c., with intent to commit 4435
Attempt to commit, punishment for 4767

RAPPAHANNOCK COUNTY
Commonwealth's attorney, fees..3585

Digitized by Google

Sec.

RAPPAHANNOCK CREEK
Placing weir or hedge in, penalty 4750

RAPPAHANNOCK RIVER
Use of oyster scrape or dredge in, permit 3248
Ballast masters in 3651

RATE
Regulation, see **"State Corporation Commission"**
Meaning of term 3693
—Va. Const., § 153
Ferries, proceeding to increase or reduce 2058
—ferriage across Chesapeake Bay 2043
Of interest, legal 5551, 5552
—banker, broker, etc., allowed to charge 5553
—special act regulating, prohibited ..... Va. Const., § 63
Long and short haul..Va. Const., § 160
Of mileage allowed State officers, etc. 3473
Of pilotage 3626
Charged by public utilities corporation 4065, 4070, 4072
Railroads may charge for storage, fixed by Corporation Commission 3774
—of demurrage 3774
—of detention charges 3774
At which State bonds purchased or redeemed from sinking fund 2594, 2623, 2624
Of taxation..... Va. Const., § 189
—cities and towns..... 2212
— —on intangible personal property 3073
—on intangible personal property by cities..... 2209, 2210
— —by counties 2209, 2210
— —by towns 2209, 2210
—for schools..... 2205
—rolling stock of railroads..... 2207
Of telephone companies regulation of by State Corporation Commission 4052-4056
Toll bridge 2069-2071
Of transportation companies, posting, etc. 3908
—advance of 3909
—presumed reasonable 3920
—proof of 3920
Of transportation and transmission companies, control of by State Corporation Commission, 3709, 3711
—Va. Const., §§ 156, 160
—hearing on 3711
Tolls on turnpike 4083
—posting 4085
Transportation of troops, munitions, etc. 3942

RATIFICATION
By court of sale of property of county 2723
Of compromises by fiduciaries..5440
—by trustee, mortgagee, receiver of joint stock company 5440
Of promise or contract made during infancy, writing required 5561

RAZOR
Carrying concealed, punishment 4534
—permit to carry 4534

READING
Legislative bill in each house. Va. Const., § 50
—when dispensed with, Va. Const., § 50

Sec.

REAL ESTATE
See also **"Creation and Limitation of "Estates"; "Deeds"; "Estates"; "Land"; "Limitations"; "Wills"**
Construed to include 5
Aliens may acquire..... 66
Allowance for betterments or improvements on recovery of, 5483-5485, 5491-5505
—relinquishment of title..... 5502
Attachment, how levied on..6389, 6390
—lien of 6393
—sale of 6405, 6406
—rehearing 6411, 6412
—recording memorandum 6469
Bank, may hold and convey for what purposes 4114
Boundaries of, petition to establish 5490
—effect of judgment 5490
Church, amount may hold..... 43
Cloud on title, suit to remove..6248
—tax deed, bill to remove..... 2498
Contingent remainder not to fail for want of particular estate..5153
—not affected by alienation of particular estate or by merger.5154
Contract for sale or lease of, writing required 5561
—in consideration of marriage, void as to creditors, etc..... 5192
— —valid when recorded....5193-5195
—for sale of, or for term of more than five years, void as to creditors, etc. 5192
— —valid when recorded....5193-5195
—with reference to, recordation in deed book..... 3393
Conveyance of to lie in grant as well as in livery 5146
Of convict, committee for..... 4998
—sheriff or sergeant as..... 5003
—maintenance of family from..5000
—delivery to after discharge....5002
—sale, exchange, leasing or encumbrance of 5004
Counties, purchase of by, contract in writing 2709
—approval of title by attorney..2709
—sale or exchange of by supervisors 2723
—purchase of by supervisors....2723
Curtesy in 5134, 5135
—in trust estate 5158
—of insane husband, how released 5346, 5347
Debt due State, taken on execution for 2517-2526, 2530
Of decedent, assets for payment of debts 5395
—order in which debts paid, 5390, 5395
—how administered 5396
—liability of heir or devisee for value of estate 5397, 5398, 5399
— —title of purchaser from heir or devisee 5397
—liens not affected 5400
—devised to be sold, duty of executor or administrator..... 5393
— —how disposed of 5394
—contract by decedent to convey, execution of deed by personal representative 5378
Deed, form of 5162-5164
—may pass subsequently acquired real estate 5202
—estate disposed of by..... 5147
—estate to commence in future..5147
—to convey grantor's interest....5163
—buildings, privileges and appurtenances 5168
—good between parties 5169
—to convey estate of inheritance or freehold, when necessary....5141

Digitized by Google

Sec.

REAL ESTATE—Con.
—voluntary partition by co-parceners 5141
—of gifts 5141
—to pass rights of grantor.....5148
—effect of certain words of release in 5164
—without words of limitation, passing fee simple.....5149
—of release effectual without lease 5156
Deed of trust 5166
—sale under 5167
Descent of 5264-5272
—when homicide to bar acquisition of estate by 5274
Dower in.5117, 5118, 5119, 5125-5127
—in trust estate 5158
—how conveyed 5211
—conveyance of by attorney in fact 5215
—in estate of insane or infant husband, how conveyed or released 5344
— —proceeds secured to wife....5345
— —of insane wife, how released. 5346, 5347
Equitable estate, liability for debts 5157
—spendthrift trusts 5157
Of execution debtor, conveyed to officer 6504
—sale of 6507, 6508
— —conveyance by officer.....6508
Exemptions 6531-6557
—Va. Const., §§ 190-193
Fee simple, deed or will without words of limitation to pass 5149
—sale of on bill by life tenant against remainderman 5161
— —by remainderman against life tenant.....5161
Fee tail estate in converted into fee simple 5150
Gifts of, necessity for writing....5141
Ground rent, limitation on action to recover 5817
Of infant, suit to sell or lease, 5326, 5335-5347
—proceeds of sale 5347
—renewal or surrender of lease by or on behalf of infant....5334
Of insane person, petition of committee to sell or mortgage, 1055-1057
—suit to sell or lease.....5335-5347
—lease, renewal or surrender of by or on behalf of insane person 5334
—proceeds of sale of 5347
Judgments or decrees affecting title or possession of, book recorded in 3393
Judicial sale of 6266-6273
Jurisdiction of justice of claims for injury to 6015
Land office warrant as.....462
Larceny of things fixed to.....4444
Lease, form of 5165
Lien on, judgment in proceeding to enforce treatment by Crop Pest Commissioner.....877
—judgment against treasurers and sureties 2433
—for taxes 2271, 2454
— —capitation tax 2455
— —assessed by town council..2457
—judgments of State Corporation Commission 3732
—vendors', void unless expressed in conveyance 5183
—not affected by sections as to payment of debts of decedent.5400
—judgment against unincorporated association 6059

Sec.

REAL ESTATE—Con.
—of attachment 6395
—of transportation or canal company, mining or manufacturing company, etc., for labor and supplies 6438, 6439
—of judgment.....6470
— —from time of docketing.....6471
— —order of liability between alienees of parts of 6476
—forfeited forthcoming bond....6527
Limitation contingent on dying without heirs or heirs of the body, how construed 5151
Lis pendens, recovering memorandum 6469
Loans on by savings banks....4142
—by building and loan associations 4154, 4166
—of fiduciary funds, requisites for 5431
Of married woman, conveyance by attorney in fact 5215
—separate estate, how acquired and disposed of 5134
— —of infant married woman, receiver for 5136, 5137
— —sale of 5137
Mortgage of, recorded in deed book 3393
—release of 3393
Partition, proceedings 5279-5285
Possession of part not construed as possession of the whole, when 5470
Powers of attorney to convey, recordation in deed book.....3393
Power of disposition in life tenant not to defeat remainder, when 5147
Prosecution for offense relating to, what proof of ownership sufficient 4872
Railroad company may acquire..3961
Recovery of, by action of unlawful entry or detainer ...5445-5450
—by action of ejectment...5451-5489
School boards, purchase of by, contract in writing 2709
—approval of title by attorney..2709
Shelley's case, rule in abolished.5152
Of State, sale of 2538-2542
Survivorship between joint tenants abolished 5159
—exceptions 5160
Taxation, segregation 2205
—for schools 2205
—ascertainment of value for....2211
—what land subject to.....2271
—assessment, beginning of year for 2270
—value of land and lots, change of 2271
—what land exempt from.....2272
—omitted from land books, procedure to have entered on, 2292, 2293
—forfeiture because not assessed for 2293
—bona fide purchaser, liability for taxes when omitted from land book 2293
—rent or lease of for collection of taxes 2439
—apportionment of taxes when partitioned 2449
—entry by owner in land book..2451
— —forfeiture for failure.....2452
—petition to ascertain delinquent taxes due on 2456
—cloud on, tax title, bill to remove 2498
—sold in chancery suit, liability for taxes 2499
—lien on for taxes....2271, 2454, 2465

Digitized by Google

Sec.

REAL ESTATE—Con.
— —assessment by town councils 2457
Delinquent for taxes, when not liable for taxes and levies....2499
—actions and suits with reference to, effect of sale to State for delinquent taxes 2483
—sale for delinquent taxes, 2283, 2461, 2462
— —redemption, payment of taxes 2283
— —for delinquent town taxes, 2457-2459
Title to vested by decree in partition suit 5282
Transfers of, recorded in deed book 3393
Transfers of to uses, effect of..5155
Transferring or encumbering to evade prohibition law, penalty.4670
In trust, suit to sell....5335-5347
Unlawful destroying or injuring, punishment 4479
Virginia Pharmaceutical Association amount may hold....1655
Will, to convey estate of inheritance or freehold 5141
—estate disposed of by....5147
—estate to commence in future..5147
—without words of limitation, passing fee simple 5149
—devise, lapsed, when included in residuary devise 5239
—devise in general terms, how construed 5240
—devise, extent and operation of.5241
—devise, charged with payment of debts, effect on limitation of action to recover 5814
—when homicide to bar acquisition by 5274

REBATE
Tobacco warehouseman giving, penalty 1384
—person receiving 1384
By transportation company, 3905, 3906
—penalty 3914
Of insurance premiums, prohibited 4222
—penalty 4223

RECEIPTS
Warehouse receipt, see **"Warehouses and Warehousemen"**
Of tobacco samplers, to predecessors 1353
—form of 1356
—statements in 1357
—duty to give on delivery of tobacco to warehouse 1361
—to be printed and dated....1368
—illegal, penalty 1359
—penalty for false 4708
Of tobacco inspector, penalty for false....4703
By employment agencies, for fees charged applicants 1803
To jailor for prisoner delivered to convict road force 2075
By Auditor of Public Accounts for payments to State treasury.2155
By State Treasurer for payments to State treasury....2155
For books, etc., of commissioner of revenue 2266
For copies of land book and personal property book 2346
To delinquent capitation tax collector for taxes collected and paid to clerk 2422
For delinquent taxes collected...2420
To purchaser, delinquent tax sale 2464

Sec.

RECEIPTS—Con.
For payment by clerk, levies received, sale of delinquent lands 2502
For payment for waste and unappropriated land 2504
For fines 2546
For taxes, expenses, paid to purchaser of delinquent land....2476
For books and papers of treasurer 2779
By payee or transferee of county warrant 2782
Given by officers for taxes, fines and fees 2829
By oyster inspector, for rents, fines, taxes, collected....3222
From officer to clerk for process, order or decree 3403
By State Corporation Commission for registration fee paid by corporation 3748
For freight, by transportation company 3915
For payment of damages, eminent domain proceedings 4360
—acknowledgment, recordation..4369
Embezzlement of 4451
For payment of revenue tax, as evidence in prosecution for violation of prohibition law..4618, 4620
For internal revenue tax, to sell ardent spirits, list of persons holding 4660
—prosecution of 4660
By commissioner for vouchers of fiduciary 5415
—effect as evidence 5415
By commissioner in chancery for original papers in suit....6187
Of officer to garnishee making payment 6512

RECEIVERS
Trust company as 4148
Listing property for taxation....2307
—bonds, notes, evidences of debt 2308
—payment of taxes on 2309
Bank or depository of funds of, report to examiner of records.2223
Debts due by, priority of payment from decedent's estate, 5390, 5391, 5395
Bond, petition of surety to be relieved from 5771
—new bond required 5771
—removal for failure to give....5773
Failing to account for money, guilty of larceny 6273
Rule against for recovery of money due from 6274
—hearing, judgment 6275, 6276
—jury 6276
Action against 6291
—judgment against, effect of....6292
—by warrant, when tried....6293
Receiver's book, contents, index.6294
Judgment against, docketing....6461
In attachment proceedings....6389
Of bank, application for by State Corporation Commission 4120
Of corporation, service of process on....6065, 6066
—action to recover call on stock subscription 3843
—compromise of claim 5440
For dissolved corporation, appointment 3813
—powers and duties 3813, 3814
—actions by and against 3813
For estate of infant married woman 5136, 5137
Of life insurance company, or casualty company on cooperative plan 4261
—compensation 4261

Digitized by Google

Sec.

RECEIVERS—Con.
General Receivers
Appointment 6280
Duties 6280
Securities, how taken and kept.. 6281
—power over 6281
—dividends and interest on..... 6282
—when interest on loans payable 6288
Accounts 6283
—statement of to courts..... 6283
—settlement 6289
—recordation of reports of settlements 6290, 6294
—fees for recordation 6295
Liability 6284
Bonds 6285
—examination 6289
—additional 6290
Compensation 6286
Penalty for neglect of duty..... 6287

RECEIVER'S BOOK
What recorded in 6294
Index 6294

RECEIVING STOLEN GOODS
As larceny 4448
United States currency, sufficiency of proof 4870a

RECESS
Of General Assembly, trial of impeachment during..Va. Const., § 54
Auditing committee of General Assembly may sit during, Va. Const., § 68
Courts may take 5959, 5970
Term of circuit court, powers of judge during 5893

RECOGNIZANCES
Of witnesses before coroner's inquest 4812
—prosecution for violating law as to intoxicating liquors 4613
—prosecution of person intending to commit crime 4792
—summoned in jurisdiction in which accused was arrested..4837
—by justice on committing accused 4845
—when venue of criminal case changed 4915, 4916
—on appeal from conviction before justice 4989
Surety in, taking security from principal 4836
For bail, arrest out of county in which offense was committed, return of 4837
Bail-piece 4838
Of accused when trial adjourned by justice 4839
—when committed for trial by justice 4845, 4846
How default certified when accused fails to appear..... 4840
—proceedings on 4840
Certified to clerk of court by judge, bail commissioner or justice 4847
Discharge of, order..... 4850
Taken by officer making arrest on caplas or attachment..... 4882, 4887
—certificate of 4882
Required when bail given..... 4972
How payable, penalty, conditions 4973
Waiver in 4974
For insane person or minor.... 4975
Commitment on failure to give, when discharged 4976
Taken out of court, where to be sent 4977
Entry of default 4978
—proceedings on..... 4978
Discharge of surety on payment 4979
—on surrender of principal..... 4982

Sec.

RECOGNIZANCES—Con.
— —certificate to surety..... 4983
Bail after surrender by surety.. 4983
Remission of penalty..... 4980
Defects of form not to defeat action on 4981
Action or scire facias on, limitation of 5815
Action on, inquiry of damages.. 6132
In proceeding to compel parent to support child 1909
Of husband or parent deserting or failing to support wife or child, 1939, 1940
Of person convicted for violation of game laws 3362
Of person about to engage in duel 4424
On appeal from sentence of justice for contempt 4523
Of person convicted of violation of Sunday laws 4570
Of person disturbing religious worship 4576
To answer indictment for violation of law relating to intoxicating liquors 4613
For person accused of intending to commit crime, 4790-4794, 4802
Of person going armed 4795
Of person about to commit breach of peace 4796
Proceeding to extradite fugitive from justice..... 5063-5065
—procedure on default 5063
Of non-resident disturbing fishing shores 5292
Of person harboring or enticing apprentices 5313
Chapter on judgments embraces. 5479

RECORDATION
See **"Records"; "Register"; "Registration"**
When to be in county, when in corporation 5199
In hustings court of city of Richmond, Part II 5914
—lands lying north of James River 5932
—lands lying south of James River 5932
In chancery court of city of Richmond 5920
—lands lying south of James River 5932
—lands lying north of James River 5932
Of what deeds and contracts not to affect purchase 5201
Power of attorney, where recorded 5203
Who to admit instruments to record 5204
Where instruments admitted to record 5204
On certificate of acknowledgment 5205-5208
—recitals in certificate..... 5210
On certificate of proof by witnesses 5205
On acknowledgments outside of the United States 5206
On acknowledgment on behalf of corporation 5207, 5208, 5209
—in representative capacity..... 5207
Copy of instrument when original lost 5212
Preservation of instruments unacknowledged but lodged for recordation 5213
Accounts of fiduciaries, 5404, 5405, 5428
—accounts settled in chancery cause 5411
—book recorded in..3393, 5405, 5428

Digitized by Google

Sec.

RECORDATION—Con.
Appointment of agent by applicant to purchase delinquent land 2495
Appointment of agent, mercantile business 5223
Appraisements, book recorded in. 3393
Approval of title of real estate purchased by school boards or county 2709
Assessors of land, certificate and oath of 2241
Assessment for local improvement 3071
By Auditor of delinquent lands purchased in name of..... 2490
Bills of sale, book recorded in.. 3393
Bond, of contractor for public printing 382
—for paper 383
—of Commissioner of State Hospitals 1011
—of district, county, city, town officer 2696
—of clerks, Supreme Court of Appeals 3334
—of officers and fiduciaries, book recorded in 3393
—of officers, State Corporation Commission 3708
Camps of Confederate veterans, rosters of 5214
Certificate of sale of property for delinquent town taxes 2458
Certificate of appraisers of estrays or adrift property 3565
Certificate for consolidation of corporation 3822
Chattels, loan of by will or deed. 5188
—reserving property in by way of condition, reversion, remainder, etc..... 5188
Charter of corporation, by Secretary of the Commonwealth..... 3851
—by clerk of the court..... 3851
—amendment 3779, 3780
—new charter of corporation after dissolution 3811
—of purchasers of property and franchises 3817
—of railroad corporation..... 3857
— —amendment to 3859
—public service corporation..... 3866
— —amendment of 3868
—non-stock corporation 3874
— —amendment of 3875
City or town, order annexing territory to 2963
—plan and survey of city or town 2977
By clerk of the court, writings, certificates, plats, manner of.. 3392
—annual return of list of surveys 440
Contracts, book recorded in 3393
—tax 2402
Contracts reserving title to or lien on chattels for purchase price. 5189
—book recorded in 3393
Contract in respect to real estate or goods and chattels in consideration of marriage....5193-5196
—for conveyance of real estate or term of more than five years, 5193-5196
— —of deed for 5193-5196
— —book recorded in 3393
Contract for sale of chattels, when possession remains with seller 5193-5196
Conveyances to United States.... 19
—tax on 19
Copies of lost or destroyed records 6202
Decree for partition, assignment of dower or recovery of land.. 5216
—book recorded in 3393

Sec.

RECORDATION—Con.
Deeds, conveyances, etc., to United States 19
Deed declaring loan of chattel.. 5188
—reserving property in 5188
Deed to real estate..... 5194, 5195
Deed of gift 5194, 5195
—where to be recorded..... 5195
Deeds, book recorded in 3393
—transfer fee 2347, 2348
—tax on 2402
Deed of married woman executed and acknowledged by attorney in fact 5215
Deeds and other instruments partly proved, book recorded in 3393
Deed of release, where to be recorded 5195
—book recorded in 3393
Deed of trust 5194, 5195
—book recorded in 3393
—on personal property when removed into State 5197
—transfer fee 2347, 2348
—releases of 3402
Delinquent real estate 2428
Division fence, decision of arbitrators as to..... 3560
Drainage district, petition, orders, map, etc., in proceedings to establish 1742, 1758
—certificate of cost 1771
—bonds 1774
Entry of land warrant in clerk's office 426, 427
Executions, abstracts of, book recorded in..... 3393
Fire company, writing to form.. 3122
Of forfeited forthcoming bond.. 6527
Of grant by register of land office 468
—index 470
Of grant supplying link in title.. 485
Grants, book recorded in 3393
List of heirs 5379
Writing claiming homestead exemption in real estate. 6532, 6546
—in personal estate..... 6540, 6546
—order setting apart or directing investment of estate in..... 6546
—book recorded in..... 3393
Insurance company, order liquidating 4244
Inventories of fiduciaries 5405
—book recorded in 3393
Judgments, book recorded in.... 3393
Judgments or decrees partitioning or affecting title to real estate 5216
—book recorded in 3393
Judgment on petition to ascertain boundary to real estate..... 5490
Land owner's consent to right of way for road 1978
Leases, book recorded in..... 3393
Liens, book recorded in..... 3393
Lien of purchaser for payments made before receiving notice.. 5200
Lien for labor and supplies against transportation or manufacturing company, etc..... 6439
—book recorded in..... 3393
Lien on colt..... 6446
—on calf..... 6447
Lien on crops..... 6452
Lis pendens 6469
—book recorded in..... 3393
Loan of chattels, will or deed declaring 5188
Log brand..... 3581
Copy of order rearranging magisterial districts..... 2690
—report and map of commissioners 2693
Marriage certificate..... 5075

Digitized by Google

Sec.

RECORDATION—Con.
—marriage out of State.....5077
Mechanic's lien, memorandum for 6427
—lien for labor or supplies against transportation or manufacturing company, etc.....6439
—book recorded in.....3393
Memorandum of lis pendens.....6469
—of attachment.....6469
—book recorded in.....3393
Mortgage 5194, 5195
—on personal property when removed into State.....5197
—transfer fee.....2347, 2348
—book recorded in.....3393
— —releases of.....3393
Of notice of motion for judgment against delinquent treasurer 2432
Optometrist, certificate of.....1633
Order declaring forfeiture of land for failure to enter in land books.....2453
Order changing name of person.5933
Oyster planting ground, assignment of.....3225
—subrenting or assignment of rights 3228
Personal property, lien on when removed into State.....5197
Pharmacy, licenses to practice..1676
Plat and survey for person in possession who has paid taxes. 457
Plat of survey of disputed boundary between counties.....2635
Plat of clamming or crabbing ground 3295
Plats of city or town lots..5217-5219
—vacation of.....5220, 5221
Power of attorney to convey real estate, book recorded in.....3393
—where recorded.....5203
Power of attorney appointing agent on whom process against corporation may be served...3854
Power of attorney to execute bonds for surety company....4319
—revocation of.....4319
Priority when writings admitted to record on same day....5198
Quit-claim deed, book recorded in 3393
Redemption of property sold for town taxes.....2458
Refunding bond of legatee or distributee 5437
Release of deed of trust.....3402
—deed of.....3393
— —where recorded.....5195
Report of delinquent tax sale...2469
—of survey of land sold for delinquent taxes.....2481
Report of surveyor, application to purchase delinquent land...2495
Report and plat of survey, formation of new county.....2630
Report of viewers, proceeding to compel repair of turnpike.....4081
Report of commissioners, eminent domain proceedings, 4369, 4381
—receipt for damages paid.4369, 4381
Report of appraisers of decedent's estate.....5376
Reports of fiduciaries.....5428
Reports of settlement of accounts of general receivers, 6290, 6294
School districts, number and boundaries of..... 776
By second auditor of certificates given for West Virginia's share of State debt 2590
—of State bonds 2592

Sec.

RECORDATION—Con.
In office of Secretary of the Commonwealth 344
Survey of land sold for delinquent taxes.....2481
Tax on deeds to United States... 19
Tax deed.....2488
Torrens system, acts concerning continued in force.....5225
Of trade marks.....1457, 1458
Writing adopting trade mark or brand for timber.....1449
Transfer of real estate, book recorded in.....3393
Of transfer of State's interest in road to county.....3758
Settlement by treasurer of dog tax fund 2322
Of wills.....5262
—effect as notice.....5262
—book recorded in 3393
Will or deed declaring loan of chattel 5188
—reserving property in by way of condition, reversion, remainder, etc.....5188
Words "creditors and purchasers" construed.....5200
Writing by widow renouncing will 5276
Written act of re-entry on land.5536

RECORDS
See **"Recordation"; "Register"; "Registration"**
Of official acts of Governor kept by Secretary of Commonwealth .....Va. Const., § 90
State Corporation Commission to keep.....Va. Const., § 155
—on appeal from Va. Const., cl. f., § 156
Accounts of receivers, order for settlement of.....6289
On appeal to Supreme Court of Appeals 6339-6342
On appeal, exhibited with petition 6339
—how made up.....6339, 6340
—objections, judge to decide....6341
—agreements as to.....6342
—rules, court may change.....6343
—part unnecessarily copied, costs of 6344
—former appeal, right of court to inspect 6345
—bill of exceptions as part of...6259
—certificate of facts a part of..6331
—certiorari, to complete.....6345
—from State Corporation Commission 5354
— —Va. Const., § 156
—printing, etc., by clerk of Supreme Court of Appeals..6357-6360
—distribution of copies.....6357
—binding 6371
—destruction of manuscripts....6371
—cost of printing.....3486
— —dismissal for failure to pay.3486
—in criminal case, transcript of with petition for writ of error 4933
— —diminution of, certiorari...1933
Bill of exception as part of....5259
Of Board of Medical Examiners.1611
Of Board of Veterinary Examiners 1278
Certification of for use in another State 345
Certificate of facts in suit to enforce claim against State....2581
Certificate of facts as part of record 6331
By clerk of taxes collected.....2406
Of commissioners to examine pilots 3640
Of Commissioner of Insurance..4182

Digitized by Google

Sec.

RECORDS—Con.
—of examinations by.....4183
—of fires.....4183
Of confession of decree or judgment 6130
Copies, as evidence, records in clerk's office.....6197
—in public offices of the State..6197
—in offices of clerks or other officers of West Virginia.....6198
—use of in different suits.....6199
By county surveyor of variation of compass needle.....2849
Of county surveyor, rebinding and transcribing.....5980-5982
Of courts, removal from county or city prohibited.....3387
—open to public inspection.....3388
—copies furnished by clerks....3388
—order book, entries in, corrections, signing.....5962
—rebinding and transcribing, 5980-5982
—faith given to transcribed record 5980
—how re-entered when lost, destroyed, or illegible.....6201-6204
—of courts of United States or another State, how authenticated to be used in evidence .6205
—of foreign court.....6207
—of money under control of court 6310
— —paid into treasury 6313
Of coupons tendered for debts due State kept by officer.....2608
Defect in, when not ground for reversal of judgment.....6331
Of district school boards..... 657
—on appeal from..... 666
Of facts proved in habeas corpus proceedings as part of...5855
—certificate of as part of record.6331
Of fiduciaries, what entered in, 5401, 5408, 5412
Foreign, admissibility in evidence 6207
Of forfeited forthcoming bond..6527
—of judgments on, justice to keep 6530
Order of Governor remitting fine 2575
—of official acts of, Va. Const., § 80
Of hunting licenses issued by clerk 3332
Index of by clerk of the court, 3391, 3392
Of intoxicating liquors, kept by railroad, express, transportation companies, common carriers, etc.....4632, 4634, 4639
—inspection of.....4632, 4637
—of shipments of to druggists and hotel-keepers.....4605
—kept by druggist of prescriptions for.....4591
—of affidavit for purchase of alcohol for scientific or mechanical purposes.....4592
— —for purchase of wine for sacramental purposes.....4592
Kept by jailor.....2860
Of judgment in petition to establish boundary.....5490
Judgment by justice on warrant for civil claim.....6024
Of junk dealer.....4711
Of juvenile and domestic relations court.....1951
Of land titles in Northern Neck in keeping of Register of the Land Office..... 414
Of proceedings to supply lost or destroyed link in title.....479-485
Of Library Board 360

Sec.

REGORDS—Con.
Of local boards of review.....2226
Lost or destroyed, petition for hearing 6241
—new suit.....6241
—use of certified copies in evidence when record destroyed..6211
—limitation on new action because of.....5826
Of lunacy proceedings.....1019
Mutual Assurance Society's lien book 6458
Of oath taken by public officer.. 277
Of oath of division superintendent of schools..... 625
By orchard inspector..... 898
Of oyster inspector.....3222
Penalty for making false entry in 4516, 4517
—destruction of by public officers 4516, 4517
—erasing, altering.....4516, 4517
—theft or destruction of by person other than officer.....4518
—for false entries in record of marriages, births or deaths..4491
— —for giving false information for 4492
—of penitentiary.....4997
— —of conduct of convict.5017, 5018
Of plat of survey for one in possession who has paid taxes... 457
Of public offices of United States or of a State, now authenticated to be used as evidence..6206
Publication of from library fund. 349
School districts, name or number of 667
—claims against..... 670
Of school officers, delivery to successors 685
School trustee, of qualification of 638
Kept by Secretary of the Commonwealth 344
—authentication by..... 344
—official acts of Governor, Va. Const., § 80
Of State deposited in State Library 361
Of State Anatomical Board.....1730
Of State Board of Dental Examiners 1644, 1645
Of State Board of Education... 602
Of State Corporation Commission 3703
—Va Const., § 155
—full faith and credit to.....3703
—on appeal from, Va Const., cl. f., § 156
Of supervisors..2744, 2766, 2770, 2771
Of Superintendent of Public Printing, official acts of..... 381
Of Supreme Court, publication of 401
Of tobacco shipped by vessels..1333
Of vital statistics.....1577-1578

RECOUPMENT
See also "Set-off"
Plea of.....6145
—proceedings on.....6146-6150

RED CEDAR TREES
Public nuisance, when..... 885
Rust, destruction.....886, 889
Treatment 887

RED TOP GRASS SEED
Bushel, standard.....1470

RE-ENTRY
Power of to pass on devise or conveyance of rent.....5514
When tenant deserts premises..5518
On land for non-payment of rent, breach of covenant or condition 5530-5539
—recordation of written act of..5536

Digitized by Google

Sec.

RE-ENTRY—Con.
— —effect as evidence.....5536
—relief against.....5532-5534, 5538

REFEREE
In case of need, named in bill of exchange 5693

REFORMATORIES
See **"Prison Association of Virginia"; "Negro Reformatory Association of Virginia"**
Appropriations to...Va. Const., § 67
Report, penalty..... 987
Inspection by Board of Charities and Corrections.....1894
—information and statistics furnished to.....1894
Reports by to Board of Charities and Corrections.....1895
Plans for, submitted to Board of Charities and Corrections.....1896
Delinquent, dependent, neglected children committed to.....1905
—children under 18.....1908
Children paroled by, report to Board of Charities and Corrections 1919
Property of, exemption from taxation 2272, 2301
—Va. Const., § 183
—inheritance tax on gifts to....2272
Minor sentenced to when convicted of having ardent spirits in his possession.....1641

REFUND
Money paid into treasury, special act for prohibited, Va. Const., § 63
By legatee or devisee.....5438, 5439

REFUNDING BOND
Of distributees of estate of person presumed to be dead.....5365
Of legatee or distributee..5437, 5438

REGISTER
See also **"Recordation"; "Records"; "Registration"**
Of addresses of stockholders....3829
Of city or town, who to perform duties of.....2987
Of persons convicted of felony, to be kept by clerks of courts..4787
—supervision by judge.....4788
Foreign, admissibility as evidence 3207
Kept, by auditor, of land belonging to Commonwealth...2537, 2539
—by clerk of penitentiary.....4937
— —of offences by convict, punishments, etc.....5017
—by employment agency.....1803
— —false entries in.....1804
— —penalty for.....1806
—by jailor.....2861
—by State Corporation Commission, of corporations.....3745
— —of property of State.....3765
—by Secretary of the Commonwealth 344
—by harbor masters, of vessels..3683
Of land warrants..... 416
Of marriages.....5092
—entries in.....5075, 5076
—as evidence.....5098
Of marriages, births and deaths, false entries in.....4191
Of State bonds and certificates of debt by second auditor.....2631
—lost bond or certificate.....2639
—when bonds surrendered and canceled and new bond or certificate issued.....2638
Of State property.....999, 3765
By treasurer, of State coupons..2628
Of practitioners of veterinary medicine and surgery.....1278

Sec.

REGISTER—Con.
Of vessels, taking oysters with scrapes and dredges.....3246
—kept by harbor masters.....3683

REGISTER OF LAND OFFICE
See **"Land Office"**
Election by General Assembly.. 323
—time of..... 323
Term 324
When to qualify..... 324
Bond of..... 325
—submission of to Attorney General 326
—new or additional..... 327
—effect of failure to give..... 327
—where filed..... 328
Record of oath taken by..... 277
Vacancy in office if bond not approved or oath not taken..... 329
—how vacancy filled....122, 329, 331
Removal from office..... 330
Business hours..... 337
Proceedings and vouchers..... 338
Salary 3439
To be Superintendent of Public Buildings 402
To be Superintendent of Weights and Measures.....1465
Clerks, appointment of.....335, 3439
—removal or suspension..... 336
—salary 3439
Employees 402
When to take inventory of property in Governor's house..... 404
When to take possession of Governor's house..... 404
Record of land titles in Northern Neck to be in keeping of. 414
To provide offices for Legislative Reference Bureau..... 575
To designate office for Board of Charities and Corrections.....1890
To file and preserve vouchers and certificates 416
To keep a register of warrants.. 416
To furnish copies of unsigned grants 417
—certificate to..... 417
When and to whom to issue warrant 418
When to issue duplicate for lost warrant 418
Report of names and oaths of chain-carriers to..... 436
Receipt for return of plat to... 442
To issue new warrant when land lost on caveat..... 452
Land grants, made out by..... 455
—of waste and unappropriated land 2594
When not to receive plat..... 458
When not to issue grants..... 459
Noting grant or renewal..... 461
To return defective plat and certificate to surveyor. 462
—postage allowed register..... 466
When and in what form grants to issue..... 467
Delivery of grant..... 468
Recordation of grant..... 468
—index 470
Warrant for surplus in grant... 472
To receipt for court certificate on resurvey..... 476
To enter decree repealing grant. 488
When to issue grant for escheated land.....507, 512
To publish certificate of escheator 504
—copy filed with Governor..... 504
To forward list of grants to clerk of court.....2242
List of land grants, to whom furnished 3277

Digitized by Google

Sec.

REGISTER OF LAND OFFICE—Con.
Copy certified to of order forfeiting land for failure to enter in land book....2453
—recordation....2453
Account with auditor....2507
—penalty for failure....2508
When to pay funds into treasury....2509
Fees, warrant, etc., for waste and unappropriated land....2505
—when to be paid....2506
Fees, paid into treasury....3439
Proceedings against by auditor, for violation of revenue law..2544
Contingent expenses....3439
State Accountant to devise system of accounting for....552, 554
—mandamus to compel adoption. 555
Inspection of accounts of....557, 558
—duties and penalty.... 558
Exempt from jury service....5985
Venue of actions against....6049
—court in which brought....3051
Copies of records of as evidence.6197

REGISTERED MAIL
Notice by, in proceeding to revoke certificate of optometrist.1635
Insurance, proof of loss by....4221
—application for form....4221
Notice to creditors, sale of merchandise in bulk....5187

REGISTRARS
See **"Elections"; "State Board of Health"; "Vital Statistics"**

REGISTRAR OF VITAL STATISTICS
See **"Cities and Towns"; "State Board of Health"; "State Registrar of Vital Statistics"; "Vital Statistics"**

REGISTRATION
See **"Recordation"; "Records"; "Register"**
Of Births and Deaths, see "Vital Statistics"
Fertilizer, brand and analysis, 1110, 1112
Agricultural lime, brand and analysis....1132, 1134
Dairy, creamery, cheese factory, skimming station, etc....1173
Statement of dealer in commercial feeding stuffs....1235-1236
Wheat and corn millers, distributors and dealers with Dairy and Food Commissioner....1239
Commission merchant....1258
Certificate of physician....1612
Certificate to practice optometry.1629
License to practice dentistry, 1647, 1648
Pharmacist....1673, 1674, 1683
—application for....1684
—assistant....1688
—apprentice....1689
License to practice embalming..1720
Employment agencies, of applicants for employment,....1803
Of automobiles....2126, 2129
—owner....2126, 2127
—manufacturer or dealer....2128
—chauffeur....2129
—owned by State, county, city..2148
Of boat used in taking oysters..3241
Tongers of oysters....3242
Fee for, to corporations, notice of....3747
License of agent of insurance company....4235
Of cattle or other animals, obtaining by false pretense....4160

REGISTRATION DISTRICT
For vital statistics....1563

Sec.

REGULATION
Definition....3693
—Va. Const., § 153

REHEARING
Proceeding to correct erroneous assessment of taxes....2391
As to parties not served....6072
Right of absent party to when case stricken from docket for failure to prosecute....3174
In Supreme Court of Appeals...3372
—Va. Const., § 88
On attachment....6411, 6412

REINSTATEMENT
Of suit in equity for appointment of commissioner to execute deed....6297
Injunction, by Supreme Court of Appeals....6320

REINSURANCE
By co-operative life insurance or casualty company....4266
By insurance companies, consent to by Commissioner of Insurance....4310

RELEASE
Of attached property, when bond given....3394
Of contracts for conditional sale.5191
Of co-obligors....5763, 5764
Of curtesy of insane husband, 5346, 5347
Effect of certain words of in a deed....5134
Deed of, effectual without lease.5156
Deed of, where to be recorded..5195
—recorded in deed book....3393
Of deed of trust or other obligation marginal notation of....3334
Of deed of trust, to whom made.6456
Of dower of insane wife..5346, 5347
Of dower by wife of insane or infant husband....5344
—how proceeds secured to wife.5345
Of encumbrance by satisfaction on record....6456
Of errors, by confession of judgment....6330
Of person imprisoned for failure to pay fine....4952, 4953
Of excess in judgment or decree.6333
Of liens....6456
When proof of signature not required....6093

RELIGION
Religious freedom....34, 35
—Va. Const., §§ 16, 58

RELIGIOUS ASSOCIATIONS
Property, exemption from taxation....2272, 2301
—Va. Const., § 183
—inheritance tax on gifts to...2272

RELIGIOUS BODIES
Property of exempt from taxation....2272, 2301
—Va. Const., § 183
Gifts to, inheritance tax on....2272

RELIGIOUS DENOMINATION
Not to be incorporated, Va. Const., § 59

RELIGIOUS FREEDOM
Act of....34-35
—Va. Const., §§ 16, 58

RELIGIOUS MEETING
Disturbance, punishment....4576
Carrying weapon to place of, punishment....4578
Police for....4580
Stallions and jackasses prohibited at....4744

Digitized by Google

Sec.

RELIGIOUS PURPOSES
Property dedicated to by recording plat of city or town lots, 5219-5222

RELIGIOUS SOCIETIES
See also "Churches"
Appropriations for prohibited, Va. Const., § 67
Conveyances to..... 38
Charitable trusts for benefit of, not to fail..... 38
Trustees, appointment of..... 39
—books and furniture held by.. 41
—suits by and against.....42-44
—real estate, quantity may hold. 43
—personal estate, quantity may hold 43
—sale or mortgage of property. 45, 46
Division of, disposition of property 40
Property of exempt from taxation 2272, 2301
—Va. Const., § 183
Making false entry in record of marriages, births or deaths, punishment 4491
Making false statement for records of marriages, births or deaths, punishment.....4492

REMAINDERS
See "Creation and Limitation of Estates"; "Limitations"; "Real Estate"
Effect of sale or life estate for taxes 2488
When not defeated by power of disposition given to life tenant 5147
Limitation contingent on dying without heirs or heirs of the body, how construed.....5151
Limitation to heirs or heirs of body of life tenant, how construed 5152
—rule in Shelley's case abolished 5152
Contingent, not to fail for want of particular estate.....5153
Not affected by merger or alienation of particular estate.....5154
Sale of on bill by tenant of life estate 5161
Sale of life estate on bill by remainderman 5161
Reservation of property in chattels by, when void as to creditors 5188
Surrender or default by life tenant not to prejudice.....5443
Grant or devise of, attornment not necessary.....5514
Attachment of.....6389
Remainderman, entry of for failure of life tenant to repair mill 3592
—reimbursing life tenant for improvements 5498

REMOVAL
Of Causes, see "Removal of Causes"
Of Attorney General, Va. Const., § 107
Attachment, for removal from State 6379
Of Board of Review and tax officers for misfeasance.....2215
Of clerks, State Corporation Commission 3699, 3752
—Va. Const., § 155
Of clerk of court, for giving false certificate to special commissioner 6271
Of clerks, Supreme Court of Appeals 3378

Sec.

REMOVAL—Con.
—for acting as counsel.....3330
—deputies 3379
Of commissioners to examine pilots 3614
Of commissioners in chancery...5178
Of Commission of Fisheries.....3146
Of Commissioner of Insurance..4198
—deputy 4171, 4198
Of Commissioner of Prohibition 4624
—deputies and inspectors.....4627
Of Commissioner of Revenue, 2255, 2315
Of Commissioner of State Hospitals 1012
Of Commissioner of Wrecks....3596
Of coroners.....2816
Of directors and officers of corporations 3789
Of Dairy and Food Commissioner 1156
Of deputies of officers.....2701
Of deputy clerk of Supreme Court of Appeals.....3379
Of Deputy Commissioner of Insurance 4171, 4198
Deputies to Commissioner of Prohibition 4627
Of district school trustee..... 651
Of division superintendents of schools 617
Of Board of Agriculture employees 1106
Of examiner of records.....2218
Of fences for coast survey..... 20
Of game wardens.....3321
Of goods levied on, punishment.4447
Of guardian.....5326
Of guardian ad litem for infant or insane defendant.....6098
—in proceeding to establish drainage district.....1741
Of harbor masters of Norfolk and Portsmouth.....3673
Of inspectors of flour and other commodities 1404
Of Inspector of Mines.....1836
Of inspectors appointed by Commission of Fisheries.....3153
Of inspectors appointed by Commissioner of Prohibition.....4627
Of judge, from office, Va. Const., § 104
—of residence of, when to vacate office 5977
Of justice, juvenile and domestic relations court.....1949
Of local registrar of vital statistics 1564
Of Mayor of city.....3010
By Mayor, of officers, firemen, police, etc.....3010
—Va. Const., § 120
Of member of Legislature from district to vacate office, Va. Const., § 44
Of member, Board of Medical Examiners 1609
Of member, Board of Embalming 1716
Of members, Board of Charities and Corrections.....1889
—secretary, assistant.....1893
Of members of police and fire department of cities.....3010
—Va. Const., § 120
Of mortgaged goods, fraudulently, punishment.....4455
Of notaries.....2850
Of officers by General Assembly .....Va. Const., § 78
Of officers for failure to repay loans from literary fund..... 761
Officer of State institution for failing to make report..... 987

Digitized by Google

Sec.

REMOVAL—Con.
Officers of insane hospitals.....1008
—Va. Const., § 151
Of officers appointed by Health Commissioner 1490
Of officers and employees of drainage district.....1780
Of officer interfering with or refusing information to Board of Charities and Corrections.....1900
Of officers, cause for, procedure, 2705, 2706
Of officers and employees of cities and towns.....2988
Of town officers.....3004
Of officers of State Corporation Commission 3752
—Va. Const., § 155
Of officer, for disclosing information relating to banks.....1124
Of officers and employees of penitentiary 5027, 5034
Of officer, commissioner or receiver, failing to give new bond 5773
Of orchard inspector..... 902
Police agents of railroads.....3944
Of special police for counties...4798
—from county as creating vacancy in office.....4799
Police agents for steamboat wharf 4025
Of poor person, to place of last settlement 2802-2804
Of school trustee..... 632
Of secretary of Board of Health.1492
Of State Accountant..... 550
State Corporation Commission, members and officers of.....3752
—Va. Const., § 155
From State, as ground for attachment 6379
From State, homestead to cease.6550
Of superintendents of insane hospitals 1007
—officers 1098
—Va. Const., § 151
Of Superintendent of Penitentiary 5027
—Va. Const., § 148
Of Superintendent of Roads....2033
—foremen 2032
Of Superintendent of Schools... 607
—Va. Const., § 132
Of surgeon of penitentiary.....5027
—Va Const., § 148
Of tax officers.....2215
Of teacher from retired list.801,. 804
Of tobacco sampler.....1388, 1396
Of treasurer for failing to make statement and payment of taxes collected.....2412
—for violating law... 2790
Of trees, for coast survey..... 20
Of trustee.....6298, 6301, 6304
Of trustees of property held for school purposes..... 650
Professors, Virginia Military Institute 842
Officers and teachers, Virginia Normal and Industrial Institute 952
—visitors 963
Professors, Virginia Polytechnic Institute 864
Superintendent, professors and officers, Virginia School for Deaf and Blind..... 975
Superintendent and professors, Virginia State School for Colored Deaf and Blind Children. 985
Of voter from precinct..... 82
—Va. Const., § 18
—change of residence.....100, 101

Sec.

REMOVAL OF CAUSES
Of prosecution for violation of State law to United States Court, duty and compensation of officers.....4971
Of civil cases, from trial justice to Circuit Court.....4988
From one court in city of Richmond to another.....5927
From Corporation Court of Roanoke to Court of Law and Chancery 5951
Of civil warrant from justice to circuit or corporation court..6017
Transfer of Commonwealth's cases to Circuit Court of Richmond 6051
By circuit, corporation or city court 6175-6177
Motion for.....6175
For disqualification of judge....6176
Clerk's duty.....6177
Costs 6177
Proceedings after removal.....6177
Of proceeding before justice on forthcoming bond.....6526

REMOVING PROPERTY OUT OF STATE
By fiduciaries.....5350-5356
Injunction to restrain.....6323
—forthcoming bond.....6323
Attachment 6379

RENEWAL
Of charter of corporation by special act prohibited, Va. Const., § 63
Of license to practice embalming 1721
Certificate or license of insurance or guaranty company....4210
—foreign companies.....4226
Of lease, by or on behalf of infant or insane person.....5334

RENT
See also **"Distress"; "Landlord and Tenant"; "Leases"**
Protection of right to in escheated land..... 515
Assessment of for taxation.....2245
Taxes, as lien on..... 2271
Renting real estate for collection of taxes.....2439
Of oyster ground.....3225
—abandoned plats.....3271
Of bathing grounds.....8230
Charged to superintendents of insane hospitals.....3447
Of wife's land, right of husband in 5134
Covenant to pay, effect of.....5178
—on destruction of premises....5180
—when lessee deprived of possession by public enemy.....5180
Reduction of when buildings destroyed 5180
Curator of estate of decedent to receive 5248
Of estate of decedent, collection of by personal representative.5393
—how disposed of.....5394
Unlawful detainer to recover premises forfeited for failure to pay.....5448
Security for an appeal from justice, in unlawful detainer proceeding 5449
Conveyance or devise of, what powers pass.....5514
Grant or devise of, attornment not necessary.....5514
Grant or devise of.....5514
Liability of tenant deserting premises 5518

Digitized by Google

Sec.

RENT—Con.
Recovery of by distress or action 5519
Who may recover 5520
Who liable for 5521
Distress, for 5522-5529
—liability for when rent not due 5783
Remedy when not payable in money 5529
Re-entry for non-payment of, 5530-5539
—relief from forfeiture 5532-5535
For land occupied by emblements 5541
Apportionment 5544-5547
—land occupied by emblements .. 5541
—rent from lessee of tenant for life, etc. 5543
—purchase of part of land or rent 5547
Attachment for 6416-6418
—liability for when rent not due 5783
— —when sued out without good cause 5783
Ground rent, limitation on action to recover 5817
Of homestead property, exemption of 6544
Homestead exemption not to extend to claims for 6531
—Va. Const., § 190

RENT CHARGE
Assessment for taxation 2215

RENUNCIATION
Of will, by widow 5276

REPAIRS
Covenant for by lessee 5179, 5180
Mechanic's lien for 5426

REPEAL
Of general laws .... Va. Const., § 64
Of laws relating to corporations, Va. Const., § 154
Of corporate charters by special acts ..... Va. Const., § 154
Of statutes not to affect liabilities 6
—not to revive former law 7
Laws relating to corporations, effect on pending actions, rights, liabilities, penalties, etc. 3842
Charter of public service corporation subject to 3891
Of bank charter 4134
—laws relating to 4134
Of land grant, suit for, limitation on 5822
Of limitation, effect of 5828
Of acts when Code goes into effect 6567
—effect on rights, penalties, limitations, etc. 6569

REPLEVIN
Abolished 5784

REPLICATION
See also **"Pleading"; "Pleas"**
To plea of usury 5554
To plea of limitation 5812
Unnecessary allegations in 6109
When clerk to enter 6138
To plea of set-off 6146
Want of, not ground for reversal 6332

REPORTER OF SUPREME COURT OF APPEALS
State reports furnished to 347
Use of State Library 366
Acts of Assembly furnished to .. 388
Printing reports 394
Appointment 5879
Salary 3465, 5879

Sec.

REPORTER OF SUPREME COURT OF APPEALS—Con.
Duties 5880
Correction of proof-sheets 5881
Court may change 5882
Opinions delivered to 5883
Records furnished to 6357

REPORTS
See **"Statements"; "Supreme Court Reports"**
Of accounts of fiduciaries by commissioners 5426-5429
Of analysis of food, evidence ... 1190
Animals, diseased, report of to supervisors 913
Of appraisers, stock killed or injured by railroad 3994
Of appraisers of decedent's estate 5376
—effect as evidence 5376
Of Art Commission 585
Of Attorney General 277
Of audit of officer's accounts, to court 2756
By auditor, of funds applicable to school purposes 746, 749
—annual, to Governor 2202, 2203
—to General Assembly relative to debts due State and sale of State lands 2542
To auditor by treasurer of receipts and disbursements 2127
—by local Board of Review 2227
By Board of Charities and Corrections 1894, 1899
To Board of Charities and Corrections 1895
—of institutions receiving dependent or delinquent children 1918
—by inspectors of jails 2862
—by jailor, of prisoners 2871
Of Board of Crop Pest Commissioners 884
Of Board of Pharmacy 1679
By Board of Poor Commissioners 1904
Of branch banks to commissions of revenue 4102
Of Bureau of Labor and Industrial Statistics 1797
Of census of schools 653
—of deaf and blind 654
Of children paroled by reformatories 1919
Of chief factory inspector 1799
Of chief orchard inspector 903
By clerk of court, of delinquent taxes collected 2419
—of deed for delinquent land ... 2482
—of amounts received on redemption of delinquent lands sold to State 2491
—of fines reported by justices .. 2551
—of officers failing to pay fines and costs 2558
—of hunting licenses issued 3334
—of prosecutions under game law 3342
—to Clerk of House of Delegates 3495
Of commission, in proceeding to declare person feeble-minded. 1979
By Commissioner of Assessment of omitted capitation taxes ... 2420
Of commissioners, in boundary dispute between counties 2685
Of commissioners to rearrange magisterial district 2692
—recordation 2693
Of commissioner examining treasurer's bond 2777
Of commissioners on application of city to erect dam in water course 3057

Digitized by Google

Sec.

REPORTS—Con.
Of commissioners, erection of dam 3585, 3586, 3587
Of commissioners in condemnation proceedings.....4368-4380
—return of, confirmation.....4369
—recordation 4369
—Board of Commissioners.4377, 4380
—proceeding to take sand, water, gravel, etc.....4382
Commissioners in proceeding to drain land through land of another 5294
By Commissioner of Accounts, of settlements of accounts of fiduciaries 5408
Of commissioner examining accounts, etc., of receivers of court funds. 6289, 6290
Of Commissioner of Agriculture.1124
Of Commissioner of Agriculture of work of division of markets 1255
—of tobacco sold.....1363
Of Commissioner of Agriculture and Immigration.....1109
Of Commissioner in Chancery, 3482, 6179-6186
—in proceeding for discharge of county or city treasurer.....2792
Of commissioners of election, on bond issue by county for erection of buildings.....2739
Of Commission of Fisheries....3149
—of license taxes collected.....3169
—of forfeitures and proceeds of sale of nets, etc.....3159
Of Commissioner of Game and Inland Fisheries.....3314
By Commissioner of Insurance, 4197, 4199
—annual 4133
—of insolvency of insurance company 4180
— —of liquidation of.....4246
Of Commissioner of Prohibition, annual, to Governor.....4625
—to General Assembly.....4625
By Commissioner of Revenue to escheator 492
—of license taxes.....2374
Of Commissioners of the Sinking Fund 2621
Of Commissioner of State Hospitals 1010
Of commission merchant to consignor 1263
Of contagious and infectious diseases to Board of Health.....1497
Of Convict Lime Board.....1272
Of Committee on Printing..... 397
Of Committee of Inebriate or Drug Addict.....1074
Of committee to hear applications for aid from local levy for pensions.....2664, 2665, 2666
Of committee to inspect jails..2663
Of committee to assess damages when street graded.....3039
Of corporations to State Corporation Commission, annual.....3820
—by corporation with new charter 3811
Of county treasurer to division superintendent of schools.727, 728
—of receipts and disbursements of dog tax.....2322
Of county and city treasurers of sale to satisfy judgment for filing false list for taxation..2328
Of county school board..... 644
To curator of Hampton Normal and Agricultural Institute..... 930
Of dairy, creamery, cheese factory, skimming station, etc...1173

Sec

REPORTS—Con.
Of Dairy and Food Commissioner 1228
—annual 1175
Of delinquent capitation tax collector 2422
Of delinquent officers by division superintendent of schools..... 729
Of delinquent, dependent, neglected children placed in homes 1905
Of Dental Corporation or Association, dentists employed, 1652.1653
Of dental examiners.....1654
Of directors of penitentiary, 5024, 5027
—annual 5030
Of district school board, annual. 664
By division superintendent of schools of delinquent officers. 729
Of enumerators of population of town 2973
—of cities.....2976
Of escheator to auditor..... 510
—penalty for failure to make.. 511
To escheator by commissioner of revenue 492
Of examiner of records....2220, 2259
Of examiner of books of surveyor 2843
Of examiners of clerks' offices..3383
Of fires to Commissioner of Insurance 4185
Of fire marshal.....3138
Of fishways in dams by counties and cities.....3194
Of violators of food law.....1223
Of Foreign Building and Loan Association to State Corporation Commission.....4161
Of forest wardens..... 541
To General Assembly, by Governor .....Va. Const., § 58
—by Auditing Committee..... 311
— —Va. Const., § 68
—by Committee on Printing.... 397
—by State Board of Education.. 619
—by Commissioner of Prohibition 4625
—by joint committee on condition of penitentiary.....4995
—by Bureau of Vital Statistics, on marriages.....5097
By Governor, to General Assembly .....Va Const., § 68
—of suspension of officers, Va. Const., § 73
—of removal of notary.....2850
To Governor by officers and State institutions..... 320
To Governor by Commissioner of Prohibition 4625
Of harbor commissioners of Norfolk and Portsmouth.....3677
Of Health Commissioner.....1489
To inspector of mines.....1874
—of accident in mine.....1873
Of inspector of salt.....1443
By inspectors of jails to board of charities and corrections..2862
Of industrial sick benefit company 4356
Of insurance companies.....4229
—of gross premiums.....4196
By jailor of prisoners delivered to convict road force.....2076
—of prisoners in jail.....2870
— —to board of charities and corrections 2871
Of junk dealer to police.....4711
By justice, of commitment of inebriate or drug addict to private sanitarium.....1074

Digitized by Google

Sec.

REPORTS—Con.
To land owner of stock, fowl or dog caught in trap.....3350
Of library board.....360
By local board of review to auditor 2227
—to commissioner of revenue...2259
—of purchasers by merchant...2366
Of lunacy commission.....1018
Of maternity hospitals....1928, 1929
Of misconduct of commissioner of revenue or examiner of records 2265
Of misfeasance, etc., of boards of review and tax officers.....2215
Of mutual fire or storm insurance company, annual 4338
Of orchard inspector to judge of appeal 800
Of oyster inspector.....3222
To oyster inspector, of oysters shucked or packed.....3239
Violation of law as to taking oysters from polluted areas..3289
Of payment of delinquent taxes, 2465, 2466
By pension commissioners.....2657
On treatment and condition of sick in hospital at penitentiary 5024
Of proxies for State stock in internal improvement companies 3761
By receiver of court funds.....6283
—of commissioner examining accounts, etc., of.....6289, 6290
Of retired teachers' fund..... 795
Of school bonds..... 773
Of school census..... 653
School districts, of number or name of..... 666
By Secretary of the Commonwealth 344
—printing, binding and distribution 344
—of taxes received.....2404
—of formation of city of first class 2911
To Secretary of the Commonwealth, of loss of number plate of automobile.....2135
By second auditor of securities of literary fund..... 614
—annual, to Governor.....2202
To General Assembly of condition of improvements in which State has interest.....3773
Of sinking fund, receipts and disbursements 2627
Of special commissioner, of taxes 6267
—certificate returned with.....6269
State accountant.....551, 565
—deputy accountant..... 551
—of irregularities or defaults.. 560
—annual 561
Of State Board of Accountancy. 571
Of State Board of Dental Examiners of receipts and expenditures 1654
Of State Board of Education to General Assembly 619
Of State Board of Health.....1502
To State Board of Health of tubercular patient in jail or penitentiary 1546
Of State Corporation Commission, annual.....3751
—Va. Const., cl. 1, § 156
—rules and regulations, Va. Const., cl. b, § 156
—of clerk 3703
—of condition of internal improvements in which State is interested 3773

Sec.

REPORTS—Con.
To State Corporation Commission by railway and canal corporation for purpose of taxation, Va. Const., § 779
—by transportation and transmission companies.....3710
—by agents.....3715
—by corporations.....3716
— —annual 3820
—by corporation, with new charter after dissolution..... 3811
—by public service corporation in which State is stockholder.3892
—of condition of works in which State is interested.....3893
—of accidents on railroads.....3938
—by public utility companies...4070
—of foreign building and loan associations 4161
Of heads of departments of State 393
By State depository to auditor..2162
Of State educational institutions, annual 586
Of State Forester..... 537
By State Geological Commission 529, 533
Of State Geological Survey..... 831
Of State Highway Commissioner 1969
Of State hospitals.....1016
—of expenditure of funds of....1013
By State institutions to Auditor of Public Accounts..... 987
Of State Mine Inspector...1836, 1837
By State Treasurer as to game protection fund 3344
—annual, to Governor....2202, 2204
—to auditor of receipts and disbursements 2197
—of sale of bonds of insurance or guaranty company.....4213
Of superintendent to Commissioner of State Hospitals relative to voluntary patients....1037
Of Superintendent of Penitentiary 5027, 5035
Of Superintendent of State Prison Farm.....5027, 5035
Of superintendent of poor to board of supervisors.....2798
Of Superintendent of Public Instruction 396
—of acts, calendars, etc..... 391
Of Superintendent of Roads, 2021, 2022, 2023, 2027, 2037
Of survey of land sold for delinquent taxes.....2481
Of survey and plat of new county 2688
Of surveyor, of oath of chain-carrier 436
Surveyor, application to purchase delinquent land.....2495
Of tobacco sold, to Commissioner of Agriculture..... 1363
By treasurer, to auditor of receipts and disbursements.....2197
—to Governor, annual.....2202, 2204
—of game protection fund.....3344
—of violations of duty by commissioner of revenue.....2384
Of sale of bonds of insurance company or guaranty company 4213
Of treasurer of Virginia Military Institute 841
Turnpike, by freeholders on construction of.....4077
Of viewers in proceeding to establish drainage district, 1743, 1744, 1750
—for establishment of road....1978
—toll-bridges 2069

Digitized by Google

Sec.

REPORTS—Con.
—in proceeding to establish ferry 2055, 2056
—in proceeding to compel repair of turnpike.....4078-4081
Of Virginia State Board of Examiners in optometry.....1627
Of visitors of University of Virginia, annual..... 815
Of visitors of Virginia Military Institute 850
—of treasurer..... 841
—of State cadets..... 849
Of visitors, Virginia Normal and Industrial Institute..... 951
Of visitors, Virginia School for Deaf and Blind..... 976
Visitors, Virginia State School for Colored Deaf and Blind Children 983
Voluntary patient in insane hospital 1087

REPRESENTATIONS
Statement in application for insurance policy as.....4220
—in affidavit before or after loss 4220
Written, when required.....5551

REPRESENTATIVE CAPACITY
Liability of person signing negotiable instrument in.....5582
Indorsement in.....5606
Negotiation without indorsement 5631

REPRIEVE
Power of Governor to grant, Va. Const., § 73
Sealing 30
Of person sentenced to death...4914

REQUISITIONS
On Superintendent of Public Printing for stationery..... 384
On Superintendent of Penitentiary for prisoners from road force to be employed on roads.2088

RESCUE
Of prisoner.....4504
—refusal to aid sheriff or officer in prevention of.....4511

RESERVATION
Of use or property by condition, reversion, remainder, or otherwise in goods and chattels, when void as to creditors....5188
Of title to chattels, contracts for, form, recordation, etc.....5189
—how enforced.....5190
—when and how released.....5191

RESERVE FUND
Of co-operative life and casualty companies 4268

RESERVOIR
Pollution 1783, 1784
Putting poison in 4400

RESIDENCE
Of candidates for office, Va. Const., § 32
Of members of General Assembly, Va. Const., § 44
Of Governor.....Va. Const., §§ 71, 72
Of applicant for Confederate pension 2647
Of apprentice, change of.....5310
Who are citizens 62
Of city, county and district officers 2703
—removal, vacating office.....2704
Of civil and police justice.....3098
Of county officer in city or town..2967
Of Health Commissioner.....1489
Of instructor of educational institution exempt from taxation 2272

Sec.

RESIDENCE—Con.
—Va. Const., § 183
Of judge of Supreme Court of Appeals at seat of government..5862
Of judge of circuit court, 5897, 5977
—Va. Const., § 96
—removal to vacate office.....5977
Of judge of city courts.....5977
—Va. Const., § 99
—removal to vacate office.....5977
Of jurors 5984
Of minister of church, exempt from taxation 2272, 2301
—Va. Const., § 183
Of officers of city, county or district 2703
—removal vacating office.....2704
Of officer of county in city or town 2967
Of officer of educational institution exempt from taxation....2272
—Va Const., § 183
Of patient in insane hospital....1047
Of voters 82, 93
—Va. Const., §§ 18, 19
—who not deemed to have acquired legal 82
— —Va. Const., § 24

RESIGNATION
Of member General Assembly.... 81
Of fiduciary 5419
Of trustee 6298

RESISTING OFFICERS
Arrests for violations of oyster laws 3265
By convict 5049

RESTAURANTS
Use or sale of oleomargarine, sign 1199
Sale of ice cream or milk not meeting standards.....1216, 1217

RESTRAINING ORDER
See **"Injunctions"**
In attachment proceedings.....6389

RESTRAINT ON ALIENATION
Estate in trust 5157

RETURNS
See also **"Process"**
Of elections, see **"Elections"**
Of attachment 6387
—by officer 6390, 6391
—for rent 6417, 6418
Of bond taken by justice in action of detinue, to clerk of the court 5804
Of civil warrant before justice..6020
Of depositions 6232
Of distress warrant.....5528, 5529
Of officer distraining trespassing cattle 3543
On execution 6491, 6515
—issued by justice 6030
—property not sold.....6492
Of forfeited forthcoming bond, 6520, 6527
Forgery of, punishment 4484
Of garnishment 6509
—time for 6055
Of indemnifying bond 6154
Limitation of motion against officer for failure to return execution 5816
Of notice of motion for judgment 6046
Of notice of mechanic's lien.....6430
Of nihil, no judgment rendered on 6068
Of order or warrant of Governor 5070
On process, by officer.....2825
—failure to make....2825, 2826, 6059
—time for 6055
—for witness 6056
—in garnishment 6055

Digitized by Google

Sec.

REPORTS—Con.
To land owner of stock, fowl or dog caught in trap.....3350
Of library board.....360
By local board of review to auditor 2227
—to commissioner of revenue...2259
—of purchasers by merchant...2366
Of lunacy commission.....10
Of maternity hospitals....1928, 1
Of misconduct of commissioner of revenue or examiner of records .....
Of misfeasance, etc., of board of review and tax officers
Of mutual fire or storm ance company, annual
Of orchard inspector to appeal .....
Of oyster inspector...4817
To oyster inspector ...4824
shucked or packe 5070
Violation of law ustice..6020
oysters from r us..5849, 5861
Of payment of
"; "Taxation"
By pension or 2304
On treatme sick in charge to grand tiary 2367
Of prox' 2393-2397
interr jurisdiction of police nies and corporation court.3094
By r ill and police justice with —of ration court 3102
c ations under, when plea of O former acquittal not bar.....4773
c of error for State in prosecution for violation of 4931
Va. Const., §§ 8, 88

REVENUE OFFICERS
Books and accounts of, examination .....Va. Const., § 68
General Assembly to provide system of checks and balances for, Va. Const., § 84
Impeding or intimidating, punishment 4525

REVERSAL
See **"Appeals"; "New Trials"; "Writ of Error"**
Of judgment, effect on limitation 5826
—for failure of record to show venire facias.....6002
—errors not sufficient to cause, 6331, 6332
— —in criminal case 4879

REVERSION
See **"Creation and Limitation of Estates"; "Estates"; "Real Estate"**
Of land conveyed to United States 19
Of gift to University of Virginia to donor 824
—to Virginia Polytechnic Institute 867
Effect on of sale of life estate for taxes.....2488
Of land condemned for mill dam or canal 3591
—life tenant failing to repair..3592
Of land condemned on change of location of railroad 4379
Reservation of use or property in chattels by, when void as to creditors 5188
Reimbursing life tenant for payments for improvements 5498
Rights of grantee of against lessee 5512
Rights of lessee against grantee of reversioner 5513
Grant or devise of 5514

REPOR
To
Sec.
rent for land nents.....5541
essee of life of other un- 5543
one interested, 5544-5547

of inspector 1430
.....1430
for refusal to act.....1431

atute .....Va. Const., § 52
peal of statute not to revive former law 7
Of actions in case of death or change of parties 6165
—by motion 6165
—by scire facias 6165
— —by administrator de bonis non 5387
— —issuance 6169
Time for 6171
Defendant's powers ceasing.....6170
Of action for damages by wrongful act, etc., on death of plaintiff 5790
Of suit to sell real estate of infant or insane person 5336
—to sell estate held in trust..5336
Of will, after revocation.....5234
—when revived will deemed to have been made 5246

REVOCATION
Of charter of corporation, Va. Const., § 157
Of authority of female personal representative by marriage...5373
Of authority of fiduciary.....5411
Of appointment, of substitute justice, juvenile and domestic relations court 1948
Of appointment of administrator of person presumed to be dead.5365
Of certificate to operate milk testing machine 1207, 1208
Of certificate of commission merchant 1262
Of certificate of optometrist....1635
Of certificate or license of graduate nurse 1713
Of certificate of registration of insurance agent 4235
Of check by death of drawer....5745
Of charter of corporation engaged in fish business, for failure to file list of officers and stockholders 3254
Of charter of insurance company, for failing to obtain license..4236
Of decree of divorce 5115
—prohibition of re-marriage in..5114
Of license 2378
Of license to slaughter house, sausage factory, etc.....1222
Of license to sell condimental stock and poultry food.....1245
Of license to practice medicine.1614
Of license to practice dentistry .1649
Of license to practice pharmacy 1677, 1678
Of fishing license for illegally taking food fish for guano, etc. 3176
Of license to catch oysters.3244, 3246
Of license to practice law, 3420, 3423, 3429
Of license of building and loan association 4166
License or authority of insurance company to do business...4190
—for failing to pay assessment.4195
Of license of life insurance company for deficiency of funds..4250

Digitized by Google

Sec.

·tive life
'asualty
.....4270
so-
..4300

97

4595
em-
.....4595
n for un-
oing intoxi-
.....4538
hotel, boarding
room, billiard room,
alley, store, etc., for
tion of prohibition law..4653
license to sell soft drinks....4665
order establishing stream or canal as lawful fence.....3554
Of permission to establish wharf at county landing.....1939
Of permit to water works to supply water for domestic purposes 1790
Of power of attorney to execute bonds for surety company....4349
Of will, by marriage 5232
—generally 5233
—revival after revocation 5234
—when revived will deemed to have been made 5246

REVOLUTIONARY CLAIM
Seal on paper, no tax charged on 2402

REWARDS
For arrest and conviction of felon, offer by supervisors....2733
For escaped convict, how paid..5043
—who entitled to 5044
For arrest of persons convicted of or charged with offenses..5068
—when officer not entitled to....5068
—when police officer may receive 2991

RICE BIRD
Killing 3364

RICHMOND AND ALLEGHANY RAILROAD COMPANY
Docks controlled by 3683, 3689
—appointment of dockmaster...3689
Sale to by James River and Kanawha Company 3772

RICHMOND CITY
See **"Hustings Court of the City of Richmond"; "Hustings Court of the City of Richmond, Part II"; "Chancery Court of the City of Richmond"; "Law and Equity Court of the City of Richmond"; "Circuit Court of the City of Richmond"; "Police Court of Richmond"**
Assessors of land for taxation..2233
Bar examination held in 3411
Burials in certain cemeteries of prohibited 57
—penalty for violation of ordinance 57
Circuit court 5887
City of first class 5905
Commissioner of Agriculture and Immigration to reside in.....1105
Commonwealth's attorney, fees..3505
Contract with Superintendent of Grounds and Public Buildings for water for Capitol and State Library Building 406

Sec.

RICHMOND CITY—Con.
Coroners, inquest, bodies in penitentiary 4806
Courts of 5912-5933
—continued 5905
—removal of causes from one court to another 5927
Distance between and courthouses of various counties....3474
—how computed from place other than courthouse 3475
Dock-master 3689
Harbor-masters 3664
—term 3664, 3680
—vessels at Richmond dock....3688
Health commissioner to reside in 1489
Jurisdiction of Commonwealth's cases 6049, 6051
Larceny of dogs in.....4445
—malicious trespass 4445
List of jurors, number to contain 5988
Local board of review, appointment 2226
Meetings, Board of Pharmacy in.1668
Members of State Board of Health from 1486
Office of State Accountant in.... 562
Police justice, salary 3095
Port wardens for.....3658
Publication in, of revocation of certificate of commission merchant 1261
—of statements of Auditor, Treasurer, Second Auditor....2202
—of orders, rules and regulations of State Corporation Commission.....3711, 3726
— —Va. Const., cl. b, § 156
—for transportation of explosives 3922
—of notice of sale of works of railroad, canal, turnpike, etc., in which State is interested..3889
—of establishment of office by consolidated corporation 3824
—of suspension of license of insurance company.....4233
—of proceedings for payment of unclaimed court fund into treasury 6311
Records of chancery court as notice south of James River..5932
—of hustings court, Part II, as notice north of James River..5932
Sergeant, to attend and serve process of hustings court.....5917
—assistant to attend and serve process of hustings court, Part II 5917
—jurors and witnesses 5918
—deputy, allowance to 3515
—process from clerk of penitentiary directed to 5028
Sheriff, election 2814
—qualification, bond, duties.....2814
—vacancy, how filled 136, 138
—to attend law and equity court 5924
Supreme Court of Appeals, session 5866
—business 5867
—session of special court.....5873
—clerk 3378
— —office 3385
— —salary 3465
Tobacco, sale of unclaimed in warehouse 1398
Treasurer, statement and payment of taxes collected.....2412
—report of tax sales.....2467

RICHMOND COUNTY
Assignment of oyster ground to riparian owner.....3223

Digitized by Google

Sec.

RICHMOND COUNTY—Con.
Taking terrapins or disturbing eggs, season for....3297
—forfeiture of boats, nets, etc..3297
Hunting at night....3357
Shipping wild water fowl....3357
Fees of Commonwealth's attorney....3505

RICHMOND, FREDERICKSBURG AND POTOMAC RAILROAD COMPANY
General Assembly may prevent building lines parallel to, Va. Const., § 166
Interest of State in as part of sinking fund....2622

RIFLE
Toy, using explosive charge, furnishing to minor....4597

RIGHT OF ENTRY
Dower in....5118
Wife's right of not barred by acts of husband....5441, 5442
Acts of life tenant not to affect remaindermen....5443
Not affected by descent cast....5444

RIGHT OF WAY
Acquirement by city of second class in providinng water, heat, light, etc....2906
Of railroad, manner of keeping.3991
—liability for fire originating on....3992
—insurable interest in property along....4018
—condemnation....4360-1388
Of telegraph and telegraph companies, contract for....4039
—condemnation....4040
—title....4040
—title not exclusive....4040
Of public utility company, contract for....4062
—acquired by eminent domain..4063
—compensation for damage....4063
Vested in turnpike company by condemnation proceedings, 4369, 4373
—reversion of....4379

RIOTS
Who are rioters....4527
Suppression....4527
Commitment of rioter on failure to give bail....4528
Failure of judge or justice to suppress....4529
Aid to judge or justice in suppression of....4527, 4530
Killing or wounding in suppression of....4531
Punishment....4532

RIPARIAN OWNERS
Assignment of oyster planting ground to....3223
Right to use creek, cove or inlet for planting oysters....3229
On Elizabeth River, rights of...3236
Building bulkhead or wharf over oyster grounds....3269
Rights of to extend to low-water mark....3574
Lines within which may erect wharves, piers, etc., in Elizabeth River....3667
—removal of obstructions in...3668
Notice to by company condemning or taking water....4382

RIVERS
See "Navigation"; "Riparian Owners"; "Water Courses"
Inspection, improvement and prevention of pollution of by State Geological Commission....528

Sec.

RIVERS—Con.
Laws declaring to be highways and providing for removal of obstruction from continued in force....2093
Jurisdiction of circuit courts over....3213
Between counties or cities, jurisdiction of courts....5958

ROADS
See "Board of Supervisors"; "Counties"; "State Highway Commission"; "State Convict Road Force"; "Turnpikes"
Appeals in controversies, jurisdiction of Supreme Court of Appeals....6336, 6337
—Va. Const., § 88
Assessment of benefit to by ditch or drain established by drainage district....1764
Automobiles and motor vehicles, rules for operating on, 2139, 2140, 2143
—fees from applied to maintenance of roads....2154
Bonds for improvement of, election on....2110-2115
—issued for magisterial districts....2123, 2124
Changing lines of, permission of court....4731
Classification of, first class, second class....2026
Contracts for repairing, interest of officer in prohibited....2707
Control of by supervisors, superintendents of roads and surveyors....1976
Contribution to building and improvement of by cities and towns....2016
Controversies concerning, appeals to Supreme Court of Appeals....6336, 6337
—Va. Const., § 88
Convicts, employment on, procedure of counties to obtain, 1971, 1972
Between counties, opening.1991, 1992
—mandamus to compel....1992
Crossing by tramway or railroad....2036
—appeal of supervisors....2037
Crossing railroad, procedure....3256
—duty of railroad to keep in repair....3973
—proceeding to eliminate grade crossing by....3974
Over dams, width of, duty of repair....1985
Definitions, road....1962, 4757
—public road....1962
—county roads....1962
—highways....1962
Discontinuance....1984
—viewers, report....1984
Election on issue of bonds for improvement of....2110-2115
Engineer, salary....1971
—of convict road force, construction or repair by....2040
Forest reserve funds credited to 743, 744
Gates, maintenance across private road....2099
—on public highway, proceeding to cause removal....2011
— —viewers, damages....2012
— —appeal....2012
—flag stations and flagmen maintained at by railroads...3956
— —in cities and towns....3958

Digitized by Google

Sec.

ROADS—Con.
Grade crossing by railroad, duty of railroad to keep in repair 3973
—proceeding to eliminate..... 3974
Improvement of, assistance rendered by State Highway Commission 1970
—contribution to by cities and towns 2016
—bond issue for..... 2110-2124
—.—for magisterial districts. 2123-2124
—with proceeds of bond issue. 2120-2124
—bids 2120
—plans 2120
—contract 2120
— —payments on..... 2120
—bond of contractor..... 2120
—machinery and supplies..... 2121
—when work done by supervisors and Highway Commissioner 2121
Fund derived from fees collected under automobile law applied to maintenance of..... 2154
Maintenance of from road tax, 1986, 1987
—funds derived from automobile law applied to..... 2154
Macadamized 1993
As dividing lines between magisterial districts..... 2027
Maps of by superintendent of roads 2025, 2026
Measuring 2023
Opening through land belonging to State Confederate Memorial Association, etc..... 3041
Overseer of, not to act as grand juror 4853
Pipes or conduits in, by public utility company..... 4059
Contract by supervisors with water company, etc., to lay water pipes in..... 4060
Private, across works, roads, canals, etc., of public service corporations, procedure to establish 3883
Private, maintenance of gates across 2009
—leaving gate open, penalty.... 2010
Public, proof of existence of.... 2015
—center of..... 2015
—width 2015
—definition 1962
Public service corporation, crossing or changing course, proceedings 3885
Road precincts..... 2025, 2026
—mileage of, numbering..... 2025
Rules for passing vehicles on.. 4739
Special laws, effect on of chapters 84 and 85..... 2004
—to what extent repealed..... 2018
Special and local legislation by supervisors 2013
—notice 2014
State's interest in, transfer of to county 3758
Superintendent 2019-2039
—appointment 2019, 2099
—term 2019
—qualification 2019
—bond 2019
—vacancy, how filled..... 2020
—control and supervision of roads, causeways, wharves and bridges 1976
—duty to care for roads, construct bridges, ditches, etc... 1989
—designation of when road improved with State aid..... 2099

Sec.

ROADS—Con.
—apportionment of salary..... 2019
—to give entire time..... 2021
—compensation 2021
—examination stone and gravel deposits, report..... 2021
—reports to State Highway Commissioner 2022
—measurement of roads, report. 2023
—annual inventory of machinery 2024
—storage place for machinery.. 2024
—annual maps of roads... 2025, 2026
—report on condition of roads.. 2027
—report of money expended.... 2027
—accounts 2027
—advertisement for bids..... 2028
—notice of letting of contracts.. 2029
—maintenance of roads not let to contract..... 2032
— —foremen 2032
—removal 2033
—liability for neglect or malfeasance 2033
—order for payment of road contractor 2034
—bond of contractor..... 2035
—duty when taxpayers complain 2036
—written reports to supervisors. 2037
—appointment in county provided with road supervisors.. 2039
—reports 1977, 2021, 2022, 2023, 2027, 2037
Supervision of by board of supervisors 1988
—control of..... 1976
Supervisor of district..... 2038, 2039
—maintenance and improvement of roads..... 2038
—appointment 2039
—compensation 2039
—duties 2039
Surveyors, control of roads.... 1976
—pay 1983
Tax, levy, amount, disposition of 1986, 1987
—for upkeep of roads 2117
— —redemption of road bonds.. 2117
—on segregated intangible personal property 2209
Telegraph and telephone lines on 4035
—consent of supervisors, or councils 4037
—regulation of use 4037, 4038
Time for performance of act under road law 2005
Tolls, regulation by supervisors.. 2743
Turnpike, abandoned, how kept in order 2000
—control of by supervisors..... 4074
—vesting in abutting owners.. 4094
—opened to public for failure to complete 4077
—right to use granted to turnpike company by board of supervisors 4094
Work on by person convicted of violating prohibition law..... 4669
—by convicts 1971, 1972

Establishing or Altering
Establishing or altering ..1977-1984
Superintendent, report of..... 1977
Surveyor 1976
—pay 1983
Right of way, width, grade..... 1977
Viewers 1977
—pay 1983
—examination, location, map, report 1978
—consent of land owner 1978
Report of viewers 1978
—proceedings on, process to summon proprietors 1979
—service, publication, posting.. 1979

Digitized by Google

Sec.

ROADS—Con.
—non-resident or unknown owners 1979
—defenses, compensation and damages 1980
—appointment of commissioners.1980
— —pay of 1983
Costs and damages 1981
—road for private convenience..1981
Land not condemned without consent of owner, cemetery, seminary 1982
Effect of alteration 1984
Commissioners, meeting, notice, report 1980
—proceedings on report.....1980
—confirmation 1980
Appeal to circuit court 1980
—hearing, judgment 1980
Opening through land belonging to State, Confederate Memorial Association, etc. 3041
State Aid for Improvement of
Application of local authorities for 2097
—proceedings on 2100
—rescinding prior action by local authorities 2101
Manner of improving, choice of..2098
Plans 2098, 2100
Materials 2100
Superintendent, engineer or other person in charge of 2099
—proportion of salary paid from State highway funds 2099
Supervision of by Highway Commissioner 2098, 2102
Bids for contract 2102
Contract, penalty 2102
—payments on 2102
Construction when no satisfactory bid received 2102
Expense, how borne 2102, 2103
—when work done by local authorities 2102
—amount of appropriation set aside by Highway Commissioner to employ assistants 2103
Apportionment of State funds to counties 2103, 2104, 2107
Expense to counties, distribution to districts 2104
Payments by State Treasurer....2105
—by county treasurer.....2102, 2106
Improvements made as money becomes available 2107
Use of funds in construction of bridges 2109
—bids 2109
—joint bridge between counties..2109
—plans 2109
Offenses
Leaving gates open 2010
Violation of special and local legislation 2013
Drinking ardent spirits in, punishment 4631
Killing or injuring tree near....4730
Injury to or destruction of bridge 4730
Obstructing road or ditch.....4730
Riding or driving on sidewalk, 4730, 4733
Injury to or destruction of signboard, milestone or post.....4730
Injuring sidewalks in unincorporated town 4732
Encroachment on or obstruction of 4731
Railroad train or car obstructing 4734
Regulations for moving steam engines on 4735
Care required of bicycles overtaking and passing vehicles, etc. 4736
Leading or driving bear along..4737

Sec.

ROADS—Con.
Shooting in or along.....4738
Vehicles failing to pass to right.4739
Driving vehicle on at excessive rate of speed 4741
Driving animals on at dangerous speed 4741
Horse racing on 4741
Driving sheep along without brands, when prohibited 4742
Casting dead animal into.....4743
Leaving sick or disabled animal in 4743
Casting glass, nails, tacks, etc., in 4745

ROAD DISTRICTS
Incorporated town to be 2017

ROANOKE CITY
See **"Court of Law and Chancery of the City of Roanoke"**
City of first class 5905
Courts continued 5905
Circuit court 5887
Court of law and chancery, 5946-5957
Corporation court 5905
—jurisdiction 5948
—removal of causes to court of law and chancery of Roanoke.5951
—clerk, to be clerk of court of law and chancery of city of Roanoke 5956
—judge, salary 3468
— —increase 3469
— —decrease 3469
— —absence or inability to sit..5955
Sergeant, to attend and execute process of court of law and chancery 5953
Bar examination held in.....3411
Commonwealth's attorney, fees..3505

ROANOKE COUNTY
Fees of Commonwealth's attorney 3505

ROANOKE RIVER
Erection of fish dam in 3199
—penalty 3199

ROBBERY
Punishment 4405
Possession of tools with intent to commit 4427
Entering building, etc., with intent to commit 4428
Homicide in attempt to commit..4492
Committed without State, jurisdiction of prosecution for.....4769

R. E. LEE CAMP
Act incorporating 60
Death of inmate, disposition of effects of 2672

ROBINS
Unlawful hunting, buying, selling, etc. 3356, 3360

ROCKBRIDGE COUNTY
Fees of Commonwealth's attorney 3505

ROCKINGHAM COUNTY
Commonwealth's attorney, fees..3505
Land owners to keep streams free from obstructions 4752
—punishment for failure 4753

ROUT
See **"Riots"**

RULE IN SHELLEY'S CASE
Abolished 5152

RULES
See also **"Judgments"; "Orders"**
Of procedure for General Assembly .....Va. Const., § 47
Of construction of Code..... 5
Of decision, general provisions for all courts.....6373

Digitized by Google

Sec.

RULES—Con.
—in proceeding for reversal or arrest of judgment or decree..6331
—in Supreme Court of Appeals, 6363, 6365
—when verdict set aside 6251
For maturing causes, when held..6074
—how long continued 6074
—docket in which rules entered.6075
—continuance when no clerk to take 6076
—nature of 6077
—how given 6077
—by defendant 6078
—non-suit 6078, 6079
—on petition filed in chancery suit 6096
—placing case on court docket..6112
—default judgment or decree....6131
—rule to plead 6131
—office judgment, when to become final 6134
— —lien of 6134
— —entry 6134
— —setting aside 6135
—damages, on default 6131
— —inquiry of 6131
— —when inquiry unnecessary..6132
— —in assumpsit 6133
—setting suit in equity for hearing 6138
—control of court over 6140
—order reviving suit entered at 6169
Against clerk for failing to furnish list of conveyances to commissioner of revenue and Auditor 2276
Against commissioner 6274-6276
Requiring officer to give new bond 280
Against officer, failing to collect or account for fines 2554
Against officer failing to return process 2825, 2826
In proceeding for removal of officer 2705
—for suspension of 2201
Against pensioner to show cause why name should not be stricken from roll 2657
Against purchaser at sale..6274-6276
Against receiver 6274-6276
Against witnesses by Commission of Fisheries 3258
Against witness failing to attend 6220
For contempt or disobedience of process 4985
In action of debt for recovery of penalty for violation of revenue laws 2395
In proceeding for disbarment or suspension of attorney 3424
For submission of controversy to arbitration 6159
To make assignor a party when assignee pleads set-off 6150
In proceeding for discharge of treasurer 2792
In proceeding to suspend treasurer, clerk or other officer....2201
Of practice, Supreme Court of Appeals may prescribe 5960
—for records, court may change..6343
Of practice, by civil and police justice 3108

RULES AND REGULATIONS
See **"Rules"**
Of Board of Bar Examiners, 3413, 3416
Of board of commissioners to examine pilots 3613
Of board of harbor commissioners of Norfolk, Portsmouth and Norfolk county 3672
Of city councils 2985

Sec.

RULES AND REGULATIONS—Con.
For deposits in banks and trust companies 4147
For enforcement of law relating to oysters in polluted areas..3289
For jails 2869
For penitentiary, 4996, 5007, 5012, 5016
Of State Corporation Commission 3716
—Va. Const., § 155
—for transportation and transmission companies.3709, 3710, 3711
— —Va. Const., §§ 156, 160
—for storage, demurrage, detention charges, placing cars, etc..3774
—for telephone companies, 4052, 4055, 4056

RUM
See **"Intoxicating Liquors"**
As ardent spirits 4581
Denatured, sale of 4588

RUSSELL COUNTY
Commonwealth's attorney, fees..3505

RUSSEL'S RIVER
Obstructing navigation of, punishment 4752

RYE
Bushel, standard ..... .1470

SAFETY APPLIANCE ACTS
Effect of violation of in action to recover for death or injury of employee of intrastate railroad, as to contributory negligence.5792
—as to assumption of risk 5793

SAFETY DEPOSIT BOX
In name of two or more, right of access to.....4128

SAILORS
When not deemed to have acquired residence for purpose of voting 82
—Va. Const., § 24
Pensions to 2642
Reduced rate of transportation.3918
Federal, not liable to jury service 5984

SALARIES
See also **"Compensation"; "Fees"**
Special acts, creating, increasing, decreasing, etc., prohibited, Va. Const., § 63
Adjutant-General 3444
Attorney-General 3433
—assistant 3433
—clerical force 3433
Auditor of Public Accounts.....3435
—clerical force 3435
Bank examiner 4121
—clerk, assistant, stenographer.4121
Board of Agriculture.....1103, 1106
—officers and employees 1102
Board of Embalmers 1721
Board of Examiners of Graduate Nurses, members 1704
—secretary 1704
Board of Pharmacy 1670
—secretary, treasurer 1670
Bureau of Insurance, how paid..4172
Cities, employees, garnishment of 6560, 6561
Civil justice 3112
Civil and police justice 3100
—substitute 3101
Clerk, city school board 786
—board of supervisors 2772
—of the court, proportion borne by city of second class 2904
—circuit court of city of Richmond 3465
—Supreme Court of Appeals....3465
Commissioner of Agriculture and Immigration 1105, 3441

Digitized by Google

Sec.

SALARIES—Con.
Commission of Fisheries, member 3146
—Commissioner of Fisheries 3146
—Shellfish Commissioner 3146
Commissioner of Game and Inland Fisheries 3307
Commissioner of Insurance.....4193
—clerks, assistants 4193
Commissioner of Labor.....3443
—clerks 3443
Commissioner of State Hospitals for Insane 1011, 3447
Commonwealth's attorney, proportion borne by city of second class 2904
Convict road force, assistant superintendent 2083
—clerks 2083
—guards 2083
Counties, employees, garnishment of 6560, 6561
Dairy and Food Commissioner...1158
—deputy 1158
—assistants 1158
Demonstrator or agent in county demonstration work 924
Director of Legislative Reference Bureau 573
Division superintendent of schools 604-606, 626, 627
Engineer in charge of convict road force.....2090
—of roads, apportionment of salary when road improved with State aid 2099
Fertilizer inspector 1119
General Assembly, members 3454
—Va. Const., § § 45, 46
—president of Senate 3454
—committees 3454
—sergeants-at-arms 3460
—doorkeepers 3461
—pages 3462
—clerk of Senate 3456
—clerk of House of Delegates..3456
—assistant clerks 3457
—journal clerks 3457
—reading clerks 3457
—document clerk 3457
—librarian of Senate 3457
—enrolling and engrossing clerks 3458
—committee clerks 3459
Governor 3432
—Va. Const., § 72
—secretary to 3432
— —assistant secretary 3432
—janitor 3432
—messenger 3432
Health commissioner 1490
—assistant 1490
—bacteriologist 1490
—clerk 1490
Insane hospitals, superintendent..3447
—officers, assistants, employees, 1008, 3447
Inspectors, analysis, etc., of agricultural seed 1153
Of judges .....Va. Const., §§ 102, 108
—Supreme Court of Appeals....3463
— —Va. Const., § 103
— —upon retirement 3464
— —forfeiture of by acceptance of public office 3464
—circuit courts 3466, 3469, 3470
— —Va. Const., § 103
— —proportion borne by city of second class.....2904
—city courts.....3468, 3469
— —Va. Const., § 103
—circuit court of city of Richmond 3466, 3469
—court of law and chancery of Norfolk 5945
—court of law and chancery of Roanoke 5956

Sec.

SALARIES—Con.
Justice, juvenile and domestic relations court.....1947
—substitute justice.....1948
Lieutenant-Governor as President of Senate.....Va. Const., § 79
Matron for jail.....3027
Mayor of town.....3028
Mayor and councilmen when form of government of city or town is changed.....2951
Officers of executive department, Va. Const., § 83
—not to be increased or decreased during term, Va. Const., § 83
Officers at seat of government, when paid.....3453
Overseer of poor.....2806
Penitentiary, superintendent....3449
—assistant 3449
—surgeon 3449
—bookkeeper 3449
—Bertillion clerk.....3449
—recording clerk.....3449
—matron 3449
—directors 3450
—guards 3451, 3452
—substitute guards.....3451, 3452
Police justice.....3095
—how paid.....3097
Police officer.....2991
Registrar of vital statistics.....1562
School teachers.....692, 693
Second Auditor 3436
—clerical force.....3436
Secretary Board of Charities and Corrections 1891, 1901
—assistant 1892, 1901
Secretary of Commonwealth.....3434
—clerical force.....3434
Servants at Executive Mansion.3432
Sheriff, proportion borne by city of second class.....2904
State Accountant..... 550
—deputy 551
State Capitol employees.....3446
—police 3446
State Corporation Commission, members 3440, 3751
—chairman 3440
—clerk 3440
—bailiff 3440
—clerks 3440
—officers and employees.....3753
State employees, garnishment of.6559
State Farm Superintendent.....3452
—surgeon 3452
—guards 3452
State Forester..... 538
State Highway Commission, commissioner 1975, 3443
—assistant 1975
—clerk 1975, 3443
—members 1975
State Librarian.....3445
—assistants 3445
—employees 3445
State Library employees.....3446
Of State officers, withheld for debt due State.....3476
—petition for payment.....3476
— —limitation on.....3477
—how paid.....3472
State Treasurer.....3437
—clerical force.....3437
Superintendent of Poor 2799
Superintendent of Grounds and Public Buildings..... 402
Superintendent of Public Instruction 621, 3442
—clerks and employees..... 608
Superintendent of Public Printing 3438
—clerks 3438
—assistant 398

Digitized by Google

Sec.

SALARIES—Con.
—messenger 400
Supreme Court of Appeals, judges 3463, 3464
—Va. Const., § 103
—clerks 3465
—reporter 3465
—stenographer 3465
Towns, employees, garnishment of 6560, 6561
—professors 816
University of Virginia, president 816
Virginia Agricultural and Mechanical College and Polytechnic Institute, professors..... 865
Virginia Military Institute, professors 842
Virginia Normal and Industrial Institute, president, secretary, 950, 960
—professors, instructors, employees 960, 966

SALES
See also "Auctions"; "Judicial Sales"
Of Ardent Spirits, see "Intoxicating Liquors"
Tax Sales, see "Taxation"
Adrift property by land-owner..3571
Agricultural seeds unfit for seeding purposes.....1145
—falsely labeled.....1116
—penalty 1150
—untagged seeds.....1151
Animals, trespassing, of nonresident 3544
—to enforce lien of Society for Prevention of Cruelty to Animals 4561
Articles falsely marked, penalty 1439
In attachment proceedings, after judgment 6405, 6406
—property perishable or expensive to keep.....6397
—effect on of rehearing...6411, 6412
Of automobile, on judgment against owner.....3147
—used in transporting ardent spirits 4658
Bill of, book recorded in.....3393
Black-jack, brass or metal knucks, prohibited.....4535
Bonds, of drainage district, 1774, 1777
—road, by supervisors.....2116
—issued for magisterial district.2124
—of State, how made.....2635
—issued by city or town, 3084, 3089, 3090
Bran, adulterated.....1196
Building and loan associations, by trustees of.....4167
Canal in which State interested.3889
Of chattels, by contract reserving title, recordation, etc.....5189
—how enforced.....5190
—when and how lien released...5191
—penalty for failing to release.5191
—failing to advise landlord of amount due.....5191
—possession allowed to remain with seller, void as to creditors and purchasers.....5192
—valid when recorded.....5193-5196
Clams, falsely designated as Lynnhaven, penalty.....3291
Commodities on margin....4714-4718
Condimental stock and poultry foods, unlicensed.....1249
Convict, real estate of.....5004
Corn meal, deception in.....1195
Corporation stock, for failure to pay subscriptions.....3807
—transfer on books.....3839

Sec.

SALES—Con.
To counties, interest of officers in prohibited.....2707
County property by supervisors.2723
Decedent's estate, property of by personal representative, 5380-5382
—real estate devised to be sold.5393
—real estate by heir or devisee.5397
Deed of trust to secure debt, by trustee 5167
—recitals in conveyance as evidence 6136
Detinue, property seized in action of.....5798
Under distress warrant, suspension of sale.....6156
—surplus, how disposed of.....6158
—when property expensive to keep 6519
Drugs, adulterated or misbranded 1657, 1659
Dead bodies.....1734
Escheated lands.....505-511
—delay in favor of foreigners.. 506
Under execution, on judgment for trespass by animals.....3541
—suspension of sale.....6156
—surplus, how disposed of.....6158
—after return day.....6485
—property subject to prior lien.6486
—equitable interest of debtor...6486
—coin or bank notes.....6487
—re-sale 6492
— —liability of first purchaser. 6492
— —venditioni exponas....6493, 6494
Exempt property, injunction....6565
Farm products on commission, 1257, 1258
Fertilizer, without certificate...1114
—unregistered and unbranded, 1115, 1118
—falsely labeled.....1127, 1128
By fiduciary, account of, when filed 5404
Food, adulterated or misbranded 1177, 1178
—misbranded cider.....1192
—adulterated cider vinegar.....1191
—adulterated candy.....1193
—adulterated flour 1194
—unwholesome or diseased, 1218, 1219
Feeding stuffs, adulterated or misbranded 1230
Forfeited property, 3369, 3372, 3373, 3374, 3377
—nets forfeited for fishing without license.....3169
—nets and seines forfeited for fishing in spawning locality...3180
—boats, nets, etc., forfeited for unlawful fishing in Back Bay.3203
—forfeited for violation of fishing laws.....3216
Franchise or corporate property by city or town..Va. Const., § 125
Fraudulent, of mortgaged goods, punishment 4455
—of goods of another and failure to pay over proceeds.....4453
—of stocks, bonds, town lots, etc., punishment 4465
Furniture in Capitol and State Library building..... 403
—in Governor's house..... 405
—in house of prostitution when abated as nuisance.....1525, 1526
Game 3356
Goods marked "sterling" or "sterling silver".....4461
—marked "coin" or "coin silver" 4462
—articles made of gold.....4463

Digitized by Google

Sec.

SALES—Con.
—to employees by employers operating railroad shops, mines, etc., price....1820
Heroin 1693
—proprietary remedies containing 1693
Infant, property of, 5326, 5335-5347, 5355
—transfer of proceeds out of State 5351, 5355
Infant married woman, estate of 5137
Insane person, property of, 5335-5347, 5355
—transfer of proceeds out of State 5351, 5355
—petition of committee to sell, 1055, 1057
Internal improvement company, works of....3756, 3757
Interpleader proceedings...6153, 6157
Of intoxicating liquors, unlawful 4583
—in general....4583-4675
Judicial proceedings, recitals in conveyance as evidence....6196
Lime, etc., produced by convict labor 1268
Live stock, diseased.... 917
Lumber found adrift....1446
Meat slaughtered, prepared or kept in unsanitary conditions.1183
Merchandise in bulk, procedure for 5187
Milk or ice cream not meeting standards 1216, 1217
Millfeed, adulterated....1196
Morphine 1693
—proprietary medicines containing 1693
Nursery stock....872, 874, 882
Obscene literature, punishment..4549
By officers, of goods levied on..2832
—horses, mules and oxen....2833
—adjournment 2834
—endorsed on return....2825
Oil for illuminating purposes in mine, penalty....1832
Oleomargarine, process or renovated butter....1198-1203
Opium 1693
—proprietary medicines containing 1693
Oysters, by inspector for payment of rent and taxes....3220
—under prescribed size, penalty.3214
—removed from polluted areas, 3284-3286
—falsely designated as Lynnhaven, penalty....3231
Partition, of real estate, in suit for 5281
— —proceeds deemed personal property 5283
— —effect on rights of lessee..5285
—of goods and chattels....5286
Patent or proprietary preparations 1690
Personal property to enforce lien 6449-6451
Pharmaceutical preparations....1690
Plumage from birds, penalty...3864
Poisons, regulation of by Board of Pharmacy....1672
—label on bottle, etc....1691
—inquiry 1691
—to person under sixteen years of age....1691
Railroad in which State interested 3889
Real estate delinquent, assessed for drainage district....1771, 1776
—delinquent, for taxes, 2457, 2458, 2461-2464, 2489-2495

Sec.

SALES—Con.
—delinquent lands purchased in name of auditor....2435
—in suit, liability for taxes....2435
—execution on judgment, debt due State....2520-2526
—belonging to State....2538-2542
—of convict....5004
—of fee simple on bill by life tenant against remainderman.5161
—of life estate on bill by remainderman against life tenant 5161
—contract for or for lease of when void as to creditors and purchasers 5192
— —valid when recorded..5193-5195
—in suit for partition....5281
—of infants, insane persons or trust estate, procedure for, 5326, 5335, 5347, 5355
— —certain sales validated....5338
— —who may not purchase....5341
— —proceeds, how secured, applied, and paid over, 5342, 5343, 5345
— —proceeds as real estate....5347
— —transfer of proceeds out of State 5351, 5355
—devised to be sold, by executor or administrator....5393
—by heir or devisee....5397
—for payment for estate relinquished to petitioner for allowance for improvement....5503
—writing required in contract for 5561
—to satisfy judgment lien....6472
—in which homestead exemption is claimed....6534, 6535
Rent not payable in money, goods distrained or attached for....3529
R. E. Lee Camp, effects of deceased inmate of....2672
School property.... 649
Seed cotton....4720
Shellfish, under size, penalty....3244
State bonds, how made....2635
By State Geological Commission, timber 530
—gas, oil, minerals 531
State publications for State Library 258
Timber, by State Geological Commission 530
—marked, penalty....1447
—unbranded, when not claimed.1454
Tobacco, western....1359
—account of....1362-1364
—report 1362
—unsampled 1396
—unclaimed 1398
By treasurer, bonds deposited by foreign express company....4029
—bonds of insurance and guaranty companies....4213
Trust estate, property of, 5335-5347, 5355
—transfer of proceeds out of State 5351, 5355
By trustee, account of, when filed 5404
Tuberculosis sanatorium, land and buildings of....1510
Turnpike in which State interested 3589
Unclaimed freight and baggage by transportation companies, 3933, 3934
Vehicle, to enforce lien of Society for the Prevention of Cruelty to Animals....4561
—used in transporting ardent spirits 4658
Warehouse receipt, warranty....1833

Digitized by Google

Sec.

SALES—Con.
By warehouseman, to satisfy lien 1322, 1323
—perishable and hazardous goods 1323
Ward, personal estate of....5322
Wild turkey....3358
Wreck, property recovered from, 3607, 3608
—accounting for proceeds.3609, 3610
On writ of venditioni exponas..2529

SALMON
Potomac River, season, manner of taking....3305

SALT
See also **"Inspection"; "Inspectors"**
Inspectors of....1400-1402
Inspection of, barrels for....1412
—owner to mark, weigh and tare 1415
—penalty 1417
Brand 1416, 1419, 1420
—penalty for failure....1417
—how marked when unfit to pass 1422
Manufacturers of, statement to inspector 1442
Bushel, standard....1470

SAND
Condemnation of, power of railroad corporation....3857
Stealing from banks of Potomac River 4441
Condemnation of....4382

SAND PIPERS
Unlawful hunting....3356
Shipment from State....3361

SANDY RIVER
Placing dams or obstructions in, punishment 4754

SANITARIUMS
For Tuberculosis, see **"Tuberculosis"**.
Claims against estates of decedents 5390, 5391, 5395

SAN JOSE SCALE
See **"State Entomologist"**
Enquiry into existence of.... 880

SATURDAY
Negotiable instrument falling due on....5647
—presentment for acceptance on.5708
Half-holiday 5758

SAUSAGE FACTORY
See **"Slaughter Houses"**

SAVINGS BANKS
See also **"Banks and Banking"; "Savings Institutions"; "Savings Societies"**
Statutory provisions applicable to 4098, 4138
Word bank includes, when....4123
Capital stock, part paid before commencing business....4100
—when balance paid....4100
—minimum 4099
Limitation to amount invested in bank building 4104
—penalty for exceeding....4104
Certificate from State Corporation Commission....4105
—publication of....4105
— —proof of filed....4105
—penalty for doing business without or failing to publish.4105
Receivers, when State Corporation Commission may apply for 4120
When State Corporation Commission may close....4120

Sec.

SAVINGS BANKS—Con.
State depositories, insolvency, notice of to auditor and treasurer 4120
Examinations by State Corporation Commission....4120
—application of directors or stockholders for....4120
—expenses of....4120
—duty of officers and directors..4120
—fees for....4122
—refund of fees 4122
Statement of financial condition, when filed....4120
—publication of....4120
—form of....4120
Examiners, appointment 4121
—assistants, salaries....4121
—salary, oath, qualifications....4121
—bond 4121
Penalties for failing to furnish statement of financial condition 4124
— —failing to publish....4124
—officer refusing to assist examiner 4124
— —making false statement of financial condition....4124
Incorporation 4137
General powers....4137
Directors, number....4139
—election, removal....4139
—vacancy 4140
—appointment of president and officers, by....4140
—powers and duties....4141
President and officers, appointment 4140
Certificate of deposit 4141
—recovery on when payment refused 4142
—interest 4142
Funds, how invested....4143
Capital stock, increase of....4144
Discounts 4143
Name 4145
Deposits, regulations as to making or withdrawing....4147
—printing in pass book....4147
—posting 4147

SAVINGS INSTITUTIONS
See also **"Banks and Banking"; "Savings Banks"; "Savings Societies"**
Statutory provisions applicable to 4098, 4139
Minimum capital stock 4099
Word bank includes, when....4123
Building, limitation to amount to be invested in....4104
Certificate to commence business 4105
—publication of....4105
—filing proof of....4105
—penalty 4105

SAVINGS SOCIETIES
See also **"Banks and Banking"; "Savings Banks"; "Savings Institutions"**
Statutory provisions applicable, 4098, 4129
Minimum capital stock....4099
Word bank includes, when....4123
Buildings, limitation on amount to be invested in....4104
—penalty for exceeding....4104

SAWMILLS
Employees, payment, time and manner of....1818,1819
Fire escape....3141
—penalty for failure to provide.3141

SCALLOPS
Taking, regulations as to....3293
—tax 3293

Digitized by Google

Sec.

SCALLOPS—Con.
—buying, marketing, shipping, license for....3294
—penalty for violation of....3294
—presumption from possession of oysters....3294

SCALPS
Premium for by supervisors....2729

SCARLET FEVER
Bodies dead of, transportation, rules for....1728

SCHEDULES
Recordation of by clerk of court....3392
Redelivery....3392
Indexing....3392

SCHOOLS
See "Education"; "Colleges and Universities"
For particular institutions, see the titles of the respective institutions.
Ordinance preventing annoyance of pupils....3063
Disturbance of, punishment....4577

SCHOOL BOARDS
See "Education"

SCHOOL COMMISSIONERS
Property held by vested in school boards.... 648

SCHOOL DISTRICTS
See "Education"

SCHOOL DIVISIONS
See "Education"

SCHOOL FUNDS
See "Education"; "Literary Fund"

SCHOOL HOUSES
See "Education"
Burning or destroying, punishment....4430
Wilful or malicious injury to, punishment....4482

SCHOOL LEAGUE
Property of....47-49
Trustees of.... 49

SCHOOL PROPERTY
See "Education"

SCHOOL TAXES
See "Education"; "Taxation"

SCHOOL TRUSTEES
See "Education"

SCHOOL TRUSTEE ELECTORAL BOARD
See "Education"

SCHOOLS
See "Education"

SCHOOL WARRANTS
See "Education"

SCIRE FACIAS
See also "Revival"
On bond of suspended pilot....3644
On recognizance....4980
—what defects not to defeat....4981
—limitation....5815
—saving to person under disability....5823
—inquiry of damages unnecessary....6132
When administrator de bonis non may have....5387
On judgment, of justice....6040
—inquiry of damages unnecessary....6132
—limitation on....6477
—assigning further breach of bond....6478
Service of process....6062-3064
—out of State....6071
No judgment on return of nihil on....6068

Sec.

SCIRE FACIAS—Con.
When default judgment on to become final....6134
Revival of action or suit by....6168
—when issued....6169, 6171
On bond payable in instalments....6262
For penalty for non-performance of condition or covenant....6262

SCOTT COUNTY
Commonwealth's attorney, fees....3505
Animals of non-resident, trespass by, damages....3542
—distress of....3544
—when returned to owner....3545
—when surrendered to resident purchaser....3546

SCRAPES
Vessel fishing for Menhaden carrying on board, penalty....3177
Taking oysters, crabs, clams or shells with in Accomac and Northampton Counties, penalty....3238

SCRIP
Issued by State....Va. Const., § 184
Issuance of, etc., prohibited....4703

SCROLL
See "Seals"
As seal....5, 5562

SEALS
On bonds of surety companies.. 285
Unauthorized use of, penalty...1463
Tax on, when not charged....2492
Furnished to county officers by board of supervisors....2767
Scroll as....5, 5562
Corporate or official, impression or stamping sufficient....5562
Not to affect negotiability of instrument....5568
Of Board of Drainage Commissioners....1759
Of board of supervisors....2710
Of Bureau of Insurance....4174
—use....4175, 4176
—tax on....4175
Of Commissioner of Game and Inland Fisheries....3309
Of corporation....cl. 12, 5, 3777
—forging, punishment....4485
—keeping instrument for forging, punishment....4485
—affixed to deeds....5208
—impression or stamping sufficient....5562
Of court.... 5
—forging, punishment....4485
—keeping instrument for forging....4485
Of electoral boards.... 158
Of natural person, scroll sufficient.... 5
Of notary to certificate of protest, judicial notice of....5680
Of public officer.... 5
Of Register of Land Office affixed to warrants.... 418
Of State, to be affixed to commissions and grants, Va. Const., § 75
—great seal.... 27
—lesser seal.... 28
— —affixed to land grants.... 462
—tax on....29, 30
— —paid to Secretary of the Commonwealth....2401
—affixed to certificates to members of Commission of Fisheries....3146
—affixed to records in office of Secretary of the Commonwealth relating to corporations, effect as evidence....3530
—forging, punishment....4485

Digitized by Google

Sec

SEALS—Con.
—keeping instrument for forging, punishment....4485
Of State Board of Dental Examiners....1644
Of State Board of Embalming..1719
Of State Corporation Commission....3742
—use of, tax on....3742
Of State Board of Examiners of graduate nurses....1704
Of Virginia State Board of Examiners in optometry....1627
Of weights and measures, how procured and paid for....1480

SEALER OF WEIGHTS AND MEASURES
See "Weights and Measures"

SEAMEN
When not deemed to have gained residence for purpose of voting.... 82
—Va. Const., § 34
Landing without provision for maintenance....3660
Desertion, warrants for....3661
—imprisonment....3662
—discharge from custody....3663
Arrest....3661, 3663
Will of....5231
Federal, not liable for jury service....5984

SEARCHES AND SEIZURES
General warrants prohibited, Va. Const., § 10
Search of premises for violation of law relating to cruelty to animals....4557
Of premises for violations of laws relating to intoxicating liquors....4612
—seizure of property....4612
— —destruction of....4618
—United States tax receipt as evidence....4618, 4620
—without warrant....4619
By game warden....3320
By Commissioner of Game and Inland Fisheries....3330
Resistance to officer enforcing oyster laws, penalty....3265
Disposition of property seized...4822
Seizure of concealed weapons by officers....4534
—of property in action of detinue, order for....5797
— —how executed....5797
— —return of property...5798, 5800
— —charges for keeping....5803
—of vessel, boat, etc., of person found violating fishery laws..3155
—of boats, nets and fixtures used in violating law relating to fishing in Potomac River....3302
—of nets, etc., violation of fishing laws....3215, 3217, 3367
—of traps, etc., by fish warden..3197
—of gambling device, money, etc....4676
—boats, traps, nets, etc., used illegally in hunting....3356, 3367
—of illegal measures for oysters....3252
—for violation of oyster laws, 3266, 3273, 3277, 3279, 3287
—vehicle transporting intoxicating liquor....4657
— —how disposed of....4657

Search Warrant
General warrants prohibited, Va. Const., § 10
Special police of counties may execute....4801
When justice may issue...4819, 4820
—for stolen property....4819

Sec.

SEARCHES AND SEIZURES—Con.
—for counterfeit money....4820
—for forged bank notes....4820
— —instruments, etc., for making....4820
—for obscene literature....4820
—for lottery tickets or materials....4820
—for gaming apparatus, etc....4820
Form and requisites....4831
Disposition of property seized...4822
For violation of law relating to cruelty to animals....4557
For violations of prohibition law....4612, 4618
—for vehicle transporting ardent spirits....4657

SEARCH WARRANTS
See "Searches and Seizures"

SECOND AUDITOR
See also "Auditor of Public Accounts"
Vacancy in office, how filled, 122, 329, 331
—when bond not approved or oath not taken.... 329
Record of oath taken by.... 277
Removal from office.... 330
Business hours.... 337
Proceedings and vouchers.... 338
Election of by General Assembly.... 323
—time of.... 323
Term.... 324
When to qualify.... 324
Bond of.... 325
—submission of to Attorney General.... 326
—new or additional.... 327
—effect of failure to give.... 327
—when filed.... 328
—liability for retired teachers' fund.... 795
Absence of, notice to Governor.. 340
When first clerk to act for.... 341
Employees.... 402
Policy of insurance on school buildings filed with.... 764
Securities of retired teachers' fund deposited with.... 793
Member of Miller Manual Labor School....1000
Certificates for West Virginia's share of Virginia debt, recordation of....2694
Member, board of indemnity....2619
Commissioner of Sinking Fund..2621
Commissioners of Sinking Fund, books of to be kept in office of....2621
Salary....3436
Contingent expenses....3436
Register of property of State kept by....3765
Proceedings by to recover money forfeited to Corporation Commission....3746
—money due State from internal improvements....3766
Exempt from jury service....5985
Actions against, venue of....6049
—court in which brought....6051
Copies of records of as evidence, 6197
Accounts kept by, State Board of Education....2192
—State Corporation Commission..2192
—corporation funds and property of which State is sole owner....2192
—State Accountant to devise system of accounting for....552, 554
— —mandamus to compel adoption.... 555

Digitized by Google

Sec.

SECOND AUDITOR—Con.
—inspection of accounts of..557, 558
Bonds of State, surrendered by colleges, list of..... 992
—held by colleges, payment of interest on 990
terest on..... 990
—recordation 2590
—redeemed or purchased and canceled, recordation of.....2594
—forged, petition for seizure of.2613
—registry 2631
—issued, canceled or exchanged record of.....2632
—monthly summary and comparison 2632
—duty to countersign.....2633, 2638
—cancellation and reissue.....2637
—lost bond or certificate, renewal 2639
—warrants for payments on....2633
Claims presented to 2177
—allowance of.....2177
—may administer oaths.....2178
—barred by time, disallowed....2179
—warrants for.....2181
Clerks 3436
—record of oath taken by..... 277
—bond of..... 325
— —submission of to Attorney General 326
— —new or additional 327
— —effect of failure to give.... 327
— —where filed 328
—vacancy in office if bond not given and approved..... 329
— —how filled..... 329
—appointment of..... 335
—removal 336
—salaries 3436
Coupons from State bonds, destruction of forged or counterfeit 2612
—comparison with register in treasurer's office.....2629
—suit on, officer or clerk not to leave office to testify.....2618
— —books not to be taken from office 2618
— —copy as evidence.....2618
— —depositions 2618
First clerk, appointment..... 340
—authority 340, 341
—when Governor to designate.. 341
—vacancy 241
—liability of Second Auditor for default of..... 342
Literary fund, institution of proceedings to recover money due to 603
—securities belonging to deposited with..... 614
— —list of filed with annual report 614
—warrants for payments to and from 615
— —attestation of..... 615
—report of loans from.....760, 761
—notice by of failure to pay loan from..... 761
—withholding payments from or enforcing payment of loans from 989
Payment by, of interest to Hampton Normal and Agricultural Institute..... 929
—to Virginia Agricultural and Mechanical College and Polytechnic Institute..... 929
—cost of publication of escheator's certificate..... 504
Payments to, appropriations for high schools..... 708
—appropriations for normal departments of high schools.... 709

Sec.

SECOND AUDITOR—Con.
—interest on Corcoran Fund.... 827
—fee for exchange of State bonds for registered bonds.....2602
Reports to, by visitors of University of Virginia..... 815
—by visitors of Virginia School for Deaf and Blind..... 976
—by Virginia State School for Colored Deaf and Blind Children 983
Reports by, to Governor, annual 2202
—statement with.....2292
—list of securities of literary fund filed with..... 614
—to General Assembly, condition of internal improvements in which State has interest.....3773
Warrants, for claims payable out of literary fund..... 615
—for payment into treasury of money belonging to literary fund 615
—for expenses of office of Superintendent of Public Instruction 616
—for expenses of State Board of Education 620
—for salary of division superintendent of schools..... 626
—for expenses of summer schools 698
—for high schools.....707, 710
—for school funds..... 753
—for retired teachers' fund..... 792
—for pensions to retired school teachers 794
—for payment of money into State Treasury.....2155, 2182
— —what to state 2183
—for payment of funds from State Treasury.....2184
—for claims allowed against State 2181
—duplicate, when issued.....2184
— —bond 2184
— —when bond not required...2184
—for payments to and from sinking fund.....2626
—for payments on State bonds..2633

SECRETARY OF AGRICULTURE OF THE UNITED STATES
State Live Stock Sanitary Board, co-operation with..... 907

SECRETARY OF THE COMMONWEALTH
Election 118
—Va. Const., § 80
Term of office..... 118
—Va. Const., § 80
Contested election of..... 264
—how determined..... 265
Vacancy in office, how filled, 122, 329, 331
—for failure to give bond..... 329
Removal from office..... 330
Business hours..... 337
Proceedings and vouchers..... 338
Bond of.....325, 2134
—submission of to Attorney General 326
—new or additional..... 327
—effect of failure to give..... 329
—where filed 328
Oath of secrecy of..... 342
Record of oath taken by..... 277
Absence, notice to Governor.... 346
—chief clerk to act..... 346
Salary 3134
Accounts of, audited by Auditing Committee of General Assembly 311
—Va. Const., § 68

Digitized by Google

Sec.
SECRETARY OF THE COMMONWEALTH—Con.
—State Accountant to devise system of accounting for.....552-554
—State Accountant to inspect, 557, 558
Books of Superintendent of Public Printing to be open to..... 381
Copies of legislative Journals delivered to..... 386
Acts of Assembly delivered to.. 388
Annual reports of departments furnished to..... 393
Appeal of bidder for contract for public printing..... 382
—for contract to furnish paper. 383
Failure to account for and pay taxes to auditor, forfeiture for 2404
Proceeding against by auditor for violation of revenue laws..2544
Contingent expenses.....3434
Exempt from jury service.....5935

Clerks
Appointment of..... 324
Removal 326
Record of oath taken by..... 277
Bond of..... 325
—submission of to Attorney General 326
—new or additional 327
—effect of failure to give..... 329
—where filed..... 328
Vacancy in office if bond not given and approved..... 329
—how filled 329
Chief clerk, to act in absence of Secretary 346
Salaries 3434

Fees and Commissions
General provisions.....3478
Paid into treasury 3484
—Va. Const., § 80
For filing and registry of trademark 1458
—furnishing copies.....1458
Automobiles, motorcycles, etc., license to owner.....2132
—to manufacturer or dealer....2128
—to chauffeur.....2129
—duplicate 2135
—new certificate when machine sold and another purchased....2136
—transfer of license.....2136
—disposition of fees.....2154
For issuing commission to Commissioner of Deeds.....2853
For filing papers, recordation, copies, etc., relating to corporations 3336
For receiving and mailing process against foreign corporation 3846

Powers and Duties
Duties 344
—Va. Const., § 80
To transcribe and preserve official copy of constitution, Va. Const., Schedule § 22
Keeper of seals of the Commonwealth 29, 344
Forms furnished by, registration books 94
—application for registry of trade-mark 1457
—license, automobiles, motorcycles, etc.....2127, 2128, 2129
Supreme Court reports, custody of 347
—furnishing copies, exchanging, etc. 347
—designating number to be printed 394

Sec.
SECRETARY OF THE COMMONWEALTH—Con.
To furnish law schools with copies of Journals, Acts of Assembly and Codes..... 356
To furnish colleges and academies with maps..... 356
Certain securities and funds delivered to Treasurer..... 357
—account of..... 357
Sale, exchange, etc., of State publications by..... 358
Law books placed by in law libraries 369
To furnish Acts of Assembly to officers 372
Member, Board of Review, appeal from proceeding of State Board of Dental Examiners, revoking license 1651
To collect and account for tax on seals of State.....29, 2401
Payment to auditor of taxes collected 2404
—forfeiture for failure.....2404
Member, Board of Indemnity....2619
Bids to surrender bonds for cancellation opened in presence of 2625
Comparison of coupons with register in Treasurer's office.....2629
Proceedings to form city of the first class.... 2911
—certificate of population.....2911
—filing 2911
—report to Governor and General Assembly.....2911
Return of order or warrant of Governor to.....5070

AS TO AUTOMOBILES AND MOTOR VEHICLES
Enforcement of laws relating to.2144
License to owner.....2126, 2127
—manufacturer, dealer.....2128
—chauffeur 2129
—fee 2128, 2129, 2132
—number plate.....2131
Certificate, issuance of.....2132
Loss of license, duplicate, fee...2135
Sale of car, return of license...2136
—purchasing another machine, new certificate, fee.....2136
—transfer of license.....2136

BONDS, OATHS, FILED WITH AND RECORDED BY
Bonds recorded by..... 279
Of Auditor of Public Accounts and clerks..... 328
Of State Librarian and Doorkeeper 348
Of State Accountant filed with.. 550
Of contractor for public printing 382
—of contractor to furnish paper. 383
Of Dairy and Food Commissioner 1157
—deputy and assistants of.....1158
State Board of Examiners of Graduate Nurses, members....1704
—treasurer 1704
Of Secretary and assistant, Board of Charities and Corrections..1893
Of Commissioner of Game and Inland Fisheries.....3309

CERTIFICATES AND COMMISSIONS ISSUED BY
To notaries.....2850
To Commissioner of Deeds.....2853
To Commission of Fisheries.....3146
To Commissioner of Fisheries...3146
To Shellfish Commissioner.....3146

AS TO CORPORATIONS
Charters certified to by State Corporation Commission.....3746

Digitized by Google

Sec.

SECRETARY OF THE COMMONWEALTH—Con.
Noting dissolution of 3809, 3810
Copies of records, papers, etc., relating to corporation as evidence 3830
Amendment of charter.....3779, 3780
Recordation, decrease of capital stock 3781
—of charters 3851
— —of railroad corporations...3857
— —of amendment of.....3859
— —of public service corporations 3866
— —amendment of.....3868
—of new charter after dissolution 3811
—purchaser of franchises and property of corporation.....3817
—certificate of consolidation of corporations 3822
—charter of non-stock corporations 3874
— —amendment of.....3875
As agent of foreign corporations on whom process may be served 3845
—service of process on.....3845
—mailing copy.....3846
—fee 3846
—copy of power of attorney as evidence 3845
Filing certificate to foreign corporation to transact business in State.....3847
Service of process or notice on in action against foreign insurance company, guaranty company, etc., filing resolution consenting to 4207

AS TO ELECTIONS.
Returns of elections transmitted to .....Va. Const., § 70
—delivery to Speaker of House of Delegates.. ..Va. Const., § 70
To furnish registration books... 94
To deliver returns of election to Speaker of the House of Delegates 119
Poll book, furnished by..... 150
Notices to secretary of electoral board of candidates..... 154
Names of candidates for President and Vice-President of United States to be furnished to 157
—to notify electoral board of... 157
To send messenger for election returns 190
To open and record election returns 189, 190, 191
To issue certificates of election, 191, 344
To distribute copies of Chapter 15 of the Code to members of electoral boards, judges of election and clerks of courts.. 237
To lay abstract of votes at primary election before State Board of Canvassers..... 242
When to convene State Board of Canvassers 242
When to send messenger for abstract of votes..... 243
When to order primary election. 248
To keep register of city, county and district officers..... 344

RECORDS, BOOKS, PAPERS, ETC.
Filing, recordation of reports made to Governor by officers and State institutions 320
Records kept and authenticated by 344
To certify records for use in other States..... 345

Sec.

SECRETARY OF THE COMMONWEALTH—Con.
System of accounting for State officers filed with..... 554
Trade-marks registered with...1458
—copies furnished, fee.....1458
State Board of Examiners of Graduate Nurses, rules of, etc., filed with.....1705
Register of licenses, automobile or motorcycle, owner....2126, 2127
—dealer or manufacturer.....2128
—chauffeur 2129
—owned by State, county or city 2148
Records of notaries kept by....2950
Certificate of population, city of first class filed with.....2911
Records of, copies as evidence..6197

REPORTS BY
What to embrace..... 344
Annual 393
—printing and distribution..... 392
To Auditor of taxes received....2404
—forfeiture for failure to make.2404
To Governor and General Assembly of formation of city of first class 2911

REPORTS TO
Of loss of certificate of license of automobile or motorcycle..2135
—number plate.....2135
New county, plat and survey of.2680
—commissioner's report and map 2693
Copy of order declaring town to have population of five thousand or more.....2975
By clerk of court, list of county, district and city officers, vacancies, elections, appointment and qualification of.....3407

SECRETARY OF THE INTERIOR OF THE UNITED STATESS
Funds received from by Auditor of Public Accounts 853

SECTARIAN SOCIETY
State appropriation to prohibited .....Va. Const., § 67

SECURITIES
See also **"Bonds"**
Of Insurance Companies, see **"Insurance Companies"**
Deposited in treasury by foreign building and loan association 4161
Fraudulent sale of, scheme for, etc., punishment.....4455
Fiduciary funds may be invested in 5431

SECURITY
For costs, in proceedings on caveat 451
—of resurvey by patentee..... 474
—by non-resident plaintiff.3519, 3520
—given by prosecutor when....4857
For fine.....2519
By State depositories.....2158
Trust company as.....1148
—when required of.....1148
To surety on bond of non-resident plaintiff.....3520
Surety in bail bond or recognizance taking from principal.4837
Recognizances in criminal cases.4973
—taken for insane person or minor 4975
On appeal from justice, trial of civil warrant.....6027
—in unlawful detainer proceedings 5449

On Bonds
Of claimant in petition against escheat 500

Digitized by Google

Sec.

SECURITY—Con.
Of State Accountant..... 550
Of depository, Virginia Normal and Industrial Institute..... 965
Of committee of inebriate or drug addict.....1074
Of Dairy and Food Commissioner 1157
Of person to whom duplicate warrant on State Treasurer issued 2184
Of treasurer, when credited with lost school warrant.....2185
Of city treasurer.....2699
Of applicant for resurvey of oyster planting ground 3257
Of officers, Society for Prevention of Cruelty to Animals...4555
Of person convicted of violating prohibition law.....4643
Of special police for counties...4800
—for watering place, university, college, manufacturing plant..4805
Of guardian.....5318
Of executor, when not required.5371
On indemnifying bond.....6154
On suspending bond.....6156
Of special commissioners..6266, 6269
In injunction proceedings..6322, 6324

For Good Behavior

Of attorneys at law.....3425
Of person betting on game in public place.....4679
Of keeper of ordinary permitting gaming at.....4688
Required by conservator of the peace 4789
—on complaint that crime is intended 4791-4794
—of person going armed.....4795
—of persons about to commit breach of peace 4796
Required by justice of peace....4803
Condition of.....4973
Commitment to jail for failure to give.....4976
Of person enticing or harboring apprentice 5313

SECURITY COMPANIES
See also **"Guaranty Companies"**
Shares of stock of subject to taxation .....Va. Const., § 182
As surety on bonds of officers, 2698, 2699
Supervision and control of by State Corporation Commission.4169
Examination of by Commissioner of Insurance.....4178
—when dispensed with.....4179
—revocation of certificate to transact business 4180
—appeal 4180
Process against, where served...6963

SEDUCTION
Punishment 4410
Limitation of prosecution.....4413
Evidence 4413
Marriage of parties.....4413
Action for.....5780
Unnecessary allegations.....5780

SEEDS
See **"Agricultural Seed"; "Commissioner of Agriculture and Immigration"; "Board of Agriculture"**
Distribution of by State Geological Commission..... 536

SEGREGATION
See also **"Taxation"**
Of property for taxation....2205-2212
—Va. Const., § 169
Assessment by cities and towns..3073

Sec.

SEGREGATION—Con.
Of districts for white and colored persons in cities and towns 3043-3053

SEIZURES
See **"Searches and Seizures"**
Of forged or counterfeit bonds or coupons of State.....2612, 2613

SEISIN
Recovery by heir when dower improperly assigned.....5129

SEMINARIES
Establishment of landing on or road through lands of.....1982
Property of, exemption from taxation 2272, 2301
—Va. Const., § 183
Gifts, inheritance tax on.....3272
Lands of, not subject to condemnation 4384
Instructors and pupils of exempted from jury service.....5985

SENATE
See **"General Assembly"**

SENATORS OF THE UNITED STATES
See **"United States Senators"**

SENTENCE
See **"Crimes"; "Death Penalty"; "Fines and Penalties"; "Misdemeanors"**
Suspension of on conviction of certain crimes.....4486

SEPARATE ESTATES
See also **"Husband and Wife"**
Of married women, how acquired and disposed of.....5134
—trust company as trustee of..4148
Of infant married woman, receiver of.....5136
—sale of.....5137

SEPULTURE
Violation of, punishment.....4552

SERGEANTS
See also **"Sheriffs"**
Not eligible as member of General Assembly ....Va. Const., § 44
Election 123, 129, 3026
—Va. Const., §§ 120, 122
Term 123, 129, 3026
—Va. Const., §§ 120, 122
Bond 2698
—liability on for delinquent taxes collected.....2429
—action on, judgment.....2514
—liability on when committee of convict's estate 5003
—when acting as fiduciary, limitation of actions on.....5811
—motion for judgment on.....6046
Deceased, deputy acting for....2816
—removal and appointment of deputy by personal representative 2816
—liability for default of deputy 2816
Not to practice law in court of which he is officer.....3426
Acts of Assembly furnished to.. 388
Coroners, when to act in place of 2817, 2818
Person appointed by court to act in place of.....2821
—bond 2821
Of town becoming city of second class 2891
Of city, duties, compensation...2992
—allowance to by court.....2993
Of city of second class, election, term 2893
—appointed by court.....2897

Digitized by Google

Sec.

SERGEANTS—Con.
Impeding or intimidating, punishment 4525
Execution against, no forthcoming bond to be taken....6524, 6525

Deputies
Appointment 2701, 2816
Powers, oath 2701
Removal 2701, 2816
Acting in name of deceased sergeant 2816
Signing return on process.....2825
Judgment against in favor of sergeant 2836, 2837
Not to practice law in court of which he is an officer.....3426
Allowance by court of compensation for attendance 3503

Fees
General provisions 3487
On execution when no levy made or bond taken 3488
Failing to serve process after due effort, affidavit 3489
What services not to charge for 3492
When not paid out of treasury.3493
Fee book 3494
Payment from treasury.....3503
In criminal cases.....3508, 3509
—when not paid from treasury..3511
—allowance to in lieu of fees...3511
—executing process, case out of county 4960
—other service for which no compensation provided 4960
—certificate of allowance..4961, 4962
—effect of failure to present claim in time 4965
Payment from treasury 3504
Posting list of paid poll taxes, 112, 114
Posting notice of election..... 199
Confinement of lunatics, epileptics, etc. 1049
Leasing property for collection of taxes 2439
Distraining property for taxes..2439
Execution for fine and costs....2561
For preserving record of civil and police justice 3107
Serving process of State Corporation Commission 3730
Enforcement decision of commissioners, controversy between pilots and masters.....3637
Enforcement of prohibition laws.4655

Penalty
For failure to post list of paid poll taxes 113
For failure to deliver goods to sheriff having writ of venditioni exponas 2528
For improperly acting as attorney at law 3426
For failure to execute process of State Corporation Commission 3730
For failing to pay collections to clerk of State Corporation Commission 3747
For failure to summon grand jury 4862
For failure to serve or return notice 6041
For failure to get process from clerk's office 6060
For taking insufficient bond in attachment proceedings 6395
For failure to serve and return mechanic's lien 6430

Powers and Duties
Powers and duties 3026

Sec.

SERGEANTS—Con.
Arrest of person escaping from quarantine 1529
Attachment, directed to....6387, 6415
—how levied 6389, 6390
—return 6391
—bond taken by.....6394, 6397
— —penalty if insufficient.....6395
—levy on effects in hands of officer 6408
Begging, duty to prevent.....2804
Bloodhounds furnished to by superintendent of penitentiary..5048
Bureau of Animal Industry, assistance to inspectors 1289
City court, duty to attend.....5963
Civil warrant before justice returned to 6020
—subpoenas for witnesses.....6021
—execution on 6030, 6031
—writ of possession 6029
—penalty for failure to return...6033
—liability for money collected..6034
— —evidence 6032
Condemnation proceedings, removing forcible resistance to .4386
Convict, delivery of to guard....4948
—compensation 4948
—as committee of estate of....5003
Debt due State, execution on judgment for 2518
—levied on real estate 2519
Distress for rent 5522
—levy 5523
Elections, writ of election directed to 81
—writ of election, posting...146, 147
—posting copy list paid poll taxes 109
— —Va. Const., § 38
—to execute summons issued by commissioner of elections..... 183
—to serve summons to correct returns in primary election... 240
—publication of notice of special election in city of first class..2919
Fertilizer condemned for violation of law 1118
Fishing laws, prosecution for violation of 3215
—seizure of forfeited property..3217
Forthcoming bond 6157
Indemnifying bond 6154
Inebriate, drug addict, delivery to private sanitarium 1073
Insane persons, duties as to commitment of, 1019, 1020, 1022-1024, 1027
—as committee for 1053
—convicted of or accused of crime, duty as to.....4910
Intoxicating liquor laws, duty to enforce 4655
—failure as misfeasance.....4655
Jailor, sergeant to be.....2868
Judgments in favor of against deputy 2836, 2837
—courts having jurisdiction.....2838
Jury, summoning 5992
—when county, city, or town party 6006
—list of jurors and mileage furnished clerk.....6007
—for escheator's inquest 494
Levy, unreasonable prohibited..2831
—removal of goods 2831
—on horses, live stock, sustenance 2831
—on judgment for debt due State 2519
—venditioni exponas..... .2527-2530
—return 2531
Nuisance, abatement of.....1518

Digitized by Google

Sec.

SERGEANTS—Con.
Mechanic's lien, serving notices of 6430
As personal representative.....5374
Pilots and masters, controversies between, enforcement of decision of commissioners.....3637
Poor persons, removal to place of last settlement 2802, 2804
Prisoners in jail, report of to court 2870
—report of to State Board of Charities and Corrections 2871
—confined for failure to pay fine and costs, hiring out.....4950
— —obligation taken from hirer 4951
Process, execution, powers.....2822
—where to execute.....2822
—summoning assistance 2822
—return on 2825
—forfeiture for failure or false return 2825, 2826
—rule against 2825
—motion against 2826
—forfeiture credited on judgment 2826
—judgment against 2835
—sent from other jurisdictions, fees and postage 2827
— —return of by mail 2828
—directed to by civil justice....3120
—delivery to by clerk.....3403
—receipt for 3403
—orders and decrees 3403
—of State Corporation Commission 3730
—special term of court.....5894
—service of notice by 6041
—in divorce case 6042
—directed to 6055
—return of when alias process issued 6059
—duty to get from clerk's office.6060
Sale, of automobile, on judgment against owner 2147
— —notice, posting, etc. 2147
—of real estate levied on, execution on judgment for debt due State 2518
— —notice 2520
— —how sale made 2521
— —terms, bond of purchaser...2522
— —purchase money, deed.2523, 2524
— —venditioni exponas ...2527-2530
—of goods levied on.....2832
— —notice 2832
— —of horses, mules and oxen.2833
— —adjournment of sale.....2834
—of property forfeited to Commonwealth 3377
—disposition of surplus. ..... .6158
—decree or order of, when executed by 6278
— —liability for proceeds 6278
—of personal property to enforce lien 6449
Search warrant, directed to.....4821
—disposition of property.....4822
—violation of law relating to cruelty to animals, execution of 4557
Suspending bond 6156
Taxation, collection of delinquent taxes 2429
— —receipt, account, liability for 2429
—distress for taxes.....2439
—leasing property for collection of taxes 2439
—collection of taxes by garnishment 2444

Sec.

SERGEANTS—Con.
—service and return of application to purchase delinquent land sold 2495
Vagrants, how dealt with.....2809
Witness, serving process for out of jurisdiction 6218
—before General Assembly, summoning 303
Writs directed to, execution for fine 2561
—capias 2561
—commission 2561
—payment of proceeds to clerk..2568
—penalty for default 2568
—in quo warranto proceedings, directed to 5845
-- —service 5845
— —return 5843

SERGEANTS-AT-ARMS
Of General Assembly, salaries, duties 3460

SERUM
Hog cholera, manufacture and distribution 1283, 1284, 1285

SERVANTS
See **"Master and Servant"**
Where may reside in city or town segregating races 3051

SESSIONS
Of General Assembly.Va. Const., § 46
—extension.....Va. Const., § 46
—quorum.....Va. Const., § 46
—adjournment.....Va. Const., § 46
Of local board of review.....2226
Of State Corporation Commission 3733
—where held 3697
—to be public.....Va. Const., § 155
Of Supreme Court of Appeals...5866
—Va. Const., § 93
—at Richmond 5867
—at Wytheville 5868
—at Staunton 5869
—special sessions 5884-5886
—change of place of.....5967
Of special court of appeals.....5873

SET-OFF
In action for death of employee of intrastate railroad, contribution by railroad to insurance of employee, &c.....5794
When proof of signature not required 6093
Allowed when described in plea or account 6144
When allowed in action against several 6144
—counter set-off 6144
Defense to 6144
To part of demand 6148
Defendant a plaintiff.....6149
Special plea of 6145
—effect on relief in equity.....6146
—issue, trial, evidence 6146
Voluntary bonds 6147
Plaintiff cannot dismiss after...6149
Set-off by assignee.....6149-6150
—waiver of excess 6150
—how assignor made a party...6150
In attachment proceedings.....6402

SEWERS
Supervisors may establish and maintain 2757
Contracts for, by cities and towns 3064
Local assessment for improvement, etc., of 3067-3071
—Va. Const., § 170
Bond issue by cities and towns for 3079
Pipes emptying into Lynnhaven river prohibited 3290

Digitized by Google

Sec.

SHAD
Opening ways to spawning localities 3179
—fishing in ways 3180
—penalty 3180
Fishing season for in Potomac river 3300, 3302

SHADE TREES
Telegraph or telephone wires not to be attached to 4038
Killing or injuring, penalty.....4732

SHEEP
Killing by dogs, payments for from license taxes 2319
—procedure to estimate damages 2319
—allowance by supervisors.....2319
—pro rated, when 2320
—payment 2321, 2322
—fees of officers 2323
Trespass by, impounding.....3541
—damages, proceeding to recover, lien, sale 3541
—of non-resident 3542
—distress of 3543
—sale of 3544-3546
Running at large in county in which boundary lines are lawful fences 3548
—damages 3552
Running at large in villages and unincorporated communities, penalty 3550, 3551
Turnpike tolls 4083
—on valley turnpike 4083
Registration, obtaining by false pretenses, punishment 4460
—giving false pedigree, punishment 4460
Driving along road without branding, when prohibited....4742

SHELLS
See "Oysters"

SHELL FISH
See "Commission of Fisheries"

SHELL FISH COMMISSIONER
See "Commission of Fisheries"

SHELLEY'S CASE
Rule in, abolished 5152

SHENANDOAH COUNTY
Commonwealth's attorney, fees..3505

SHENANDOAH RIVER
Act for protection of fish in continued in effect 3218

SHERIFFS
See also "Sergeants"
County not to be made responsible for acts of....Va. Const., § 114
Term personal representative includes, when 5
Election 123
—Va. Const., § 110
Term 123
—Va. Const., § 110
Not to hold other office.....2702
—Va. Const., § 113
—office vacated thereby.....2702
Not eligible as member of General Assembly.....Va. Const., § 44
May not practice law in court of which he is officer.....3426
Bond 2698
—liability on for delinquent taxes collected 2429
—action on, judgment 2514
—liability on when sheriffs is mittee of convict's estate.....5003
—when acting as fiduciary, limitation of action on 5811
—motion for judgment on.....6046

Sec.

SHERIFFS—Con.
Acts of Assembly furnished to.. 388
Office for, how provided.....2854
Coroner, when to act in place of 2817, 2818
Constable, when to act in place of 2819
Person appointed by court to act in place of 2821
—bond 2821
Deceased, deputy acting for.....2816
—removal and appointment of deputy by personal representatives 2816
—liability for default of deputy.2816
Audit of accounts of by supervisors 2719
Judgments in favor of against deputy 2836, 2837
—courts having jurisdiction.....2838
Having writ of venditioni exponas, failure of officer to deliver goods to, penalty.....2528
Commissioner of Game and Inland Fisheries and wardens to have power of to serve process 3318
Commissioner of Prohibition, deputies and inspectors to have powers of 4628
Impeding or intimidating, punishment 4525
Remedy for money paid under liability for not taking sufficient bail.....5777
Exempt from jury service.....5935
Execution against, no forthcoming bond taken.....6524, 6525

Deputies
Appointment 2701, 2816
Powers, oath.....2791
Removal 2701, 2816
Acting in name of deceased sheriff 2816
Signing return on process.....2825
Judgment against in favor of sheriff 2826, 2837
Ex-officio game wardens.....3328
Not to practice law in court of which they are officers.....3426
Judgment against for failure to account for fee bills.....3499
Allowance by court of compensation for attendance.....3503
Fees for guarding juries in criminal cases.....3509
Execution of search warrant, violation of law relating to cruelty to animals.....4557

Fees, Commissions, Etc.
Annual allowance to by supervisors 2726
Proportion of salary borne by cities of second class.....2904
Fees, general provisions.....3437
On execution when no levy made or bond taken.....3488
Failing to serve process after due effort, affidavit.....3439
What services not to charge for.3492
When not paid out of treasury..3493
Fee book.....3494
Payment out of treasury.....3503
In criminal cases.....3508, 3509
—payment out of treasury.....3504
—executing process in criminal case out of county.....4960
—other service for which no compensation provided.....4960
—certificate of allowance..4961, 4962
—effect of failure to present claim in time.....4965
For posting list of paid poll taxes 112, 114

Digitized by Google

Sec.

SHERIFFS—Con.
For posting notice of election... 199
For confinement of lunatics, epileptics, etc.....1019
For leasing property for collection of taxes.....2439
For distraining property for taxes 2439
On execution for fine and costs.2561
For serving summons, calling meeting of supervisors.....2715
For attending meetings of supervisors 2718
For collecting officers' fee bills.3499
For enforcement of decision of commissioner, controversy between pilots and masters.....3637
On process, etc., from State Corporation Commission.....3730
For report of fire to Commissioner of Insurance.....4185
For enforcement of prohibition laws 4655
For summoning coroner's jury and witnesses.....4818
In proceedings to compel mine owner to permit survey.....5289

Penalties
For failure to post list of paid poll taxes..... 113
For violations of law with reference to insane persons.....1030
For failure to advertise and sell unmarked timber.....1454
For failure to make return of money collected on process...2835
For violation of revenue laws..2544
Failure to return process..2825, 2826
For failing to give notice of town election.....3000
For improperly acting as attorney 3426
For failing to execute process of State Corporation Commission 3730
Failing to pay collections to clerk of State Corporation Commission 3747
For failing to perform duty under insurance law.....4132
For voluntarily allowing prisoner to escape.....4505, 4506
For negligently allowing escape of prisoner.....4506
For failing to execute process for arrest.....4510
For corruptly summoning juror to act partially.....4519
For failing to execute and return process for coroner's jury and witnesses.....4808
For failing to summon grand jury 4862
For failure to serve and return mechanic's lien.....6430
For failure to get process, etc., from clerk's office.....6060
For failure to serve or return notice 6011
For taking insufficient bond in attachment proceeding.....6395

Powers and Duties
Arrest of person escaping from quarantine 1539
Attachments, directed to..6387, 6415
—how levied.....6389, 6390
—return 6391
—bond taken by.....6394, 6395, 6397
— —penalty if insufficient.....6395
—levy on effects in hands of officer 6408
Automobiles and motor vehicles, duty to enforce law as to.....2144
Bloodhounds furnished to by Superintendent of Penitentiary..5048

Sec.

SHERIFFS—Con.
Bureau of Animal Industry, assistance to inspectors of 1289
City of second class, powers and duties in.....2804
Civil warrant before justice directed to.....6020
—subpoenas for witnesses.....6021
—execution on 6030, 6031
—writ of possession 6029
—penalty for failure to return, 6032, 6033
—liability for money collected..6034
— —evidence 6032
Collection of fee of physician for inspecting laborers engaged in constructing works of public improvement.....1531
Commonwealth's attorney, reporting violations of law to..4854
Condemnation, removing forcible resistance to.....4336
Convict, delivery of to guard...4948
—as committee of estate of....5003
Court-house, posting notices of completion of.....2747
Court, duty to attend 5963
Debt due State, execution on judgment for.....2518
—levied on real estate.....2519
Distress of trespassing animals..3543
—report to court.....3543
—sale 3544
—restored to owner.....3545
—surrender to resident purchaser 3546
Distress for rent by.....6522
—levy 6523
Elections, writ of election directed to..... 81
— —posting 146, 147
— —for removal of court-house, posting 2745
— —on bond issue by town.....2749
—posting list of paid poll taxes. 109
—Va. Const., § 38
—to serve summons to correct returns in primary election.... 240
—posting notice of election for issuance of school bonds..... 769
—giving notice of town election 2999
Fee bills, collection of.....3498
—distress for 3498
—accounting for 3499
—commission 3499
—judgment against for failure to account for 3499
Fires, report of to Commissioner of Insurance 4185
—assistance to commissioner making examination 4186
Fishing laws, violation, seizure of forfeited property.....3215, 3217
Forthcoming bond 6157
—when to take on execution or distress warrant 6518
—affidavit of tenant unable to give 6519
—return 6519, 6520
Game warden, sheriff to be ex officio 3323
Inebriate, drug addict, delivery of to private hospital.....1073
Indemnifying bond 6154
Insane persons, duty as to commitment of, 1019, 1020, 1022-1024, 1027
—committee for 1053
—convicted of or accused of crime, duty as to as.....4910
Intoxicating liquors, to remove advertisement of from billboard, sign, etc. 4609

Digitized by Google

Sec.

SHERIFFS—Con.
—to enforce law as to sale, etc., of 4655
—failure to enforce law as misfeasance 4655
Jailor, sheriff to be 2868
Jurisdiction when new county formed —....2682
Jury, summoning 6992
—when county, city or town a party 6006
—list of jurors and mileage furnished clerk 4928, 6007
—for escheator's inquest.... 494
Levy or distress, unreasonable prohibited 2831
—removal of goods 2831
—horses, live stock, sustenance..2831
—execution on judgment for debt due State 2519
—venditioni exponas 2527-2530
Mechanics' liens, serving notice of 6430
Mines, duty in proceeding to compel mine owner to permit survey 5289
Notice by of meeting of commissioners in proceeding to establish road 1980
Nuisance, abatement of 1518
Payment into treasury of costs collected for Commonwealth..3536
Personal representative, acting as 5374
Pilots and masters, controversies between, enforcement of decision of commissioners....3637
Prisoners, in jails, report to court of 2870
—report to State Board of Charities and Corrections 2871
—confined for failure to pay fine and costs, hiring out 4950
— —obligation taken from hirer 4951
Probation officer, when to act as 1912, 1943, 1944
Process, executing summons issued by commissioner of election 183
—summons, call of meeting of supervisors 2715
—execution, powers 2822
—where to execute 2822
—summoning assistance in executing 2822
—return on 2825
—forfeiture for failing to return, 2825, 2826
—rule against 2825
—motion against 2826
—forfeiture credited on judgment 2826
—sent from other jurisdictions, fees and postage 2827
—return by mail 2828
—delivery to by clerk....3403
—receipt for 3403
—orders and decrees 3403
—of State Corporation Commission, service 3730
—to execute process to special term of court 5894
—service of notice by....6041
—in divorce case 6042
—directed to 6055
—executed in city by sheriff of county 6057
—return of when alias process issued 6059
—duty to get from clerk's office 6060

Sec.

SHERIFFS—Con.
Revenue laws, to inform auditor of violations of 2548
Sales by, fertilizer condemned for violation of law 1118
—of unbranded timber....1454
—of automobile on judgment against owner 2147
—of real estate levied on, execution on judgment for debt due State 2520
— —notice 2520
— —how sale made 2521
— —terms, bond of purchaser..2522
— —purchase money, deed.2523, 2524
— —venditioni exponas....2527-2530
—of goods levied on....2832
— —notice 2832
— —of horses, mules and oxen..2833
— —adjournment of sale 2834
—on judgment for enforcement of forfeiture 3372-3374, 3377
—disposition of surplus 6158
—decree or order of, when executed by 6278
— —liability for proceeds 6278
—of personal property to enforce lien 6449
Search warrant directed to....4821
—disposition of property 4822
—for violation of law relating to cruelty to animals 4557
State Live Stock Sanitary Board, executing orders of 918
Stock held by non-resident in corporation engaged in fish business, certificate surrendered to 3254
—duplicate certificate 3254
—disposal of 3254
Supervisors, duty to attend meetings of 2717
Suspending bond 6156
Taxation, service and return of application to purchase delinquent land 2495
—collection of delinquent taxes..2429
— —receipt, account, liability of bond for 2429
—distress for taxes....2439
—leasing property for collection of taxes 2439
—collection of taxes by garnishment 2444
Tuberculosis suspect, examination and report of....1546
—segregation 1547
Vagrants, how dealt with....2809
Warrant for seizure of property forfeited for violation of fish, game or oyster laws 3367
—how executed and returned...3367
—sale 3372-3374, 3377
Witness, duty to summon before General Assembly 303
—serving process for out of jurisdiction 6218
Writs directed to, execution for fine 2561
— —capias 2561
— —payment of proceeds to clerk 2568
—in quo warranto proceedings..5845
— —service 5845
— —return 5843
Written act of re-entry on land, oath to 5536

SHINGLES
See "Inspection"; "Inspectors"
Offered for inspection, dimensions and quality 1413

Digitized by Google

Sec.

SHIPS
See also "Pilots"; "Vessels"; "Wrecks"
Destroying or injuring, punishment for 4466
—property on 4466
Entry with intent to commit murder, rape or robbery.....4438
—with intent to commit other crime 4439
Action to recover for death caused by 5786-5790
—libel against 5786

SHOOTING
With intent to kill, maim, etc., punishment 4402
In attempt to commit felony, punishment 4403
In place of public resort, punishment 4404
Antwerp or homing pigeons, punishment 4446
Live stock, dogs, fowl, punishment 4467
In or along road or street, punishment 4738
Conviction for unlawful on indictment for malicious 4920

SHOPS
Entry with intent to commit murder, rape, or robbery.....4438
—with intent to commit other crime 4439

SHUCKING HOUSE
Erection by renter of oyster grounds 3231

SICK BENEFIT ASSOCIATIONS
Taxation of property of....2272, 2301

SICK BENEFIT COMPANY
Payments to policyholder, not subject to attachment, garnishment, distress 4219

SIDEWALKS
Local assessments for, Va. Const., § 170
Construction by owner in unincorporated town 4732
Riding or driving on, penalty, 4730, 4733
Injury to or destruction of.....4732
Trees, posts, frames on.....4732

SIGN
Display of by infant doing business as trader 6108

SIGNALS
For pilots 3625
By railroads, by bell and whistle 3958
—penalty for failing to give....3960
—in cities and towns 3958
—effect of failure to give in actions for injuries 3959
By railroads, at overhead bridge, tunnel, etc. 3970
—effect of failure to provide in action by injured employee....3970
Signal boards at railroad crossings 3985
—flagmen 3986

SIGNATURE
Of statute.....Va. Const., § 50
To record of official acts of Governor.....Va. Const., § 80
To written request for drafting bills by Legislative Reference Bureau 579
Of records of State Board of Education 602

Sec.

SIGNATURE—Con.
To warrants for payment of expenses of office of Superintendent of Public Instruction..... 616
—for claims payable from literary fund 615
—for expenses of public schools. 662
—for claims against school districts 670
—of county school board for payment of funds to depositary.. 736
—for appropriation for county demonstration work 921
—for expenses of division of markets 1256
—issued by Auditor and Second Auditor for claims allowed against State 2181
—county warrants 2713
—of board of supervisors.....2772
—on game protection fund.....3336
To contracts with public school teachers 690
To bonds for loans to school boards from literary fund..... 760
To road bonds of magisterial district 2124
To bonds and certificates issued by State 2633
To application for Confederate pension 2648
To contracts of supervisors.....2730
To records of supervisors.....2744
To bonds of town, removal of county courthouse 2750
To return, by officer 2825
To certificates of members of Commission of Fisheries 3146
To hunting licenses 3382
To information, forfeiture for violations of hunting, fishing or oyster laws 3366
To license to practice law.....3411
To fee bills of deceased clerks..3497
To certificate for transportation of convicts and insane.....3740
To certificate for amendment of charter of corporation...3779, 3780
To certificate decreasing capital stock of corporation 3781
To stock certificate 3793
To certificate of incorporation, new charter after dissolution.3811
To certificate of incorporation, purchaser of franchise 3817
To certificate for consolidation of corporations 3822
To certificate of incorporation..3851
To articles of association of railroad corporation 3857
To writing for amendment of charter of corporation 3859
To articles of association of public service corporation 3866
To amendment of charter of public service corporation 3868
To certificate of incorporation of non-stock corporation 3874
Obtaining by false pretense.....4459
To testimony of witness before coroner's inquest 4810
To testimony of witnesses in criminal trial before justice..4844
To writings admitted to record.5204
—deed of corporation 5208
To plats of lots in cities and towns 5218
—to writing vacating 5221
To will 5229
—writing revoking 5233
To contracts required to be in writing 5561
Of record by judge.....5962

Digitized by Google

Sec.

SIGNATURE—Con.
To negotiable instrument, ambiguous, deemed to be of indorser 5579
—in trade or assumed name....5580
—by agent 5581
— —liability of person signing as 5582
—by procuration 5583
—forged, effect of.....5585
To notice of motion for judgment 6046
To release, when proof of not required 6093
Proof of, when averred in pleading 6125
Of governor or judge, judicial notice taken of 6194
To bill of exceptions 6252
—certificate in lieu of 6253
To agreement for lien on crop..6452
To writing claiming homestead exemption in real estate.....6532
—in personal estate 6540

SIGNBOARDS
Injury to or destruction of, penalty 4730

SILVER
Regulations of sales of goods marked "sterling" or "sterling silver" 4461
Regulation of sales of goods marked "coin" or "coin silver".4462

SIMILITER
See also **"Pleading"**
Proceeding without.....6112
Absence of no ground for reversal 6331

SINKING FUND
See also **"Commissioners of the Sinking Fund"; "State Debt"**
General Assembly to provide and maintain .....Va. Const., § 187
Law creating debt or authorizing loan to provide for, Va. Const., § 187
Separate account of by treasurer 2195
Creation of.....2594
Purchase and redemption of bonds 2594
Fee for exchanging bonds credited to.....2602
Of what constituted.....2622
Use of in buying bonds.....2623
—fractional certificates.....2624
Funds, how paid into treasury..2626
—how paid out.....2626
Dividends from internal improvement company paid to.....3759
Dividend of public service corporation in which State has interest paid to..... 3890
For payment of school bonds... 773
For debt of University of Virginia 820
For retirement of road bonds...2117
—cancellation of bonds.....2118
—use of, loans from.....2118
For bond issue for magisterial districts, payments into.....2124
For county bonds for erection of public buildings 2711
To redeem bonds issued by town for removal of court-house...2750

SKUNK
Hunting for on land of another.3338

SLANDER AND LIBEL
See also **"Libel"**
Action for insulting words.....5781
Apology, evidence of in mitigation of damages.....6240
Plea of truth.....6240

Sec.

SLAUGHTER HOUSES
Condition to be maintained in, sanitation, etc.....1221
Persons employed in, diseased...1221
Rules and regulations.....1222
License, revocation.....1222
Inspection 1222
Penalty 1222
—exception 1222

SLAVERY
Selling person into 4408
Kidnapping for purpose of selling into 4408

SLAVES
Marriages, validation.....5091
—legitimacy of children.....5091
—Va Const., § 195
Children of former slaves, inheritance by 5268
—Va. Const., § 195

SLEEPING CARS
Exclusion from.....4007

SLOT MACHINES
Keeping or exhibiting, punishment 4676, 4685
—permitting on premises.....4677
—aiding as doorkeeper, etc.....4678
—resisting arrest or seizure....4678

SLUNGSHOT
Carrying concealed, punishment.4534

SMALLPOX
Prevention, restriction, care, by Board of Health.....1493
—compulsory vaccination.....1493
Report of, quarantine.....1497, 1500
Penalty for violating quarantine or vaccination regulations.....1505
Inoculation for, improper, penalty 1532
Bringing into the State.....1532
—penalty 1532
Hospital for, location.....1560
Bodies dead of, transportation, rules for.....1728
Person sick of, abandonment of on shore, punishment.....4399

SMITH'S RIVER
Erection of fish dam in, penalty.3199

SMYTH COUNTY
Commonwealth's attorney fees..3505

SNIPE
Unlawful hunting.....3356
Shipment from State.....3361
Killing 3364

SOCIAL CLUB
See **"Corporations"**
Incorporation 3872-3880

SOCIETY
See **"Corporations"**
Word "person" includes, when..1188
Incorporation 3872-3880
Insignia of, unauthorized wearing or using.....4719

SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS
See **"Animals"; "Corporations"**
Incorporation 3872-3880
Officers, appointment, certificate, bond 4555
—arrests by.....4555
—may prevent cruelty to animals 4556
—punishment for interfering with officer.....4556
—power to search premises.....4557
—to be prosecutor.....4564
Destruction of animals by.....4558
When to take charge of animal and vehicle.....4559, 4560
—notice to owner.....4559
—lien for expense.....4559, 4560
—sale to enforce.....4561, 4559

Digitized by Google

Sec.
SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS—Con.
How fines disposed of.....4563-4565
SOCIETY FOR PREVENTION OF CRUELTY TO CHILDREN
See also **"Corporations"**
Incorporation 3872-3880
SODA FOUNTAINS
Preparations, sale at.....1681
SODOMY
Punishment 4551
SOFT DRINKS
Defined 4664
License for sale of.....4665
—revocation of 4665
Use of ardent spirits in.....4665
—penalty for violations of law..4665
SOIL
Analysis by State Chemist.....1280
SOLDIERS
When not deemed to have gained legal residence for purpose of voting 82
—Va. Const., § 24
Reduced rate of transportation for 3918
Will of, in actual military service 5231
SOLDIERS' HOME
Condemnation of land by United States for..... 19
Not to be included in territory annexed to city.....2968
SONS OF TEMPERANCE
Property of.....47-49
Trustees 49
SORA
Unlawful hunting.....3359
Shipment from State.....3361
SOUTHAMPTON COUNTY
Commonwealth's attorney, fees..3505
SOUTHERN CROSS OF HONOR
Wearing or using without authority 4719
SOUTHWESTERN STATE HOSPITAL
See **"Insane Hospitals"; "Insane Persons"; "General Board of Hospital Directors"; "Commissioner of State Hospitals"**
Location 1004
Corporate name.....1005
SPARK ARRESTERS
Engines, threshing machines, etc., to be provided with..... 546
Railroad locomotives to be equipped with.....3952
On steam engines moving on roads, penalty for failing to provide 4735
SPEAKER OF HOUSE OF DELEGATES
See **"General Assembly"**
SPECIAL ASSESSMENTS
For local improvements in cities and towns.....3067-3071
—Va. Const., § 170
SPECIAL COMMISSIONER
See also **"Commissioners"; "Commissioners in Chancery"**
Appointment 6266
After final decree 6297
Bond 6266, 6269
—certificate of 6269
Report of delinquent taxes and sales therefor 6267
Report of sale 6269
Sale or renting by 6269
—before giving bond, penalty...6271

Sec.
SPECIAL COMMISSIONER—Con.
Payments to 6270, 6272
Collection of purchase money...6272
Larceny by.....6273
Proceedings against.....6274-6276
—sureties 6277
Commissions 6279
To execute deeds.....6296, 6297
SPECIAL COURT
See **"Supreme Court of Appeals"**
In election contest 264, 266
SPECIAL ELECTIONS
See **"Elections"**
SPECIAL LEGISLATION
Referred to standing committee .....Va. Const., § 51
When prohibited....Va. Const., § 63
General laws having effect of, Va. Const., § 64
By counties, cities and towns, General Assembly may authorize .....Va. Const., § 65
For contraction or extension of corporate limits, prohibited, Va. Const., § 126
Corporate charters not to be granted or amended by, Va. Const., § 154
For regulation of corporate affairs .....Va. Const., § 154
For repeal of corporate charter .....Va. Const., § 154
SPECIAL POLICE
See **"Police"**
Interest in contract with county prohibited 2797
Appointment by circuit court...4797
Compensation 4797
Removal by court.....4798
Removal from county, vacancy..4799
Bond 4800
Jurisdiction and authority, extent of.....4801
—evidence of.....4801
Duties and powers.....4802
For watering place, university, manufacturing plant 4804, 4805
—for wharf.....4025
SPECIAL VERDICT
In case of variance.....6250
SPECIAL WARRANTY
Effect of covenant of.....5172, 5173
SPENDTHRIFT TRUSTS
Conditions on which permitted..5157
SPEECH
Freedom of.....Va. Const., § 12
Law abridging freedom of prohibited .....Va. Const., § 58
SPITTING
In public place, prohibited.....1550
SPOTSYLVANIA COUNTY
Jail, jailor.....2868
Commonwealth's attorney, fees..3505
SPRINGS
See also **"Water Supply"**
Pollution 1783, 1784
Putting poison in.....4400
SQUIRRELS
Unlawful hunting.....3356
STABBING
With intent to kill, maim, etc., punishment 4402
In attempt to commit felony, punishment 4403
Live stock, dogs, fowl, punishment 4467
Conviction for unlawful on indictment for malicious.....4920

Digitized by Google

Sec.

STABLE
See "Arson"; "Burnings"; "Criminal Procedure"
Burning or destroying, punishment 4431
—containing live stock..... 4428
STAFFORD COUNTY
Commonwealth's attorney, fees.. 3505
STAGE DRIVERS
Exempt from jury service..... 5985
STAKES
For pound net, when withdrawn. 3173
On oyster ground..... 3224
—penalty for removing..... 3235
On bathing ground..... 3230
To designate crabbing or clamming grounds..... 3295
STALLIONS
Restraint of, when forfeited..... 4744
Lien of owner on colt..... 6446
STAMPS
Affixed to affidavits and prescriptions required by prohibition law..... 4668
Proceeds of sale of, how disposed of 4668
STATE
See "Debts Due State"; "Officers"; "State Debt"
Debt against, statute continuing or reviving, how enacted, Va. Const., § 50
Commissions to run in name of, Va. Const., § 75
Proportion of judge's salary paid by ..... Va. Const., § 103
Property of, exempt from taxation ..... Va. Const., § 183
Not to become interested in works of internal improvement ..... Va. Const., § 185
Debts State may contract, Va. Const., § 184
Not to lend credit to nor assume indebtedness of county, city or town ..... Va. Const., § 185
Credit of not to be granted to aid person or corporation, Va. Const., § 185
Not to subscribe to stock or obligations of corporations, Va. Const., § 185
Common law of..... 2
Construction of word.....cl. 1, 5
Actions by or in name of, on bonds taken or given by courts and officers..... 286
—to repeal grant..... 486
—against district school board. 659
—to recover penalties for violation of school law..... 687
—against railroad for failing to disinfect cars used in transporting live stock..... 911
—against water works for supplying water without permit or disobeying order of Board of Health 1793
—petition for rehearing in proceeding to correct assessment of taxes..... 2391
— —appeals 2391
—proceeding to correct erroneous assessment by State Corporation Commission..... 2392
—for recovery of penalties for violation of revenue laws..... 2395
—to recover debt due to 2512
—on treasurers' bonds..... 2739
—proceedings before State Corporation Commission..... 3722
—on bonds taken by State Corporation Commission..... 3735

Sec.

STATE—Con.
—to recover money forfeited to Corporation Commission..... 3756
— —money due State from internal improvements..... 3766
—for forfeiture of charter by corporation 3831
—to enjoin violations of law relating to advertisement of intoxicating liquors..... 4609
—to abate nuisance under prohibition law..... 4630
—by Superintendent of Penitentiary 4993
—writ of quo warranto..... 5841
— —writ of information in nature of..... 5844
Venue, of actions by or on behalf of..... 6049, 6050
—actions against officers, etc... 6049
—to enjoin judgment decree or execution on behalf of..... 6049
—court in which brought..... 6051
Appeals by, in proceeding to correct assessment for taxation. 2237, 2240, 2391
—in proceeding for removal of officer 2796
—in cases arising under prohibition law..... 4645
—in case involving right to levy taxes 6336
—from action of State Corporation Commission..... 6336
— —Va Const., § 156
—in criminal cases..... 4931
— —Va. Const., §§ 8, 88
Approval by Art Commission of works of art acquired by..... 582
Automobiles owned by, registration of..... 2148
Bonds of, literary funds may be invested in..... 614
—premium on 614
—held by colleges, interest on.. 990
—exchange of coupon for registered, by colleges..... 991
— —cancellation 992
—investment of donations to educational institutions 994
—deposited as security by State depository 2158
—disposition of when received by auditor in settlement of claims of State..... 2191
—exempt from taxation..... 2301
— —Va. Const., § 183
Bond taken or given by courts or officers payable to..... 279
—bond of depository of school funds to..... 734
—for loans from literary fund.. 760
—of treasurer, Virginia Military Institute 840
—of treasurer, Virginia Polytechnic Institute..... 866
—of treasurer, Hampton Normal and Agricultural Institute..... 928
—of treasurer, Virginia Normal and Industrial Institute..... 950
—of custodian of insane person..1020
—of Dairy and Food Commissioner 1157
—of secretary and assistant, Board of Charities and Corrections 1892
—of examiner of records..... 2219
—of delinquent tax collector....2421
—of agent to secure satisfaction of judgment for taxes..... 2596
—of city treasurer..... 2699
—of Commissioner of Game and Inland Fisheries..... 3309
—of non-resident, security for costs 3519

Digitized by Google

Sec.

STATE—Con.
—of harbor masters, cities of Richmond and Alexandria....3664
—of officers, State Corporation Commission 3708
—taken by State Corporation Commission 3735
—of hirer of prisoner.....4951
Bonds deposited by insurance companies and guaranty companies, responsibility for.....4211
Boundaries 9-16
—between Virginia and North Carolina 11
—between Virginia and Tennessee 12
—between Virginia and Kentucky 13
—between Virginia and Maryland 14
—reciprocal rights between Virginia and Maryland..... 15
—recession of territory to by United States..... 16
Capital stock of bank of circulation property of.....4152
Certificate of debt of, transfer of to personal representative of non-resident.....5348, 5349
Cession of northwest territory.. 10
Common law of..... 2
Concurrent jurisdiction over property acquired by United States 17, 19
Costs in judgment or decree in favor of, taxation of.....3536
—against State, not allowed....3537
Court in which actions by or in behalf of brought.....6051
Division into congressional districts 70
—apportionment,...Va. Const., § 55
—into house districts..... 78
— —Va. Const., § 43
—into judicial circuits.....5888
— —Va. Const., §§ 94, 95
—into school divisions.....604, 606
— —Va. Const., § 132
—into senatorial districts 79
— —Va. Const., § 43
Employees, wages and salaries, garnishment 6559
Fees of officers, liability for....2550
Fines, how recovered.....2543
Flag, description..... 31
—Governor to prescribe size..... 32
—when raised..... 33
Forfeited property as part of literary fund..... 738
Forfeiture to of adulterated, misbranded or substituted food...1165
Forfeiture by treasurers for return of false delinquent tax list, proportion to 2426
Forfeiture to, of real estate not entered on land book.....2452
Forest reserves not subject to warrant or patent..... 532
Funds due, when clerk of court to remit.....2405, 2406
—payment of into treasury by county and city treasurers....2412
Garnishment of wages and salaries of employees.....2559
Judgment in action to recover debt due to.....2513
—in favor of, docketing.....6168
—limitation on suit to enforce, 6474, 6475
—costs 3536
— —not allowed against 3537
—for fine, etc., before State Corporation Commission.....3727
—against transportation company failing to refund after appeal 3736

Sec.

STATE—Con.
Judicial circuits.....5888
—Va. Const., § 94
—rearrangement....Va. Const., § 95
Jurisdiction, of actions by or on behalf of.....6049-6051
—concurrent over land acquired by United States.....17, 19
Land of, title acquired by settlement and payment of taxes. 457
—sold for delinquent taxes, purchased by State.....2489-2495
—register of.....2537
—agent to sell, appointment....2538
— —compensation 2540
—sales, entry.....2539
—deeds 2541
—report of.....2542
—opening street or highway through 3041
Law books acquired by to be placed in Law Library..... 369
Liability to of person or corporation for causing fires..... 547
Liability when check, draft or certificate of deposit by which funds are paid into treasury is lost or not paid.....2139
Liability for fees of officers....2550
Limitations, statute of, when to apply to State.....5829
Loans to, temporary, effected by Governor 2640
Premium of bonds of officers and clerks paid by State..... 325
—on bond of Secretary of the Commonwealth 2134
—on bonds, officers of State Corporation Commission.....3708
Property of, exempt from taxation 2272, 2301
—Va. Const., § 183
—lease or conveyance to United States 18, 19
—sale of timber of..... 530
—sale or lease of gas, oil or minerals 531
—property of William and Mary College to be property of..... 936
—plates for printing bonds.....2598
—register of kept by Corporation Commission and Second Auditor 3765
— —by State institution..... 999
—beds of bays, rivers, etc., and shore of sea, to remain property of.....3573
—right of to improve navigation preserved 3576
—capital stock of company acting as bank of circulation....4152
Recognizances in criminal case payable to.....4973
Reimbursement by counties for payment of judge's salary....3466
—by cities.....3468
—Va. Const., § 103
Road, transfer of interest in to county 3758
School divisions.....604, 606
—Va. Const., § 132
Seal of, to be affixed to commissions and grants, Va. Const., § 75
—great seal..... 27
— —when used..... 27
—lesser seal..... 28
— —affixed to land grants..... 468
—tax on.....29, 30
— —paid to Secretary of the Commonwealth 2401
—affixed to certificates to members of Commission of Fisheries 3146

Digitized by Google

Sec.

STATE—Con.
—records from office of Secretary of the Commonwealth relating to corporation as evidence when seal affixed....3830
—forging, punishment.....4485
— —keeping instrument for....4485
Statute of limitations not to affect 5825
Taxation, property of exempt from 2272, 2301
—Va. Const., § 183
Trustee for donations to University of Virginia..... 826
Venue of actions by or on behalf of.....6049-6051
—against officers, etc.....6049
—courts having jurisdiction.....6051
Writs to run in name of Commonwealth .....Va. Const., § 106
—writs issued by State Tax Board to run in name of.....2216
—writs, process, etc., of State Corporation Commission to run in name of..... 3730

Claims Against
Presented to auditor.....2173
What allowed.....2174
Forms for.....2175
When laid before Governor by auditor 2176
Payment at direction of Governor 2176
Auditor may administer oath...2178
When barred.....2179
Allowed by order of court, when barred 2180
Warrants for.....2181
What warrant to State.....2183
Duplicate warrant, when issued, bond 2184
Presented to Second Auditor....2177
—auditor may administer oath..2178
—when barred.....2179
—warrants for.....2181
—what warrant to State.....2183
—duplicate warrants, when issued, bond.....2184
Disallowed by auditor.....2578
Petition or suit to recover.....2578
—jurisdiction 2578
Defense by auditor.....2579
Hearing 2579
Jury 2580
Facts certified.....2581
Judgment 2580
—appropriation for payment....2582
—limitation 2582

STATE ACCOUNTANT
Appointment 550
Term 550
Salary and expenses..... 550
—statement to auditor..... 550
Qualification 550
Removal 550
Vacancy, how filled..... 550
Appointment of assistant..... 551
—deputy accountant..... 551
—to approve statements of..... 551
Duties and powers 552-565
—devising system of accounting for State offices.....552, 554
— —penal, educational and eleemosynary institutions..... 553
— —statement of filed with Secretary of Commonwealth..... 554
—inspection of accounts and vouchers of officers..... 557
— —how made..... 558
Power to administer oath and compel appearance, production of books and papers.....559, 565
Reports of irregularities in accounts of officers, to whom made 560

Sec.

STATE ACCOUNTANT—Con.
Annual report..... 561
Office of, location and equipment 562
Accountant of joint Auditing Committee of General Assembly 562
Inspection of accounts upon request of particular officers.... 564
Services for counties and cities. 565
—report 565
—costs 565
—disposition of fees..... 565
—assistants 565
Examination of disbursement of funds appropriated for county demonstration work..... 921

STATE AID FOR ROADS
See **"Counties"; "Roads"; "State Highway Commission"**

STATE ANATOMICAL BOARD
Continuation 1729
Membership 1729
Rules and regulations.....1729
Records 1730
Dead bodies, delivery to.....1731
—distribution 1726, 1732
—employment of carriers to convey 1733
— —receipt for.....1733
—burial 1733
—bond of person receiving.....1734
—trafficking in, penalty.....1734
—importation of.....1734
—expense of transporting.....1735
Furnishing bodies for instruction to schools of embalming.....1726
Penalty for failure to perform duty 1736

STATE BOARD OF ACCOUNTANCY
See also **"Certified Public Accountants"**
Number and appointment..... 566
Qualification 566
Term and vacancies..... 566
Certified public accountant..... 567
—who may become..... 567
— —others forbidden to assume title 567
—examination of applicants for. 568
—examination waived by board. 569
—fee for examination..... 571
To conduct examinations of applicants for certified public accountant 568
—publication of time and place of 568
—may waive examination..... 569
—fees, how applied to expenses.. 571
Certificate issued by..... 567
—revocation of..... 570
Fees and expenses of..... 571
Report 571
Penalty for violating laws with reference to..... 572

STATE BOARD OF CROP PEST COMMISSIONERS
See **"State Entomologist"**
Powers and duties..... 870
Appointment of State Entomologist 870
—assistants 870
Pests and diseases, publication.. 871
Rules, penalty for violation..... 871
Quarantine regulations..... 872
Inspection of nursery stock..... 874
—treatment, report.....875, 876
—appeal 875
Duties of judge of circuit court.. 877
Authority to enter premises..... 878
—hinderance or obstruction..... 878
Uninspected nursery stock, certificate 879

Digitized by Google

Sec.

STATE BOARD OF CROP PEST COMMISSIONERS—Con.
Regulations concerning sale of nursery stock 882
Appropriations, report 884
Orchard inspector 895-903

STATE BOARD OF EDUCATION
See also "Education"; "Superintendent of Public Instruction"
A corporation 596
How constituted 596
—Va. Const., § 130
Terms of members 597
Qualification of member, oath, certificate, entry and return of 598
Vacancies 599
—Va. Const., § 130
President 600
Superintendent of Public Instruction president of 623
—Va. Const., § 131
—how vacancy filled 621
Quorum 600
Meetings 601
Powers and duties,
Va. Const., § 132
Administration of school system by 595
Record of proceedings 602
—inspection of 602
—copies as evidence 6197
Recovery by of money due literary fund 603
Agents, appointment of 603
—to buy or sell property 603
—bond 603
—compensation 603
Division of State into school divisions 604, 605, 606
To appoint Library Board ... 360, 617
Gifts and devises to 588
—how will probated 589
—power of General Assembly to suspend or repeal 593
Appointment by of division superintendent of schools 605, 607
—salary 604, 605, 606
—removal 607
—vacancy 607
To prescribe duties of Superintendent of Public Instruction .. 608
—clerks of 608
Secretary 608
—compensation 608
May adopt by-laws and regulations 609
To provide for examination of teachers and inspection of schools 610
—compensation, duties and expenses 610
Selection of text books and educational appliances 611
Regulation of number of schools. 612
Approval of plans for summer normal schools 612
—audit of account of expense of. 613
—warrants for payment 613
Decision of appeals from Superintendent of Public Instruction 613
—form of 613
Reference to voters by 613
Investment by of capital and income of literary fund 614
Audit of claims payable out of literary fund 615
—limitation of claims 615
—certification 615
—warrant 615
Provision by for traveling expenses of division superintendent and trustees 615
Secretary, certification by of claims against literary fund .. 615

Sec.

STATE BOARD OF EDUCATION—Con.
Secretary, to sign warrants for expenses of office of Superintendent of Public Instruction. 616
Presiding officer, certification by of claims payable from literary fund 615
—to sign warrants for expenses of office of Superintendent of Public Instruction 616
Approval by of apportionment of school funds 616
—of contingent expenses of office of Superintendent of Public Instruction 616
—examination of accounts 616
—warrants 616
Punishment of division superintendents for neglect of duty. 617
Appointment of board of directors for State Library 617
Provision for encouragement and maintenance of industrial, agricultural, household arts, and commercial education 618
—allowance of funds for 618
Observation of operation of school system 619
Suggestions for improvements .. 619
Reports to General Assembly ... 619
Warrant for expenses 620
To fill vacancy in office of Superintendent of Public Instruction 621
Appointment by of division superintendents 624
—failure to appoint 624
—when determined by lot 624
—publication of statement of qualifications 624
Warrant for salary of division superintendent 626
To fix powers and duties of division superintendents 628
Vacating office of trustee when number of school districts is reduced 651
Meetings of district school board prescribed by 660
Duties of district school board prescribed by 665
Redistricting school districts 668
Relaxation of requirement for paying State money for school purposes 669
Interest of member in school contract prohibited 682, 683
—penalty 682
—exceptions 682
To prescribe teacher's certificate 688
Establishment of summer schools 695, 697
—approval and payment of expenses 698
—consent to establishment of joint schools 701
—selection of text books 702
Provision for intermediate grade of instruction 703, 704
—fees for 703
Regulations for joint high schools 706
Amount contributed by for support of high schools 707, 708
—warrant 707
State appropriation for high schools 708
—regulations for distribution ... 708
—normal department of 709
—warrant 710
Designation of high schools with normal departments 711, 712
—course 711

Digitized by Google

Sec.
STATE BOARD OF EDUCATION—Con.
—teachers 711
Establishment of agricultural high schools 713
—approval of regulations of.... 714
Regulations for demonstration farm work 717
—pupils attending school in adjoining district 719, 720
—appeals to 720
—pupils from adjoining State... 720
—pupils between twenty and twenty-five years of age..... 721
—night schools 721
Regulations as to number of pupils required for a school..... 723
Disposition of unexpended school funds 730
Management of literary fund.... 738
Rate of school levy 740
Books for school libraries, 754, 755, 756
Loans by from literary fund..757-764
—application for 758
—amount 759
—title 762
—expenditure 762
—regulations 763
Regulations for city schools .. 786
Retiring and pensioning school teachers 787, 788
Deduction from teachers' salaries for retired teachers' fund, 790, 799
Appropriations for retired teachers' fund turned over to..... 791
—gifts 792
—investment of 793
—warrants on 794
—accounts, bond, report 795
—regulations 800
Publication by of list of retired teachers 798
Removal of teacher from retired list 801, 804
Report to by treasurer, Virginia Military Institute 841
Co-operation in county demonstration work 923
Payments to Hampton Normal and Agricultural Institute..... 929
Reports to by visitors, Virginia Normal and Industrial Institute 951
Removal of visitors of Virginia Normal and Industrial School. 963
Supervision and control of Virginia Normal and Industrial Institute 968
Report to by State educational institutions laid before General Assembly 987
The Miller Manual Labor Training School of Albemarle.....1000
Appropriation for schools at State Colony for Epileptics...1077
Appropriation for school in colony for feeble-minded at Central State Hospital 1092
Claims against, presentment to Second Auditor 2177
—payment 2177
Accounts of receipts and expenditures of by Second Auditor 2192
To keep certificates for West Virginia's share of State debt.2641
Approval of traveling expenses of Superintendent of Public Instruction 3442
Venue of actions against.....6049
—court in which brought.....6051
Records, copies as evidence 6197

Sec.
STATE BOARD OF DENTAL EXAMINERS
See "Dentistry"
Members, appointment 1642
Vacancies 1642
President 1643
Secretary 1643
Meetings 1643
Quorum 1643
By-laws, regulations 1643
Seal 1644
Examination of applicants to practice 1644, 1646
—fee 1646
—requirements 1646
—certificate 1644, 1646
—license 1646
—registration 1644
Registration of persons certified.1644
Record book 1644
—transcripts from as evidence..1645
Reciprocity with other States...1644
—licenses, fees 1644
Forms to be filled out and returned 1648
—fee 1648
Revocation of licenses, 1649, 1650, 1651
—charge against dentist.....1650
—hearing 1650
—revocation 1650
—appeal 1651
Dental corporations or associations, regulation of 1652
—demand for list of persons employed 1652
—penalty 1652
Dental offices, report of dentists employed 1653
—penalty 1653
Statement of receipts and disbursements 1654

STATE BOARD OF EMBALMING
Continued 1715
Members, term, appointment....1716
Vacancies 1716
Removal 1716
Member to be member State Board of Health 1717
Qualification 1718
Meetings 1719
Quorum 1719
President 1719
Secretary 1719
—bond 1719
—funds held by 1722
Seal 1719
Witnesses appearing before, oath of 1719
Rules, regulations, by-laws.....1719
Maintenance of schools of embalming 1719
Licenses, application for.....1720
—fee 1720
—examination 1720
—registration 1720
—signing, attestation 1720
—display 1720
—renewal, fee 1721
—suspension, appeal 1721
—in other States 1721
Expenses, salary, per diem of members 1722
Disposition of fees 1722

STATE BOARD OF EXAMINERS
See "Education"

STATE BOARD OF EXAMINERS OF GRADUATE NURSES
Members, appointment, term.....1703
Vacancy 1703
Oath 1704
President 1704

Digitized by Google

Sec.

STATE BOARD OF EXAMINERS OF GRADUATE NURSES—Con.
Secretary, treasurer 1704
—bond 1704
—salary, expenses 1704
Rules and regulations 1704, 1705
Seal 1704
Records 1704
Violations of law 1704
Compensation 1704
Funds 1704
Quorum 1705
Meeting 1705
Examinations, rules for...1705, 1706
—publication 1705
—notice 1706
—certificate, license 1706
—qualification of applicants.....1707
—fee 1708
Revocation of certificates.....1713
—notice 1713
—hearing 1713
Certificates to graduate nurses of other States 1714

STATE BOARD OF EXAMINERS IN OPTOMETRY
Continuation 1625
Members 1625
Vacancies 1625
Qualification of members 1626
Rules and regulations 1627
Seal 1627
Secretary 1627
Annual report 1627
Examination of applicants.1628-1630
—registration 1629
—certificate 1629
—fee 1630
Annual fees of registered optometrists 1631
Application of fees 1632
Revocation of certificate 1635
—re-issue 1635

STATE BOARD OF HEALTH
See **"Health Commissioner"; "Local Board of Health"; "Public Health"; "State Registrar of Vital Statistics"; "Vital Statistics"**
Members, appointment, term....1486
Member of State Embalming board to be member of.....1717
Postmaster may be member of.. 291
Vacancy 1486
Meetings 1486
President 1486
Secretary 1486
Quorum 1486
Rules and regulations, adoption and enforcement 1487
—penalty for violation 1487
Testing sight and hearing of pupils in schools 724
Examination of teacher applying for pension 788
Removal of teacher from retired list 801
List of communicable diseases, time and manner of reporting.1488
Commissioner of Health to be executive officer of 1489
Report of expenditures 1489
Health Commissioner, assistants, appointment of 1490
Per diem for members.....1491
Laboratories, research 1491
Treatment of tuberculosis 1491
When to perform duties of.....1497
Local board 1496
—expenses 1496
Employment of experts 1499
Examinations for physicians....1499

Sec.

STATE BOARD OF HEALTH—Con.
Quarantine and disinfection of persons, goods, animals in transit 1500
Vital statistics 1501
Annual report 1502
Suggestions as to legislation....1502
Quarantine or vaccination regulations, penalty for violation..1505
Public aid to indigent consumptive 1506
Advice in establishment of tuberculosis sanatorium 1511
—supervision 1513
Blanks for report by physician of person having contagious disease 1515
Reports to of person in State institution suffering with tuberculosis 1546
Births and deaths, registration of 1561
—forms and blanks for 1561
Bureau of Vital Statistics.....1562
—apartments for.....1562
Stationery 1583
Expenditures for Bureau of Vital Statistics 1584
Inspection of hotels 1589
—fees 1591
—disinfecting rooms in...1594, 1596
—airing bedding 1598
—approval of construction of privies 1601
Removal of persons infected with contagious disease to hospital.1559
To furnish transit labels for transportation of dead bodies..1728
Enforcement of laws relating to sanitary facilities for employees 1824
Marriages, forms and instructions to be furnished to clerks of courts 5095
—register, copy of transmitted to by clerks 5096
—abstracts of for General Assembly 5097
—certificates for payment of fees to clerks 5099
Water supplies and water works, supervision and control of....1786
—examination of 1786, 1788
—entry for 1788
—consultation with cities and towns as to 1786
—permits 1787, 1789-1793
—revocation of permit.....1790
— —notice 1790
— —hearing 1791
— —witnesses, subpoenas 1791
— —appeal 1792
—failure to obtain permit or comply with order, penalty....1793
—mandamus against municipal corporation disobeying orders.1794
—when Attorney General to represent board 1795
—special counsel for board.....1795

STATE CHEMIST
See **"Board of Agriculture"**
Appointment, salary 1106
Assistants, salaries 1106
Record of oath taken by..... 277
Analysis of food and dairy products 1163, 1178, 1190
—certificate and report, effect as evidence 1163, 1190
Analysis of commercial feeding stuffs 1229, 1231
—evidence 1231

Digitized by Google

Sec.

STATE CHEMIST—Con.
Analysis of feeding stuff and stock foods at request of dealer, manufacturer, etc.....1244
Analysis, of condimental stock and poultry foods 1245
Analysis, of soil 1280
Fertilizers, recommendation of..1280
Measuring utensils for milk, testing and marking 1205
Penalty for interfering with, 1187, 1242
Records, copies as evidence.....6197

STATE COLONY FOR EPILEPTICS AND FEEBLE-MINDED
See **"Insane Hospitals," "Insane Persons," "General Board of Hospital Directors"; "Commissioner of State Hospitals"**
Provided for 1004, 1005
Commitment of epileptics 1067
Records 1076
Reports 1076
Who received, employment, treatment 1077
Buildings, teachers 1077
Children, census 1077
Appropriation for schools.....1077
Separate departments 1076
Commitment papers, disposition of 1082
Notice of petition for removal of patient 1082
Tests of mentality of patients..1083
—removal 1083
Transfer of patients to insane hospital 1086
Transfer of patients from insane hospital 1086
Colored persons 1092, 1093
Voluntary patients 1087
—length of detention 1087
—report of superintendent on...1087
—expenses, bond 1088
Forms 1089
Furlough, parole, discharge of patients 1091
Provisions relating to insane to apply to 1094
Special duties of board and superintendent 1095

STATE CONVICT ROAD FORCE
How constituted 2073
Superintendent of penitentiary to notify judges of needs.....2074
How persons confined to jail put to work on 2075
—receipts for prisoners 2076
—account of 2077
—fees to superintendent of penitentiary 2077
—return to jails 2077
Provisions of chapter 200 applicable 2078
Rules and regulations of penitentiary applicable to 2078
—changes by State Highway Commissioner 2078
Jail prisoners on, punishment for escape 2079
—returned when ill or not at work 2080
—felons, return of to penitentiary 2080
—not subject to contracts of hire 2080
Fund 2081, 2092
—expenditures 2081
Discharge of prisoners 2082
—allowance to 2082
Guards 2083, 2088
—wages 2084

Sec.

STATE CONVICT ROAD FORCE—Con.
Assistant superintendent...2083, 2088
—salary 2083
Clerks 2083, 2088
—salaries 2083
Sergeants 2084
—wages 2084
Trusties 2085
Superintendent of penitentiary to furnish equipment 2086
Transportation 2087
Requisition for 2088
—duties of superintendent of penitentiary 2088
State Highway Commissioner to settle questions of doubt.....2088
Food, quarters, guards 2089
Engineer, appointment.....2088, 2890
—salary 2090
—duties, supervision, reports....2090
Sickness of prisoners.....2091
Appropriation, fees, expenses....2092
Convicts, number allotted to county when road improved by contract 2093
—hours and conditions of employment 2093
Prisoners, allowance for good behavior 2094
—rate at which required to work out fine and costs 2094, 2095
—time may be held to work out fines and costs 2094
—notice to superintendent of penitentiary of sentence to roads 2094
Statement to be given superintendent when he receives prisoner 2095
Person convicted of misdemeanor may be sentenced to 2096
Husband or father deserting or failing to support wife or child may be sentenced to 1936
Persons convicted of violations of prohibition laws, put to work on roads 4669
County to which furnished not entitled to State money aid for roads 2108

STATE CORPORATION COMMISSION
Constitutional provisions, Va. Const., §§ 155, 156, 157
General Assembly may amend provisions of constitution relative to.....Va. Const., Cl. d, § 156
Proceedings by not to affect right of action by persons injured.....Va. Const., Cl. h, § 156
Board of Public Works to cease existence...Va. Const., Cl. k, § 156
—records transferred to State Corporation Commission, Va. Const., Cl. k, § 156
—commission to exercise powers of.....Va. Const., Cl. a, § 156
Railroad commissioner, office abolished...Va. Const., Cl. k, § 156
—records transferred to commission....Va. Const., Cl. k, § 156
—commission to exercise powers of.....Va. Const., Cl. a, § 156
Definitions 3693
Creation 3694
—Va. Const., § 155
Members, appointment 3694
—Va. Const., § 155
—term 3694
— —Va. Const., § 155
—General Assembly may provide for election of....Va. Const., § 155
—vacancies 3702

Digitized by Google

Sec.
STATE CORPORATION COMMISSION—Con.
— —Va. Const., § 155
—eligibility 3695
— —Va. Const., § 155
—salary 3440, 3753
— —Va. Const., § 155
—oath 3696
— —recordation of 277
—free transportation for 3749
— —Va. Const., § 155
—impeachment, removal 3752
— —Va. Const., §§ 54, 155
—exempt from jury service.....5985
Chairman 3701
—Va. Const., § 155
—member, State Tax Board.....2213
—salary 3440
— —Va. Const., § 155
—to sign checks on depository..3747
Subordinate bureaus and divisions.....Va. Const., § 155
Funds 3440
—Va. Const., § 155
Offices, where located.....3697, 3698
—Va. Const., § 155
Business hours 337
Public sessions, where held.....3697
Writs and process, return of....3697
Seal 3742
—tax on, by whom collected....3703
Docket 3743
Expenses 3440, 3744, 3750
Depositary, designation of.....3747
—checks on, chairman to countersign 3747
Supplies, printing, &c. 3750
Concurrent jurisdiction with courts 3754
Contingent expenses of.....3440
Claims against, presentment to Second Auditor 2177
—allowance of 2177
Accounts of receipts and expenditures of by Second Auditor 2192
May require opinion and advice of Attorney General 375
Attorney General to represent State before 376
Acts of Assembly furnished to.. 388
Mandamus and prohibition to by Supreme Court of Appeals....5864
—Va. Const., Cl. d, § 156
Mandamus by 3902
Injunction by 3902
State accountant to devise system of accounting for.....552, 554
—mandamus to compel adoption. 555
Inspection of accounts of....557, 558
—duty and penalty 558
Records 338, 3703
—rules of procedure to be entered on 3725
—Va. Const., § 155
—copies as evidence 6197
Orders, notice of.....3711, 3726
—Va. Const., Cl. b, § 156
—publication of.....3711, 3726
— —Va. Const., Cl. b, § 156
—power to enforce,
Va. Const., Cl. c, § 156
—penalty for violation,
Va. Const., Cl. c, § 156
—suspended pending appeal,
Va. Const., Cls. c, e, h, § 156
—collateral attack on,
Va. Const., Cl. h, § 156
—on reversal..Va. Const., Cl. g, § 156
—not retroactive,
Va. Const., Cl. g, § 156
—as evidence of amendment to charter of railroad 3859

Sec.
STATE CORPORATION COMMISSION—Con.
— —to charter of public service corporation 3868
Annual reports 3751
—Va. Const., Cl. b, § 156; cl. i, § 156
—printing, distribution 393

Officers, Clerks, Employees

Officers, clerks, employees, appointment and removal..3699, 3752
—Va. Const., § 155
Salaries 3440, 3754
Free transportation to,
Va. Const., § 155
Oath 3696
Residence, qualification 3700
Stenographer 3699
—duties 3707
Agents, accountants, examiners, etc., employment of 3715
—powers and duties 3715
—reports, recommendations 3715
Penalties for failure to perform duties as to moneys of commission 3747
Removal 3699, 3752
Agents for collection of debts...3767
—compensation 3770
Exempt from jury service.....5985

BAILIFF

Appointment 3699
—Va. Const., § 155
Removal 3699, 3752
—Va. Const., § 155
Term 3699
Duties 3706
Bond 3708
Residence 3700
Service of process 3730
—fees for, accounting.....3730
—penalty for failure 3730
Salary 3440, 3753
Exempt from jury service.....5985

CLERKS

Appointment and removal..3699, 3752
—Va. Const., § 155
Vacancy 3705
Term 3699
Residence 3700
Duties 3703
First assistant 3699
—duties 3705
—bond 3708
Bond 3708
Salary 3440, 3753
To furnish to supervisors and councils list of assessments of railway and canal companies..3704
—of telegraph and telephone companies 3704
Bonds of officers of commission recorded by 3708
—transmission to Auditor.....3708
Attestation of process 3730
Fees paid to by bailiff.....3730
To sign certificates of transportation of convicts and insane.3740
Affixing seal, tax for.....3742
Certifying expenses, witnesses's fees and mileage 3744
Moneys received by 3747
—deposit of 3747
—checks on 3747
—penalty for failure of duty as to 3747
Registration fee of corporation, receipt for 3748
Commissions of members filed with 3694
Memorandum filed with, of office of consolidated corporation...3824

Digitized by Google

Sec.
STATE CORPORATION COMMISSION—Con.
Certificate of to schedule of rates used in evidence 3920
Certificate of rules as to transportation of explosives as evidence 3922
—of publication thereof 3922
Certificate by, to copy of schedule, rule, &c., as to telephone company 4056
Transcript of record for appeal..6339
Bond taken on appeal.....6352
Record and certificate 6354
Exempt from jury service.....5985
Jurisdiction, Powers and Duties
To perform duties of board of public works and commissioner of railroads, Va. Const., Cl. a, § 156
Superior authority of General Assembly...Va. Const., Cl. b, § 156
Compelling compliance with regulations as to fees, etc., Va. Const., § 157
In general 3716
—Va. Const., § 156
Approval of route for transportation of insane persons to hospitals 1027
Arbitration by, establishment of drainage district affecting right of way of railroad company 1765
Toll-bridges, fixing rates charged by 2069
Investigation of promotion of securities, contracts or city, town or suburban lots 3714
Enforcing fines and penalties, 3716, 3720
Convicts and insane persons, transportation, contracts for..3738
—determination of routes.....3739
—certificates for 3740, 4948
Statutes governing common carriers, publication and distribution of 3741
Register of corporations, what to contain 3745
Report 3751
To perform duties of board of public works 3755
—as to sale by James River and Kanawha Company of works to Richmond and Alleghany Railroad Company 3772
State property, register of.....3765
Recovery of money forfeited to commission 3766
—money to be paid to fund for internal improvement 3766
Fixing tolls 3771
Debts and claims of, appointment of agents to collect.....3767
—property sold for, purchase by commission 3768
—resale 3769
—compensation of agents.....3770
Wharf affected with public use, authority to close 3669
—application 3669
—order 3669
Turnpikes, approval of extension of 4092
—report to of viewers in proceeding to compel repair of...4078
Northwestern turnpike, interest of State in transferred to Corporation Commission 4095
—powers and duties 4097
—repair, appropriations, tolls...4096

Sec.
STATE CORPORATION COMMISSION—Con.
Appointment of bank examiners, assistants, clerks 4121
Investigation of complaint by property owner or occupant ordered to remedy inflammable condition 4190
Suspension by of operation of law relating to transportation by railroad on Sunday 4572
Certificates for transportation of convicts 4948
AS TO BANKS
Not to issue charter if minimum capital stock is less than ten thousand dollars 4099
May authorize banks to establish branches 4101
--penalty for doing business in more than one place 4101
Enforcing penalty for investing more than lawful amount in building 4104
Certificate to do business.....4105
--investigation 4105
—proof of publication of filed with 4105
—penalty for doing business without or failing to publish..4105
Filing oath of director.....4117
—penalty for failure 4117
Examiners, appointment, salary, qualification, oath, bond 4121
—assistant 4121
—clerks, stenographers, assistants 4121
Examination of, annual 4120
—on application of directors or stockholders 4120
—notice to correct irregularities.4120
—closing bank 4120
—when a State depositary.....4120
—application for receiver 4120
—fee for examination 4122
Statement of financial condition.4120
—forms for 4120
—penalty for failure to furnish..4124
Assessment of fee for examination 4122
—payment into State treasury..4122
— —"Banking Fund—State Corporation Commission" 4122
— —payments from 4122
—proceeding to recover fees....4122
Examination of books and papers of person or corporation suspected of doing a banking business 4131
—to ascertain whether law is being violated 4131
BUILDING ASSOCIATIONS
Supervision of 4163
Financial statement 4164
—penalty for failing to make..4164
— —false statements, penalty...4165
Revocation of license 4166
Foreign, filing copy of charter..4159
—certificate, filing 4160
—report 4161
—consent to exchange of securities 4161
AS TO CORPORATIONS
Supervision, regulation and control of 3716
—Va. Const., Cl. a, § 156
Issuance of corporate charter...3851
—Va. Const., Cl. a, § 156
—to railroad corporation 3857
To public service corporations...3866
To non-stock corporations 3874

Digitized by Google

Sec.
STATE CORPORATION COMMISSION—Con.
Incorporation of purchasers of corporate property and franchises 3817
Mutual life insurance company, reincorporating as stock company 4251, 4252, 4253
Mutual fire, lightning or storm insurance company 4327
Amendments to charters...3779, 3780
—Va. Const., Cl. a, § 156
—of railroad 3859
—of non-stock corporation....3875
—decreasing capital stock, 3779, 3780, 3781
—increasing capital stock..3780, 3781
Consolidation of corporations...3822
Dissolution of corporations.3809, 3810
—certificate of 3810
—of non-stock corporation by court, certificate of 3880
New charter after dissolution...3811
Register of corporations 3745
Issuing charters, amendments, renewals 3746
—certifying to Secretary of Commonwealth 3746
Foreign, licensing 3746
—Va. Const., §§ 156, 157
Fees 3746
—Va. Const., § 157
Notice to, of amount of registration fee 3748
—receipt for 3748
Relief from excessive or erroneous charter tax or fee....3775
Financial plan for issuance of stocks and bonds filed with...3788
—Va. Const., § 167
Annual reports 3820
—penalty for failure to make...3820
Permission to corporation to condemn property of another corporation 3832
—appeal from 3833
Certificate to foreign corporation to transact business in State..3847
—surrender of 3848
Power of attorney appointing agent on whom process against corportation may be served filed with 3854
Imposing fine for failing to file list of officers and directors..3854
—for failing to appoint attorney for service of process 3854
— —appeal from 3854
— —forfeiture of charter 3854
Examination of to ascertain whether law is being violated.4131

AS TO INSURANCE, INSURANCE COMPANIES, GUARANTY AND BENEFIT COMPANIES, ETC.

Bureau of Insurance, control of.4169
—salaries, order for payment....4172
—printing for 4172
Commissioner of Insurance, assignment of office to 4170
—qualification, oath, bond 4171
—deputy 4171
—vacancy, appointment to fill..4171
—removal 4198
— —deputy 4198
Accident insurance company, license and certificate of authority to do business 4272
—procedure to obtain, filing copy of charter, statement, etc....4272
—review of ruling of Commissioner of Insurance 4315

Sec.
STATE CORPORATION COMMISSION—Con.
Co-operative casualty company, proceeding to revoke license for failure to pay policy....4270
Co-operative life insurance company, proceeding to revoke license of for failure to pay policy 4270
Fire insurance company, incorporation of 4201
—certificate of deposit of bonds.4201
—hearing on assumption of excessive risk 4307
—revocation of license 4307
—publication 4307
—appeal 4307
Fraternal benefit society, review of refusal of Commissioner of Insurance to issue license to foreign society 4288
—revoking license 4301
—appeal 4288
Life insurance company, incorporation 4201
—certificate of deposit of bonds.4201
—license and certificate of authority to do business 4272
—filing copy of charter, statement, etc. 4272
—revocation or suspension of license of for deficiency of funds 4250
— —publication 4250
—mutual company reincorporating as stock company....4251, 4252
Guaranty company, certificate to transact business 4203
—appeal to from refusal of Commissioner of Insurance to renew 4210
—copy of charter and statement, filed 4343
—foreign, license 4203
— —appeal to from refusal of Commissioner of Insurance to renew 4210
Indemnity insurance, license and certificate of authority to do business 4272
—procedure to obtain, filing copy of charter, statement, etc. 4272
Insurance companies, inspection and supervision 4169
—revocation or suspension of license or certificate 4180
— —publication of 4180
— —appeal 4180
—when permitted to do business in State 4181
—certificate to transact business 4203
— —appeal to from refusal of Commissioner of Insurance to renew 4210
—suspending license of for doing business illegally 4223, 4224
—enforcement of fine against, 4223, 4224
— —judgments for 4234
—agent, appeal from revocation or suspension of license by Commissioner of Insurance...4235
—report of liquidation of by Commissioner of Insurance....4246
—foreign, license to transact business 4203
— —appeal from refusal of Commissioner of Insurance to renew 4210
— —suspending license for doing business illegally 4223, 4224

Digitized by Google

Sec.

STATE CORPORATION COMMISSION—Con.
——enforcement of fine against, 4223, 4224

INTERNAL IMPROVEMENT COMPANIES IN WHICH STATE IS INTERESTED
Sale of, member to attend.....3756
Proceeding against for abandonment or failure to use.....3757
—sale, right of purchaser.....3757
Turnpikes, transfer to county....3758
Dividends, collection of.....3759
Proxies for stock of State.....3760
—duty 3761
—term 3764
State directors, appointment, 3762, 3763
—term 3764
—number 3764
Reports on condition of.....3765
Terms of sale of.....3789
—notice to State Corporation Commission 3889
Dividends, notice of declaration.3890
Reports of.....3892, 3893

AS TO PUBLIC SERVICE CORPORATIONS
Incorporation 3866
Amendment of charter of..3868, 3871
Effect of special franchise by city, town, county.....3712
Extension of time for beginning and completing construction of work 3871
Examination of plans for crossing works of another.....3884
—order, appeal.....3884
Crossing county road or changing course of, approval of plans 3885
—appeal 3885
Relief to persons aggrieved by acts or omissions of.....3902
—mandamus 3902
—injunction 3902
—appeals 3902

AS TO PUBLIC UTILITY CORPORATIONS
Subject to control of State Corporation Commission 4064, 4072
Schedules of rates and charges filed with.....4065
Examination and testing of instruments and materials for..4069
Reports 4070
Prescribing units of product or service by.....4070
Rates, regulations.....4071
—amendment 4072

RAILROADS
Control over..Va. Const., cl. b., § 156
As to railroad companies generally 3717
Examination of equipment, etc..3718
Compelling repairs and improvements 3720
Examination on application of mayor or supervisors.....3721
Copies of statutes furnished to..3741
Storage, demurrage, detention of freight and cars, rates of, rules and regulations as to..3774
Consent to sale or lease of works, property or franchises of.....3857
—to construction, purchase or lease of railroad not more than forty miles long.....3861
Extension of time for construction of.....3864
Running county road across railroad 3886
Imposing penalty for failing to make repairs.....3932

Sec.

STATE CORPORATION COMMISSION—Con.
Regulations to telegraph or telephone ..ces of.....3945
Approval cattle guards.....3950
Terms a. conditions under which r.oad may use tracks, etc., of.other in pass or defile 3953
Approv. of character and location . danger signals, overhea bridge, tunnel, etc.....3970
Con.itions with other railr.ds 3971
F.mination of grade crossings..3974
Passenger stations, abandonment, rebuilding 3984
—waiting rooms, water closets..3984
Gates, flag stations and flagmen at crossings.....3986
Report of accidents.....3988
Air brakes.....3989
Block system.....3989
Rules and regulations as to baggage 3990
Filing lease or contract, railroad operated under.....3994
Information to furnish commission 4002
—penalty for failure.....4002
——for violating regulations...4003
Connection with telephone lines in cities and towns.....4011
Extension of time for supplying caboose cars.....4014
Suspension of law relating to transportation on Sunday.....4572

TELEGRAPH COMPANIES
Term "transmission company" includes 3693, 3881
—Va. Const., § 153
Foreign, license to.....4036

TELEPHONE COMPANIES
Term "transmission company" includes 3693, 3881
—Va. Const., § 153
Supervision and control of..4052, 4055
—Va. Const., cl. b., § 156
Rates, prescribed and enforced..4052
—Va. Const., cl. b., § 156, § 160
—revision of.....4054, 4056
—not to be questioned in courts.4056
—how proved.....4056
Agreements between companies submitted to.....4053
Hearing on practice established by ordinance, franchise or contract 4054
Regulations and schedules, how proved 4056
Offences by, penalty.....4057
Foreign company; license to do business 4036

TRANSMISSION COMPANIES
Construction of words.....3693, 3881
—Va. Const., § 153
Supervision, regulation and control of.....3709
—Va. Const., cl. b, § 156
Fixing rates.....3709
—Va. Const., cl. b., § 156, § 160
Inspecting books and papers of.3710
Requiring reports and statements 3710
Preventing unjust discrimination 3710
Notice and publication of proposed order or regulation.....3711
—Va. Const., cl. b., § 156
Adjustment of claims and controversies with employees and patrons 3713
Investigations of acts of.....3717
Notice to of violation of law....3719

Digitized by Google

Sec.

STATE CORPORATION COMMISSION—Con.
—proceeding against.....3719
Examination on application of mayor or supervisors.....3721

TRANSPORTATION COMPANIES
Construction of words.....3693, 3881
Regulation of.....3709
—Va. Const., cl. b., § 156
Regulation of rates of, 3709, 3904, 3918
—Va. Const., cl. b., § 156, § 160
Inspecting books and papers of.3710
Requiring reports and statements 3710
Preventing unjust discrimination 3710
Notice and publication of proposed order or regulation.....3711
—Va. Const., cl. b., § 156
Adjustment of claims and controversies with employees and patrons 3713
Investigation of acts of.....3717
Examination of works and equipment of.....3718
Notice to of violation of law...3719
Proceeding against.....3719
Requiring separate waiting-rooms for white and colored people 3716
Compelling repairs and improvements 3720
Examination on application of mayor or supervisors.....3721
Investigation of accidents.....3737
Copies of statutes furnished to..3741
Storage, demurrage, detention of freight and cars, rates of, rules and regulations as to...3774
Regulation of rates, long and short haul, etc.....3904, 3918
—revision of.....3920
—complaint to Interstate Commerce Commission.....3904
—advance of, approval, procedure 3909
—schedules submitted to State Corporation Commission.....3911
Requiring facilities for interchange of traffic by connecting lines 3907
Agreements between companies submitted to.....3919
Established rates presumed reasonable 3920
How rates proved in suits.....3920
Rules for transportation of explosives 3922
—penalty for violating.....3923
Penalty for failing to furnish reports 3924
—obstructing or hindering commission 3924
—failing to obey rules and regulations of.....3925
—failing to make repairs.....3932

TRUST COMPANIES
Examination of, annual.....4120
—on application of directors or stockholders 4120
Notice to correct irregularities..4120
Closing bank 4120
—when a State depositary.....4120
Application for receiver.....4120
Examiners 4121
Fee for 4122
Statements of financial condition 4120
—forms for 4120
Certificate to do business.....4105
—investigation 4105
—filing proof of publication.....4105
—penalty, for doing business without or failing to publish..4105

Sec.

STATE CORPORATION COMMISSION—Con.
— —for engaging in business in more than one place.....4101
— —for investing more than lawful amount in buildings...4104
— —for failing to furnish financial statement 4124

AS TO TAXATION
Assessment of railway and canal corporations, Va. Const., §§ 176, 179
Assessment of franchise taxes, Va. Const., §§ 178, 179, 181
Relief from excessive assessment.....Va. Const., § 180
—notice of application for, Va. Const., § 180
Assessment of, rolling stock of railroads 2207
—rate 2207
Rolling stock of electric railways 2208
—apportionment and distribution to counties, districts, cities, towns 2208
Copies of assessments of mineral lands certified to.....2236
—examination of 2236
—proceedings to correct.....2236
— —appeal 2237, 2240
Appointment, mineral assessors.2238
Disagreement of assessor and commissioner of revenue, procedure to settle 2238, 2240
—to direct Commonwealth's attorney to appear for State....2238
—witnesses, books, maps, etc....2239
Notice to, of appeal in proceeding to correct assessment of mineral land 2240
Correction of assessment.....2392
—Va. Const., § 180

HEARINGS AND PROCEDURE
Rules of procedure..Va. Const., § 155
Quorum.....Va. Const., § 155
Business days.....Va. Const., § 155
Sessions to be public, Va. Const., § 155
Notice of.....Va. Const., Cl. b, § 156
Process, power to issue and enforce.....Va. Const., Cl. c, § 156
Witnesses, power to compel attendance of..Va. Const., Cl. c, § 156
Oath, power to administer, Va. Const., Cl. c, § 156
Contempt, power to punish for, Va. Const., Cl. c, § 156
Sessions, where held 3697
—when to be public 3733
—Va. Const., § 155
—regular, number, etc.....3733
—special 3733
Process, where returned 3697
—service of 3706, 3730
—power to issue.....3714, 3729
—right of parties to.....3722
—to run in name of Commonwealth 3730
—Va. Const., Cl. c, § 156
Notice of proceedings, 3711, 3720, 3721, 3726
—Va. Const., Cl. b, § 156
Witnesses, compelling attendance 3714, 3722, 3729
—fees and mileage 3744
—Va. Const., Cl. c, § 156
Complaints by mayor or supervisors 3721
—to be in name of Commonwealth 3722
Proceedings to be as in courts of record 3723

Digitized by Google

Sec.

STATE CORPORATION COMMISSION—Con.
Perjury 3724
Rules of procedure, publication and distribution 3725
—to provide for sessions....3733
—Va. Const., § 155
Contempt 3726, 3728
—power to punish for....3728
—appeal 3728
—Va. Const., Cl. c, § 156
Fees and costs, taxation, etc., of.3731
—bond for, enforcement of....3735
On complaint of rate, charge, or practice established by municipal ordinance, franchise, or other contract 4054

JUDGMENTS

Notice before entering....3726
Enforcement 3727
Execution on 3727
For fines and penalties....3727
—against officers 3747
For fees and costs 3731
Docketing 3732
Lien 3732
Enforcement 3732
To be rendered in public session 3733
Time effective 3733
Interest on 3733
On bonds required by commission 3735
For money collected by transportation companies and not refunded 3736
—satisfaction 3736
Against corporation engaged in fish business failing to file list of directors and stockholders..3254
In proceeding to establish wagon-way across works, canal, road, etc., of public service corporation 3883

APPEALS FROM

How taken and heard, Va. Const., Cl. d, § 156
Jurisdiction of, Va. Const., Cl. d, § 156
Supersedeas..Va. Const., Cl. e, § 156
Suspending bond and accounts, Va. Const., Cl. e, § 156
Preference....Va. Const., Cl. e, § 156
Evidence....Va. Const., Cl. f, § 156
Record....Va. Const., Cl. f, § 156
Remand....Va. Const., Cl. f, § 156
Order on reversal, Va. Const., Cl. g, § 156
From contempt proceedings....3728
How taken and heard....3734, 3735
—Va. Const., Cl. d, § 156
Supersedeas 3734
—Va. Const., Cl. e, § 156,
Suspending bond, enforcement of 3735
Restitution of money collected by transportation company....3736
When to lie 6336, 6337
Taken by Commonwealth....6336
Time for 6337
Bond 6352
Record and certificate 6354
—Va. Const., Cl. f, § 156
Limitation on 6355
Dismissal 6355, 6356
Decisions on transmitted to, 6367, 6368
—Va. Const., Cl. g, § 156
—how entered 6369

PENALTIES IMPOSED BY

Fines imposed on clerks for failure to perform duty relating to corporations 3851

Sec.

STATE CORPORATION COMMISSION—Con.
—for failure to record charter of non-stock corporation 3874
—for failing to certify dissolution of non-stock corporation.3880
On corporation engaged in fish or oyster business for failure to file list of officers, directors and stockholders 3254
—revocation of charter 3254
Fines imposed by on corporation failing to obey order of commission 3925
—Va. Const., Cl. c, § 156
On corporation illegally issuing stock 3788
—failing to file financial plan...3788
—for failure to make annual report 3820
— —Va. Const., § 167
—for failing to file list of officers and directors 3854
—for failing to appoint attorney for service of process....3854
—for failing to obey rules and regulations 3925
Enforcing fine against foreign corporation doing business without certificate 3845
On banks and trust companies doing business in more than one place 4101
—investing more than lawful amount in buildings 4104
—doing business without certificate 4105
— —failing to publish....4105
— —failing to file proof of....4105
—failing to file oath of director 4117
—failing to furnish financial statement 4124
On building and loan association failing to make financial statement 4164
On insurance company doing business illegally...4223, 4224, 4234
On railroad for failing to make repairs 3932
—failing to transport troops and munitions 3942
—failing to remove cause of complaint 4001
—failing to furnish information to city or town 4002
For violating rules and regulations of commission 4003
Against telephone companies for violation of law....4057
—failing to report 4057
—obstructing commission 4057
Against transportation company, for violating rules for transportation of explosives 3923
—for failing to furnish reports.3924
—for obstructing or hindering commission 3924
—for failing to obey rules and regulations of 3925
—for failing to make repairs...3932

Documents, Statements, Etc., Filed With

List of officers, directors and stockholders in corporation engaged in fish or oyster business 3254
—penalty for failure to file....3254
Financial plan for issue of stocks and bonds by corporations....3788
—Va. Const., § 167
Charter and power of attorney by foreign corporation....3847

Digitized by Google

Sec.

STATE CORPORATION COMMISSION—Con.
Power of attorney appointing agent of corporation on whom process may be served.....3854
Proof of publication of certificate authorizing bank or trust company to commence business 4105
Oath of directors of banks.....4117
Statement of financial condition by banks, trust companies, etc..4120
—by building and loan associations 4164
Charter and certificate of foreign building and loan association, 4159, 4160
Oath and bond of Commissioner of Insurance 4171
—of deputy 4171
Charter and statement by guaranty, fidelity and security companies 4343
Copy of writing reserving title to locomotives and rolling stock of railroads 5189

Reports to

Forms for....Va. Const., Cl. a, § 156
Preservation, tabulation, publication.....Va. Const., Cl. a, § 156
Requirement of.....Va. Const., § 157
Penalty for failure to make, Va. Const., § 157
Requiring from transmission and transportation companies, Va. Const., Cl. b, § 156
Reports to, by railroad and canal corporations, of property, for taxaton.....Va. Const., § 179
By transportation and transmission companies 3710
By corporations 3716
—Va. Const., Cl. a, § 156
—annual 3820
—in which State is stockholder, 3892, 3893
By corporation with new charter after dissolution 3811
Of condition of works in which State is interested 3893
Of accidents by railroads.....3988
By public utility companies.....4070
By viewers in proceeding to compel repair of turnpike.....4078
By banks, trust companies, etc., of financial condition.....4120
By foreign building and loan association 4161
Statements of building and loan associations 4164
By Commissioner of Insurance, annual 4183
—of insolvency of insurance company, guaranty company, etc. 4180
—violations of law by.....4180
—of liquidation of insurance company 4246
By mutual fire or storm insurance company 4338

STATE DEBT
See also **"Commissioners of the Sinking Fund"; "Debts Due State"; "Sinking Fund"**
Claims against State see **"State"**
May be incurred when, Va. Const., § 184
Created during civil war, no appropriation to be made for, Va. Const., § 186
Interest on, separate account of kept by treasurer 2195

Sec.

STATE DEBT—Con.
Obligations, what not subject to taxation 2301
—Va. Const., § 183
Statement of 2584
Funding 2591
—time for extended 2601
Riddleberger legislation repealed 2600
Temporary loans 2640
—Va. Const., § 184

Bonds

Received as part of security of State depository.....2158
Character 2585
Amount 2585
Date of 2586
Where payable 2586
Interest 2586
—payment of 2586, 2597
Redemption before maturity, 2586, 2594
Form of 2587
Denomination 2588
Exchange for other obligations, 2588, 2591
—of old for new 2588
—of coupon for registered.....2602
Deposit of old bonds 2591
Recordation 2592
Sinking fund, application of.....2594
Cancellation, redeemed 2594
—refunded bonds 2598
—exchanged 2602
Fiduciary funds may be invested in 2595
Plates for printing 2598
Expense for, how paid 2599
Transfer 2602
Conditions under which issued..2603
Exemption from taxation..2301, 2587
—Va. Const., § 183
Forged or counterfeit, destruction of 2612
—seizure of 2612, 2613
Sinking fund, of what constituted 2622
—use for buying bonds.....2623
Procedure for retiring 2625
Cancellation when redeemed....2626
Registration 2631
Issued, cancelled, exchanged, record and summary of 2632
How signed 2633
How paid 2633
Who deemed owner 2634
—how sold 2635
—transfer 2636
Cancellation when transferred..2636
—upon application 2637
Where cancelled bonds filed....2638
Issuance of new 2638
—when bond lost 2639

Certificates

For West Virginia's share of old debt 2589
—form 2589
—recordation 2589
Cancellation 2593
Purchase of by sinking fund commissioners 2624
Registration of 2631
How signed 2633
How paid 2633
Who deemed owner 2634
—how sold 2635
—transfer 2636
Cancellation when transferred...2636
—upon application 2637
Where cancelled certificates filed 2638
Issuance of new 2638
—when certificate lost 2639

Digitized by Google

Sec.

STATE DEBT—Con.
Held by literary fund 2641
How transferred to foreign personal representative of nonresident 5348

Coupons
Tender of for debts due State, certain acts continued in force.2515
Form of 2587
Refunding 2591
Tender for taxes 2596
—certain acts continued in force.2515
Purchase or sale of by officers prohibited 2604
Received by officers, record of to be kept 2605
—penalty for failure 2606
Fraudulent use of, tender for taxes 2607
—record of 2608
—possession until validity adjudicated 2609
—tendering same coupons twice.2610
—penalty on officer receiving...2611
Forged or counterfeit, destroyed 2612
—seizure of 2612, 2613
Who are brokers 2614
Not receivable for taxes of corporations 2615
—penalty 2616
Register of 2628
—comparison of coupons with...2629
Destruction of 2629
Cancellation of 2629
—when received for taxes.....2630

STATE DENTAL ASSOCIATION
Member of, on State Board of Health 1486

STATE DEPARTMENTS
Records of deposited in State Library 361
Printing and distribution of reports 393

STATE DEPARTMENT OF GAME AND INLAND FISHERIES
See also **"Commissioner of Game and Inland Fisheries"**
Establishment 3306
Expenses of, how paid 3336

STATE DEPOSITORIES
Designation of 2157
Bonds 2158
—new 2160
—discontinuance of for failure to give new bond 2160, 5773
—State bonds as security.....2158
—petition of surety to be relieved from 5772
— —new bond required 5772
— —withdrawal of deposit for failure to give 5773
Deposits in.....2155, 2157, 2162
—transfer, causes for.....2159, 5773
—interest on 2158, 2162
—credited to treasurer..... ...2164
—check, draft, certificate of deposit 2167, 2168
— —State not liable if lost or not paid 2169
Report to Auditor 2162
Notice to by Auditor of duplicate warrant 2184
Notice to of checks charged off by treasurer 2194
Accounts with treasurer.....2200
Insolvent, notice to Auditor and Treasurer by State Corporation Commission 4120

Sec.

STATE ENTOMOLOGIST
See also **"State Board of Crop Pest Commissioners"**
Appointment, assistants 870
Duties 871
—quarantine regulations 872
—treatment of diseased trees and plants 873
—inspection of nursery stock.... 874
—treatment, report 875, 876
—appeal 876
Complaint to court 877
Authority to enter premises.... 878
Investigation San Jose scale.... 880
—duty 880
Inspectors 880
—report 880
—pay; account and settlement.. 881
Registration of dealer in nursery stock..... 882
—certificate 882
Payment for services, expenses. 883
Destruction of diseased cedar trees 885, 886, 889
—notice 886, 888
—treatment 887
—expense 889, 891, 892, 893
—entry for 890
Appeal from order of 891
Orchard inspector 895
—appointment 895
—duties 895-902
—term, assistants 896, 900
—compensation, expenses 897
—acceptance, record, vacancy... 898
—notice to destroy trees..... 899
—entry to destroy trees, cost, appeal 900
—failure to obey order of..... 901
—removal 902
—adoption of law relative to... 904
To be chief inspector of orchards 903
—duties and powers 903
—supervision work of orchard inspectors 903

STATE FARM
See **"Penitentiary"; "State Prison Farm"**
Convicts employed on 2073
Superintendent, salary 3452
—duties 3452
Surgeon, salary.....3452
Guards, appointment, salary.....3452
—vacation 3452

STATE FEMALE NORMAL SCHOOL
See **"State Normal Schools"**
Board of trustees to nominate eligibles from faculty for State Board of Education 596
—Va. Const., § 130

STATE FORESTER
See **"State Geological Commission"**
Creation of office 523
Appointment and qualification of officer 524
Co-operation with counties, cities and individuals in protecting trees 525
—expenses ..... 53›
Duties, powers, report 527
Notice relating to forest fires and to trespass laws 538
Salary and expenses 539

STATE GEOLOGICAL COMMISSION
See **"State Forester"**
Who to compose, term.....523, 828
Compensation and expenses..523, 829
To appoint State forester..... 524
Powers and duties 525
Purchases by and gifts to....526, 527

Digitized by Google

Sec.
STATE GEOLOGICAL COMMISSION—Con.
Investigation, means of improving and preventing pollution of rivers 528
To preserve evidence, make reports to General Assembly, and publish bulletins 529
Sale of timber by 530
—payment of proceeds into State treasury 530
Sale or lease of gas, oil or minerals 531
—payment of proceeds into State treasury 531
Forest reserves not subject to warrant or patent 532
Account of receipts and disbursements, report to General Assembly 533
To employ civil engineer, surveyor and assistants 534
Establishment of nurseries..... 536
Distribution of seeds and seedlings 536
Forest wardens, appointment and removal of 540
—duties 538, 540, 541
—compensation 540
—report, account 541
Penalty for violating regulations of 543
Penalty for kindling fires, cutting or damaging timber..... 544
Liability of person or corporation to State or county for causing fires 547
Prosecutions for violations of forestry laws 548
Forest reserve fund, creation and appropriation of 549
Geological survey, continued.... 828
—geologists and assistants 829
— —compensation 829
—objects and duties 830
—co-operation with United States Geological Survey 830
— —expenses 830
—report to General Assemoly... 831
— —printing and distribution... 832
—materials collected 833

STATE GEOLOGICAL SURVEY
See "State Geological Commission"
In general 828-833

STATE HIGHWAY COMMISSION
See also "Roads"
Creation, members 1963
Approval of employment of clerks and assistants 1968
Application of local road authorities for aid 1970
Expenses 1975
State accountant to devise system of accounting for.....552, 554
—mandamus to compel adoption 555
Inspection of accounts of....557, 558
—duties and penalty 558
State cadet at Virginia Military Institute as engineer for..... 849
Power of eminent domain.....4385

State Highway Commissioner
Appointment, term 1963
Qualifications 1964
Oath 1965
Offices 1966
Assistant clerk 1967
—salary 1975, 3448
Additional clerks and assistants.1968
—compensation, how paid..1968, 3448
Salary and expenses.....1975, 3448
Clerical force, salaries.....1975, 3448
Contingent expenses 3448

Sec.
STATE HIGHWAY COMMISSION—Con.
Gathering and dissemination of information and statistics.....1969
Annual report 1969
Application of local road authorities for aid 1970
—submission of plan 1970
—plans, specifications, estimates.1970
—application of State aid.....1970
Convicts for work on road, application for 1971
—conditions to be fulfilled.....1971
—equality of service to each county 1972
Supervision of construction and repair of roads of State...1973
—suggestion of improvements...1973
—supplying and publishing information 1973
Consultation with and assistance from members of commission..1974
Control and supervision of roads, causeways, bridges, landings and wharves 1976
Plans, specifications, etc., for keeping roads in repair.....1988
Road superintendent to submit samples of road material to..2021
—reports to 2022, 2037
—measurement of roads, report, form 2023
State convict road force, guards, assistant superintendent, clerks, for.....2083, 2088
—salaries and wages 2083, 2084
—trusties 2085
—requisition for 2088
Appointment of engineer.....2088
— —duties, reports 2090
—decision as to work to be done 2088
—change or amendment of rules.2078
Assistance when county desires to improve road by contract..2093
—number of convicts allotted to county 2093
— —direction, supervision, care of 2093
State aid for county roads, application to commissioner for....2097
—agreement with local road authorities 2097
—approval of manner of improvement 2098
—designation of local superintendent, engineer, or other person to make improvement....2099
—proceedings on 2100
—proportion of expense to be borne by county 2100, 2103
—plans and specifications for roads 2100
—advertising for bids 2102
—supervision of work 2102
—proportion used to employ assistants 2103
—certificate for payment of assistants 2103
—certificate of share of county in 2105
—certificate for expenditures by county treasurer 2106
—bridges, approval of plans for when State aid used.....2109
Report to court, on petition for election, on bond issue for roads 2110
Tax for upkeep of roads, approval expenditure of 2117
Roads and bridges constructed with proceeds of bond issue, engineer 2120
—advertising for bids 2120

Digitized by Google

Sec.

STATE HIGHWAY COMMISSION—Con.
—letting contracts for.....2120
—bond of contractor 2120
—payment for work 2120
—regulation and direction of work 2120
—road machinery and supplies, purchase of 2121
— —co-operation with supervisors 2121
Vested with powers of sheriff for enforcement of law relating to automobiles and motor vehicles 2244
Automobile license fees, expenditure of.....2154
—apportionment to counties 2154
—work on which expended.....2154
Roads, public service corporation crossing, or changing course of, proceedings for 3885
To superintend repairs, Northwestern turnpike road 4096

STATE HOSPITALS
See also **"Insane Hospitals"**
Acts of Assembly furnished to... 388
System of accounting for devised by State accountant 553, 554
—mandamus to compel adoption. 555
Inspection of accounts of....557, 558
—duty and penalty 558
Expenses of inebriate patients..1068
—of drug addicts 1068
Examination and report of tubercular patient 1546
—segregation of 1547
Lands of, not subject to condemnation 4384
Power of eminent domain.....4385
Abducting, kidnapping or aiding escape of inmates 4412
Carnal knowledge of inmate....4414

STATE INSTITUTIONS
Person holding office under United States may be director of 291
Report of to Governor..... 320
—Va. Const., § 74
—appearance of officers of before Governor 321
—production of books and papers 321
— —Va. Const., § 74
Copies of publications of to be furnished to State Library.... 354
—penalty for failure to furnish.. 355
Monthly report to Auditor of Public Accounts 987
—penalty for failure to make... 987
Educational, annual report of.. 986
—penalty 989
—monthly report to Auditor of Public Accounts 987
— —penalty for failure to make. 987
—scholarships 993, 996, 997
—gifts, investment in State bonds 994
— —irrevocable 995
—contracts with, persons prohibited from making.....998, 4706
—register of State property..... 999
Visitors, investigations 1096
Directors, expenses 1097
Expenditures by boards in sending representatives before legislature prohibited 1098
Superintendents, records kept by 1576
When law relating to embalming not applicable to 1724
Inspection by Board of Charities and Corrections 1894

Sec.

STATE INSTITUTIONS—Con.
—information and statistics furnished to 1894
Reports by to Board of Charities and Corrections 1895
Copies of annual report of Board of Charities and Corrections furnished to 1899
Power of eminent domain.....4385
Officer of having interest in contract, penalty 998, 4706

STATE LAW LIBRARY
See also **"Libraries"; "State Library"**
Separate from State Library.... 360
Establishment, branches 361
Additions to 358, 369
Regulations 370
Who may use 371, 5878
Librarian and employees, appointment 360, 368, 5878
—Va. Const., § 132
Supreme Court of Appeals to control and use 360, 368, 5878
—Va. Const., § 132
Publications received in exchange placed in 347
Supreme Court reports placed in. 347
Acts of Assembly furnished to.. 388
Director and employees of Legislative Reference Bureau to have access to 576
Fees from bar examination applied to 3417

STATE LIBRARY
Establishment 348
Exchange of publications 352
Distribution of publications 352
Donations to colleges, etc..... 352
Cities and towns to furnish copies of official publications to 353
Institutions of learning to furnish copies of publications to. 354
Traveling libraries 360
Deposit of State records in..... 361
When to be open 364
Who may use 366
Time books may be kept out.... 366
Penalty for defacing or injuring books, etc. 367
—for removing 367
—for failing to return 367
Copies of legislative journals furnished to 386
Acts of Assembly furnished to.. 388
Annual reports of heads of departments furnished to 393
Building, care of 402
Purchase of furniture for..... 403
Sale of old furniture 403
Water for building 406
State accountant to devise system of accounting for.....552, 554
—mandamus to compel adoption. 555
Inspection of accounts of....557, 558
—duty and penalty 558
Director and employees of Legislative Reference Bureau to have access to 576
Cataloguers, appointment 360
Doorkeeper, bond, salary..... 348
—appointment, term 360
—duties 365
Employees 402
—appointment 360, 617
—salaries 3445, 3446
Fund, how derived.....349, 357, 358
—annual reports of departments as part of 393
—how paid 369
Librarian, appointment, term, duties 360, 363, 617

Digitized by Google

Sec.

STATE LIBRARY—Con.
—Va. Const., § 132
—bond 348
—salary 348, 3445
—account 350
—assistant 360
—record of oath taken by..... 277
—may assign employees for work in Legislative Reference Bureau 574
Library board, appointment..360, 617
—Va. Const., § 132
—a corporation 360
—term, duties 360
— —Va. Const., § 132
—appointment of librarian and employees 360, 617
—reports 360
—to arrange for distribution and exchange of publications 352
—fees for copies made by library staff 350
—exchange or sale of duplicates 351
— —account of 351
—to fix prices of State publications 358
—warrants on library fund... .. 359
Stenographer, appointment 360

STATE LIVE STOCK SANITARY BOARD
See also **"State Veterinarian"**
Constitution of 906
Duty of, quarantine 907, 909, 910
State veterinarian 908
Clerks and assistants 908
Warrants 908
Disinfecting railway cars..... 911
Penalty for violating regulations of 912, 919
Report of animals infected with contagious disease 913
Quarantine by supervisors..... 914
Hindering inspection of diseased stock 916
Bill of health of animals..... 917
Duty of sheriff and constable to assist 918
Tuberculosis 920
Cattle, tuberculosis test.....1224
—rules and regulations....1225, 1227
—compensation 1225
—expenses, how paid 1227
—report 1228

STATE MEDICAL SOCIETY
Members, on State Board of Health 1486

STATE NORMAL SCHOOLS
See also **"Normal Schools"**
Names of institutions 942
Location 939
Supervision, management, government 939
Board of visitors, corporation... 940
—number, appointment, term, expenses 941
—vacancy 941
—quorum 941
—property rights 942
—powers and duties....943, 944, 945
—control, appropriations 943
—budgets, commitees, employees 944
—selection of pupils 945
—report 987
—expenses 988
Presidents, annual reports...986, 989

STATE PRISON FARM
See **"Convicts"; "Penitentiary"**
Establishment.....Va. Const., § 147
Control of.....333, 5027
—Va. Const., § 148
Reports by to Board of Charities and Corrections 1895

Sec.

STATE PRISON FARM—Con.
Convicts employed on 2073
Inspection of by directors.....5027
Inventory and accounts of property 5047
—directors to attend taking of..5029
Bloodhounds at 5048
Laws for government of.....5047
Expenses of, how paid 5047
Officers and employees, appointment of 333, 5047
—Va. Const., § 148
—removal 5027, 5047
— —Va. Const., § 148
Directors, appointment 333
—Va. Const., § 148
—powers and duties.....333, 5027
— —Va. Const., § 148
—inspection 5027
—attending taking inventories..5029
—meetings 5027
—reports 5027, 5030
—to appoint superintendents....5047
—surgeons 5047
—record of oath taken by..... 277
Guards, appointment 3452, 5047
—compensation 3452, 5047
—vacations 3452, 5041
Superintendents, appointment, 333, 5047
—Va. Const., § 148
—qualification, term, vacancy... 333
— —Va. Const., § 148
—removal 336, 5027
— —Va. Const., § 148
—duties 3452, 5047
—appointment of officers and employees 5047
— —Va. Const., § 148
— —removal of 5027
— —Va. Const., § 148
—appointment of guards..3452, 5047
—salary 3452, 5047
—certificate for payment of salaries 5047
—inventory, accounts 5047
—report to directors 5027
— —of receipts and disbursements 5035
—purchase of material and supplies 5035
—record of oath taken by..... 277
Surgeon, appointment 333, 5047
—Va. Const., § 148
—qualification, term, vacancy... 333
— —Va. Const., § 148
—removal 336, 5027
— —Va. Const., § 148
—salary 3452, 5047
—record of oath taken by..... 277

STATE PROPERTY
Exempt from taxation.....2272, 2301
—Va. Const., § 183
Plates from which bonds are printed 2598
Register of 3765
—at State institutions 999

STATE PUBLICATIONS
See also **"State Library"**
Donations and exchange of..... 352
Distribution of by library board. 352
Delivered to Secretary of Commonwealth to be sold 358
Decisions of Supreme Court of Appeals, printing 394
—custody and distribution..... 347
—reporter, duties, etc.....5879-5883

STATE QUARANTINE BOARD
See **"State Board of Health"**
Neglect to enforce quarantine...1500

Digitized by Google

Sec.

STATE REGISTRAR OF VITAL STATISTICS
See also **"Local Boards of Health"; "State Board of Health"**
Appointment 1562
Salary 1562
Registration districts 1563
Appointment of local registrars..1564
—removal 1564
Permits for burial or removal of dead body, 1565, 1566, 1569, 1570, 1571
—for transportation of 1728
Death certificate 1565-1569
Registration of births.....1572-1575
Records of inmates of hospitals, etc. 1576
Forms provided and instructions issued 1577
Information required by 1577
Preservation of certificates.....1577
Certification to treasurer of number of births and deaths...1579
Certified copies of record of birth or death 1580
—fees 1580
Enforcement of law 1582
—complaint to Commonwealth's attorney 1582

STATE REPORTS
Printing 394
Custody and distribution..... 347
Reporter, duties, etc.....5879-5883

STATE RESERVATION
See **"State Forester"; "State Geological Commission"**
Penalty for violating regulations of 543
Penalty for kindling fires, cutting or damaging timber..... 544

STATE REVENUE
See **"State"; "State Treasurer"; "Taxation"**
Appeal allowed Commonwealth in prosecution for violation of law relating to, Va. Const., §§ 8, 88
Paid into State treasury, Va. Const., § 186
Limitation on amount to be levied for.....Va. Const., § 188

STATE TAX BOARD
See also **"Taxation"**
Composed of 2213
Chairman, secretary 2214
Assistants, compensation 2214
Duties 2215
May administer oaths 2216
Process, writ, order of publication, power to issue, have executed or published 2216
Witnesses 2216
Enforcement of orders, judgments, etc 2216
Copy of order fixing county levies furnished to 2217
Compiling table showing levies for counties and districts.....2217
Examiners of records, appointment, residence, removal.....2218
Application to local board of review for correction of assessment 2227
—to courts 2227
Notice to of neglect of duty by commissioner of revenue.....2255
Application by to local board of review for correction of erroneous assessment of personal property 2263
—appeal 2263
List of land grants furnished to.2277

Sec.

STATE TREASURER
Ineligible as member of General Assembly .....Va. Const., § 44
Refunding money, special laws prohibited .....Va. Const., § 63
Powers and duties..Va. Const., § 81
Election 118
—Va. Const., § 81
Term 118
—Va. Const., § 81
Contested election.....264, 265
Vacancy, how filled.....122, 329, 331
—if bond not given and approved 329
—for failure to give additional bond 327
Removal from office..... 330
Business hours..... 337
Proceedings and vouchers..... 338
Record of oath taken by..... 277
Bond of..... 325
—submission of to Attorney General 326
—new or additional..... 327
—effect of failure to give..... 327
—where filed 328
—liability on for acts of clerk.. 342
— —for retired teachers' fund... 795
Salary 3437
Member of Finance Board.....2156
Member of Board of Indemnity..2619
As Commissioner of the Sinking Fund 2621
Absence of, notice to Governor.. 340
When first clerk to act for..... 341
Actions against, venue of.....6049
—court in which brought.....6051
Certificate by that price of escheated land has been paid.... 507
Contingent expenses.....3437
Execution against, no forthcoming bond taken.....6524, 6525
Exempt from jury service.....5985
Finance Board, composition of..2156
—designation of State depositories 2157
Fiscal year.....2172
Game protection fund, payments to 3333, 3336
—warrants on.....3336
—reports to commissioner.....3344
Gifts to University of Virginia, investment, etc.....823, 824
—accounting for..... 826
—to Virginia Normal and Industrial Institute..... 957
Night watchman..... 402
Proceeding against by auditor for violation of revenue law.....2544
Records, copies as evidence, 2618, 6197
Reports by, to auditor and depositary of check charged off.2194
—to auditor of receipts and payments 2197
—to Governor, annual.....2202
— —what to contain.....2204
—of receipts and disbursements of sinking fund 2627
—on game protection fund.....3344
Report to by insurance and guaranty company of unimpaired capital.....4211
—by State Corporation Commission of insolvency of State depository 4130
Sale by of securities of Library Board 362
Suit on coupons, officer or clerk not to leave office to testify 2618
—books not taken from office...2618
—copy as evidence..... 2618
—depositions 2618
Taxes, order correcting assessment certified to.....2336

Digitized by Google

Sec.

STATE TREASURER—Con.
—refund when assessment corrected 2388
—amount of delinquent taxes certified to.....2417

Accounts
Examination of by auditing committee 311
—Va. Const., § 68
—by State Accountant.....557, 558
System of accounts devised for by State Accountant..552, 554, 555
—duty to adopt..... 558
With auditor.....2186, 2200
—contingent expenses of courts.2136
Comparison with those of auditor 2139
Of separate branches of revenue.2193
Unpresented checks charged off..2194
Separate accounts of literary fund 2195
—of interest on public debt....2195
—of sinking fund.....2195
—of Miller fund 2195
General ledger.....2198
With depositaries.....2199
Sinking fund.....2627

Clerks
Appointment 335, 3437
Removal 336
Record of oath..... 277
Bond 325
—submission of to Attorney General 326
—new or additional 327
Effect of failure to give..... 327
—where filed 328
Vacancy in office if bond not given and approved..... 329
—how filled..... 329
Salaries 3437
First clerk, appointment..... 340
—authority 340, 341
—when Governor to appoint..... 341
—vacancy 341
—when to act for Treasurer..... 341
—liability of Treasurer for default of..... 342
Testimony in suit on coupon...2618

Depositories
Designation of.....2157
Security given by.....2158
—State bonds as.....2158
Interest on deposits.....2158, 2162
When deposits to be removed, 2159, 5772, 5773
When new bond required..2160, 5772
Opinion of Attorney General as to bond..... 2161
Remedies on bond of.....2161
Transfer of deposits to.....2162
Reports to Auditor.....2162
Payments to depository credited to Treasurer.....2164
Notice to when unpresented check is charged off.....2194
Notice to Treasurer of insolvency of.....4120
Deposits, withdrawal pending new bond.....5772
Discontinuance for failure to give new bond.....5773

Receipts and Disbursements
Lists of to Auditor.....2197
Of sinking fund, report of.....2627

RECEIPTS
Special acts for refunding prohibited .....Va. Const., § 63
Revenue paid into..Va. Const., § 186
How made.....2155
—warrant 2155, 2182
—order 2155
—certificate 2155
—receipt 2155

Sec.

STATE TREASURER—Con.
Effect of failing to make in required manner.....2163
By certificate of deposit, certified check, etc.....2165
—credit by Auditor.....2165
—effect of non-payment upon presentation 2165
—entry by Auditor.....2166
—receipt by Treasurer.....2166
—account of by Treasurer.....2167
—deposit of 2167, 2168
—settlement with Auditor.....2167
—notification to Auditor of non-payment 2167
—Treasurer not to receive checks, etc., except from Auditor 2168
—how collected.....2168
—to whom payable.....2168
—loss by lack of diligence of depositary 2169
—loss of in mails.....2169
—Auditor's blanks to show how made 2170
—not to interfere with payments under section 2165 2171
—disbursement of.....2171
Capitation taxes.....117, 2420
By clerks, taxes and money belonging to State.....2405, 2406
—amount collected for redemption of delinquent lands sold to State.....2491
—money received from hunting licenses 3333, 3336
By clerk of court of appeals, costs collected for printing record 3486
By Commissioner of Insurance..4197
Cost of services of State Accountant to counties and cities. 565
Costs, in proceedings for violation of license and revenue laws 2396
Costs taxed in favor of Commonwealth 3536
Cost of publishing process against corporation in criminal cases.....4892
By county and city treasurers, taxes collected.....2412
—poll taxes.....117, 2420
—proportions of salaries of judges 3436
—by city treasurers for proportion of salaries of city judges.3438
— —Va. Const., § 103
Dividends or funds from internal improvement 3759
Dividend on stock in public service corporations, etc., owned by State.....3990
By escheator..... 510
Fees, from State Librarian..... 350
—collected by State Board of Accountancy 571
—for registration of brands of lime 1134
—registration fee, dairy, cheese factory, skimming station, etc.1173
—collected by Dairy and Food Commissioner 1212
—for registration of commercial feeding stuffs.....1239
—of State Registrar of Vital Statistics 1580
—for inspecting hotels.....1591
—for violation of law relative to practice of pharmacy.....1699
—collected by Secretary of Commonwealth 3434
— —Va. Const., § 80
— —under automobile law.....2154
—for exchange of State bonds...2602
—of Register of Land Office....3439

Digitized by Google

Sec.

STATE TREASURER—Con.
—of Auditor of Public Accounts.3435
—collected from defendant.....3513
—for examination of banks.....4122
—for licenses to agents of insurance companies.....4235
Fertilizer fund.....1123
Fines collected.....2575
—for violations of law relative to practice of pharmacy.....1699
—collected by State Corporation Commission 3727
—recovered from insurance companies 4232
Forest reserve fund.....549, 742
Inspection tax on commercial feeding stuffs.....1239
By insurance companies, assessment for expenses of Bureau of Insurance 4195
—fines and penalties recovered from 4232
—assessment on legal reserve insurance company.....4257
Interest on Corcoran fund..... 827
License fee, of stock salesman promoting insurance company.4237
Literary fund..... 615
—loans from.....760, 761
Proceeds from sales, of duplicates in State Library..... 351
—made by Secretary of the Commonwealth 357
—of furniture in capital and library 403
—of timber by State Geological Commission 530
— —of gas, oil or minerals..... 531
—of adulterated, misbranded or substituted foods.....1166
—of tubercular cattle.....1226
—of unclaimed tobacco in warehouses 1398
—of timber found adrift.....1446
—to satisfy judgment against person rendering false list of property for taxation.....2328
—of waste and unappropriated land 2504
—of boats, tackle, etc., forfeited for violation of oyster laws...3275
—of wrecks and property from..3609
—of goods for charges by transportation companies.....3934
—of vehicle used in transporting ardent spirits.....4658
—of stamps affixed to affidavits and prescriptions required by prohibition law.....4668
By Register of Land Office.....2509
Retired teachers' fund..790, 791, 792
By sinking fund commissioners.2591
Sinking fund.....2626, 2627
By State Corporation Commission, fees for issuing charters, amendments to and licenses to foreign corporation.....3716
—receipts and collections by clerk of.....3703
By Superintendent of Penitentiary 5037
Tax on rolling stock, of railroads 2207
Taxes on real estate, paid in advance 2438
Tax on seal of State Corporation Commission 3742
Unclaimed court funds.....6311, 6312

DISBURSEMENTS

Special act for refunding prohibited ....Va. Const., § 63
Payments from made in pursuance of appropriations, Va. Const., § 186
To be by checks drawn on warrants 2164

Sec.

STATE TREASURER—Con.
—made otherwise not valid.....2164
Accounts for printing records on appeals 6360
Allowance to jailor for prisoner committed for contempt by State Corporation Commission.3728
Allowance for analysis for poison in criminal case.....4956
Allowance for medical attendance, medicines, clothing, for jail prisoners.....4956
Allowances to officers in criminal cases 4960
Amount found due to officer indebted to State.....3476
Appropriations for high schools. 708
—normal departments..... 709
—for Virginia Military Institute 834
—for normal schools..... 946
—for Virginia School for Deaf and Blind..... 978
From banking fund..... 1122
Commissions to Commissioner of Revenue 2349
Compensation of local Board of Review 2226
—of assessor of taxes.....2250
—of agent appointed by Auditor to assess license tax.....2270
—of examiners of office of clerk of Supreme Court of Appeals..3383
—of agents and employees of State Corporation Commission.3715
—of jurors in criminal cases....4928
—to sheriff or sergeant delivering convict.....4948
—of guards for jails.....4955
—of officers of penitentiary.....5041
—of officers of State prison farm 5041
To corporation, excessive or erroneous charter tax paid by..3775
Cost of making report of prisoners in jail.....2871
—of publishing process against corporation in criminal cases.4892
—of printing records in appeals, 6357, 6360
— —mailing decisions of.....6368
Expenses of insane, epileptic, feeble-minded persons.....1048
—in jails.....1049
—removing and supporting not in hospitals.....1038
—of Dairy and Food Commissioner 1243
—of division of markets.....1256
—of Board of Pharmacy.....1669
—of Board of Charities and Corrections 1901
—of postage and express to clerks and commissioners of revenue 2358
—of refunding State debt.....2593
—of artificial limb to pensioner..2679
—of Bureau of Insurance.....4172
—of coroner's inquest. 4814
—of juries in criminal cases....4902
—of State prison farm.....5047
Fees, for escheator's sale, from literary fund..... 513
—of commissioner of revenue, for licenses.....2353
—to officers in criminal cases...3054
— —when not paid from treasury 3511
—for services in cases of the Commonwealth 3493
—to sheriffs and sergeants.....3502
—refund of fees paid to witnesses for Commonwealth by treasurers 3512
—of witnesses.....3530
— —time for.....3531

Digitized by Google

Sec.

STATE TREASURER—Con.
—for report of fires to Commissioner of Insurance.....4185
—of Bail Commissioner.....4835
—to witnesses in criminal cases.4959
—of Commonwealth's attorneys.4966
—of Commonwealth's attorney and witnesses in criminal case removed to United States court 4971
—of clerks for marriages reported 5099
Interest on bonds for State debt.2537
—to colleges, etc..... 990
—to Virginia Agricultural and Mechanical College and Polytechnic Institute..... 929
—to Hampton Normal and Agricultural Institute..... 929
Indemnity to officer collecting taxes 2619
Jurors, compensation and mileage in criminal case.....4928
—expenses of.....4902
—allowances to.....6010
From library fund..... 359
From literary fund, debt of decedent whose land has escheated 516
Mileage of jurors in criminal case 4928
—of Commonwealth's attorney and witnesses in criminal case removed to Federal court.....4971
—of officers.....3472
Proceeds of escheated or derelict property to person entitled... 521
From penitentiary fund.....5037
Pensions 2652
—artificial limb for pensioner...2670
For public printing..... 385
Salary, of assistant to Superintendent of Public Printing.... 398
—of Board of Charities and Corrections 1901
—of officers and employees at seat of government 3453
—of judges of Supreme Court of Appeals 3464
— —Va. Const., § 103
—of judges of circuit courts....3466
—of judges of city courts.....3468
— —Va. Const., § 103
—of officers.....3472
—of Bureau of Insurance.....4172
From sinking fund.....2626, 2627
State money aid to roads.....2105
Unclaimed court funds to person entitled to recover.....6314
Warrants, for paper furnished to Superintendent of Public Printing 383
—of State Live Stock Sanitary Board 908
—for expenses of State Board of Agriculture 1196
—of assistant to Highway Commissioner, for services in improvement of road with State aid 2103
—for check charged off.....2194

WARRANTS

For payments to.....2155, 2182
For payment of claims, by whom issued 2181
For receipt of money, by whom drawn 2182
What to state.....2183
Duplicate, when issued.....2184
—bond required 2184
School, loss by county or city treasurer, relief.....2185
Listing and numbering.....2196
List of to Auditor.....2197

Sec.

STATE TREASURER—Con.
For allowances by courts.....2187
New, when check charged off...2194
For fees, of printer, treasurer, clerk, for sale of delinquent land to Auditor.....2501
On game protection fund.....3336

Securities Deposited With by Corporations

Bonds deposited with by insurance and guaranty companies, 4211, 4233
—compensation 4211
—receipt for.....4211
—assessment on.....4211
—power of attorney to transfer.4211
—yearly examination of.....4211
—notice of depreciation.....4211
—interest on..... 4212
—sale of, and application of proceeds to payment of claims...4213
— —report of.....4213
—party to suit to enforce lien on 4214
—to suit by Commissioner of Insurance to administer assets of 4215
—duty when bonds are paid....4216
— —investment in other bonds..4216
—when bonds may be withdrawn, in whole or in part.....4217
—illegally disposing of, penalty.4218
Deposit of reserve fund of life insurance company with.....4271
—securities invested in.....4271
—change in deposit.....4271
Bonds deposited by foreign express companies.....4028
—sale of, notice.....4029
—when surrendered.....4030
Securities deposited by foreign building and loan association..4161
—exchange of.....4161
Bond deposited with by mutual life insurance company reincorporated as stock company.4255
Bonds deposited with by underwriters' agency.....4313
Bonds deposited with by individual sick benefit companies..4351

State Bonds

Cancellation of coupon bonds of colleges 992
Lists of bonds surrendered by colleges 992
Cancellation of State bonds.....2593
—of coupons.....2629, 2630
—preservation of list of.....2593
—filing in office of.....2638
Forged or counterfeit bonds or coupons of State, disposition of 2612
Bonds of sinking fund commissioners kept in office of.....2621
Register of coupons.....2628
—comparison 2629
—cancellation of coupons..2629, 2630
Registry of bonds.....2631
—issued, cancelled or exchanged, record of.....2632
—monthly summary and comparison 2632
—verification 2632
—filing when cancelled.....2638
To sign bonds and certificates issued by State.....2633, 2638
State bonds, cancelled, filed in office of.....2638

STATE VETERINARIAN
See also **"State Live Stock Sanitary Board"**
Duties, expenses, payment..... 908
Examination of diseased stock, 909, 910

Digitized by Google

Sec.

STATE VETERINARIAN—Con.
Release of quarantined stock.... 910
Penalty for violating regulations of 912, 919
Quarantine by board of supervisors 914
Penalty for hindering..... 916
Bill of health of animals..... 917
Tuberculosis 920
Tuberculosis tests of cattle.....1224

STATEMENT
Of Auditor, to Governor, annual.3202
—of delinquent treasurer..... 2413
By auditors of cities of receipts and disbursements.....2775
By banks, to State Corporation Commission 4120
By building and loan associations, financial.....4163, 4164
—failure to make, penalty.....4164
—false, penalty.....4165
Of casualty or life insurance company on co-operative plan, before commencing business..4259
By chemical laboratory, of ardent spirits on hand, etc.....4601
By city councils, disbursements.3078
By clerk of board of supervisors, of receipts and disbursements.277
By clerk of court, for repayment of expenses, postage and express 2350
—taxes and money belonging to State, collected 2405
—fines collected.....2516
—subjoined to list of fines returned 2565
—of expenses of criminal prosecution 4964
By clerk of State Corporation Commission to Auditor.....3703
By commissioners, for repayment of expenses, postage, express..2350
By Commissioner of Game and Inland Fisheries 3311
Of Commonwealth's attorney in prosecution for embezzlement.4451
By corporations, financial plan..3788
County demonstration work, expenditures for..... 912
Debt, action of, to recover penalty for violation of license or revenue laws.....2395
By druggist, of ardent spirits on hand, etc.....4601
Ejectment, action of, of damages and profits.....5481
—claim for improvements by defendant 5482
Of fees on report of Commissioner in Chancery.....3483
—on affidavit or deposition.....3484
Of fiduciary, how compelled to exhibit 5410
By fraternal benefit society, filed with Commissioner of Insurance 4284
—for merger or transfer of funds or membership.....4286
By general receiver of court funds 6283
Of guaranty, fidelity and security companies filed with State Corporation Commission.....4312
By hospitals, of ardent spirits on hand, etc.....4601
By hotels, of ardent spirits on hand, etc.....4603
Of insurance company, guaranty company, etc., to Commissioner of Insurance before doing business 4205
—to treasurer of unimpaired capital 4211
By justice, of fines collected....2546

Sec.

STATEMENT—Con.
By life insurance company, filed with State Corporation Commission 4272
Mechanic's lien, of account, filed with bill to enforce.....6437
By mutual fire, lightning or storm insurance company.....4328
By officer, returned with fieri facias 5491
By road superintendent, itemized expenses 2037
By school boards, annual..... 750
By Second Auditor, annual, to Governor 2202
By State Accountant of traveling expenses 550
—by deputy..... 551
By State Board of Dental Examiners, receipts and expenditures 1654
Of State hospitals.....1016
By treasurers, to Auditor.....2412
Of Treasurer of State, to Governor, annual.....2202
—in adjustment of judgment against 2737
—of receipts and expenditures, 2780, 2785
—list of warrants.....2780
By transportation and transmission companies to State Corporation Commission.....3710
Of trustee, to Commissioner of Accounts 5408

STATIONS
See also **"Railroads"**
Separate waiting rooms for white and colored persons in.....3716
Penalty for failing to repair on order of State Corporation Commission 3922
Keeping open, warming.....3940
Maintenance of by railroad.....3984
—waiting rooms, water closet...3984
Express office at railroad station.4004
Change or abandonment of by railroad 4379
—damages 4379
—commissioners to ascertain —damages 4379
Drinking ardent spirits in railroad station, punishment.....4431

STATION AGENT
Of railroad company, service of process on.....6066

STATIONERY
Duty of Superintendent of Public Printing to furnish..... 384
For legislative reference bureau. 580
For clerk, board of supervisors..2767
For county treasurers.....2767
For clerks.....2767
For county officers, proportion of expense borne by city of second class.....2904
For civil and police justice.....3109
For Commission of Fisheries...3159
For State Corporation Commission 3750

STATUARY
In public buildings, grounds, etc., injuring or defacing, punishment 4432

STATUTE
See **"Acts of Assembly"; "General Assembly"; "Statute of Frauds"; "Statute of Limitation"**
City Ordinances, see **"Cities and Towns"**
To embrace one object expressed in title.....Va. Const., § 52

Digitized by Google

Sec.

STATUTE—Con.
Creating debt or authorizing loan, to provide for sinking fund .....Va. Const., § 187
Local, special or private, reference to standing committee, Va. Const., § 51
—how passed.....Va. Const., § 51
—when prohibited..Va. Const., § 63
—amendment not to have effect of enactment.....Va. Const., § 64
—relating to cities and towns, Va. Const., § 117
—contracting or expanding limits of city or town prohibited .....Va. Const., § 126
—granting, amending or extending charter of corporation, prohibited .....Va. Const., § 154
—repealing charter.Va. Const., § 154
—regulating affairs of corporation or granting privileges to, Va. Const., § 154
—special road laws, effect on of chapters 84 and 85.....2004
— —to what extent repealed...2018
—by supervisors, relating to roads, ways and bridges..2013, 2014
Enactment .....Va. Const., § 50
—Governor's duties.Va. Const., § 76
—veto .....Va. Const., § 76
Printing .....Va. Const., § 50
Reference to committee, Va. Const., §§ 50, 51
Reading .....Va. Const., § 50
Vote on.....Va. Const., § 50
Amendment ....Va. Const., §§ 50, 52
Signature .....Va. Const., § 50
When to take effect..... 4
—Va. Const., § 53
—when not returned by Governor .....Va. Const., § 76
—emergency act..... 4
—general appropriation act..... 4
Repeal of, when not to revive former law..... 7
—of validating law effect of.... 8
—of when Code goes into effect.6567
— —statutes not affected.....6568
— —effect of repeal on penalties, rights, limitations....6, 6569
Acts of Parliament as part of common law..... 3
Continued in force.....522, 592
—Va. Const., Schedule, § 1
Headlines of Code sections, use of .....cl. 20, 5
Absent voters, liberally construed in favor of..... 220
Primary elections, chapter relative to liberally construed.... 221
Offenses in violation of two or more, proceeding under one as bar to others.....4775
Action to recover damages for violation of.....5785
As evidence.....6139
—private acts.....6190
—of United States.....6192
—of other States or territories..6192
Jurisdiction of Supreme Court of Appeals in case involving constitutionality or construction of 6336
—Va. Const., § 88

STATUTE OF FRAUDS
General provisions.....5561

STATUTES OF LIMITATION
Not to run against claim of State for taxes.....Va. Const., § 174
Computation of time, what period excluded.....5089
Effect of devise for payment of debts 5814
Promise not to plead, effect of..5821

Sec.

STATUTES OF LIMITATION—Con.
Saving as to persons under disability 5823
Death before accrual of right of action 5824
Suit prevented by defendant....5825
Absconding defendant.....5825
Concealment of defendant.....5825
Effect of abatement of action or reversal of judgment or decree 5826
—new action by reason of loss or destruction of papers or records 5826
Repeal, not to remove bar.....5828
Effect of Code on existing rights and remedies.....5830
State not affected by, when...5829
Liability of fiduciary for failing to make defense of.....5406
Recovery of damages to adjacent land by establishment of cemetery 56
Recovery of proceeds of escheated or derelict land..... 521
Claims paid out of literary fund. 615
Recovery of money paid on void school contract..... 683
Action on bond of State cadet at Virginia Military Institute.... 843
Actions by guests against innkeeper 1606
Claims against State.....2179, 2583
—when allowed by order of court 2180
Correction, erroneous assessment of taxes.....2385, 2387, 2388, 2389
Action of debt for recovery of penalty for violation of revenue laws.....2395
Distress by Treasurer for taxes.2410
Redemption of land sold for delinquent taxes.....2475, 2482, 2487
—persons under disabilities.....2479
Suit to cancel tax deed.....2488
Right to redeem delinquent land when application made to purchase 2495
Action against officers for illegal contracts with counties.....2707
Recovery against officer of city or town on contract improperly made with city.....2708
Proceeding when illegal claim allowed against county by supervisors 2759
Appeal from order of board of supervisors disallowing claim.2761
Petition of officer for salary withheld for debt due State...3477
Recovery of officers' fees.....3500
Witnesses' fees, claim for.....3531
—entry of.....3532
Suits against directors of corporations 3816
Action to recover on contract with company acting as bank of circulation.....4151
Actions on insurance policies, provisions in policies.....4227
Suit to set aside fraudulent transfer of stock of merchandise 5187
Appeal from probate proceeding by clerk.....5249
Bill to impeach or establish will 5259, 5260
Probate of will against purchasers from heir.....5263
Setting aside for fraud compromise of suit on behalf of infant 5332
Time deducted, when claim against deceased proved before commissioner 5422

Digitized by Google

Sec.
STATUTES OF LIMITATION—Con.
Suit against legatee or distributee for refund to creditors..5439
Action of unlawful entry or detainer 5445
Action by infant or insane person to set aside judgment in ejectment 5487
Relief against forfeiture of land for non-payment of rent or breach of covenant.....5539
Suit against person in possession of lands by re-entry.....5539
Action for recovery of usury paid 5555
Action for recovery of money lost in gaming 5559
Actions for damages from violation of statutes.....5785
Action for death by wrongful act 5787
Action to recover for death or injury of employee of intrastate railroad.....5791
Entry on or action for land, 5805-5808
—right not saved by claim.....5806
—as to persons under disabilities 5807, 5808
Actions against fiduciaries.....5811
—time of accrual of action.....5811
Actions on bonds of fiduciaries.5811
—time of accrual of action.....5811
Personal actions generally.....5810
Awards 5810
Contract, other than judgment or recognizance 5810
New promise.....5812
—by personal representative....5813
—by joint contractor.....5813
—pleading 5812
—persons under disability, saving to.....5823
Motion against officer or sureties for failure to return execution 5816
Action on recognizance.....5815
—persons under disabilities.....5823
Action to recover ground rent...5817
Personal action not otherwise prescribed 5818
Judgments and decrees of another State.....5819
Suit to avoid voluntary conveyances 5820
Suit to repeal grant of land.....5822
Action on foreign contract.....5825
Deeds of trust, enforcement of..5827
Mortgages, enforcement of.....5827
Lien reserved to secure unpaid purchase money, enforcement of 5827
—extension 5827
Claim of jurors for pay and mileage 6010
Scire facias or action on judgment of justice.....6040
Rehearing as to parties not served 6072
Motion to correct judgment in same court.....6333
Recovery of unclaimed court funds paid into treasury.....6314
Appeal, writ of error or supersedeas 6355
Enforcement of mechanics' liens.6432
Judgment lien, suit in equity to enforce 6474
—proceeding to enforce right of subrogation 6475
Issue of execution or scire facias on judgment.....6477, 6478
Motion for new execution by obligor on indemnifying bond.6498

Sec.
STATUTES OF LIMITATION—Con.
Actions barred before Code takes effect.....6539
Or prosecutions.....4768
—for violation of revenue laws.2396
—for abduction.....4413
—for seduction.....4413
Trial of person indicted for felony 4926

STAUNTON
Branch of State Law Library at. 368
Western State Hospital for Insane at.....1094
Jail, jailor.....2868
Commonwealth's attorney, fees..3595
Supreme Court of Appeals, session 5866
—business 5869
—session of special court.....5873
—clerk 3378
— —office 3378
— —salary 3465
Circuit court.....5887
City of first class.. 5905
Courts in continued.....5905
Corporation court.....5905
—judge, salary.....3468
— —increase, decrease.....3469

STAY
Of execution on judgment before justice 6027
Of proceeding on forthcoming bond, none.....6530

STAY LAWS
Prohibited .....Va. Const., § 194

STEALING
See **"Grand Larceny" "Larceny"; "Petit Larceny"**

STEAM COMPANIES
See **"Public Utility Companies"**
Use of streets by...Va. Const., § 124

STEAM ENGINES
Moving on roads, regulations for 4735
—penalty 4735

STEAMBOATS AND STEAMBOAT COMPANIES
See also **"Corporations"; "State Corporation Commission"; "Vessels"**
Allowing food to become contaminated in transit, penalty.....1220
Examination of by State Corporation Commission.....3717, 3721
—works and equipment.....3718
—notice to of violation of law..3719
Captain, failure to observe rules as to transportation of explosives, penalty 3923
Bonds, of railroad company guaranteeing 3957
Excursions, notice of prohibition of 4009
—penalty for violating law relating to.....4010
White and colored passengers, separation, assignment to apartments 4022
—discrimination prohibited.....4022
—penalty for failure.....4023
—passenger to occupy place assigned 4024
—disorderly conduct, penalty...4024
—ejection 4024
—wharf accommodations for....4026
Police agents, appointment, removal 4025
Masters, agents, etc., as conservators of peace.....4025
Wharves, accommodations for passengers 4026
—penalty for failure to provide.4026

Digitized by Google

Sec.
STEAMBOATS AND STEAMBOAT COMPANIES—Con.
Liability for goods delivered to express company....4031
Loading or unloading cargoes on Sunday, punishment....4575
Intoxicating liquors, delivery to other than consignee.....4635
—hours for delivery....4635
—record open to inspection, 4632, 4637
—affidavit to be in duplicate... 4634
— —original filed in clerk's office....4634
Ardent spirits, transported, record kept of, what to show, 4632, 4634, 4638
—effect as evidence....4632
—penalty for failing to keep, 4632, 4634
—regulations for transportation of....4633
—affidavit by consignee, 4634, 4635, 4638
— —filing with clerk of court..4634

STEAMSHIP COMPANIES
See **"Corporations"; "Steamboats and Steamboat Companies"**

STEER
Larceny of....4440

STENOGRAPHERS
For State Library.... 360
Of Supreme Court of Appeals, salary....3465
State Corporation Commission, appointment....3699
—removal, term....3699
—qualification....3699, 3700
—vacancy....3702
—duties....3707

STERLING SILVER
Regulation of sale of goods marked "sterling" or "sterling silver"....4461

STOCK
See **"Banks"; "Corporations"; "Stockbrokers"; "Taxation"**
Savings bank, investment of funds in....4143
Loans on by building and loan association....4154
Fraudulent sale, issuance, promotion of....4465

STOCK BROKERS
See also **"Bucket Shops"**
Penalty for failure or neglect to furnish information to customer as to sale or purchase of securities or commodities....4717

STOCK FOOD
See **"Board of Agriculture" "Dairy and Food Commissioner"; "Feeding Stuffs"**

STOCKHOLDERS
See **"Corporations"**

STOLEN GOODS
Receiving, etc....4448
Possession of by junk dealer as larceny....4711
Bringing into State, jurisdiction of prosecution....4769
Search warrants for....4819-4822
—execution by special police....4802

STONE
Condemnation of....4382

STONE QUARRY
No land grant to include.... 459

Sec.
STORAGE
See also **"Warehouses and Warehousemen"**
Of Tobacco, see **"Tobacco"**
State Corporation Commission to fix rate of....3774

STORE
Revocation of license for violation of prohibition law....4653

STORE ACCOUNT
Limitation of action on....5810

STOREHOUSE
Burning or destroying, punishment....4430
Entry with intent to commit murder, rape or robbery....4438
—with intent to commit other crime....4439

STRAW
Setting fire to, punishment.4434, 4435

STRAW STACK
Burning, punishment....4431

STREETS
See also **"Cities and Towns"**
Consent to use of..Va. Const., § 124
Sale of rights in by city or town....Va. Const., § 125
Franchise to use, how granted, 3016-3022
Use of by public service corporation, persons, etc., without consent prohibited....3014, 3882
—compensation to person damaged....3882
—penalty....3024
Awnings, fire escapes and other projections over, ordinance permitting....3015
Unauthorized use of, penalty....3024
Cities and towns, powers over...3030
Grading by city or town...3036-3039
—notice to abutting land owner.3037
—assessment of damages....3038
—appeal, trial of....3038
—judgment for damages....3039
Opening through land belonging to State, Confederate Memorial Association, etc....3041
Opening or widening, acquisition of adjoining property....3065
Local assessment for improvement of....3067-3071
—Va. Const., § 170
Bond issue by cities and towns for....3079
Telegraph and telephone lines on....4035
—consent of council....4037, 4038
—regulations of use of...4037, 4038
Pipes or conduits in by public utility corporation....4059
Drinking ardent spirits in, punishment....4631
Railroad train obstructing, penalty....4734
Leading or driving bear along, penalty....4737
Shooting in, penalty....4738
Driving vehicles on at excessive speed....4741
Driving animals on at dangerous rate of speed....4741
Horse racing on....4741
Leaving sick or disabled animal in, penalty....4743
Dedication of by recording plat of city or town lots....5219
—alteration or vacation of, 5220, 5221, 5222

Digitized by Google

Sec.

STREET RAILWAY COMPANIES
See also "Corporations"; "Electric Railways"; "Public Service Corporations"
Free transportation to firemen and policemen....Va. Const., § 161
Use of streets by.....3014, 3882
—Va. Const., § 124
As public service corporation...3881
Drinking ardent spirits in street car, punishment.....4631

STRIPPINGS
See "Milk"

STRYCHNINE
Sale, label.....1691

STUDENTS
See also "Education"
Of particular institutions, see the titles of the respective institutions
Residence for purpose of voting 82
—Va. Const., § 24
Minor, giving credit to, penalty.4707

SUBCONTRACTORS
Definition 6426
Lien of, perfecting 6428
—memorandum, affidavit.....6428
—notice 6428
—priority over assignments by contractor 6435
—priority over contractor's lien.6437

SUBORNATION OF PERJURY
Punishment 4494
—disqualification from office....4495
—disqualification as juror.....4495
Sufficiency of indictment.....4869

SUBPOENAS
See also "Process"
For witnesses.....6217, 6218
—before justices.....6021
—in criminal cases.....4969
—in election contest.....9, 261
Subpoena duces tecum.....6219
—in criminal cases.....4969
In injunction, endorsement on...6324

SUBPOENA DUCES TECUM
See also "Process"
Issuance 6219, 6220
In criminal cases.....4969

SUBROGATION
Party paying bill of exchange for honor 5737
To lien of judgment, limitation on enforcement of 6475

SUBSCRIPTION
To Corporate Stock, see "Corporations"

SUFFOLK
Commonwealth's attorney, fees..3505
Circuit court.....5887

SUFFRAGE
Right of.....Va. Const., § 6

SUGGESTION
For substitution of supposed decedent in action by or against administrator 5367
Garnishment on.....6509

SUICIDE
Defense to action on life insurance policy.....4228
Not to work corruption of blood or forfeiture of estate.....4762

SUITS
See "Actions and Suits"

SUMMER NORMAL SCHOOLS
See also "Education"; "Normal Schools"; State Normal Schools"
Plans for approved or amended by State Board of Education.. 613

Sec.

SUMMER SCHOOLS
See also "Education"
Establishment and maintenance. 695
Purpose of..... 696
How conducted..... 697
Terms and regulations..... ... 698

SUMMONS
See "Process"

SUNDAY
Adjournment of court Saturday to Monday..... 5
Adjournment proceedings of officer Saturday to Monday..... 5
Proceedings set for day of month falling on to take place on next day..... 5
Service of process on.....2823
Violations of laws relating to by railroads, concurrent jurisdiction of police justices and corporation courts 3094
—civil and police justice with corporation court.....3102
Catching oysters, clams or crabs on prohibited.....3251
Fishing with net in Potomac River, prohibited 3301
Hunting on, prohibited.....3356
Laboring, employing servants or apprentices in labor on, punishment 4570
—exceptions 4570, 4571
Transportation by railroads on..4572
—punishment 4574
Definition 4573
Steamboat, loading or unloading on 4575
Carrying dangerous weapon on, punishment 4578
Coroner's inquest may be held on 4817
Term of convict expiring on....5046
Negotiable instrument falling due on.....5647
—presentment for acceptance...5708
—day for act falling on.....5755
Issuance or execution of attachments on.....6392

SUPERINTENDENTS
Hospitals, almshouses, etc., duties, reports.....1576
Of fair grounds or cemetery, powers of constable.....2820
Of hatcheries, employed by Commission of Fisheries.....3154
—arrests by.....3155
—authority to compromise.....3156
—not to have interest in fisheries 3158

SUPERINTENDENT OF GROUNDS AND PUBLIC BUILDINGS
Flag, duty with respect to..... 33
Register of Land Office shall be 402
Duties 402-410
Salary 402, 3439
Fees 402
Appointment and control of employees 402
When to take inventory of property in Governor's house..... 404
Purchase of furniture for Capitol and Library building..... 403
Contract for water..... 406
Possession of Governor's house, when to take..... 404
To keep buildings in order..... 407
To supervise lighting and heating at Capitol..... 408
—payment for fuel..... 408
When not to permit use of Senate chamber and hall of House 409
Control of Capitol Square..... 410
—expense of..... 410

Digitized by Google

Sec.

SUPERINTENDENT OF GROUNDS AND PUBLIC BUILDINGS—Con.
Keys of Capitol and charge of rooms 410
Furniture for Governor's house, purchase of..... 405
—sale of..... 405
To provide offices for State Highway Commission.....1966

SUPERINTENDENT OF PENITENTIARY
See **"Penitentiary"**

SUPERINTENDENT OF THE POOR
See also **"Poor"**
Appointment of..... 126
Term 126
Qualification of as district school trustee 637
Feeble-minded, commitment to custody of.....1080
Qualification, oath.....2696
Vacancy for failure to qualify..2697
Bond 2696, 2698
Not to hold other office.....2702
—office vacated thereby.....2702
Not to be interested in contract with counties.....2707
Supervisors to recommend for appointment 2716
Audit of accounts of by supervisors 2719
Duties 2794
Receipt, disbursement, account of funds.....2795, 2797
Suits by or against.....2797
Annual report.....2798
Salary 2799
Application for conservator of peace at poorhouse.....2807

SUPERINTENDENT OF PUBLIC INSTRUCTION
See also **"Education"; "State Board of Education"**
Oath taken by, where recorded.. 277
Election 118, 621
—Va Const., § 131
—certificate of.....191, 192
—contest of..... 264
— —how determined..... 266
Term 118, 621
Qualification 621
Salary and expenses.....621, 3442
Vacancy 329, 331, 621
—Va. Const., § 131
Oath 621
Bond 325
—submission to Attorney General 226
—new or additional, when required 327
—where filed..... 328
—vacancy for failure to give... 329
Removal from office..... 330
Business hours..... 337
Proceedings, vouchers..... 338
Clerks 225, 608
—bond of..... 325
— —submission of to Attorney General 326
—new or additional, when required 327
—where filed..... 328
—vacancy in office if bond not given and approved..... 329
—how vacancy filled..... 329
—salary 608
—exempt from jury service.....5985
Annual report, printing and distribution of..... 393
—editing of..... 393
—report on retired teachers' fund included in..... 795

Sec.

SUPERINTENDENT OF PUBLIC INSTRUCTION—Con.
—annual reports of State educational institutions included in. 986
State Accountant to devise system of accounting for.....552, 554
—mandamus to compel adoption. 555
Inspection of accounts of....557, 558
—duty and penalty..... 558
Duties 608, 623
—Va. Const., §131
Administration of school system by 595
President of State Board of Education 600, 623
—Va. Const., § 131
Member of State Board of Education 596
—Va. Const., § 130
—of governing board of institution receiving appropriation from State..... 622
—of visitors of University of Virginia 807
—of visitors of Virginia Military Institute 835
—of visitors of Virginia Polytechnic Institute..... 359
—of Virginia Normal School Board 941
—of board of Virginia Normal and Industrial Institute..... 948
—of board of review, appeal from proceedings of State Board of Dental Examiners revoking license 1651
Certificate of oath of division superintendent furnished to..... 625
—record of..... 625
Report to by county school board, annual..... 644
—by Auditor of amount applicable to school purposes....746, 749
—of compared warrants..... 748
—of boundaries of school districts in cities, recordation.... 776
—by Hampton Normal and Agricultural Institute..... 930
—by Virginia Polytechnic Institute 930
—by visitors of Virginia Normal and Industrial Institute..... 951
—by State educational institutions 986
Number or name of school districts recorded in office of.... 667
Nomination of inspectors..... 610
Appeals from decisions of..... 613
—form of..... 613
Certification by of claims payable from literary fund..... 615
Plans of for apportionment of school funds, approved by State Board of Education..... 616
—transmission of..... 753
Contingent expenses of office of. 616
—examination of accounts for.. 616
—warrants for payment..... 616
To furnish forms for oath by trustees 634
—for school census..... 653
—for annual report of district board 664
—of teachers' contract..... 690
—for treasurers' report on school levies 727
—of application for restoration to retired teachers' list..... 803
Supervision of summer schools, 697, 698
Testing sight and hearing of pupils 724
Approval of plans for school building and loans for..... 759
—of issue of school bonds..... 769

Digitized by Google

Sec.
SUPERINTENDENT OF PUBLIC INSTRUCTION—Con.
Conference with Governor, county demonstration work..... 925
Salary, professors, teachers, Virginia Normal and Industrial Institute, supplementing 966
Use of funds for normal instruction among colored teachers.. 967
Board of Medical Examiners, copy of records of furnished to....1611
Exempt from jury service.....5985
Venue of actions against.....6049
—court in which brought.....6051

SUPERINTENDENT OF PUBLIC PRINTING
Election of by General Assembly 323
—time of..... 323
Term 324
When to qualify..... 324
Bond of..... 325
—submission of to Attorney General 326
—new or additional..... 327
—effect of failure to give..... 327
—where filed.....328
Salary 3438
Contingent expenses.....3438
Vacancy in office if bond not given or oath not taken..... 329
Removal from office..... 330
Vacancy in office, how filled, 122, 329, 331
Record of oath taken by 277
Annual report of to Governor.... 396
Books and transactions of investigated by Committee on Printing 397
Clerks, salaries.....3438
To have supervision and control of public printing and binding. 379
Oath of..... 380
Penalty for being interested in State contracts 380
Books to be kept by..... 381
—open to inspection..... 381
Record of official acts..... 381
Procedure in awarding contracts for public printing..... 382
To record bond and contract of contractor for public printing, 382, 383
Appeal of bidder for contract for public printing..... 382
—notice of..... 382
How contracts for paper awarded 383
Appeal of bidder for contract to furnish paper..... 383
To supply stationery..... 384
Proclamations and advertisements by..... 384
Approval of accounts by..... 385
Printing for General Assembly.. 386
Printing of House and Senate Journals and documents..... 386
How bills and joint resolutions printed 387
—form of..... 387
Printing and distribution Acts of Assembly 388
Copies, bills, calendars, etc., furnished 389
—fees and costs for..... 390
—report of..... 391
Reports of heads of departments furnished to..... 393
—printing and distribution of... 393
Contracts for printing reports to provide for additional copies.. 393
To employ assistant..... 398
—salary 398
Messenger, salary..... 400

Sec.
SUPERINTENDENT OF PUBLIC PRINTING—Con.
Contracts for printing Supreme Court reports..... 394
Duty when contractor has failed to comply with contract..... 395
To supervise printing and binding for Legislative Reference Bureau 580
Forms for commitment of feeble-minded persons.....1039
To furnish Board of Health with blanks and forms.. 1583
Printing for Board of Charities and Corrections.... 1901
Annual reports of Treasurer, Auditor and Second Auditor delivered to.....2202
To furnish forms for pensions..2659
—printing for.....2659
Supervision of printing for State Corporation Commission.....3750
Printing reports of condition of works, improvements, etc., in which State has interest.....3773
Printing for Bureau of Insurance 4172

SUPERINTENDENT OF ROADS
See "Counties"; "Roads"

SUPERINTENDENT OF SCHOOLS
See "Division Superintendent of Schools"; "Education"; "Superintendent of Public Instruction"

SUPERINTENDENTS OF STATE HOSPITALS
See "Insane Hospitals"; "State Hospitals"

SUPERINTENDENTS OF STATE INSTITUTIONS
See "State Institutions"

SUPERINTENDENT OF WEIGHTS AND MEASURES
Register of Land Office to be...1465
Verification, sealing by....1468, 1477
Neglect of duty, penalty.....1482
Fees 1481

SUPERSEDEAS
See also "Appeals"; "Writs of Error"
To judgment in proceeding on caveat against grant 449
In proceeding to correct erroneous assessment of taxes....2391
With writ of error in proceeding for removal of officer.....2706
Appeals from order for levy by supervisors 2762
In proceeding forming city of first class.....2912
Order on application by city or town for leave to erect dam...3960
Proceeding for enforcement of forfeitures 3376
On appeal from order of State Corporation Commission.....3734
—Va. Const., Cl. e, § 156
On writ of error in criminal cases 4935, 4936
Jurisdiction of Supreme Court of Appeals 5865
To courts of city of Richmond..5929
To court of law and chancery of city of Norfolk 5938
To court of law and equity of Roanoke 5950
Change of party by death or otherwise pending, judgment..6167
Bill of exceptions.....6252
—certificate in lieu of.....6253
When motion for new trial unnecessary 6254

Digitized by Google

Sec.

SUPERSEDEAS—Con.
Petition for....6336, 6337
Award of....6349
Bond....6351-6353
—how payable....287
Limitation....6355, 6356
To execution, repayment to debtor....6495

SUPERVISORS
See **"Board of Supervisors"**

SUPPLEMENTAL BILL
See **"Equity"**
Filing in clerk's office....6035

SUPREME COURT OF APPEALS
How constituted....5842
—Va. Const., § 88
Attorney General to represent State in....376
Jail of....2868
List of persons licensed to practice law certified to....3411
—spread on records....3411
Summoning to try appeals, habeas corpus proceedings....5858
Business of at Richmond....5867
—at Wytheville....5868
—at Staunton....5869
Transfer of cases....5871
Docket....6350, 6361
Costs in, who to recover....3528
—in proceeding to annex territory to city or town....2961
—in criminal cases....4938

Clerks
Appointment....5870
Number....3378
Term....3378
Removal....3378
Deputies, appointment, removal..3379
Not to act as counsel....3380
Vacancy, how filled....3331
Successors, appointment....3382
Office, examination of....3383
—where kept....3385
Bond....3384
—where recorded....3384
—where taken....5870
—petition of surety for relief...5771
—new or additional, order requiring....280
— —to whom certified....280
— —in vacation....280
Salaries....3465
Report to General Assembly....3405
—penalty for failure to make...3106
Fees, general provisions...3484, 3486
—in chancery cases....3485
Fee book....3494
Summons on writ of error in criminal case....4936
Costs taxed on writ of error in criminal case....4938
Issuing order for publication of process....6073
Summons....6350
—endorsement on of bond required....6352
Records on appeals, preparation and printing....6357-6360
—manuscript, destruction....6371
—binding....6371
Printing record, cost of paid or secured....3486
—notice to appellant....3486
—dismissal for failure to pay...3486
—payment into treasury....3486
Advertising for bids for printing....6358
—what bids to state....6359
—awarding contracts....6360
Dockets, making out....6361
Transmitting decisions to lower courts....6367, 6372
—postage....6388

Sec.

SUPREME COURT OF APPEALS—Con.
Duties respecting order books, dockets, etc., of district courts.6370
Appeal in proceeding to correct assessment of mineral land, notice of to State Corporation Commission....2240
Of special court....5874
Furnishing copies of opinions to reporter....5883

Decisions and Reports
Number of judges assenting to, Va. Const., § 88
Opinions to be written, Va. Const., § 90
In cause docketed at other place of session....5871
Decisions, certifying....5871
—of special court....5875
—of special session....5886
—when lower court has ceased to exist....5974
Provisions applying to all courts.6373
Entered in lower court....6369, 6372
Certifying cost of mailing....6368
Directing destruction of manuscript records....6371
Rehearing and review....6372
Rules for....6363
Evidence in any bill of exception considered....6364
Affirming or reversing....6365
—when final judgment entered..6365
Constitutional question....6365
For damages....6366
Transmission to lower court, 6367, 6368, 6372
Decisions on appeals from State Corporation Commission....3734
—Va. Const., cls. f., g., § 156
—in contempt proceedings....3728
On writ of error in criminal case....4937
—how certified and entered....4939
Reports, custody and distribution of....347
—printing....394
Reporter, duties, etc....5879-5883

Judges
How chosen....Va. Const., § 91
Qualifications....Va. Const., § 91
Terms....Va. Const., § 91
Not to practice law or hold other office....Va. Const., § 105
Number....5862
—Va. Const., § 88
Quorum....5862
—Va. Const., § 88
To reside at seat of government.5862
Temporary vacancy, how filled..6365
—Va. Const., § 88
Retirement of....3464
Salaries....3463
—how paid....Va. Const., § 103
—upon retirement....3464
Mileage....3467
State reports furnished to....347
May use State Library....366
Allowance of bail by, 4829, 4831, 4832
Certiorari to diminish record awarded by....4933
Petition for writ of error, presentation to....4934
Petition for appeal presented to.6347
—endorsement on....6347
—rejection....6348
—allowance of....6349
—bonds....6351-6353

Jurisdiction, Powers and Procedure
Jurisdiction, general provisions, 5864, 5865, 6336, 6337
—Va. Const., § 88

Digitized by Google

Sec.

SUPREME COURT OF APPEALS—Con.
Change of by General Assembly, Va. Const., § 88
Habeas corpus proceedings, 5858, 5859, 5865
—Va. Const., § 88
Mandamus 5864
—Va. Const., § 88
—to State Corporation Commission .....Va. Const., cl. d., § 156
How heard and determined.....5837
—where issued and tried.....5872
—to compel adoption of system of accounting devised by State Accountant 555
—to compel city or town to carry out terms of order annexing territory.....2965
Prohibition 5864
—Va. Const., § 88
—to State Corporation Commission .....Va. Const., cl. d., § 156
—how heard and determined....5837
—where issued and tried.....5872
—to compel compliance with order annexing territory to city or town.....2965
Injunction, awarding, enlarging, reinstating 6317, 6320
Elections or appointments by, vote for.....5962
—librarian of Law Library..... 360
—clerks 3381
— —to fill vacancies.....3382
— —successors 3382
— —deputies, consent to.....3379
—examiners of clerk's office.....3383
—Board of Bar Examiners.....3410
Granting certificate to practice law to lawyer from another State 3409
Revocation or suspension of license of attorneys.....3424
Prescribing forms of writs and making regulations for courts.5960
—system of rules of practice...5960
—system of pleading.....5960
—forms of process.....5960
—altering forms of writs.....6054
Petition for appeal, presentment 6347
—endorsement on 6347
—rejection 6348
—allowance 6349
Bond of appellants or petitioners 6351-6353
Dismissal of appeal for failure to indemnify surety 6353
Process, issuance 6350
—service by publication 6073
Records for appeals, rules for, court may make 6343
—unnecessarily copied, costs....6344
—on former appeal, right to inspect 6345
—certiorari to complete.....6345
Dismissal of appeals, etc., because not within time specified.6355
—when final 6356
Hearing case out of turn.....6362
Change of parties pending appeal, how judgment or decree entered 6167
Appeal to, from judgment against petitioner denied registration 103
—judgment on caveat against land warrant 449
—feeble-minded, person adjudged 1080
—drainage district, proceeding establishing 1748, 1756

Sec.

SUPREME COURT OF APPEALS—Con.
— —by railroad company 1767
— —order authorizing issue of additional bonds 1777
—from order of circuit court as to railway or tramway crossing highway 2007
—proceedings to correct assessment of land for taxation.2237, 2240
—order decreasing merchants' license tax 2366
—proceedings to correct erroneous assessment of taxes..2391
—contest of application to purchase delinquent land sold for taxes 2495
—proceeding for removal of officer 2706
—approval of title to real estate purchased by county or school board 2709
—proceeding for discharge of county or city treasurer.....2792
—from order of court on petition to incorporate town 2884
—from proceeding forming city of first class 2912
—proceeding to annex territory to city or town 2961
—order on application by city or town for leave to erect dam...3060
—from appraisal of stock, stockholder dissenting from consolidation 3822
—corporation condemning property of other corporation.....3833
—proceedings by public service corporation for crossing or changing course of county road 3885
—judgment refusing or requiring excessive bail 4930
—judgment on petition to establish boundary to real estate..5490
—verdict reduced and accepted under protest 6335
—from orders, &c., of State Corporation Commission 3734, 3735
— —Va. Const., cls. d-g, § 156
— —in contempt proceedings...3728
— —from assessments for taxation of corporations 2392
— —Va. Const., § 180
— —proceeding to forfeit charter of corporation 3831
— —proceeding against corporation failing to file list of officers and directors 3854
— —proceeding against corporation failing to appoint attorney for service of process 3854
— —public service corporation crossing works of another....3884
— —on complaint against public service corporation 3902
— —revoking license of insurance company, guaranty company, etc. 4180
— —by insurance company from assessment, expense of Bureau of Insurance 4195
— —by insurance company, order suspending license 4223
— —by insurance company, order imposing fine or penalty on 4234
— —by life insurance company, revocation of license by for deficiency of funds 4250
— —refusal to issue license to foreign fraternal benefit society 4284

Digitized by Google

Sec.
SUPREME COURT OF APPEALS—Con.
—by fire insurance company, revocation of license 4307
Writs of error in criminal cases.4931
—presentation of petition for...4934
—procedure on 4935, 4938
—when allowed 4935
—to operate as supersedeas.....4935
—summons and supersedeas....4936
—how docketed and heard.....4936
—application to of statutes relating to writs of error in civil cases 4938
—where tried 5870
Certiorari to diminish record in criminal case 4933
Allowance of bail by..4829, 4831, 4832
Writs of error in contempt proceedings 4932

Law Library

Separate from State library..... 360
Establishment, branches..... 368
Additions to 358, 369
Regulations 370
Who may use 371, 576, 5878
Appointment of librarian and employees 360, 368, 5878
—Va. Const., § 132
Management of.....360, 368, 5878
—Va. Const., § 132
Publications received in exchange placed in 347
Supreme Court reports placed in 347
Acts of Assembly furnished to.. 388
Fees for bar examination used for 3417

Officers

Appointment, duties, compensation, terms.....Va. Const., § 92
President 5862
—absent, who to preside.....5863
—calling special session of court 5885
—summoning court to try appeal, habeas corpus proceedings....5858
—salary 3463
— —upon retirement 3464
Reporter, appointment, compensation 5879
—duties 5880
—copy for reports 5880
—correction of proof sheets....5881
—removal 5882
—clerks to deliver opinions to..5883
—records furnished to.....6357
—salary 3465, 5879
—State reports furnished to.... 347
—may use State library..... 366
—Acts of Assembly furnished to. 388
—printing reports 394
Stenographer, to be secretary and treasurer of Board of Bar Examiners 3412
—salary 3465
Tipstaff and crier, appointment, removal 5877
—compensation 5877
—exempt from jury service.....5985

Special Court

When authorized, composition, Va. Const., § 89
Formation 5873
Place of session 5873
Judges 5873
—salaries 5876
Clerk 5874
Decisions, how certified and executed 5875
Tipstaff and crier 5877
Place of session of, changing, 5967, 5968

Sec.
SUPREME COURT OF APPEALS—Con.
—acts at other places confirmed 5969

Terms and Sessions

Sessions 5866
—Va. Const., § 93
Time of 5866
Special sessions 5584-5886
Place of holding 5866
—change of 5967, 5968
—acts at other places confirmed 5969
Effect of failure to open on day appointed 5970

SUPREME COURT OF THE UNITED STATES
Attorney General to represent State of Virginia in..... 376

SURETIES
Set-off in joint suit against principal and surety 3144
Compromise with, credit 5763
Relief of, new bond on surety's petition 5771
—on bonds of State depositaries.5772
—failure to give new bond, effect 5773
—requiring creditor to sue.....5774
— —effect of creditor's failure to sue 5775
—from bonds given under decree or order of court.....5776
—remedy against principal.....5777
Confession of judgment by, effect of 5778
Suit against, effect of failure of principal to defend.....5778
On bond, liability limited, judgment against 6261
Execution against, when forthcoming bond not taken..6524, 6525
Right of principal to claim homestead exemption against.6548
Surety company as 282
—expenses of bonds 283
—estoppel of surety company... 284
—signing by attorney in fact.... 287
Trust company as 4148
Guaranty, fidelity and security companies as, on official bonds 4346
—rights and liabilities 4346
—when accepted 4350
Railroad corporation becoming surety of bonds of other corporations 3828
On bonds taken by courts and officers, limitation of liability on 279
—when new or additional bond is given 281
—of clerks 325
—of officers 325, 2698, 2699
— —collecting taxes or public money, judgment 2514
— —proceedings against for violations of revenue laws 2544
— —liability for officer's failing to collect or account for fines.2554
— —judgment against for officer's failure to make return of money collected 2835, 6032, 6034
— —action against by State Corporation Commission for fine for neglect of duty 3747
— —limitation on motion against for failure of officer to return execution 5816
— —proceedings against for officer's failure to make return of execution issued by justice.6033

Digitized by Google

Sec.

SURETIES—Con.
—of State Treasurer, liability for defaults of first clerk..... 342
— —liability for retired teachers' fund 795
— —liability for donations to University of Virginia..... 826
—of Second Auditor, liability for defaults of first clerk..... 342
— —liability for retired teachers' fund 795
—of State librarian 348
—of doorkeeper 348
—of contractor for public printing 382
— —for paper 383
—of surveyor, liability for improper delivery of plat 441
—of escheator, effect of increasing or reducing, penalty..... 491
—of contractor for purchase or lease of gas, oil or mineral on public land 531
—of treasurer of Virginia Military Institute 840
—of treasurer of Virginia Normal and Industrial Institute.. 950
—of voluntary patient, insane hospital 1031
—of custodian of insane person, 1040, 1042, 1043
—of commission merchant.....1259
—of tobacco sampler 1352
—of owner of house of prostitution 1527
—filed with petition for establishment of drainage district..1738
—of treasurers, liability for State money for roads 2106
— —liability for funds received on sale of bonds issued for improvement of roads 2116
— —liability for funds received for road bonds 2124
— —proceedings against 2432
— —judgement, execution, lien..2433
— —liability for failure to perform duty as to delinquent land 2503
— —liability for proceeds of tax sales 2471
— —liability for treasurer's failure to pay warrants 2787
— —liability for treasurer's violation of law 2790
—of Secretary of Commonwealth 2134
—of State depository 2160
—of examiner of records.....2219
—of assessor of land for taxation 2241
—of person doing business without license 2369
—of person arrested for violation of license or revenue laws 2395
—of sheriff, liability for delinquent taxes collected by.....2429
— —liability for officers' failure to account for fee bills.....3499
— —liability when sheriff acting as committee of convict's estate 5003
—of constable, liability for delinquent taxes collected.....2429
— —liability for failure to account for fee bills 3499
— —liability for failure to pay over money collected on claim.6034
—of sergeant, liability for delinquent taxes collected.....2429

Sec.

SURETIES—Con.
— —liability when sergeant is committee of convict's estate.5003
—of sheriff, city of Richmond..2814
—of Auditor, liability 2434
— —liability for defaults of first clerk 342
—of person liable to State, motion to enforce payment.....2513
—of purchaser, land sold on execution for debt due State....2522
—of applicant for issue of new State bond or certificate when old lost 2639
—of deputy treasurer 2776
—on appeal from decision of mayor, judgment 3011
—of civil and police justice....3099
—on appeal from civil and police justice 3106
—of oyster inspector 3219
—of Commissioner of Game and Inland Fisheries 3309
—of game wardens 3322
—of claimant, proceeding for enforcement of forfeiture for violation of fish, game and oyster laws 3368
—to indemnify obligor on bond to secure costs 3520
—of clerk and bailiff, State Corporation Commission 3708
—before State Corporation Commission 3735
—of bank examiner 4121
— —clerk of 4121
—of hirer of prisoners.....4951
—of minister authorized to celebrate marriage 5079
—of person authorized to celebrate marriage 5080
—of distributees of estate of person presumed to be dead.....5365
—of personal representative, extent of liability 5389
— —judgment as prima facie evidence of liability 5389
— —defenses surety may make.5389
—of legatee or distributee.....5437
—of petitioner, quo warranto proceedings 5843
— —information in nature of...5844
— —of defendant to reopen judgment 5846
—of petitioner in habeas corpus proceeding 5850
—on appeal from justice, civil warrants 6027
—forthcoming bond.....6157
— —injunction proceedings, obtaining additional security....6325
— —on execution or distress warrant 6518
—of receiver, judicial sale, rule against 6274, 6277
—of special commissioners, judicial sale, rule against..6274, 6277
—of purchaser at judicial sale, rule against 6274, 6277
—suspending judgment on appeal 6338
—on appeal bond, indemnity to..6352
—of printer, records on appeals 6360
—of plaintiff, attachment proceedings 6384, 6385, 6406
—in attachment proceedings, 6394, 6397, 6398
—of plaintiff for capias.....6420
— —of defendant 6421
—when execution stayed.....6499

Digitized by Google

Sec.

SURETIES—Con.
—indemnifying officer in action to recover property subject to lien of judgment or execution. 6514
On recognizances 4973
—taken for insane person or minor 4975
—discharge on payment..... 4979
—discharge on surrender of principal 4982, 4983
—of person convicted for violation of game laws 3362
—on appeal from sentence of justice for contempt 4523

SURETY COMPANIES
See also **"Guaranty Companies"**
As sureties on bonds..... 282
—expense of bonds 283
—estoppel of 284
—signing by attorney in fact.... 285
—on bond of officers and clerks. 325
—on bond of contractor for public printing 382
—on bond of contractor to furnish paper 383
Refusing to become surety on bond of employee of common carrier, or cancelling bond, to give reasons therefor..... 3935
—privileged communication 3935
—penalty for failure to give.... 3935
Assessment of, proportion of expense of Bureau of Insurance. 4194
—notice of 4195
—proceeding to recover..... 4195
—appeal 4195
— —judgment on 4195
—revocation or suspension of license or certificate 4195
—report of premiums 4196
Not to engage in banking business 4240

SURF BIRDS
Unlawful hunting 3356

SURGEONS
See **"Board of Medical Examiners"; "Physicians and Surgeons"**

SURPLUS
Of fees for bar examination, disposition of 3417
Dower in, after lien or encumbrance satisfied 5119
After sale on execution, attachment or distress warrant, how disposed of 6158
Payment to execution debtor.... 6495
On sale of homestead exemption, disposition of 6533

SURPLUS FUND
Of bank 4119

SURRENDER
Of charter of corporation, Va. Const., § 154
Of insane person by custodian, 1042, 1043
Of warehouse receipt when goods attached or levied on..... 1314
By foreign corporation of certificate to do business..... 3848
Of privileges of corporation by amendment of charter... 3859, 3868
—Va. Const., § 158
Of bonds of foreign express company by State Treasurer..... 4030
Of accused by surety on recognizance 4982, 4983
Of lease by or on behalf of infant or insane person..... 5334
By life tenant, not to prejudice remainder 5443

Sec.

SURRY COUNTY
Taking terrapins, disturbing eggs, season for 3297
—forfeiture of boats, nets, etc.. 3297
Commonwealth's attorney, fees.. 3505

SURVEYS AND SURVEYORS
See also **"Coast Survey"**

Surveys
In suits to supply links in titles. 480
Of land to be condemned for schoolhouse 672
By reviewers in proceeding to establish drainage district, 1749, 1750
Of coal mines 1838, 1839
Of land sold for delinquent taxes 2480, 2481
—sold to State for taxes, when resold 2495
Of city or town 2977
—recordation 2977
To establish lines of Baylor survey 3163, 3257
—application, bond, cost..... 3163
Of oyster ground..... 3224-3226, 3257
—assigned to riparian owner... 3223
—re-establishment of Baylor survey 3163, 3257
Of bathing ground..... 3230
Of clamming or crabbing ground 3295
Of Elizabeth river 3670
By railroads, power to make... 3857
By public service corporations.. 3866
Of mine by adjoining owner.... 5288
In proceeding to establish boundaries of land 5490

County Surveys
New county 2680
—plat 2680
Disputed boundary between counties 2685
By commissioners rearranging magisterial districts, 2691, 2692, 2693
By magnetic meridian and horizontal measurement 2841
Variations certified 2841
To be promptly executed..... 2842
Meridian line to be established.. 2847
—where and how located 2848

Land Office Surveys
Location when land in possession of another 428
—endorsement, statement, etc... 428
By whom made 432
Notice of time of 433
Entry void if party fails to appear for survey 434
Variation of magnetic needle to be stated 435
—forfeiture for failure to state. 435
Chain-carriers to be sworn..... 436
How made and marked 437
Plat and certificate..... 438, 441
—examination and entry of..... 439
—penalty for delivery of to unauthorized person 441
—return of to register, receipt for 442
—copy filed with clerk of court. 443
—surveyor may take copies of.. 443
Annual return of list of surveys. 440
For one in possession who has paid taxes 457
When void 458
Register of Land Office to return defective plat to surveyor.. 463-465
Resurvey by patentee 473
—costs and damages for..... 473
—security for 474

Digitized by Google

Sec.

SURVEYS AND SURVEYORS—Con.
Resurvey to correct errors in grant 476
—caveat against 477

Surveyors
Oath or affidavit before..... 274
Entry of warrant and survey when surveyor is interested.. 427
Of land sold for delinquent taxes, 2480, 2481
—certificate, plat, report...2480, 248
Survey of boundary between counties 2685
—compensation 2685
Of land sold to State for taxes, when resold 2495
Employment of by Commission of Fisheries 3154
—of oyster ground, and to mark lines of Baylor survey.....3163
—duties 316
Of assigned oyster ground, fee..3225
To survey oyster grounds and re-establish Baylor survey, appointment 3257
Of oyster ground, unlawful to hinder or threaten 3259
—entry by 3259

County Surveyors
Appointment 126
—Va. Const., §§ 110, 112
Term 126
—Va. Const., § 112
Not to hold other office, Va. Const., § 113
Land warrant lodged with..... 420
—to give receipt for 420
Entry of location by 422
To determine priorities 423
When entry void 424
Certificate when warrant not fully satisfied by entry 425
To return copy of survey on land office warrant to clerk's office 443
—surveyor may take copies..... 443
Penalty for failure to perform duty 465
—failure to deliver books to successor 2844
—failure to produce books for examination 2845
—failure to deliver books to successor 2846
—failure to set compass by meridian line, to note variations, etc. 2849
Clerks of courts disqualified....2839
Oaths administered by 2840
Forfeiture, failure to make proper surveys 2841
—failure to promptly execute survey 2842
Books, etc., examination of, 2843, 2845
—to be kept in clerk's office....2844
—delivered to successor 2846
Record of magnetic variations..2849
Compass to be set by meridian line 2849
Fees, general provisions 3479
Mileage 3479
Fee book 3494
Verification of statement of mileage of railroads, etc., furnished by State Corporation Commission 3704
—compensation 3704
As conservator of the peace....4789
—duties, arrests by, etc.....4789
—proceedings to require recognizance of person about to commit crime 4790-4792
— —of person going armed....4795

Sec.

SURVEYS AND SURVEYORS—Con.
— —about to commit breach of peace 4796
Records, rebinding and transcribing 5980-5982
Copies of records and papers of as evidence 6197

SURVIVORSHIP
Between joint tenants, abolished 5159
—exceptions, executors, trustees 5160
—joint judgment debtors or creditors 5160
Between joint trustees 6300

SUSPENDING BOND
On appeal from State Corporation Commission 3735
—Va. Const., cl. e, § 156
Of claimant to property levied on 6156
—action on 6156
On appeal 6338

SUSPENSION
Of laws, not to be exercised, Va. Const., § 7
Of executive officers, power of Governor.....Va. Const., § 73
Of members of police and fire department of cities. Va. Const., § 120
Of citizenship 64
Of State officers.....330, 336
Of division superintendent of schools for neglect of duty... 617
Of treasurer, clerk, or other officer for failure to settle accounts 2201
County or city treasurer or collector 2791
Of town officers 3004
Of city officers by mayor.....3010
Of pilot.....3638, 3642-3644
Of Commissioner of Prohibition.4624
Of judgment in criminal case, when prohibited 4925
—petition for allowance for improvement 5491
—in habeas corpus proceeding by writ of error 5859
Of proceedings, where writ of prohibition applied for 5838
Of tolls, turnpike company failing to keep road in repair....4082
Of pupils 660, 691
Of order of State Corporation Commission pending appeal...3726
Certificate of registration of insurance agent 4225
Of license to practice embalming 1721
—to practice law.....3423, 3424
—of insurance company, 4180, 4195, 4223
—of life insurance company for deficiency of funds 4250
—of co-operative life insurance or casualty company 4270
—of fraternal benefit society....4299
—of physician for unlawfully prescribing intoxicating liquor 4598

SUSSEX COUNTY
Commonwealth's attorney, fees..3505

SWEAR
Includes affirms or affirmed.... 5

SWEARING
Profane, punishment 4568
—over telephone 4569

SWEET POTATOES
Levy or distress on 2830

Digitized by Google

Sec.

SWITCH
Tampering with, punishment, 4468, 4474
—dealth caused by, murder. 4468, 4474

SYCAMORE MILL CREEK
Obstructing navigation or passage of fish in, penalty.....4749

SYXAS ISLAND
Exemption of citizen from jury service 5985

TAGS
For fertilizers 1113

TAN-BARK
Cord, standard measure 1470

TANGIER ISLAND
Exemption of citizen from jury service 5985

TANGIER SOUND
Use of oyster scrape or dredge in, permit 3248

TAR
See also **"Inspection"; "Inspectors"**
Inspection of 1400-1402
—barrels for 1411
—owner to mark weight and tare 1415
—penalty 1417
—brand 1420
—how marked when unfit to pass 1428

TATTLERS
Unlawful hunting 3356
Shipment from State 3361

TAXATION
See also **"Commissioners of the Revenue"; "Local Board of Review"; "License Fees and Taxes"; "State Tax Board"**
Road Tax, see **"Roads"**
School Tax, see **"Education"**
See also Tax Bill in Appendix
Statute imposing, continuing, or reviving tax, enactment, Va. Const., § 50
To support church or ministry prohibited.....Va. Const., § 58
Special laws relative to prohibited.....Va. Const., § 63
Laws or ordinances, controversies involving construction of, jurisdiction of Supreme Court of Appeals.....Va. Const., § 88
Uniformity.....Va. Const., § 168
Limitation on amount of, Va. Const., § 188
Rate of.....Va. Const., § 189
Application.....Va. Const., § 189
Special tax for pensions, Va. Const., § 189
Road tax, upkeep of roads.....2117
—redemption of road bonds.....2117
—property subject to 2117
—redemption of bonds of magisterial districts 2123
State Treasurer, separate account of revenue 2193
Auditor, accounts with.....2200
Tax officers, removal from office, proceeding for 2215
Examiners of records.....2218-2224
Local boards of review.....2226-2232
Inheritance tax, exemptions from, in general 2272
Construction of terms 2304
—money 2304
—credits 2304
—capital 2304
Revenue laws, reports of violations of.....2355, 2356, 2357

Sec.

TAXATION—Con.
Acts continued in force....2398, 2399
Charters of cities not affected by chapter 96 2400
Revenue of the State, definition..2430
Local revenues, definition.....2431
Covenants to pay taxes.....5179
Appeals concerning 6336, 6337
—Va. Const., § 88

Assessment
Special laws prohibited, Va. Const., § 63
Manner of.....Va. Const., § 169
Of real estate, reassessment, Va. Const., § 171
—of railway and canal corporation.....Va. Const., § 171
Failure to assess, effect of, Va. Const., § 174
—as to bona fide purchaser of property.....Va. Const., § 174
Of railroad and canal companies, Va. Const., §§ 176-179
—relief from excessive, Va. Const., § 180
—change in method of, Va. Const., § 181
Of school taxes 752
Of road tax for redemption of bonds and improvement of roads 2117
Of rolling stock of railroads....2207
—of electric railway 2208
Of segregated property 2211
Of estates in hands of executors, administrators, trustees 2225
Of mineral lands.....2234, 2235
—Va. Const., § 172
—separate, land and minerals...2235
—proceedings to correct, 2236, 2237, 2239
— —appeal 2237
—mineral assessors.....2238, 2239
— —disagreement with commissioner of revenue, referred to court 2238
List of deeds, Register of Land Office to furnish 2242
—for commissioner of revenue..2274
Forms and instructions 2243
Of standing timber 2244
Of ground rent, rent charge....2245
Copies, disposition of 2247
Tax extended on last assessment.2251
Interrogatories and answers, filing 2261
Of real estate, when to commence 2270
—change of value of land and lots 2271
—property subject to 2271
—property exempt 2272
Land books to be shown to owners or agents 2273
Penalty for refusing information to commissioner of revenue...2273
Abstracts of grants, lists furnished by Register of Land Office 2277
Of white and colored persons, separate 2279
Of town and city lots, buildings.2280
Of land, to heirs and devisees...2287
Of land lying in different counties 2289
—new buildings on 2289
—when part sold 2291
Of land lying in different districts 2290
—new buildings on 2290
Of omitted land 2292
—liability of bona fide purchaser for 2293
— —Va. Const., § 174

Digitized by Google

Sec.

TAXATION—Con.
Forfeiture of land omitted from land book 2293
Of buildings and enclosures..... 2294
—new 2289, 2295
—repairs and additions..... 2296
—injured or destroyed 2297
Of timber land, when value reduced 2297
Of machinery and fixtures in mining or manufacturing establishment 2298
Of poll taxes 2300
—Va. Const., § 173
Of personal property..... 2300, 2312
—refusal to list..... 2306, 2314
—to whom taxed 2307
—where taxed 2307
—refusal to exhibit, penalty.... 2315
Of property taxed to other than owner, when delivered to owner 2307
Of notes, bonds, &c., held subject to order of court 2308
—funds deposited in bank..... 6310
Interrogatories to taxpayers.... 2310
Of property of corporation organized but not doing business in this State 2313
Of dogs 2318
Of property of commissioner of the revenue 2327
No books for previous year, how supplied 2331
Of omitted persons and property 2332
—tax not realized..... 2322
—forms for 2333
—limitation on..... 2334, 2335, 2338
—license, privilege and occupation taxes 2338
When final, notwithstanding omitted taxes 2336
False returns, penalty 2397
Apportionment when property partitioned 2449
—of city taxes 2494
When city of second class formed 2899
Of territory annexed to cities and towns 2958
In cities and towns..... 3025
—Va. Const., § 128

RATE

Rate .....Va. Const., § 189
School tax on real estate and tangible personal property.... 2205
Rolling stock of railroads..... 2207
Additional levy by cities and towns 2212
Territory annexed to cities and towns 2958

ASSESSORS

Not eligible as member of General Assembly.....Va. Const., § 44
Appointment 2233
Number 2233
Term 2233
Vacancy 2233
Oath 2233
Bond 2233
Assistants 2233
Of mineral lands..... 2238, 2239
—disagreement with commissioner of revenue referred to court 2238
List of grants, conveyances and land book furnished to..... 2242
Lands and lots, assessment of.. 2244
—timber 2244
—ground rents 2245

Sec.

TAXATION—Con.
Consultation 2246
Copies of assessment 2247
—disposition of 2247
—penalty for not delivering.... 2247
Correction of erroneous assessments, notice to 2248
Changes in assessment certified to 2249
Compensation, how paid 2250
In cities, duties performed by commissioners of revenue..... 2987

LISTING PERSONAL PROPERTY

When to begin 2305
Persons and property to be listed 2306, 2307
Place 2306, 2307
By whom listed 2307
Penalty for false 2325

PERSONAL PROPERTY LISTS

Personal property interrogatories, form of, oath 2254
—delivery to commissioner of revenue 2254
—return on by taxpayer 2254
—return to board of review..... 2255
—defective return, how corrected 2255
—examination 2256-2259
Relief of railroad and canal com—taxes extended from..... 2256, 2257
—commissioner to obtain answers to 2310
—failure of taxpayer to answer. 2310
—oath, signature 2310
—laid before board of review.... 2310
—with whom left in absence of taxpayer 2311
—return 2311
—refusal to answer, penalty.... 2314

CORRECTION AND REVIEW

panies from excessive levy, Va. Const., § 180
Correction..2222, 2248, 2285, 2285-2292
—by local board of review..... 2227
—by circuit or corporation court. 2227
—time for 2285
—correction or refund, 2286, 2287, 2288
—levies and local taxes..... 2289
—when relief refused..... 2290
—appeal 2291
—by State Corporation Commission 2292
Mineral lands..... 2236, 2237, 2239
—appeal 2237, 2240
Increased on application of owner 2248
Changes certified to auditor, commissioner of revenue and assessor 2249
Personal property 2263
Change of, value of land and lots 2271
When land becomes property of different owners 2285
Land assessed in wrong locality. 2288
By State Corporation Commission, correction of 2292

Capitation Taxes

Payment of as prerequisite to registration of voter, Va. Const., § 20
—as prerequisite to voting, Va. Const., § 21
—who exempt.....Va. Const., § 22
—enforcement of payment, Va. Const., § 22
List of paid, furnished by treasurer.....Va. Const., § 38
—clerk to make copies, Va. Const., § 38

Digitized by Google

Sec.

TAXATION—Con.
—posting, publishing, Va. Const., § 38
—correction.....Va. Const., § 38
—delivered to judge of election, Va. Const., § 38
—delivered to auditor, Va. Const., § 38
Levy of, lien .....Va. Const., § 173
—omitted, how assessed....116, 2420
Payment by voter 93
Assessment of 2300
—person becoming of age after February 2420
Lien on real estate.....2455
—Va. Const., § 173
List furnished when city of second class formed 2900

Collection and Refunding

Special laws prohibited, Va. Const., § 63
To be under general laws, Va. Const., § 168
Statute of limitations not to run against .....Va. Const., § 174
Payment of taxes on corporations .....Va. Const., § 179
Collection and disposition, Va. Const., § 186
On seals, Secretary of Commonwealth to collect and account for 29-30
Payment of taxes by voters, 73, 82, 83, 109
By Secretary of the Commonwealth, report.....344, 2404
Payment of tax on rolling stock of corporation.....2207
Property under control of fiduciaries and courts.....2309
Tax on dogs.....2318
Tax on funds deposited in court.2307
Transfer fees on conveyances...2348
Restraining collection.....2387
Collected by clerk, record, report, payment to Auditor, 2405, 2406
Uniform tax tickets.....2408
—delivery to taxpayer.....2409
—penalty for failure.....2409
Advertisement of date for.....2410
When taxes payable.....2410
Distress 2287, 2410, 2439
—property liable.....2439, 2441
—by treasurer.....2439, 2440
—by whom levied.....2439
—land in several counties 2442
—mortgage no bar.....2443
Interest on taxes.....2411
Delinquent taxes.....2429
Payments in advance.....2438
Leasing property for.....2439
By garnishment.....2444, 2445, 2446
—lien 2447
Rights of tenant paying... 2447
Payment by fiduciary, reimbursement from estate 2448
Apportionment when property partitioned 2449
Payment by officer selling land on execution on judgment for debt due State.....2523
Attorney employed by Auditor for 2533
Taxes to be paid in United States currency 2604
Taxes of corporations to be paid in money.....2615
Of levy for pension fund.....2663
Adjustment when new county formed 2684
Warrants received for.....2782
—taxes deducted from.....2784
Receipts given for.....2829

Sec.

TAXATION—Con.
Of county levy, when territory annexed to city or town.....2960
Penalties for non-payment, cities and towns.....3066
Tax on administration of estate of decedent, by whom paid when estate committed to sheriff 5374
Order in which paid from decedent's estate.....5390, 5391, 5395
Mandamus or prohibition from Supreme Court of Appeals in cases arising out of collection.5864
Cases involving right to collect, jurisdiction of circuit court...5890
Of tax on court funds.....6310
Homestead exemption not applicable against.....6531
—Va. Const., § 190
Exemptions from debts not to extend to.....6563
Refunding erroneously assessed taxes 2386, 2387, 2388
—on charter of corporation.....3775

COLLECTORS

Ineligible as member of General Assembly .....Va. Const., § 44
Of delinquent capitation taxes..2421
—appointment 2421
—bond 2421
—compensation 2422
—report, payment.....2422
—list furnished to.....2423
—list returned to clerk.....2425
Of delinquent taxes..... ...2429
—accounting for collections.....2429
—appointment by Auditor.....2436
—compensation 2436
—bond 2437
Leasing property for taxes.....2439
—fees 2439
Distress for taxes.....2439
—property liable.....2439
—fee to officer.....2439
Definition 2450
Action on bond of, judgment....2514
Proceeding against by Auditor for violation of revenue law..2544
To inform Auditor of violations of revenue laws.....2548
Indemnity to.....2619, 2620
Damages against, payment to sinking fund.....2622
Suspension by Governor.....2791
—successor, appointment.....2791

TREASURERS

To receive taxes.....2407
—advertisement of time and place for..... ..2410
Statement of collections.....2412
Payment into treasury.....2412
—penalty 2412
Final settlements.....2412
Delinquent, statement of by Auditor 2413
—list of delivered to Attorney General 2432
—proceedings against.....2432
—lien of judgment and execution against 2433
List of uncollectible taxes.....2414
Lists of delinquent taxes.....2414
—form 2415
—oath 2415, 2416
—by whom examined and certified 2417, 2418
—copies, to whom furnished....2417
—false, penalty.....2426
Lists forwarded to Auditor.....2427
Compensation for receiving and paying over revenues of State.2430
—funds of counties, etc.....2431
Penalty for failure to pay over revenue 2435

Digitized by Google

Sec.

TAXATION—Con.

COUPONS TENDERED OR RECEIVED FOR TAXES

How to be received, conditions..2596
Account of.....2605
—penalty for failure to keep...2606
Fraudulent use of coupons.....2607
Record of coupons tendered.....2608
Possession of coupons tendered..2609
Tendering same coupons twice, penalty 2610
Penalty on officer receiving.....2611

Delinquent Taxes

To whom paid.....2419
Report by clerk of collections..2419
—payment by clerk..... 2419
Capitation taxes 2421-2425
Lists to Auditor, how forwarded 2427
Real estate, recording and indexing 2428
Collection of.....2429
Publication of lists.....2429
Collectors 2436
Sales for..... 2451-2469
Lien on real estate.....2454, 2457
—capitation taxes.....2455
— —Va. Const., § 173
Petition to ascertain taxes due..2456
Town taxes, sale of real estate for 2457
—redemption 2458
Payment, report of.....2465, 2466
List, correction of. 2473
City taxes on real estate.....2494
Real estate sold for, not liable for taxes and levies.....2499

LISTS

Treasurers to make.....2414
Form 2415
Oath 2415, 2416
By whom examined and certified 2417, 2418
Copies, to whom furnished.....2417
Preservation 2417
False, penalty.....2426
To Auditor, how forwarded.....2427
Publication of.....2429
Payments endorsed on.....2466
Correction of.....2473

In Cities and Towns

To establish tuberculosis sanatorium 1510
Assessment 2280, 3025
—Va. Const., §§ 128, 169
Correction 2389
Charters not affected by chapter 96 2490
Apportionment of city taxes, 2449, 2494
Levies paid to Auditor, account of 2500
Collection, deputies of city treasurers 2776
By cities of second class.....2907
Annexed territory.....2958
Duties of assessors performed by commissioner of revenue.....2987
Local assessments.....3067-3071
Levy 3073
—on segregated property.....3073
—additional 2212
Distress for.....3075
Delinquent lists.....3076
—how examined and allowed....3077
—copy to Auditor.....3077
Appeals in controversies concerning 6336
Exemptions not applicable against 6563

Sec.

TAXATION—Con.

Levies

Controversy concerning, jurisdiction of Supreme Court of Appeals .....Va. Const., § 88
To be under general laws, Va. Const., § 168
Limitation on amount of, Va. Const., § 188
By supervisors for fire protection 542
To reimburse county for expense of destroying diseased trees.. 892
County, to establish tuberculosis sanatorium 1510
Road tax 1986, 1987
Road tax for bonds issued for magisterial district.....2123
For pension fund.....2642
—how collected.....2643
County levy by supervisors.....2720
—for school taxes.....2721
—interest on school bonds.....2721
For sinking fund for county bonds 2741
For erection of Confederate monument by county.....2742
By supervisors to pay allowance by courts.....2758
By supervisors, appeal from.....2762
For support of poor.....2795, 2805
County levy, payment when territory annexed to city or town.2960
To pay for indexing records in clerk's office.....3398
For extension of turnpike.....4093
Controversies concerning, appeal 6336, 6337
—Va. Const., § 88

Lien

Of capitation tax...Va. Const., § 173
On property of railroad and canal companies..Va. Const., § 179
On rents.....2271
How enforced.....2271
Garnishment proceedings.....2444
Lien on real estate.....2271, 2454
—capitation tax.....2455
— —Va. Const., § 173
—assessment by town council...2457
Priority of claim for against estate of decedent.....5330

Persons and Property Liable

Property .....Va. Const., § 168
Incomes .....Va. Const., § 170
Persons .....Va. Const., § 173
On land conveyed to United States 19
On deeds to United States..... 19
On seals of State.....29, 30, 2401
—to whom paid.....2401
—when not charged.....2402
To road tax for upkeep of roads.2117
—redemption of road bonds.....2117
—for bonds issued for magisterial district.....2123
Executors, administrators, trustees, liability for taxes on estates distributed 2225
Mineral lands.....2234, 2235
—separate, land and minerals...2235
Timber, assessment.....2244
Lands and lots.....2244
Ground rent, rent charge.....2245
Real estate subject to.....2270, 2271
Personal property, liability for taxes on decedent's realty....2287
Forfeiture of land because omitted from land book.....2293
Dogs 2310
—assessment by counties.....2326
—assessment by cities or towns.2326
On suits and judicial proceedings 2401

Digitized by Google

Sec.

TAXATION—Con.
—to whom paid....2491
—when plaintiff to renew suit without payment of writ tax..6103
—appeal from denial of registration 103
Deeds, contracts, probate of wills, payment to clerks.....2403
Land sold in chancery suit, liability for taxes 2499
On seal of State Corporation Commission 3742
Branch banks....4102
—stock 4102
—deposits 4102
Bureau of Insurance, impression of seal of 4175
On recordation of act of re-entry on land 5537

SEGREGATION OF PROPERTY FOR
Power of General Assembly to provide for.....Va. Const., § 169
Segregation of property for.2205-2209
—subject to local taxation.....2205
—subject to State taxation.....2206
—rolling stock, railroads...2205-2207
— —electric railroads 2208
—intangible personal property, levy of tax on by city.....2209
— —by county for road tax.....2209
— —by town 2209
Segregated intangible personal property by city, county or town 2209
How value ascertained and taxes extended 2211

INCOME TAX
Income taxes.....Va. Const., § 170
Deductions for adopted children as for natural children.....2303
Tax and returns, how kept.....2342
—publicity forbidden.....2343
—who may inspect.....2343, 2344

CORPORATIONS
Act surrendering powers of State prohibited..Va. Const., § 64
Stock of trust and security company and incorporated banks, Va. Const., § 182
Franchises ....Va. Const., §§ 170, 178
—of railroad and canal companies ....Va. Const., § 177
—shares of stock not to be taxed, when ....Va. Const., § 170
Rolling stock of railroads..2205-2207
—electric railway....2208
On charters, no recovery of from State 2583
Building and loan association, exemption from franchise tax.4168

PROPERTY EXEMPT
Exemption, special laws prohibited ....Va. Const., § 63
Exemptions ....Va. Const., § 183
Bonds issued by drainage district 1774
Inheritance tax, exemptions from 2272
What real estate is exempt from 2272, 2499
—buildings, wharves, docks, terminals 2272
Personal property....2391
Obligations issued by State....2391
County, district and municipal bonds, may be exempt from...2302
State bonds....2587
Qualification of personal representative, when deceased a Confederate pensioner....2616
Building and loan association, from franchise tax....4168
Bonds deposited with Treasurer by insurance companies....4211

Sec.

TAXATION—Con.
Funds of fraternal benefit society 4303

School Taxes
School tax.....Va. Const., § 135
—in counties, cities, towns, districts .....Va. Const., § 136
Estimates for....661, 740
Levy of.... 739
—in cities.... 781
Assessment 752
On real estate.... 2205
On tangible personal property...2205

State Tax Board
Composed of 2213
Chairman, secretary....2214
Assistants, compensation....2214
Duties 2215
May administer oath....2216
Process writ, order of publication, power to issue, have executed, or publish 2216
Witnesses 2216
Enforcement of orders, judgment, etc....2216
Copy of order fixing county levy and levying school tax furnished to....2217
Compiling tables showing levies by counties and districts....2217
Examiners of records, appointment 2218
—term 2218
—removal 2218

Tax Books
School taxes.... 752
Books furnished by Auditor....2254
Examination of by local board of review....2260
Levies extended in....2337
—on basis of last assessment....2251
False entries, penalty....2339
Commissioner to keep original books 2341
Copies, how disposed of....2342
—receipt for....2346
—comparison with preceding books 2345
Income taxes....2343
—who may inspect....2343, 2344
Alteration by commissioner after delivery forbidden....2354
Examination by grand jury....2397

LAND BOOKS
Entry of mineral lands....2234
Furnished to assessor....2242
Furnished by Auditor....2254
Exhibit of to taxpayer....2273
—correction of entries....2273
Form of 2279
Land owned by white and colored persons shown separately.2279
Town and city lots, buildings...2280
Changes noted in....2281
Grants entered in....2282
Notation of real estate sold for taxes 2283
Transfers on....2284
—when land divided....2285
Mistakes, in correction 2286
Owner dying intestate or devising land....2287
Land in different counties, part sold 2291
Omitted land, entered and assessed 2292, 2293
Copies 2299
—disposition of....2342
Oath to 2299
Examination of....2299
Columns added....2329
No book for previous year, how supplied 2331

Digitized by Google

Sec.

TAXATION—Con.
Extending levies in.....2337
False entry in, penalty.....2339
As evidence.....2345
Owner causing land to be entered on.....2451
—forfeiture for failure.....2452
Delinquent land book.....2469, 2472
—redemption entered on...2476, 2477
—list of real estate purchased by State recorded in.....2489
— —redemption of.....2491
—payment of taxes entered in..2492
—marking satisfied when apportionment from judicial sale paid on.....6268
Court to cause to be bound....5979

PERSONAL PROPERTY BOOKS
Furnished by Auditor.....2254
Examination of by local board of review.....2260
Copies.....2340
—disposition of.....2342
Submitted to board of review...2340
—certificate.....2340
Oath of commissioner.....2340
Form of.....2300
White and colored persons assessed separately.....2300
What to be entered therein.....2300
Poll tax.....2300
No book for previous year, how supplied.....2331
Extending levies in.....2337
False entry in, penalty.....2339
Court funds assessed, entered in.6310

Tax Sales
Personal property for rendering false list.....2328
Real estate for town taxes.....2457
Notice of.....2460
Adjournments, notice of.....2461
How land sold.....2462
Treasurer not to purchase.....2463
Receipt to purchaser.....2464
—fee.....2464
Reports to court, form.....2465
—of sales in Richmond.....2467
—oath.....2468
—confirmation.....2469
—recordation, index.....2469, 2472
—correction.....3472
Possession of purchaser.....2470
Notice to redeem.....2470
Commission of treasurer.....2471
Relief against.....2474
Surveys, where part of tract sold.....2480
—entire tract sold.....2481
Deed, clerk to make.....2482
—application, motion, notice....2482
—what to contain.....2482
—fee.....2482
—where clerk is purchaser.....2483
—to assignee of purchaser.....2484
—court may compel execution...2485
—to heirs or assigns of purchaser.....2486
—time for execution.....2487
—title conveyed by.....2488
—how defeated.....2488
—limitation on suit to cancel...2488
Purchases in name of Auditor..2489
—when made.....2489
—lists, recordation.....2489, 2490
—effect of on actions or suits...2489
—title.....2490
—resale.....2495
—acts relating to continued in effect.....2497
—fees of officers, how paid.....2501
—disposition of levies received..2502
Clerk to receive taxes when sale declared irregular.....2492

Sec.

TAXATION—Con.
Authorization by court of redemption.....2493
Suit to annul.....2488, 2498

REDEMPTION
Evidence to Auditor of payment of taxes.....2233
Real estate sold for town taxes.2458
Notice to owner to redeem.....2470
Who may redeem.....2475
Time for.....2475, 2479, 2482, 2487
Terms.....2475
Entry on delinquent land book, 2476, 2477
Payment to clerk.....2477
Purchaser demanding greater sum than allowed by law, penalty.....2478
Persons under disabilities.....2479
Purchases in name of Auditor, 2491, 2493, 2496
—by whom redeemed.....2491
—terms.....2491
Authorization by court.....2493
Property sold for city taxes....2494
Sale of unredeemed land.....2495
Notice.....2495
Disposition of levies paid for...2500

TAXATION OF COSTS
By clerk, items, etc.....3532-3536

TAZEWELL COUNTY
Commonwealth's attorney, fees..3535
Effect of prohibition law on law relating to sale of ardent spirits in.....4673

TECHNICAL SCHOOLS
General Assembly may establish, Va. Const., § 137
Appropriations to by counties, cities, towns and districts, Va. Const., § 141

TELEGRAPH LINES
Railroad company may construct and maintain.....3943

TELEGRAPH AND TELEPHONE
Railroad offices, duty of operators and dispatchers.....3945

TELEGRAPH AND TELEPHONE COMPANIES
See also **"Corporations"; "Public Service Corporation"; "State Corporation Commission"**
Employment of children as messengers.....1812
Extension of line into other State.....3367
Erection of lines parallel to railroads.....4035
Occupation of roads, streets, parks, etc.....4035
—Va. Const., § 124
—consent of supervisors or corporate authorities.....4037
—location of posts, height of wires.....4038
—compensation to owners of property.....4038
—conditions imposed by corporate authorities.....4038
Foreign, to obtain license.....4036
Right of way, contracts for....4039
—condemnation.....4040
—title acquired.....4040
—not exclusive.....4040
Repeal of laws, revocation of rights, etc., by General Assembly.....4041
Stringing wires across other works, penalty.....4049
Messages, duty to receive and transmit.....4042
—preferences as to.....4042
—delay in transmission.....4042

Digitized by Google

Sec.

TELEGRAPH AND TELEPHONE COMPANIES—Con.
—delivery 4043
—interstate 4044
—intrastate, relays out of State, burden of proof....4045
—day letters....4046
—night letters....4046
—limiting liability as to....4050
—negligence in transmission, special damages....4051
— —mental anguish....4051
— —regulations of company as to repeating....4051
—disclosure of contents of....4051
Penalties, failure to transmit message 4042
—failure to deliver messages....4042
—failure to transmit promptly..4042
—venue of action for....4047
—construction of law....4048
—stringing wires across other works 4049
—telephone companies, failure to make reports to State Corporation Commission....4057
—violations of chapter 159....4057
—failure to obey rules, orders, etc., of State Corporation Commission 4057
State Corporation Commission, control and supervision of telephone companies by....4052
—agreements between companies to be submitted to....4053
—rates established by municipal ordinance or contract subject to revision by....4054
—rules and regulations by....4055
—requiring connections between companies 4055
—inspection of lines and buildings 4055
—rates, fixing, when presumed reasonable, proof of....4056
—failing to make reports to, penalty 4057
—violating orders, rules, etc., of, penalty 4057
Telephone companies, rates, regulation by State Corporation Commission 4056
—when presumed reasonable....4056
—proof of....4056
—established by municipal ordinance, contract, etc., revision by State Corporation Commission 4054
As public utility companies....4057
Malicious injury to poles, lines, wires, etc., of 4477
Illegal connection with line, wire, cable or instrument of..4477
—copying messages....4477
—obstructing transmission and delivery of messages....4477

TELEGRAPH OPERATORS
Exempt from jury service....5985

TELEPHONE
Cursing, using indecent language over 4569

TELEPHONE COMPANIES
See **"Telegraph and Telephone Companies"**

TELEPHONE LINES
Railroad company may construct and maintain....3943
Railroad offices in cities and towns to be connected with..4011

TENANCY BY ENTIRETIES
Abolished 5159
—exception 5160

Sec.

TENANTS
See **"Landlord and Tenant"; "Lessee"; "Rent"**

TENANTS IN COMMON
Apportionment of taxes when properly partitioned....2443
Partition 5279
Action of ejectment between....5466
Liability for waste....5507
Joinder of as plaintiffs or defendants 6099
Homestead exemption, partition.6534

TENANTS FOR LIFE
Annuity table....5131
Calculating value of estate.5132, 5133
Default or surrender not to prejudice remainderman....5443
Paying for improvements, reimbursement by remainderman or reversioner 5498
Emblements 5540-5543

TENANT AT WILL
Removal of manure as waste....5510
—damages 5509, 5511

TENDER
Of gold weighed with unsealed weights, by banks....1485
Of coupons for taxes and debts due State....2596, 2607-2611
Of fees....3495
Of payment of negotiable instrument 5632
—as discharge of person secondarily liable....5682

TENEMENTS
Word land includes....cl., 10 5
Word real estate includes..cl., 10 5

TENNESSEE
Boundary between Virginia and. 12

TERM
Of Summer Normal School at Virginia Normal and Industrial Institute 959
Property may be leased for collection of taxes....2439
Apprenticeship of minor....5301

TERMS OF COURT
See also **"Courts"** and the titles of particular courts
Supreme Court of Appeals....5866
—Va. Const., § 93
Circuit courts, commencement, number, adjournment....5893
—Va. Const., § 97
—special term of....5894-5896
Corporation courts....5908, 5909
City courts....5908, 5909
Hustings courts of city of Richmond 5915
Chancery courts of city of Richmond 5920
Law and equity court of the city of Richmond....5923
Chancery court of city of Richmond 5926
Court of law and chancery of city of Norfolk....5937
Court of law and chancery of Roanoke 5949
Remarriage before end of term at which divorce decree was entered, not bigamy....4539
For trial of offenses by convicts.5055
Death of judge not to end term.5902
Failure to sit on day appointed, effect of....5970
Adjournment, recess....5959
Matters not determined before end of, to stand continued....5972
Ending during trial, result....5973
Execution issued during term...6500

Digitized by Google

Sec.

TERMS OF OFFICE
Art Commission, members..... 581
Assessors of land for taxation..223
Attorney General...Va. Const., § 107
Auditor of Public Accounts
Va. Const., § 82
Ballast masters.....3619
Bank directors.....4118
Board of Agriculture, members..1039
Board of Bar Examiners, members 3410
Board of Charities and Corrections, members.....1888
—secretary, assistant.....1893
Board of Harbor Commissioners of Norfolk, Portsmouth and Norfolk County, members.....3666
Board of Medical Examiners, 1608, 1609
Board of Pharmacy, members...1656
—president, secretary, treasurer.1657
Board of Veterinary Examiners.1274
City council, members of..2979, 3012
—cities of first class, 2920, 2921, 2922
—cities of second class.....2892
City officers....Va. Const., §§ 120-122
—city of second class 2892, 2893
Civil justice.....3112, 3115
Civil and police justice.....3097
Clerk of court of city.....3007, 3012
—Va. Const., §§ 118, 122
Commission of Fisheries.....3146
Commissioner of Agriculture and Immigration 1104
—Va. Const., § 145
Commissioners of Deeds.....2853
Commissioner of Insurance.4170, 4171
Commissioner of Labor.....1798
Commissioner of Prohibition....4623
Commissioner of revenue for city .....Va. Const., § 119
Commissioner of revenue, city of second class.....2893, 2897
Commonwealth's attorney of city 3008
—Va. Const., §§ 119, 122
Corporations, directors.....3789, 3853
—officers 3789
County and district officers, Va. Const., § 112
Dairy and Food Commissioner...1155
Division superintendent of schools 597, 605, 607, 624, 625
Educational institutions, visitors and trustees.....Va. Const., § 142
Electoral board.....Va. Const., § 31
—city of second class.....2897
Examiners of records.....2218
Fertilizer inspector.....1119
Game wardens.....3319
General receiver.....6280
Governor .....Va. Const., § 69
Hampton Normal and Agricultural Institute, curators..... 926
Harbor masters.....3680
—Warwick County.....3679, 3680
Health Commissioner.....1489
Insane hospitals, directors.....1006
—Va. Const., § 149
—Commissioner of State Hospitals 1009
— —Va. Const., § 152
—superintendent ...Va. Const., § 151
—officers .....Va. Const., § 151
Inspectors appointed by Commission of Fisheries.....3153
Inspectors of jails.....2863
Internal improvement company, proxies and directors for State.3754
Judge, Supreme Court of Appeals .....Va. Const., § 91
—of circuit courts..Va. Const., § 96
—when to commence, Va. Const., § 102

Sec.

TERMS OF OFFICE—Con.
—of city courts....Va. Const., § 99
—for new circuit.....5889
—corporation courts of Bristol, Radford and Buena Vista.....5906
—court of law and chancery of Norfolk 5934
—court of law and chancery of Roanoke 5946
Jury commissioners.....5986
Justice of the peace, in city.....3092
Justice, city of second class....2893
Justice, juvenile and domestic relations court.....1945, 1953
Legislative Reference Bureau, director 573
Lieutenant-Governor, Va. Const., § 77
Local board of health.....1492
Matron for jail.....3027
Mayor of city.....3010, 3012
—city of second class.....2892
Members, of Senate, Va. Const., § 41
—of House of Delegates, Va. Const., § 42
Notaries 2850
Officers elected under constitution, when to begin, Va. Const., § 33
Orchard inspector..... 896
Penitentiary, directors of, Va. Const., § 148
—superintendent and surgeons, Va. Const., § 148
Police justice.....3094
Savings banks, directors.....4139
School trustees.....631, 636
—for towns..... 668
—in cities..... 780
School trustee electoral board... 629
Secretary of the Commonwealth, Va. Const., § 80
Sergeant 3026
—city of second class.....2893, 2897
Sheriff, city of Richmond.....2814
Special police for watering place, manufacturing plant, etc.....4804
State Accountant..... 550
—Deputy Accountant..... 551
State Board of Agriculture and Immigration, members, Va. Const., § 143
State Board of Dental Examiners, members.....1642
State Board of Education, members 597
—Va. Const., § 130
State Board of Embalming, members 1716
—president, secretary.....1719
State Board of Examiners in Optometry, members.....1635
State Board of Examiners of Graduate Nurses, members....1703
State Board of Health, members 1486
State Corporation Commission, members 3694
—clerk 3699
—assistant clerk.....3699
—bailiff 3699
—stenographer 3699
State Geological Commission, members 523, 928
State Highway Commissioner...1963
State Treasurer....Va. Const., § 81
Superintendent of Public Instruction 621
—Va. Const., § 131
Superintendent of Roads.....2019
Superintendent of Schools, Va. Const., § 132
Supreme Court, judges, Va. Const., § 91

Digitized by Google

Sec.

TERMS OF OFFICE—Con.
—clerks 3378
Tobacco samplers 1349
Trial justice.....4988
Treasurer, city of second class..2893
—appointed by court.....2897
University of Virginia, visitors.. 807
Virginia Agricultural and Mechanical College and Polytechnic Institute, visitors..... 869
Virginia Military Institute, visitors 835
Virginia Normal School Board, visitors 941
Virginia Normal and Industrial Institute, visitors..... 948
Virginia School for Deaf and Blind, visitors..... 971
Virginia State School for Colored Deaf and Blind Children, visitors 984
William and Mary College, visitors 935

TERRAPIN
See **"Commission of Fisheries"**
Citizen interested with non-resident in catching prohibited...3253
Non-resident catching, penalty..3254
—who deemed non-resident.....3255
Closed season for catching; disturbing eggs 3297
—penalty 3297
—forfeiture of boats, nets, etc...3297
Diamond-back terrapins, size that may be taken 3298
—season for 3298
—penalty 3298

TERRITORIES
Word State includes.....Cl. 1, 5
Words United States include.Cl. 1, 5

TEXAS FEVER
See **"State Live Stock Sanitary Board"**

TEXT-BOOKS
See **"Education"**

THANKSGIVING DAY
Public holiday 5758

THEATERS
Licenses 2373
Fire escapes 3141
—penalty for failure to provide.3141
Exits, doors 3142
—inspection 3143
—penalty for failing to provide..3144

THEFT
See **"Larceny"; "Petit Larceny"**

THEOLOGICAL SEMINARIES
Gifts, devises or bequests to unincorporated 587

THREATS
Extorting money, etc., by, punishment 4406
Of violence as contempt of court 4521
Obstructing justice by, punishment 4525
Of bodily injury, in writing, punishment 4537
Influencing elector by, etc., penalty 4725
Recognizance of person making.4796

TIDEWATER VIRGINIA
What embraced in 3162

TIMBER
Sale of by State Geological Commission 530
Plans for protection of by State Forester 536
Duties and powers of State Forester 537

Sec.

TIMBER—Con.
On State reservation, penalty for damaging 544
Liability for negligent burning of 545
Adrift, proceedings to sell.....1446
Marked, destruction or conversion of 1447
Unlawful use of trade mark, 1450-1454
Branding iron, unlawful use of..1451
Counterfeiting trade mark.....1451
Defacing or obliterating trade mark 1451
Fraudulent branding 1452
Branding, change of ownership and possession 1453
Unbranded, sale of when not claimed 1454
Standing, assessment for taxation 2244
Assessment of, separately from land 2284
—transfers on land book.....2284
Sale of for taxes.....2439
Felling into rivers and creeks, etc., penalty 4746
On lands of infants or insane persons or property held in trust, suits for sale or lease, 5335-5347

TIMBER DEALERS
Brands, adoption of 1444, 1449
—recordation 1449
—certificate 1444
—fees 1445
—evidence of 1445
—fraudulent use of or defacing.1447
Who known as 1448
Branding iron 1451

TIME
For instituting proceedings, see **"Statutes of Limitation"**
Absent voter's notice of intention to vote 203
Act of Assembly, when takes effect 4
—Va. Const., § 53
—not returned by Governor, when effective.....Va. Const., § 76
—when act becomes law without Governor's signature to be noted in published act..... 4
—time approved by Governor to be noted in published act..... 4
—general appropriation act, when takes effect 4
Adjournment of General Assembly to be noted in Acts of Assembly by clerk of House of Delegates 4
Annual reports of heads of departments, when made 393
Agricultural lime, payment of damages for deficiency on analysis of 1137
Answer to be filed.....6122
Appropriations to be made payable from State treasury, Va. Const., § 186
Assessment for local improvements, notice of 3069
Assessor to deliver copies of assessment 2247
Attorney General, report of..... 377
Auditor of Public Accounts, report of funds applicable to school purposes 746
—books of to be balanced.....2190
—reports of delinquent treasurers, clerks and other officers..2201
—reports as to whether county

Digitized by Google

Sec.

TIME—Con.
and city treasurers have settled with State 2201
—to certify pension rolls to clerks 2653
—to apportion salaries of judges to counties and cities 3466
Auditor of city to file statement with Auditor of Public Accounts 2775
Automobiles, application for certificate of registration and license 2128
—termination of registration and license 2130
Averment of in indictment.....4875
Banks, may hold real estate purchased to secure debts....4114
—to make statements to State Corporation Commission 4120
—to pay fees for examination..4122
Bill of exceptions tendered to judge 6252
—certificate in lieu of 6253
Bill of review allowed.....6316
Board of Agriculture, appeal to from commissioner 1120
Board of Charities and Corrections, annual report of.....1899
Board of Crop Pest Commissioners, appeal to 875
Board of Health, appeal from order of relative to water supply 1792
Board of Pharmacy, meeting of.1668
Board of State Canvassers, meeting of 191
Board of supervisors, meetings, 2711, 2714
—to fix and order county levies.2720
—appeal from allowance by of claim against county 2759
—appeal from disallowance of claim by.....2761
—appeal from order for levy by.2762
—statement posted by 2768
—clerk of to file statement with auditor 2775
Board of Veterinary Examiners, appointment 1274
Bond, official, to be given..... 329
—new, required by court..... 280
Candidates for office, notification 154, 168
—declaration of candidacy at primary election..... 229
—at primary to file statement of expenditures 232
—statement of expenses filed by. 253
Case heard on report of commissioner in chancery 6186
Case stricken from docket for failure to prosecute, motion to reinstate 6172
Caveat, copy of delivered to clerk of the court 445
—defendant to appear 446
—judgment on delivered to land office 448, 450
—against resurvey of land grant field 478
Census by district school board. 653
—of deaf and blind persons.... 654
Chairman of political party to dispatch messenger for abstract of votes 241
Check issued by treasurer, unpresented, to be charged off..2194
Claims against State presented..2179
—allowed by order of court.....2180
Clerk of court to certify copies of list of paid poll taxes...109, 111
—Va. Const., § 38

Sec.

TIME—Con.
—to transmit list of election districts and number of voters... 150
—to retain poll books and ballots used at primary election 238
—to return list of caveats decided to land office 455
—certificate given to Governor of appeals from escheator's inquest 502
—list of conveyances furnished by to commissioner and auditor 2274
— —judgments for partition of land 2275
— —devises 2275
—payment to treasury by, taxes and money belonging to State.2405
—report by, collections of delinquent taxes 2419
—list of delinquent capitation taxes to be made by 2423
—delinquent capitation tax collector to deliver list to 2425
—report by to court, fines reported by justices 2551
—to return list of fines to auditor 2563
—to prepare lists of applications for pensions 2655
—payment into treasury by, money received from hunting licenses 3333
—licenses to hunt delivered to, by commissioner of game.....3335
— —returned by 3335
—report by, to clerk of House of Delegates 3405
—list of officers furnished to Secretary of Commonwealth by 3407
Clerks of election, appointment of 148
Code to go into effect.....6567
Commission merchant, complaint against, filed.... 1260
Commissioners of election, meeting of 182, 239
Commissioner of Game and Inland Fisheries, report of.....3314
Commissioner of Labor, appeal from rulings of 1831
Commissioner of revenue to report to Auditor of Public Accounts assessment of capitation taxes 117
-to return interrogatories to local board of review.....2231
—to take lists of persons and property 2305
—to deliver copies of books....2342
—to furnish list of licenses to auditor and clerk 2374
—report by, assessment of omitted capitation taxes.....2420
Common carriers, claims against for lost or damaged goods to be filed 3928
—when paid 3928
Computation of, when act to be done or notice given..... 5
—under negotiable instruments law 5648
Constitution and schedule to take effect,
Va. Const., Schedule, § 25
Contested election, notice of, 259, 260, 264, 266, 267
—depositions taken 259, 260
—petition presented 262
—complaint filed 267
—issue of bonds for roads, complaint filed 2115

Digitized by Google

Sec.

TIME—Con.
Convict lime board, report of....1271
County school board to file with division superintendent estimate of expenses 646
—estimate laid before..... 661
—annual meeting of 643
—annual report of 643
Coroners, appointment of.....2815
Corporation, notice to of registration fee 3748
—to forfeit charter for non-use.3831
—in which State holds stock, annual report of 3892
County, notice of petition for formation or division of.2674, 2675
—sending to clerk of House of Delegates copy of polls, &c., election for forming new.....2679
County ordinance and by-law, publication of 2743
County surveyor, appointment.. 126
Courthouse, election held for removal of.....2745
—of contested election on removal of 2754
Crabs may be taken with scrapes and dredges 3292
Dairy and Food Commissioner, annual report 1175
Dairies, creameries, cheese factories, etc., registration of....1173
—annual report of 1173
Death sentence, execution of....4940
Debt due State, notice of motion for judgment on 2513
—motion, judgment for amount paid State by mistake.....2516
—sale of real estate on execution for 2520
Decedent's estate, commissioner to receive proof of debts against 5420
—personal representative to distribute estate 5437
—motion to show cause against distribution of 5439
—administration granted on estate of person presumed to be dead 5364
Delinquent capitation tax collector, appointment of 2421
Dentistry, registration of certificate to practice.....1647
Depositions of witnesses may be taken 6225
Distress for taxes.....2439
Distress warrant, return of.....5528
District school boards, annual report of 664
—appeal from 666
Division superintendent of schools, publication of qualifications of 624
—appointment of..... 624
—term begins 625
—appeal from decision of..... 719
Drainage district, publication of process in proceeding to establish.....1738, 1740, 1745, 1755
—appeal from proceeding establishing 1748, 1756
Ejectment, time for which damages may be assessed in action of.....5481, 5493, 5495
Elections to be held 118, 140
—special elections 140
—of Governor.....Va. Const., § 70
—of Lieutenant Governor, Va. Const., § 77
—of Secretary of Commonwealth, Va. Const., § 80

Sec.

TIME—Con.
—of State Treasurer, Va. Const., § 81
—of Attorney General, Va. Const., § 107
—of county and district officers, Va. Const., § 112
—of members House of Delegates 78
— —Va. Const., § 42
—of senators 80
— —Va. Const., § 41
—to fill vacancy in office of Governor 120
— —of Lieutenant Governor.... 120
—of sheriff 123
—of sergeant 123
—of attorney for Commonwealth 123
—of county treasurer 123
—of commissioner of the revenue 123
—of clerk of the court 124
—of supervisor 127
—of constable 127
—of justice of the peace..... 127
—of overseer of the poor..... 127
—of city officers.....129, 3012
— —Va. Const., § 122
—to fill office not otherwise provided for 130
—for free school purposes..... 131
—of Superintendent of Public Instruction 621
—of Commissioner of Agriculture and Immigration 1104
—of sheriff of city of Richmond 2814
—of police justices.....3094
—of civil and police justice.....3097
Election districts, change of..144, 145
Election returns delivered to Speaker of the House of Delegates 119
Eleictors chosen 74
Electoral board, appointment of members 84
Entries of land furnished to surveyor of new county.....2681
Escheator, notice of inquest by. 493
—verdict of inquest of returned to clerk's office..... 496
—certificate of filed with Register of Land Office 503
— —publication of certificate... 504
—sale of escheated land..... 505
— —delay of in favor of foreigners 506
—report to auditor 510
—notice of motion for judgment against to recover fine for failure to perform duty 511
Examiners of records, appointment 2218
Execution, proceeds of, return by officer 651
Fee bills of officers may be delivered to officer for collection.3498
—for collection of 3500
—presented to clerk 3501
Ferries, disused, discontinued...2053
—leave to establish forfeited....2060
Fiduciaries, inventories to be filed by 5403
—accounts of sales by.....5404
—to settle accounts before commissioner 5408, 5410
—list of to be posted.....5423
Fire company, meetings of.....3124
Fines collected, report to supervisors and councils of.....2546
Forfeiture of land for breach of covenant or condition, proceedings for relief against, 5532, 5533, 5538, 5539

Digitized by Google

Sec.

TIME—Con.
Franchise, period for which granted by city or town.....3016
—Va. Const., § 125
General Assembly, sessions of... 294
—Va. Const., § 46
—extra sessions 296
Grand jurors, judge to select list of 4852
—clerk to issue venire facias for.4852
Guardian, time within which to invest funds 5325
Highway commissioner, appointment 1963
Homestead exemption may be set apart 6543
Indemnifying bond returned to clerk's office 6154
Indictment, presentment or information to be found or filed against person in jail.....4880
Infant to show cause against decree 6305
Injunction proceedings, bond to be given in 6324
Insane hospitals, meetings of directors of 1006
Inspectors of flour and other commodities, appointment 1400
Insurance companies, to report gross premiums 4196
—to file reports 4229
—to file list of agents.....4235
Interest on loans of court funds payable 6288
Jails, report to State Board of Charities by supervisors and councils of condition of.....2862
—sheriff or sergeant to report to court prisoners in 2870
Judge, term of to commence, Va. Const., § 102
—to give certificate of facts proved 6331
Judges of election, appointment. 148
Judgment, execution on....6477, 6478
—action or scire facias on..6477, 6478
Jury list to be prepared.....5988
—jury drawn 5992
Justice, payment by to clerk of fines collected 2556
—appeal from conviction before.4989
Land grant, notice of application to correct mistake in..... 475
Land warrant, located and caveat filed 429, 430
—grant to issue on..... 467
Licenses, issuance and expiration of 2373
—tax on paid into treasury.....2381
Lien of creditor filing bill to set aside fraudulent transfer.....5186
—of creditor filing petition.....5186
—of vacation decree to take effect 6307
—for labor and supplies to transportation, manufacturing, etc., companies to be filed.....6439
—of judgment against purchasers 6471
Life tenant failing to repair mill, entry by reversioner or remainderman 3592
Limitation, excluded in computing period of 5809
—because of debtor residing out of State, absconding or concealing himself 5825
Loan to State, temporary, refunding 2640
Local boards of review, appointment of 2226
Mechanic's lien, memorandum of to be filed 6427

Sec.

TIME—Con.
—to be enforced 6433
—against property of railroad company, mining or manufacturing company, etc. 6439
Mill, factory, etc., to be erected when land condemned for mill-dam or canal 3591
Mineral lands, assessment of for taxation 2234
Mines, reports to inspector.....1874
Money paid by fraud or mistake, right of action to recover accrues 5811
Motion to correct errors in same court 6333
Negotiable instrument, indorsement of, presumption 5607
—presented for payment..5633, 5634
— —at bank 5637
— —falling due on Saturday, Sunday or holiday 5647
—computation of time.....5648, 5755
—notice of dishonor of given, 5656, 5664-5666, 5669
—agreement to extend, release of party secondarily liable....5682
—allowed drawee to accept.....5698
— —retaining bill as acceptance.5699
—presentment of bill of exchange for acceptance, 5705, 5708, 5709
—protest of 5717
—bill accepted for honor, maturity 5723
— —presentment of 5730
—check presented for payment..5748
—for payment of when drawer dies 5748
Notary to give bond.....2850
Office judgment to become final.6134
—may be set aside 6135
Officers, elected under constitution, when term to commence, Va. Const., § 32
—of State, county, district, and city, when duties to begin.... 132
—appointee to fill vacancy in public office to qualify..... 139
—rule returnable in proceeding for removal of 2705
—at seat of government, payment of salaries of.....3463
—petition filed by for salary withheld for debt due State...3477
—qualification of 5978
Orchard inspector, acceptance of appointment by 898
Ordinance to become effective when not signed by mayor, Va. Const., § 123
Oysters, removal of from polluted areas or public beds....3285
Oyster planting ground, posting application for assignment of.3225
—payment of rental of.....3225
—posting list of renters 3271
—posting law as to 3271
Payment of assessments for drainage district 1771
—into treasury, omitted capitation taxes collected 2430
—into treasury of money collected by Commissioner of Insurance 4197
Penitentiary, appointment of directors of 333
—directors, superintendent and surgeon to qualify 333
—annual report of directors of..5020
Pensions paid 2661
—report to court by committee on applications for aid from local pension fund 2666

Digitized by Google

Sec.

TIME—Con.
Pharmacists, examinations of...1673
Plea in abatement to be filed....6105
Poll books and ballots to be destroyed 181
—used in primary election, delivered to clerk of court..... 238
Polls opened and closed..... 152
Poll taxes, correction of list of paid 110
Presidential electors, list of, and names of candidates furnished to Secretary of the Commonwealth 157
—by Secretary of the Commonwealth to electoral boards.... 157
Primary elections held 223
—Secretary of the Commonwealth to order 248
Prisoner may be hired to work out fine 4950
Process to be returned.....2825
Publication of order in proceeding to purchase delinquent land 2495
—notice of hearing on size of oysters that may be caught...3244
—notice of hearing on shipment of seed oysters out of State...3249
Public printing, contracts for awarded 382
Public service corporations, construction of lines and works of to be begun and completed....3871
Railroad corporation to begin and finish construction of road 3864
Receivers of courts, settlements of accounts of 6289
Recordation of encumbrance on goods and chattels when moved from county 5196
—when removed to this State...5197
Register of Land Office to furnish list of land grants 2277
—payment of fees to 2506
—to settle account with auditor 2507
—payment of funds to treasury by 2509
Registrar, appointment of 86
—qualification of 88
—to return unused ballots and list of absent voters 212
—to report list of absent voters. 214
Registration of voters 98
—of residence for 98
—application for to be preserved 98
—change of 100
—petition filed in appeal from denial of 102
Registration books delivered to judges of election 104
—purged 107
Rehearing in Supreme Court of Appeals 6372
Reports, of road superintendent.2037
—to inspector by oyster packers and shuckers 3239
Sale, of land delinquent in assessment for drainage district.1771
—of land for delinquent taxes, 2460, 2461
—of effects of deceased inmate of R. E. Lee Camp.....2672
School board, annual statement of 750
School trustees, appointment.... 631
—city, appointment 780
School trustee electoral board, appointment of member 629

Sec.

TIME—Con.
Secretary of Commonwealth to notify electoral boards of candidates for President and Vice President of United States.... 157
State accountant, term to begin 550
State Board of Accountancy, appointment of..... 566
State Board of Canvassers to convene to canvass returns from primary election..... 242
State Board of Health, appointment of members 1486
State bonds, publication, notice of redemption of 2586
—transfer on books of registration 2636
State Corporation Commission, apportionment to counties, &c., tax on rolling stock of electric railways 2208
—proceeding to correct assessment of property for taxation by 2392
—judgment of effective 3733
—appeal from order, &c., of....3734
—report of 3751
State debt, funding 2591
—extension of 2601
State educational institutions, annual reports of 986
State entomologist, appeal to court from 891
State Geological Commission, publication for bids for sale of timber by 530
—for sale or lease of gas, oil, or mineral 531
State hospital, report 1016
Superintendent of the poor, appointment 126
—to report to board of supervisors 2798
Survey, on land warrant..... 433
—when surveyor is interested... 427
—annual return of 440
—plat of returned to Register of the Land Office 442
Surveyor to file plat and certificate 438, 441, 443
Teachers' pensions, payment of.. 794
Tenancy, notice to terminate....5516
Terrapins may be taken, &c....3297
Term of confinement in jail or penitentiary to begin 5019
Tobacco samplers, appointment.1349
—to settle with warehouseman.1385
Tobacco warehouse, public, publication of notice of discontinuance of 1348
Toll-bridge, failure to complete, forfeiture of privilege 2067
Town officers to begin duties....3001
Trapping fur-bearing or hair-bearing animal on land of another 3348
Treasurers, to furnish list of paid poll taxes..... 109
—Va. Const., § 38
—report to superintendent of schools 727
—annual report 728
—State school funds paid to..... 746
—county, to settle with supervisors and school boards.....2201
—to make statement of and pay to treasury taxes collected....2412
—to prepare list of delinquent and uncollectible taxes 2414
—to make statement to board of supervisors 2780
—settlement with supervisors...2786

Digitized by Google

Sec.

TIME—Con.
—to pay to State Treasurer portion of salary of judges..3466, 3468
—State, to furnish to Auditor list of receipts and payments.....2197
—State, and Auditor to compare books 2189
Trial, of person indicted for felony 4926
—of issue out of chancery.....6246
—of inquiry of damages.....6249
Trustees, account of sales by...5404
Turnpike, appointment of viewers to examine 4078
Unlawful entry or detainer, action of to be brought.....5445
—appeal from justice 5449
University of Virginia, appointment of visitors of 807
—meeting of visitors of..... 809
—annual report of visitors of... 815
Virginia Military Institute, annual report of treasurer 841
—report of State cadet at..... 849
Virginia Normal and Industrial Institute, appointment of visitors of 948
Virginia Polytechnic Institute, appointment of visitors of.... 859
Virginia School for Deaf and Blind, appointment of visitors of 971
Voter, residence of 82
Voting, time allowed for..... 164
Warrant, issuance of duplicate..2184
—presented to county treasurer for payment 2783
Warrant for civil claim, new trial by justice 6026
Widow, waiver of jointure by...5121
—renunciation of provision for in will 5276
Will or deed declaring loan of chattel or reserving property in by way of condition, remainder, etc., to be recorded..5188
Will, appeal from order of clerk probating, appointing appraisers, executors, administrators, curators 5249
—bill in equity, filed, to impeach or establish 5259
—to be probated to affect title of purchaser from heir 5263
Witnesses, payment of fees to..3531
—entry of payment to.....3532
—fined by commissioner in chancery, appeal of 6181
Writ of election, to be posted.146, 147
Writ of error, petition for presented 6337

TIMOTHY
Seed, bushel, standard.....1470

TIPSTAFF
Of Supreme Court of Appeals....5877
—compensation 5877
—exempt from jury service.....5985
Of special court of appeals.....5877

TITLE
Of act of Assembly, purpose of act to be expressed in, Va. Const., § 52
—amendment or revival by reference to prohibited, Va. Const., § 52
Effect of failure to enter caveat against issuing grant 444
To land acquired by settlement and payment of taxes 457
—forfeited land 457
Bill in equity to supply links in. 479
Grant as evidence of 485

Sec.

TITLE—Con.
Equitable, escheat of 514
To schol property in loans from literary fund 762
Warehouseman estopped to set up 1305
Suit to remove cloud on, tax deed 2488, 2498
To land acquired by tax deed..2488
—sale to auditor for benefit of State 2490
To State bonds, transfer of.....2635
To real estate purchased by school board, approval of.....2709
—contract in writing 2709
Of purchaser of forfeited property 3373
To land in condemnation proceedings, when vested....4369, 4373
—reversion of 4379
—condemnation for mill-dam or canal 3589
— —reversion 3591
—condemnation by telegraph or telephone company of right of way 4040
To real estate, conveyance of, when deed or will necessary..5143
—gifts of, necessity for writing.5143
Gift of personal property, when writing required 5142
Of purchaser for value of goods transferred in fraud of creditors 5184
To chattels, contract reserving, form, reservation, &c. 5189
—how contract enforced.....5190
—when and how lien released...5191
Purchaser not affected by recordation of deed or contract not in chain of title.....5201
Subsequently acquired, when passed by deed 5202
Courts of land registration.....5225
—power of General Assembly to establish.....Va. Const., § 100
Torrens system of registration, acts establishing continued in force 5225
Vested by decree in suit to partition real estate 5282
To property disposed of in administration on estate of person presumed to be dead.....5366
Of purchaser of real estate from heir or devisee.....5397
Abstract and certificate of, loan of fiduciary funds 5431
Relinquished to defendant claiming for improvements 5502
To negotiable instrument, when defective 5617
Effect on of judgment in trover.6087
Suit to remove cloud on.....6248
Passing by deed of commissioner 6296
Of purchaser at judicial sale, effect of reversal of decree.....6306
To land, appeals in controversies concerning 6336, 6337
—Va. Const., § 88

TOBACCO
See also "Tobacco Samplers"
Sampling 1354
—fee 1376, 1380, 1382
—stored by commission merchant 1386
Weighing 1354
—leaf in warehouse 1355
—oath of person weighing.....1355
—itemized statements 1355
—penalty 1355
—loose, certificates for 1360

Digitized by Google

Sec.

TOBACCO—Con.
Branding 1354
—"Virginia," "Western"...1354, 1359
—penalty for false.....1358, 1359
—forfeiture for false 1389
Receipt of sampler...1356, 1357, 1361
—printing and dating 1368
—penalty for illegal.....1368
—issuing false, penalty.....4708
Account of sold 1362
—transmission to Commissioner of Agriculture 1362
—penalty 1365
Manifests 1367
Resampling 1370
Purchase or manufacture by sampler, penalty 1374
Loose, sale of, fees 1381
—sale by owner 1386
Manufactured, not subject to chapter 58 1391
Nesting, penalty 1391
Penalties for offenses relating to sale, etc. 1392
Vessel transporting, record.....1393
—penalty for failing to keep....1393
—receiving without consent of owner 1394
— —penalty 1394
Penalty for sending to wrong warehouse 1397
Unclaimed, sale 1398
Violations of law with reference to, judge to charge grand jury.1399
Furnishing to minor, punishment 4695
Inspector issuing false receipt or note, penalty 4708
Persons cutting, &c., exempt from jury service 5985

Warehouses
Establishment 1348
Discontinuance 1348
Account of tobacco sold.....1362
—transmission to Commissioner of Agriculture 1363
—penalty 1365
Delivery without order from owner, penalty 1366
Delivery of wrong tobacco, penalty 1371
Penalty for failure to deliver...1372
Charges 1376-1379
—half fees 1380
—payable before delivery.....1382
Fees, division, bonus, rebate, penalty for 1384
Insurance 1385
—liability for failure to insure..1385
—publication of 1396
When sampler to settle with proprietor 1385
Commission merchant, storage by 1386
Scales, weights 1387
Sale of unclaimed tobacco.....1397
—disposition of proceeds 1397
Penalty for sending to wrong..1397

TOBACCO HOUSE
Burning, punishment 4431

TOBACCO SAMPLERS
Appointment, term 1349
Vacancy 1350
Qualification and bond 1351
Deputies 1352
Receipts to predecessors.....1353
—liability 1353
Sampling, weighing, branding tobacco 1354, 1360
Loose tobacco, certificate for....1360
Receipts, form.....1356, 1357, 1361
—penalty for refusal to give....1361
—illegal, penalty 1369

Sec.

TOBACCO SAMPLERS—Con.
—issuing false, penalty 4708
Delivery of tobacco without order of owner 1366
—penalty 1366
Manifests furnished 1367
—form 1365
Resampling 1370
Delivering wrong tobacco, penalty 1371
Failure to deliver on demand, penalty 1372
Books kept by 1373
Forbidden to buy, stem or manufacture tobacco, penalty.....1374
Discharge from liability on delivery of tobacco 1375
Fees for sampling 1376
—rent 1377
—storage 1378
—delivery 1379
—when only half fees to be paid.1380
—sale of loose tobacco.....1381
—when paid, delivery 1382
When sampler from another warehouse to act 1383
Division of fees prohibited.....1384
—penalty 1384
When to settle with proprietors.1385
Sampling before sale 1386
Complaint against, removal.....1388
Offenses by 1392
Account of reprized packages...1396
—penalty for failure, removal..1396
Sale of unclaimed tobacco.....1398

TOKENS
See **"False Tokens"**

TOLLS
Bridges, right to demand.....2069
—on troops, &c. 2070
—may be required in advance...2071
—illegal, penalty for 2071
—refusal to pay, penalty.....2071
Ferries, may be required in advance 2071
—illegal, penalty 2071
—refusal to pay, penalty.....2071
On roads maintained by county, supervisors to have control of.2743
Of witnesses 3529
—for Commonwealth 3512
Of mills for grinding.....3594
When fixed by State Corporation Commission 3771
On canal 4020, 4021
Demanded and received by turnpike company after order of completion of road 4077
Turnpike companies, when suspended for failure to keep road in repair.....4082
—when resumed.....4082
Turnpike 4083
—on valley turnpike 4083
—rates of, to be posted.....4085
—penalty for violation of law by company 4083
—penalty for receiving more than lawful tolls 4087
—person or property passing, etc., without paying 4086
—on road within half mile of city 4089
—Northwestern turnpike road...4096
Cases involving right to collect, jurisdiction of circuit court...5890
Controversy as to right of levy, appeals 6336, 6337
—Va. Const., § 88

TOLL BRIDGES
See **"Tolls"**

Digitized by Google

Sec.

TOLL-GATES
When turnpike company may erect 4077
Proceeding for permission to change 4077
Number of, distance apart....4083
Rates posted at....4035
Within half mile of city....4089

TOMATOES
Bushel, standard....1470

TOMBS
Wilful or malicious injuries to, punishment 4553

TOOLS
See also "Burglar's Tools"
Counterfeiters' or forgers', search warrant for....4820, 4822

TORRENS SYSTEM
Acts establishing continued in force 5225

TORTIOUS CONVEYANCES
Effect of....5148

TORTS
Costs, when not allowed plaintiff 3523
Of married woman, liability of husband for....5134
Contribution between joint tort feasors 5779
Use of name or portrait of person for advertising purposes..5782
Limitation of actions for....5818
Notice of intention to rely on contributory negligence as defense to action....6092
Judgment on, interest....6259
Separate judgments against joint wrongdoers 6264
Attachment for....5372

TOWELS
For common use in public place, prohibited 1517
Hotels to furnish....1598

TOWNS
See "Cities and Towns"

TOWN HALL
Unlawful or malicious injury of, punishment 4482

TOWN HOUSE
Burning or destroying, punishment 4430

TOWN LOTS
Fraudulent sale of, scheme for, punishment 4465

TOYS
Firearms, using explosive charges, furnishing to minor.4697

TRACTION ENGINES
Use of on turnpikes treated with artificial binder....4091

TRADE
Special laws regulating prohibited ....Va. Const., § 63

TRADE-MARKS
Report of by Secretary of the Commonwealth 344
Timber dealers.1444, 1445, 1449, 1450
—adoption 1449
—registration 1449
—unlawful use, punishment, 1450, 1452
—counterfeiting 1451
—removal or defacement....1451
—impressing, change of ownership and possession....1453
Adoption 1453
Counterfeiting 1455, 1456, 1460
—punishment 1456
Registry 1457, 1458
—certificate 1458
—fee 1458

Sec.

TRADE-MARKS—Con.
—fraudulent representations in procuring 1459
Unlawful use restrained....1460
Unauthorized use, penalty....1461
Of unincorporated associations, suits relative to....1462

TRADE UNION
Insignia of, unauthorized wearing or using....4719

TRADER
Person doing business as, failing to disclose name of principal or partner, liability of property for debts....5194, 5224
Liability of infant doing business as....6108

TRAMWAY
Construction across highway....2006
—appeal 2097
Private property not to be condemned for....2008

TRANSCRIPT
Of record in criminal case....4932
Of record for appeal....6339-6342

TRANSFER
Of voters, General Assembly to provide for....Va. Const., § 25
Of State bond or certificate of debt 2635, 2636
Of hunting license, penalty....2337
Of real estate, recorded in deed book 3393
Of State's interest in road to county 3753
Of shares of stock....3794
—books for....3797
—delivery of certificate....3837, 3839
—power of attorney....3839
Of assets, risks, etc., of co-operative life insurance company or casualty company....4266
Of membership and funds of fraternal benefit society....4286
Of estate to evade prohibition law 4670
Of estates to uses....5156
—deed of release effectual without lease....5156
In fraud of creditors....5184-5186
Of apprentice to new master....5305
Of stock or certificate of debt to personal representative of non-resident 5348, 5349
Voluntary, limitation on suit to avoid 5820
Of cases from one place of session of Supreme Court of Appeals to another....5871
Of case brought in law or equity to proper forum....6084
Of debt secured by mortgage, deed of trust, vendor's lien, etc., entry on record....5457
Of claim against laborer to defeat exemption....6557

TRANSFER OF EFFECTS OUT OF STATE
Manner and effect of....5348-5356

TRANSMISSION COMPANIES
Control of by State Corporation Commission Va. Const., cl. b, § 156
Appeal from order of State Corporation Commission. Va. Const., cls. d-g, § 156
Right of action against not impaired by proceeding before State Corporation Commission, Va. Const., cl. h, § 156
Rates, long and short haul, Va. Const., § 160
Franks, rebates, etc., by, when prohibited ....Va. Const., § 161

Digitized by Google

Sec.
TRANSMISSION COMPANIES—Con.
Meaning of term.....3693, 3881
—Va. Const., § 153
Rates, and regulations of by State Corporation Commission general provisions.....3709, 3711
—Va. Const., §§ 156, 160
—notice of hearing, order, publication of.....3711, 3726
Inspection of books and papers of by State Corporation Commission 3710
—reports and statements from..3710
Adjustment of controversies with patrons and employees by State Corporation Commission, 3713
Examination of by State Corporation Commission.....3717
—notice to of violations of law.3719
Examination of on complaint of supervisors, mayor or councils 3721

TRANSPORTATION
See also **"Transportation Companies"**
Of pupils..... 700
Of dead bodies.....1728
Through streets of city or town, regulation of.....3033
Of game from State, penalty, etc.3361
Of game from counties.....3365
Rates, regulation by State Corporation Commission....3709, 3711
—Va. Const., §§ 156, 160
Free, to members of State Corporation Commission.....3749
—Va. Const., § 155
—to members of General Assembly, etc., prohibited, Va. Const., § 161
Of troops, duty of railroad.....3942
Of ardent spirits, prohibited, 4583, 4633
—out of State.....4583

TRANSPORTATION COMPANIES
See also **"Common Carriers"; "Corporations"; "Railroads"; "State Corporation Commission"; "Transportation"**
Control of by State Corporation Commission, Va. Const., cl. b. § 156
Appeals from orders of State Corporation Commission, Va. Const., cls. d-g. § 156
Right of action against not impaired by proceeding before State Corporation Commission, Va. Const., cl. h. § 156
Passes or free transportation prohibited .....Va. Const., § 161
Meaning of term.....3693, 3881
—Va. Const., § 153
Inspection of books and papers by State Corporation Commission 3710
Reports and statements from...3710
Adjustment of controversies with patrons and employees by State Corporation Commission.....3713
Separate waiting rooms for white and colored races.....3716
Examination of by State Corporation Commission.....3717, 3721
—works and equipment.....3718
—notice to of violation of law..3719
Repairs and improvements, compelling by State Corporation Commission 3720
Examination of on complaint of supervisors, mayor or councils.3721
Notice to by State Corporation Commission before making order, regulation, etc.....3726

Sec.
TRANSPORTATION COMPANIES—Con.
Refund by on decision of appeal from State Corporation Commission 3736
—enforcement of.....3736
Contract with by State Corporation Commission for transportation of insane persons, convicts, etc.....3738
—route for.....3739
—certificates, payment.....3740
Copies of law furnished to by State Corporation Commission.3741
—posting 3741
Free transportation to members, State Corporation Commission.3749
—Va. Const., § 155
Reasonable, proper and equal facilities for traffic.....3907
—connections in town or city...3907
Discrimination, penalty.....3914
Freight receipts, duplicates.....3915
—delivery of freight upon presentation of.....3915
Notice to consignee of arrival of freight 3916
—time allowed for removal.....3916
Freight bills.....3917
Trackage, rules as to.....3921
Explosives, regulation of transportation of.....3922
Liability for loss or injury to goods by connecting carrier...3926
—contracts for carriage to destination over connecting carrier 3926, 3929
—when presumed.....3929
Liability for loss or damage to goods 3926, 3929
—contracts for exemption from liability 3926, 3930
—evidence of negligence in actions against.....3926
Freight, duty to receive and receipt 3927
Claims for goods lost or damaged 3928
—when and where filed.....3928
—penalty for failing to pay.....3928
—for demurrage.....3928
Unincorporated, suits against....3931
Lien for transportation charges and storage.....3933
Sale of unclaimed goods for transportation charges and storage 3933
—disposition of proceeds.....3934
Liens of employees.....6438-6442
—of persons furnishing supplies, 6438-6442

Intoxicating Liquors, Transportation of
Record of shipments to hotels and druggists.....4605
Receiving orders or collecting money for prohibited.....4611
Ardent spirits reported, record kept of, what to show, 4632, 4634, 4638
—effect as evidence.....4632
—penalty for failing to keep, 4632, 4634
Regulations for transportation
Affidavit by consignee, 4634, 4635, 4638
—filing with clerk of court.....4634
Delivery, to other than consignee 4635
—hours for delivery.....4635
—record open to inspection, 4632, 4634
Affidavit to be in duplicate.....4634
—original filed in clerk's office..4634

Digitized by Google

Sec.

TRANSPORTATION COMPANIES—Con.

Rates and Charges

Regulation of by State Corporation Commission.....3709, 3711
—Va. Const., §§ 156, 160
—notice of hearing, order, publication 3711
Demurrage, rate, fixed by Corporation Commission.....3774
Detention charges.....3774
For placing cars, regulations for 3774
Regulation, long and short haul.3904
—Va. Const., § 160
Discrimination 3905
—undue preference.....3906
—falsification by company, officer, or agent in giving, penalty 3912
—falsification by person obtaining, penalty.....3913
—penalty 3914
Schedules 3908
—public inspection, posting.....3908
—changes, submission to State Corporation Commission.3909, 3911
—publication 3909
—revision by State Corporation Commission 3920
—effect as evidence.....3920
Collecting more or less than published tariff, unlawful.....3910
Reduction, when allowed.....3918
Contracts or agreements between companies, submission to State Corporation Commission.....3919
When presumed reasonable.....3920
Passengers, reduced rate of transportation 3918
—free transportation to.....3918

Penalties

Allowing food to become contaminated in transit.....1220
Transporting for less than regular rate.....3912
Discrimination in rates by.....3914
—exceptions 3918
Failure to issue freight receipt.3915
Failure to deliver freight.....3915
Explosives, failure to observe rules as to transportation of..3923
Trackage, failure to obey rules and regulations as to.....3921
Officer, agent, employee failing to make report required by State Corporation Commission.3924
—hindering State Corporation Commission 3924
Failure to obey rules and regulations 3925
Failure to receive and receipt for freight 3927
Failure to make additions, repairs, etc., ordered by State Corporation Commission.....3932
Failure to pay claims for loss or injury to goods.....3928

TRAPPING

Fur-bearing or hair-bearing animals, season for.....3348
On land of another, written consent for.....3348
Inspection of traps.....3349
Report to land owner of stock, fowl or dog caught in trap....3350
Where traps may be set.....3351
Liability for damage by.....3351
Destruction of traps for violation of law.....3352
On one's own land.....3353
Adoption by supervisors of law relative to.....3355

Sec.

TRAPPING—Con.

Traps used in unlawful hunting, seizure and forfeiture 3356
Penalty for violation of law as to 3354

TRAVELING EXPENSES

Board of Charities and Corrections, secretary.....1891
—assistant secretary.....1892
—agent of conveying delinquent child to institution.....1907
Board of Pharmacy, members...1670
Commissioner of Insurance.....4225
Commissioners for the promotion of uniformity of legislation 322
Commissioner of State Hospitals for Insane.....1011, 3447
Directors, insane hospitals.....1006
Educational conference, division superintendent and school trustees attending.....615
Game warden.....3324
Guard, taking minor to prison association 1956
Officer conveying delinquent child to institution.....1907
Police officer.....2931
Probation officers.....1911
State Accountant.....550
State Board of Accountancy, members 571
State Board of Examiners of Graduate Nurses, members....1704
—secretary 1704
State Board of Examiners in Optometry, members of.....1632
State Board of Health, members.1491
State Forester.....539
State Highway Commission, members 1975
—commissioner 1975
—assistant 1975
Superintendent of Public Instruction 621, 3442

TRAVELING LIBRARIES

The Library Board may establish 760

TRAVERSE

See **"Pleading"**
How to conclude.....6111

TREASON

Disfranchisement for..... 82
—Va. Const., § 23
Exclusion from registration for. 93
Member or clerk of General Assembly not privileged from arrest for..... 300
—Va. Const., § 48
Definition of.....4339
Proof of, punishment.....4339
Misprision of.....4390
Petit treason, punished as murder 4761
Amendment of indictment for before plea..... 4877
—after plea.....4878
Conviction of disqualifies as juror 5984

TREASURERS

See **"County and City Treasurers"; "State Treasurer"**

TREATY

Sale of escheated land of foreigner, delay because of treaty. 506

TREES

See also **"State Board of Crop Pest Commissioners"; "State Entomologist"**
Removal of for coast survey.... 20
Plans for protection of by State Forester 535
Nurseries, distribution of seedlings 536

Digitized by Google

Sec.

TREES—Con.
Investigation for rust in cedar trees 885, 886
Diseases of.....885-905
Infected with "yellows".....894
—unlawful to keep or sell.....894
—inspection 898, 899
—destruction 899, 900, 901
Attaching telegraph or telephone wire to.....4038
Ornamental or shade, injuring in condemnation proceedings.....4382
Marking boundary, penalty for destroying, removing, etc.....4479
In Capitol Square or public grounds, injury to, punishment 4483
In graveyards, etc., injuries to, punishment 4553
Near highways, killing or injuring, penalty.....4730
Shade trees, planting by abutting owner in unincorporated town 4732
—protection of by posts or frames 4732
—penalty for injury to.....4732

TRESPASS
Orchard inspector, not liable for. 898
Dog as subject of....2324, 2325, 4445
Preventing, powers of supervisors 2743
By hunters.....3365
Malicious, costs.....3523
Boat or vessel, taking without consent, penalty for.....3563
In exercise of power of eminent domain 4362
Jumping on or off railroad trains, punishment.....4470
On railroad train.....4471

Action of
Judgment in unlawful entry or detainer not to bar.....5450
By personal representative for injury to estate.....5385
Action against personal representative for trespass by decedent 5385
Trespass on the case may be brought 6086
Pleading, general averments omitted 6089

By Animals
Power of supervisors to prevent.2743
Damages, proceeding to recover for 3541
Of non-resident.....3542
Exemptions not to extend to liability for.....6563

TRESPASS ON THE CASE
For recovery of fine.....2543-2545
By personal representative for injury to estate.....5385
Against personal representative for trespass by decedent.....5385
For waste.....5509
—committed pending suit.....5511
Action of for damages and penalty for violation of statutes..5785
May be brought where trespass will lie.....6085

TRIAL
See also **"Criminal Procedure"; "New Trials"; "Verdict"**
By jury.....Va. Const., § 11
—of motion.....6048
Term of court ending during....5973
Civil case, without jury.....5012
Venue 6049-6053
Time for after service by publication 6071
Rehearing as to parties not served 6072

Sec.

TRIAL—Con.
Issue to set aside office judgment 6135
Interpleader 6151
Effect of change of parties after verdict 6164
Order of trial of causes...6243, 6244
Issues 6247
Issue out of chancery.....6246
Inquiry of damages.....6247, 6249
—time for.....6249
Variance 6250
When final judgment entered after verdict set aside.....6251
Bill of exceptions tendered.....6252
—certificate in lieu of.....6253
Motion for new trial, when unnecessary 6254
Argument of counsel.....6265
When non-suit allowed.....6257
Jury, may carry out papers read in evidence.....6257
Faulty counts in declaration, instructions to disregard.....6258
—verdict and judgment on.....6258
Verdict to fix period at which interest begins.....6259
New trials, number of.....6260
How judgment entered on bond with condition for payment of money 6261
Judgment against less than all defendants 6263, 6265
Joint wrongdoers.....6264
Plaintiff required to remit part of recovery, appeal.....6335

Of Particular Actions or Proceedings
Of impeachments...Va. Const., § 54
Caveat against issuing grant on land warrant..... 447
—proceedings after judgment, 448, 449, 450
Violation of injunction against house of prostitution.....1524
Physician, proceeding to try right to practice..... 1614
—proceeding to review refusal of admission to examination, refusal or revocation of license 1614
Dentist, proceeding to revoke license 1650, 1651
Proceeding for removal of officer.2705
—jury 2706
Appeals from board of supervisors allowing or disallowing claim 2763
Violation of fishing law.....3216
Proceeding for enforcement of forfeiture 3371
Attorney, proceeding to revoke license of or suspend.....3424
Probate proceedings.....5257, 5259
Unlawful entry or detainer.....5446
Petition to establish boundaries of land.....5490
—right to open and close.....5490
Mandamus or prohibition proceeding 5836
—before Supreme Court of Appeals 5837
Quo warranto proceeding.....5847
Warrant removed to circuit or corporation court.....6017, 6018
—appeals from justices.....6018
Civil warrant before justice.....6022
Of appeals from justices, civil warrants 6038
Rule against special commissioner, receiver or purchaser..6276
Claims of third party in attachment proceedings.....6407

In Criminal Cases
Right to trial by jury, Va. Const., § 8

Digitized by Google

Sec.

TRIAL—Con.
On plea of guilty.....4900, 4927
—Va. Const., § 8
On plea of not guilty, without jury 4900, 4927
—Va. Const., § 8
Presentment for public nuisance.1520
Of person charged with violating laws for protection of fish.3197
Of misdemeanor, in absence of accused 4883, 4888, 4889
—on indictment or presentment.4889
—by police justices and justices of peace without warrant, when 4992
On indictment, presentmen., information, against corporation.4892
Persons who may be excluded from 4906
Joint verdict in case of disagreement as to one.....1924
Of appeal from conviction before justice 4989, 4990

TRIAL JUSTICE
See also **"Justices of the Peace"**
Trial of misdemeanor on warrant 4987
Appointment, term.....4988
Civil jurisdiction.....4988
Criminal jurisdiction.....4987, 4988
Appeal from.....4988-4990
Process returnable before.... .4988
Compensation 4988
Clerk, fee.....4988
Removal of cause.....4988

TROOPS
Transportation of, duty of railroad 3942

TROUT
Size of that may be taken.3172, 3207
Manner of taking.....3206
Time of taking.....3195, 3206
Number taken in one day or possessed at one time.....3208
—penalty for violations of law, 3196, 3210
—counties to which not applicable 3210
Buying, selling, using, when unlawful 3195
—penalty 3196

TROVER, ACTION OF
By owner of adrift property against land owner.....3571
—burden of proof.....3572
Effect of judgment.....6087

TRUCK
Barrel, standard.....1472

TRUST COMPANIES
See also **"Banks and Banking"; "Trustees"; "Trusts"**
Shares of stock of, subject to taxation .....Va. Const., § 182
Law applicable to.....4129
Word "bank" includes, when....4133
National banks as.....4149
Incorporation 4145
General powers and duties.....4145
Name 4145
Capital, minimum required.....4146
—amount to be paid before commencing business.....4100, 4146
Certificate from State Corporation Commission to commence business 4105
—publication of.....4105
—filing proof of.....4105
—penalty for doing business without or failing to publish..4105
Powers 4145, 4148
—as agent.....4148
—as trustee.....4148
—as guardian or receiver.....4148

Sec.

TRUST COMPANIES—Con.
—as executor or administrator..4148
—as committee.....4148
—as guarantor or security.....4148
—bond required of.....4148
—oath of.....4148
Acceptances, letters of credit....4112
—limitation on amount of for one person, firm, etc.....4112
Bank building, limitation on amount to be invested in.....4104
—penalty for exceeding.....4104
Capital stock, part paid before commencing business....4100, 4146
—when balance paid.....4100
Deposits, regulations as to making or withdrawing.....4147
—printing in pass book.....4147
—posting 4147
—of two or more persons, or survivor, how discharged.....4127
Examinations by State Corporation Commission 4120
—application of directors or stockholders for.....4120
—expenses of.....4120
—duty of officers and directors..4120
—fees for.....4122
—refund of fees.....4122
Examiners, appointment.....4121
—assistants, salaries.....4121
—salary, oath, qualifications....4121
—bond 4121
Penalty for engaging in business in more than one place.....4101
—for investing excessive amount in bank building.....4104
—for doing business without certificate, or failing to publish certificate 4105
—for failing to furnish statement of financial condition.....4124
— —failing to publish.....4124
—officer refusing assistance to examiner 4124
— —making false statement of financial condition.....4124
Process against, where served..6063
Receivers, when State Corporation Commission may apply for 4120
When State Corporation Commission may close.....4120
State depositories, insolvency, notice of to auditor and treasurer 4120
Safety deposit box hired by two or more persons, right of access to.....4128
Statements to State Corporation Commission 4120
—publication of.....4120
—form of.....4120
As surety on bonds of officers of State Corporation Commission.2708

TRUSTEES
See also **"Trust Companies"; "Trusts"**
Substitution of, power of clerk of circuit court..Va. Const., § 101
Trust company may act as.....4148
Death, removal, declination, appointment of successor.....6292
—motion for, notice, etc.....6239
—who to execute trust pending appointment 6300
—by courts of equity.....6302, 6303
Bond 6301
—of substituted trustees.....6294
Removal 6301
—of substituted trustees.....6294
Substituted trustees, powers, duties, etc.....6304
An alien, not to cause estate to escheat 514

Digitized by Google

Sec.

TRUSTEES—Con.
Of cemeteries, appointment and powers of....50, 51
Of church.... 38
—appointment of.... 39
—property vested in....39-41
—suits by and against....42-44
—property may hold.... 43
—sale or mortgage by.... 46
Of property of Free Masons, Odd Fellows, Sons of Temperance, etc. 47-49
Of dissolved corporation, directors as....3812
—appointment by court....3813
—powers and duties.3812, 3813, 3814
—actions by or against....3813
Of property for purposes of common school education.... 648
—report to county school board. 648
—proceedings against for irregularities 648, 650
—removal; accounting.... 650
—appointment of new trustees.. 650
—vacancies 650
Of gift, grant, devise or bequest for educational or literary purposes 588, 590
—actions by and against.... 590
—accounting by.... 590
State to be for donations to University of Virginia.... 826
Contract of with governing body of trust.... 998
Reports to examiner of records..2223
Taxes on estate, liability for....2225
Listing property for taxation...2307
—payment of taxes....2309
Accounts, recorded in will book.3393
Bonds of, recorded in bond book.3393
Of corporation, action to recover call on stock subscription....3843
—compromise of claims by....5440
—service of process on....6065, 6066
—of dissolved corporation, appointment 3813
— —directors as....3812
— —powers and duties....3812-3814
— —actions by and against....3813
Of building and loan association.4167
—powers passing to successor..4167
—sales and conveyances by....4167
Joint, survivorship....5160
Sales by under deed of trust....5167
—compensation 5167
—account and inventory to commissioner of accounts....5404
— —forfeiture of commission for failure to make....5404
When proceeds of sale of real estate in partition suit paid to trustee 5281
Suit to sell or lease real estate, 5335-5347
—not to purchase or be interested in lease....5341
Transfer of trust property out of State 5351-5356
—discharge of trustee.... 5356
Debts due by, priority of payment from decedent's estate, 5390, 5391, 5395
Statement by to commissioner of accounts....5408, 5410
—penalty for failure to make, 5408, 5409
Investments, order of court for..5430
—securities approved for....5431
Order of court for payment to persons entitled....5433
Ejectment by, performance of trust as defense....5472
Suit to recover land, liability for rents, profits and improvements 5499

Sec.

TRUSTEES—Con.
Relief against forfeiture of land for non-payment of rent, breach of condition or covenant 5532
—time for....5528
Power to submit to arbitration..6163

TRUSTS
See also **"Trust Companies"; "Trustees"**
General Assembly may enact laws preventing..Va. Const., § 165
Estate not to escheat because trustee an alien.... 514
Trust company may accept and execute 4148
Who to execute pending substitution of trustee....6300
Property held in, liability to debts 5157
—spendthrift trusts....5157
Curtesy and dower in....5158
Deed of to secure debts, form of.5166
—sales under....5167
Real estate, sale of in partition suit, how proceeds disposed of.5281
—suit to sell or lease....5335-5347
— —how proceeds secured and applied 5342
Transfer of property out of State 5351-5356
—sale of property and transfer of proceeds....5355

TUBERCULOSIS
See also **"State Board of Health"**
In domestic animals.... 920
Test for in cattle....1224-1227
Patients, in State sanitorium...1512
—indigent patient in....1506
—proceeding to restrain from menacing health of others....1516
— —confinement 1516
— —bond 1516
—in jail, almshouse, hospital, etc., examination, report....1546
— —segregation 1547
—disinfecting apartment occupied by....1548, 1549
— —penalty for letting apartment without disinfecting....1549
Sanitorium, establishment by State Board of Health....1491
—petition for election on establishment of....1507, 1513
—election, how called and held..1508
—ballots, voting....1509
—result 1510
—grounds, buildings, apparatus, 1510, 1511
—management 1510
—patients, admission, care, treatment, contributions....1512
—cities and counties may unite to establish....1514
— —board, term....1512
— —contributions 1513

TUNNEL CORPORATION
See **"Public Service Corporations"**
Incorporation 3865

TUNNELS
Warning signal of approach to, railroad to provide....3970

TURNIPS
Bushel, standard....1470

TURNPIKE COMPANIES
See **"Public Service Corporations"; "Turnpikes"**

TURNPIKES
See also **"Cities and Towns"; "Roads"; "Streets"**
Special and local legislation by supervisors 2013

Digitized by Google

Sec.

TURNPIKES—Con.
Abandoned, how kept in order...2099
—control of.....4074
Construction 4075
Width 4075
Bridges 4075
Milestones 4076
Completion of section, report on to court, entry of order.....4077
Transfer of State's interest in to county 3758
In which State interested, sale of under mortgage, etc.....3889
—dividends 3890
—annual report to State Corporation Commission.....3892
—report of manager or superintendent 3893
Telegraph and telephone lines on 4035
—consent of supervisors.....4037
—regulations of use.....4037, 4038
Contracts to lay water pipe lines along 4060
Examination of.....4078
—viewers, appointment.....4078
— —oath, meeting, report.....4079
— —form of report.....4080
— —recordation of report.....4081
Toll-gates, erection.....4077
—changing location of.....4077
—number of, distance apart.....4083
—on turnpike within half mile of city.....4089
Tolls, suspension for failure to keep road in repair.....4082
—resumption 4082
—rates 4083
—on valley turnpike.....4083
—rates to be posted.....4085
—collectors, duty, liability.....4086
—forfeiture for failure to pay...4086
—penalty for receiving unlawful.4087
—on turnpike within half mile of city.....4089
—on Northwestern turnpike road, 4096
Transfer to county by stockholder 4088
Within half mile of city, maintenance of.....4089
Changes in alignment of.....4090
Title to abandoned roadbed.....4090
Forfeiture for delay in completion 4077
Repairs, how enforced.....4078-4082
—viewers, appointment.....4078
— —oath, meeting, report.....4079
— —form of report.....4080
— —recordation of report.....4081
—suspension of tolls.....4082
—examination of repairs.....4082
—fees of officers and viewers..4082
Vehicles prohibited on turnpike treated with artificial binder..4091
Extension of.....4092
—financial aid by counties.....4093
— —levies for.....4093
Owned by county, grant or conveyance to turnpike company.4094
Northwestern turnpike, State's interest in transferred to State Corporation Commission.4095
—duties of State Corporation Commission as to repairs, tolls, etc.....4096, 4097
—powers of State Corporation Commission 4097

Turnpike Companies

Definition 3861
Incorporation 3865
Powers 3866
Eminent domain.....3866
—title acquired by.....4369, 4373
Extending line into other State.3867
—branches of lines.....3869

Sec.

TURNPIKES—Con.
Crossing public road or changing course of.....3885
Connecting with works of another 3887
Contract to lay water pipes along turnpike.....4060
Notice to of petition for examination of turnpike.....4078
—of report of viewers.....4078
Expense of proceeding to compel repairs borne by.....4092
Penalty for violation of law as to tolls.....4084
Penalty for receiving more than lawful toll.....4087
Grant to of road or turnpike owned by county.....4094
Toll gatherers, service of process on.....5066

TURPENTINE
See **"Inspection"; "Inspectors"**
Inspectors of.....1400, 1401, 1402
Barrels for.....1411
Owner to mark weight and tare.1415
—penalty for failure.....1417
Brand 1429
How marked when unfit to pass.1428

TYPE
Insurance policy printed in.....4227
Policy of accident insurance printed in.....4315

TYPHUS FEVER
Report, quarantine...1497, 1500, 1505
Transportation of dead bodies...1728

UMPIRE
To ascertain loss on insurance policy to be citizen and resident of Virginia.....4308
—oath of.....4309
Bribery of.....4503

UNDERTAKER
See also **"Dead Bodies"; "Public Health"**
Law relating to embalming, when not applicable to.....1724, 1726
Dead body, transportation of....1728
Certificate of death, signing, etc.1567
Notice of death given by.....1568
Duties of.....1569, 1577
Removal or interment of body without permit, penalty.....1581
Exempt from jury service.....5985

UNDERWRITER'S AGENCY
See also **"Insurance"**
Definition 4313
Policies issued.....4313
License 4313
Deposit 4313
Compliance with law.....4313
Penalty for failing to comply with law.....4314

UNINCORPORATED ASSOCIATION
Suits by for infringement of trade-mark, party plaintiff....1462
Practice of dentistry by, regulations 1652
—sign displayed.....1652
—penalty for failing to display.1652
— —for failure to make report..1652
—report of dentists employed...1653
Suits by and against.....6058
—process 6058
—judgment and execution.....6058

UNINCORPORATED COMMUNITY
Boundaries of established by court 3549
—petition, order 3550
—costs 3551
Animals running at large in, penalty 3551

UNION
See **"Labor Union"**

Digitized by Google

Sec.

UNITED STATES
Defined ..... cl. 1, 5
Recession of territory to Virginia 16
Concurrent jurisdiction with State over forts, magazines, etc. 17, 19
Lease and purchase of land by. 18, 19
Condemnation of land by..... 19
Fine for injury, etc., to signal, monument or building..... 26
Bonds of, investment of capital and income of literary fund in. 614
Prisoners of, confined in jail... 2875
—pay of jailors for..... 2876
—liability of jailer..... 2876
Convicts confined in State penitentiary 4994
—expense of..... 4994
Debts due, order in which paid from decedent's estate, 5390, 5391, 5395
Statutes, copies as evidence..... 6192
Records and proceedings of courts of, copies as evidence.. 3205
Records in public office of, how authenticated to be used as evidence 6206

Officers and Employees
Officers, soldiers, sailors, when not deemed to have acquired residence for purpose of voting 82
—Va. Const., § 24
—when not deemed resident by reason of being stationed in State 5984
Ineligible as members of General Assembly .....Va. Const., § 44
Officers of not eligible to serve on electoral board or as registrar or judge of election..... 84
—Va. Const., § 31
Disqualified to act as judge or clerk of election..... 149
Disqualified to hold public office 290
—exceptions 291
Qualification of as division superintendent of schools..... 624
—deputy 624
Disqualified to act as district school trustee..... 637
—deputy 637
Disqualified as city school trustee 786
Acts of Assembly furnished to.. 388
Inspection of list of income taxes 2314
Exemption from jury service....5985

UNITED STATES BUREAU OF FISHERIES
Taking of fish by..... 3157

UNITED STATES COMMISSIONER OF AGRICULTURE
Rules for inspection, etc., of diseased cattle..... 1239

UNITED STATES COURTS
Attorney General to represent State in..... 376
Acts of Assembly furnished to... 388
Removal of criminal cases from State courts to..... 4971
Persons convicted in confined in State penitentiary..... 4994
Records of, how authenticated to be used as evidence..... 6205
Docketing judgments of....6461, 6462
—of circuit court of appeals....6462
Clerk, State reports furnished to. 347
—Acts of Assembly furnished to. 388

Sec.

UNITED STATES DEPARTMENT OF AGRICULTURE
County demonstration work in co-operation with..... 922
—appropriation 924
—conference with Governor..... 925
Slaughter-houses, etc., licensed by not required to have State license 1222
Director of markets, co-operation with 1254

UNITED STATES GEOLOGICAL SURVEY
Co-operation of State Geological Survey with..... 829
—expenses 829

UNITED STATES MARSHAL
Acts of Assembly furnished to.. 388

UNITED STATES SENATOR
See "Elections"; "Primary Elections"
Election of by people..... 68
Vacancy, election to fill.....69, 73
Temporary appointment..... 69
Party nomination, method of, how determined..... 222
Primary election for, declaration of candidacy..... 229
—petition 229
Abstract of votes cast for at primary election forwarded to Secretary of the Commonwealth 241
Contested primary election..... 247
Fee of candidate at primary election 249
Expenditures by candidate..... 251
—penalty for improper expenditures 252
Statement of expenditures..... 253
—when and where filed..... 253
—what to contain..... 253
—oath to..... 253
—penalty for failing to file..... 255
—not to qualify until filed..... 256

UNIVERSITY OF VIRGINIA
Control of..... 806
Corporate name..... 806
Powers 806
Visitors 807
—appointment, number..... 807
—Superintendent of Public Instruction a visitor..... 807
—term 807
—vacancies 807, 808
—meetings, quorum..... 809
—rector 809
— —appointment 809
— —special meetings..... 809
—secretary 809
— —appointment 809
—Executive Committee..... 810
—duties 811
—appointment and removal of president and professors..... 811
— —salaries 816
—bursar 811
—proctor 811
—agents 811
—servants 811
—water supply, drainage, etc.... 811
—contracts and acts confirmed.. 812
—students, testimonials to..... 813
—expenses 814, 988
—reports 987
— —annual 815
—member of Congress may be... 291
—nomination by of member of Art Commission..... 581
—to nominate member of faculty to State Board of Education.. 596
— —Va. Const., § 130
President, appointment..... 811
—salary 816

Digitized by Google

Sec.

UNIVERSITY OF VIRGINIA—Con.
—report 986, 989
—member of the State Geological Commission.....523, 828
Professors, appointment..... 811
—salaries 816
Branches of learning taught.... 817
—forestry 537
Bonds, payment..... 818
Annual appropriations..... 819
—conditions 819
Tuition free to Virginia students. 819
Interest on debt, sinking fund.. 820
How debts contracted..... 821
Donations, how invested..... 822
—for special purposes, how applied 822, 823
—account of..... 823
—declination, disposition of.... 824
—irrevocability 824
—reservations in..... 825
—State to be trustee..... 826
—Corcoran fund..... 827
Forestry course conducted by State Forester..... 537
Dead bodies furnished to..1732, 1733
—bond 1734
State Anatomical Board.....1729
Professor of civil engineering a member of State Highway Commission 1963
—expenses 1975
Land of not subject to condemnation 4394
Power of eminent domain.....4385
Special police for.....4804, 4805

UNKNOWN PARTIES
Shares of in partition.....5284
Order of publication against....6069
Within what time may have case reopened 6072

UNLAWFUL ASSAULT
Conviction of on indictment for malicious assault.....4920

UNLAWFUL ASSEMBLY
Suppression 4527
Commitment of rioter, on failure to give bail.....4528
Failure of judge or justice to suppress 4529
Aid to judge or justice in suppression of.....4527, 4530
Killing or wounding in suppression of.....4531
Punishment 4532

UNLAWFUL ENTRY OR DETAINER
Jurisdiction 5445
—of justices.....5015
—of hustings court of Richmond.5913
—of court of law and chancery of Roanoke.....5947
Proceedings 5445
Pleading 5445
Summons 5445
—service, return.....5446
—to whom directed.....5447
Plea of defendant.....5446
Trial, precedence.....5446
Verdict 5447
Judgment 5447
—recordation of.....5216
—conclusiveness 5450
—not to bar trespass or ejectment 5450
In cities and towns, for failure to pay rent.....5448
Appeals 5449
When equitable title is defense to 5471-5473
—action by vendor, mortgagor or trustee 5471-5473
Writ of possession.....6483
—how enforced.....6483

Sec.

UNLAWFUL ENTRY OR DETAINER—Con.
By widow deprived of mansion house and curtilage.....5124
To recover land embraced within boundaries of grant under which plaintiff claims, rule for recovery 5465

USE AND OCCUPATION
Of land, recovery for.....5519
—against tenant failing to leave premises at expiration of term.5517
—effect of agreement reserving certain rent.....5519

USES
In what conveyances possession transferred to use.....5155
—deed of release effectual without lease..... 5156

USURY
Loans by building and loan association 4154
Rate of interest.....5551-5553
Plea, evidence, judgment.....5554
Excess recoverable, how.....5555
Corporation not to plead.....5556
—not to charge.....5557

UTTERING
Punishment 4489
Forged public record, certificate, return, attestation, etc.....4484
Forged coin and bank notes....4487
—having in possession with intent to utter.....4490
Sufficiency of indictment.....4871
Suspension of sentence on conviction of.....4486

VACANCIES
In office, General Assembly to determine in what case office deemed vacant....Va. Const., § 56
—by election to General Assembly .....Va. Const., § 44
Officer becoming insane..... 137
Accepting office or employment under United States..... 290
Failing to qualify and give bond 327, 329, 2697
—Va. Const., § 113
Filled by Governor.331, 332, 333, 336
—Va. Const., § 73
As result of contested election.. 267
Candidates 226, 227
Election to fill.....83, 130, 197
Term of officer elected to fill... 133
—appointed to fill.....134, 136

In Particular Offices or Boards
Art Commission..... 881
Assessors of land for taxation..2233
Attorney General..... 122
Auditor of Public Accounts..... 122
Ballast masters.....3650
Board of Agriculture.... 1099
Board of Bar Examiners.....3410
Board of commissioners to examine pilots.....3614
Board of Drainage Commissioners 1759
Board of directors of bank.....4118
—of corporation.....3789
Board of Medical Examiners....1609
Board of Veterinary Examiners.1274
City officers.....136, 2704, 2983
City school trustee..... 786
Clerks of courts. 136-138
Clerk of Supreme Court of Appeals 3381
Commissioner of Agriculture and Immigration 122, 329, 331, 1104
Commissioners of election..... 182
—primary election..... 239
Commissioner of Insurance.122, 4171
Commissioner of Prohibition, 122, 4634

Digitized by Google

Sec.

VACANCIES—Con.
Commissioner of the revenue...2702
Council, of city.....2933
—city of first class.....2920
—town 3003
County officers.....136, 2704
Commonwealth's attorney, 136, 138, 2702, 2704
County clerk.....136, 2702
County school board.....640
County surveyor.....2702
Dairy and Food Commissioner..1156
Directors of corporations.....3789
Director of insane hospital.....1006
Director of penitentiary..... 333
District officers.....136, 2704
Division superintendent of schools 607, 625
Electoral board.....84, 92
—Va. Const., § 31
General Assembly..Va. Const., § 44
—writ of election to fill..... 81
— —Va. Const., § 47
Governor 120
—Va. Const., § 78
Harbor commissioners of Norfolk, Portsmouth and Norfolk County 3666
Harbor master, Warwick County 3679
Inspector of flour, etc.....1491
Inspector appointed by Commission of Fisheries.....3153
Judges 5889
—removal of residence.....5977
—failure to qualify.....5978
—term of successor.....5889
— —Va. Const., § 102
—of Supreme Court of Appeals, temporary 6365
— —Va.Const., §§ 88, 102
— —clerk 3381
Justices 3093
Library Board..... 360
Lieutenant Governor.....120, 121
Mayor of town.....3003
—of city.....3010
Member of Congress..... 73
Officers of county, city, town or district 136, 2704, 2988
—when officer becomes insane... 137
Officers of corporation.....3789
Orchard inspector..... 898
Register of Land Office..122, 329, 331
Registrar of elections.....86, 88
School trustees.....631, 632
—in cities..... 780
—by removal from district...638, 786
School trustee electoral board... 629
Second Auditor.....122, 329, 331
Secretary of the Commonwealth, 122, 329, 331
Secretary, Virginia Military Institute 836
Sheriff 2702
Special police for counties.4798, 4799
State Accountant..... 550
State Board of Accountancy..... 566
State Board of Dental Examiners 1642
State Board of Education..... 599
—Va. Const., § 130
State Board of Examiners of Graduate Nurses.....1703
State cadetship at Virginia Military Institute..... 845
State Corporation Commission...3702
—Va. Const., § 155
State pupil at William and Mary College 988
State Treasurer.....122, 329, 331
Superintendent of penitentiary.. 333
Superintendent of the poor.....2702
Superintendent of Public Instruction 621

Sec.

VACANCIES—Con.
—Va. Const., § 131
Superintendent of Public Printing 122, 329, 331
Superintendent of roads...2019, 2020
Supervisor 2702
Surgeon of penitentiary..... 333
—of prison farm..... 333
Tobacco samplers.....1350, 1351
Town officers.....136, 2704, 2983
Treasurers 2702
—for failure to give new bond..2777
Trustees of property held for school purposes..... 650
United States Senator.....69, 73
Visitors of University of Virginia 807
—of Virginia Agricultural and Mechanical College and Polytechnic Institute.....859, 862
—of Virginia Military Institute. 835
— —president 836
—of William and Mary College.. 935
Virginia Normal School Board.. 941
Virginia State Board of Examiners in Optometry.....1625

VACATION
Of justice of juvenile and domestic relations court.....1943
Of civil and police justice.....3101
Of guard, at State farm.....3453
—at penitentiary.....5041
Of plat of city or town lots, 5220-5222

VACATION PROCEEDINGS
Abatement of public nuisance..1520
—house of prostitution as..1522-1524
Accounts of assessors certified..2250
—of fiduciaries, settled.....5415
In actions at law.....6308
Administration on estate of person presumed to be dead.5362-5368
Appeal of person denied registration as voter..... 103
—Va. Const., § 19
—from refusal to renew license, from Board of Embalming....1721
—from disapproval by attorney of title to real estate purchased by county or school board....2799
—of removed or suspended city officer 3010
—on assessment for local improvements 3071
—from sentence of justice for contempt 4523
Appointment, assessors of land for taxation.....2233
—bail commissioners.....6188
—ballast masters.....3648
—clerk of Supreme Court of Appeals 3381
— —deputy 3379
—commissioners in chancery....6178
— —instructions to.....6182
—commissioner to vote in meeting of supervisors in case of tie 2718
—committee to inquire into necessity for general index in clerk's office.....3395
— —action on report of.....3396
—county surveyor..... 126
—electoral board..... 84
— —Va. Const., § 31
— —in city of second class....2897
— —filling vacancies.....84, 92
—guardians 5316, 5317
—guardian ad litem.....6038
— —in proceeding to establish drainage district.....1741
—local board of review.....2226
—special police for counties....4797

Digitized by Google

Sec.

VACATION PROCEEDINGS—Con.
— —for watering place, university, college or manufacturing establishment 4804, 4805
—receiver, for co-operative life insurance or casualty company 4261
— —for estate of infant married woman 5136
— —in attachment proceedings.6389
—reviewers, in proceeding to establish drainage district.....1738
—superintendent of the poor.... 126
—surveyor of land sold for delinquent taxes.....2480, 2481
—successor to trustee.....6298-6302
— —requiring bond of trustee..6301
—trustees for churches..... 39
Appraisal of value of stock, stockholder dissenting from consolidation 3822
Approval, bond of owner of house of prostitution.....1527
—investment by supervisors, sinking fund for road bonds..2118
—compromise of action for wrongful death.....5789
Attachments 6397
Automobiles, seizure and sale of for violation of law.....2146, 2147
Bail 4829-4837
—person charged with transporting ardent spirits.....4657
Bill of exception signed.....6252
Bond, officer required to give new or additional..... 280
—of depository of school funds given 734
—of assessor of land for taxes given 2241
—of clerk, Supreme Court of Appeals taken in.....3384
Capias against defendant about to quit State.....6419
—defendant giving bond.....6422
—quashing, discharge.....6423, 6424
Certificate of facts proved given by judge.....6331
Certiorari to diminish record in criminal case.....4933
Commitment of witness for refusal to testify.....6221
Condemnation proceedings.....4361
Confession of judgment or decree 6130
Correction of list of paid poll taxes 110
—Va. Const., § 38
Decedent's estate, committed to sheriff or sergeant.....5374
—motion for order to distribute.5439
Decrees in, effect of, lien.....6307
Delinquent children, investigation of violations of law relating to..... 1920
—incidental powers of courts, judges and officers.....1921
—commitment to Board of Charities and Corrections or institutions 1905
Delinquent tax list furnished to court 2417
Detinue, order of sale.....5798
—exception to bond.....5799
—contest of right of plaintiff to have possession taken from defendant 5600
Disagreement between assessor of minerals and commissioner of revenue, referred to court..2238
Discharge of execution debtor failing to answer interrogatories 6506
Enforcement of provisions of law relating to primary elections 224

Sec.

VACATION PROCEEDINGS—Con.
Exemption of wages from garnishment 6556
Extension of time for report and survey in proceeding to establish drainage district.....1734
Extradition of fugitive from justice 5063, 5065
Habeas corpus.....5848-5861
— to test detention of lunatic, inebriate, etc.....1029
Injunction 6322
—dissolution of 6326
—against house of prostitution, 1522, 1524
—against railroad for violation of law relating to transportation of live stock.....4006
—against violations of law relating to advertisement of intoxicating liquors.....1699
—against nuisance under prohibition law 4630
—in attachment proceedings....5339
Instructions to commissioners in chancery 6182
Interpleader proceedings 6152, 6153, 6157
Jail prisoners put on State convict road force.....2075
Judgments in, docketing.....6163
—lien of.....6470
Mandamus 5839, 5840
Motion to quash execution.....6499
Notary to give bond.....2850
Oath, of division superintendent of schools taken in..... 625
—of city school trustee..... 786
—of Board of Veterinary Examiners 1275
—of justice of juvenile and domestic relations court.....1946
Order for sale, of perishable goods levied on.....2832
—for enforcement of forfeiture.3369
—estate of infant married woman 5137
—in detinue.....5798
—in interpleader proceedings, 6153, 6157
—in attachment proceedings....6397
—on distress warrant when property is expensive to keep.6519
Order for election on bond issue by city or town.....3082-3088
—for election of additional justices of the peace in cities...3092
—for election of directors of corporation 3802, 3804
—designating person to sit for police justice.....3096
—for taking deposition of prosecutrix in rape case.....4115
—as to custody of children when parents separated.....5327-5330
—forbidding waste by tenant....5511
Order of publication to commence suit.....6069, 6070
—dispensing with publication in newspaper 6070
—of notice to take account by commissioner in chancery.....6182
Petition to have person declared feeble minded.....1078
—to reopen coal mine closed by inspector 1870
—for writ of error.....4934
—against tenant committing waste 5511
—filed in pending chancery suit.5096
Proceeding to enforce treatment prescribed by Crop Pest Commissioner 877
—to compel turnpike company to repair road.....4078

Digitized by Google

Sec.

VACATION PROCEEDINGS—Con.
—to liquidate insurance company 4243
—to prove lost records....6203, 6204
Prohibition 5839
—contempt proceedings....5840
Process for arrest....4823
Powers of chancery judges in..6307
—to enforce obedience to decrees and orders....6309
Qualification of State Accountant 550
—members Board of Medical Examiners 1610
—examiner of records....2219
—district, county, city, town officers 2696
—civil and police justice....3099
—oyster inspector....3219
Quo warranto proceedings.5842-5847
Release by court of prisoner confined for failure to pay fine and costs 4952
Release of part of amount of judgment or decree....6333
Removal of trustee....6301
Removal of cause to another court 6175
Removal of deputies to officers..2701
Reports to judge by institutions receiving delinquent or destitute children....1918
Rule against commissioner, receiver or purchaser to recover money 6274
Sale or exchange of school property 649
Sale of property for delinquent town taxes....2457
Sale in interpleader proceedings 6153, 6157
Subpoena duces tecum....6219
Suspension of treasurer, clerk or other officer for failure to settle accounts....2201
Treasurer required to give new bond 2777
Vacancies filled, in electoral board 32
—public offices....136, 138, 139
—city council....2983
—town council....3003
Venire facias for jurors....5993
—where county, city or town is party 6006
—to try criminal case....1897
Witness, attendance compelled..6220
—commitment for refusal to testify 6221

VACCINATION
See **"Contagious Diseases"; "Public Health"; "State Board of Health"**
Compulsory 1493, 1530
Of teachers and pupils....1529
Penalty for violating regulations 1505, 1530
Free to poor....1530
Laborer constructing works of public improvement....1531
Improper, penalty....1532

VAGRANTS
Who are....2808
Proceedings against....2809, 28
Bond 2809
Punishment 2810
Discharge 2809, 2810

VALIDATING STATUTE
See **"Statutes"**
Effect of repeal of.... 8

VALLEY TURNPIKE
See **"Roads"; "Turnpikes"**
Rates of toll on....4983

Sec.

VARIANCE
Acquittal of offense because of, not a bar to further prosecution 4774
Between indictment and proof, amendment 4878
Between writ and declaration, how availed of....6103
Amendments of, pleading....6250
Special verdict....6250

VEHICLES
See also **"Automobiles"**
Turnpike toll on....4083
—on valley turnpike....4083
Use of on turnpikes treated with artificial binder....4091
Used in transporting ardent spirits, seizure....4657
—how disposed of....4658
Driving on sidewalk in town or village 4733
Standing on railroad tracks....4734
On roads, passing to right....4739
Driving at excessive rate of speed on roads, streets, etc..4741
Lien of keeper of livery stable or garage on....6445

VENDITIONI EXPONAS
See also **"Executions"**
On execution on judgment for debt due State....2527-2530
On distress warrant....5528
Issuance 6493
—on death of officer....6494

VENDOR AND VENDEE
Ejectment by vendor, when equitable title of vendee a defense 5471, 5473

VENDOR'S LIEN
Negotiation of warehouse receipt, effect on....1338
On real estate, void unless expressed in conveyance....5183
Satisfaction, duty of creditor to enter on record....6456
—penalty for failure....6456
—proceeding to enforce....6456
—presumption of payment....6456
Assignment of debt, entry of on record 6457

VENIRE FACIAS
See also **"Criminal Procedure"**
Issued by clerk of court...5992, 5993
Service, return....5992
To supply deficiency....5999
For as many jurors as may be necessary 5999
Irregularity, when verdict set aside for....6002
—failure of record to show, effect of....6002
Special jury....6005
When city, town or county is party 6006
For grand jury....4852
—effect of irregularities in....4861
In criminal cases, clerk to issue 4893, 4895
—irregularities, when verdict set aside for....4895
—contents 4895
—when another directed....4896
—person summoned failing to attend, penalty....4896
—when may issue....4897
—for trial of convict....5057
—upon change of venue....4916
Fee for executing....4927

VENTILATION
See **"Commissioner of Labor"**
Of coal mines....1847-1853
Of mines....1857

Digitized by Google

Sec.

VENUE
See also "Jurisdiction"
Actions and suits generally, 6049, 6050
Action to recover penalty for violation of license or revenue law 2395
Actions and motions on bonds of treasurers 2789
Action against telegraph or telephone company to recover forfeitures for failing to receive, transmit or deliver message..4047
Actions against guaranty, fidelity and security companies....4345
Action on judgment of justice..6040
Administration of real assets of decedent 5396
Appeals from rulings of Commissioner of Labor..... 1831
Appointment of receiver of estate of infant married woman.5136
Assignment of dower..... 5135
Attachments 6381
—for rent..... 6416-6418
Automobile, proceeding to seize and sell for violation of law..2146
Certiorari 6053
Condemnation proceedings..... 4361
Ejectment 5453
Fine, proceeding to recover..... 2514
Forfeiture for violation of fish, game, oyster laws..... 3366
Injunctions 6318, 6319
Mandamus 6053
—to establish roads and bridges between counties..... 1992
Motion for appointment of trustee for gifts for educational or literary purposes..... 590
Motions on bonds of treasurers.2789
Motion by officer against deputy for default, etc..... 3838
Motion for judgment against sheriff or constable failing to account for fee bills..... 3499
Motion against public service corporation failing to establish wagon-way 3833
Motion to recover money due by master for apprentice..... 5308
—complaints between master and apprentice 5309
Motion by surety against principal to recover money paid...5777
Motion for judgment on bond taken by officer..... 5045
—on bond of sheriff, sergeant or constable 5045
—for judgment generally..... 5048
Motion to quash execution..... 6499
Partition of land..... 5279
Petition to reopen coal mine closed by inspector..... 1870
Petition to establish boundaries of land..... 5490
Petition for relief of surety from bond 5771
—for indemnifying bond..... 5776
Petition for sale of homestead estate by widow and children..6542
Probate of wills..... 5217
Proceeding to test right of physician to practice..... 1614
Proceeding to establish drainage district 1738, 1739
Proceeding to have child released from operation of child labor law 1816
Proceeding to correct assessments for taxation..... 2236, 2237
Proceeding to declare stream or canal a lawful fence....3553, 3554
Proceeding for recovery of stock subscription 3843

Sec.

VENUE—Con.
Proceeding to transfer property of infant or insane person out of State..... 5350, 5351
—property held in trust...5351, 5353
Proceeding to change name of person 5983
Proceeding to enforce lien on personal property..... 6449
Prohibition 6052
Quo warranto..... 5052
Sale of estate of infant married woman 5137
Scire facias or action on judgment of justice..... 6040
Suit to supply link in title..... 479
Suit by Commonwealth to repeal grant..... 486
Suit for divorce..... 5105
—to affirm or annul marriage...5105
Suit by life tenant against remainderman for sale of fee simple 5161
—remainderman against life tenant 5161
Suit to sell real estate of infant or insane person..... 5335
—estate held in trust..... 5335
Suit to enforce mechanic's lien..6437
Unlawful entry or detainer..... 5445
Waiver of jointure..... 5121
Warrant for small claim..... 6030

Criminal Proceedings

Constitutional provision, Va. Const., § 8
Prosecution for homicide, death outside of State..... 4398
—in duel fought outside of State 4418, 4421
—death in one county where injury inflicted in another..... 4772
—death without State from injury inflicted within..... 4770
—death or injury without State inflicted by one within..... 4770
Offense committed wholly or partly without the State..... 4769
Larceny or robbery committed outside of State..... 4769
Offense committed on boundary of two counties..... 4771
Injury without State inflicted by one within the State..... 4770
Leaving State to evade law relating to duels..... 4421
Prosecution for violation of rules of Crop Pest Commissioners 671
Prosecutions for transporting or storing food under unsanitary conditions 1220
Prosecutions for violations of food law..... 1222
Prosecution of commission merchant 1250
Proceeding to test right of physician to practice..... 1614
Prosecution of husband or parent for failure to support or desertion of wife or child..... 1942
Violations of law as to oysters and shell fish..... 3355
Prosecution for allowing animals to run at large in villages and unincorporated communities 3551
Violations of laws relating to pilots 3621
Prosecution for building wharf without permit from harbor commissioners 3675
Violations of law relating to separate railroad cars for white and colored passengers..... 3969

Digitized by Google

Sec.

VENUE—Con.
Violations by railroads of law as to caboose cars.....4915
Proceedings under law relating to cruelty to animals.....4562
Prosecution of railroad companies for transportation on Sunday 4574
—of steamboat companies.....4575
Prosecution for pandering.....4579
Prosecution for sale of intoxicating liquor.....4536
Prosecution of accessaries.....4766
Where warrant of arrest returned 1824

Change of Venue
Special law changing prohibited .....Va. Const., § 63
Change of in criminal prosecutions 4914
—admission of accused to bail..4915
—duty of clerk of court.....4916
—procedure on removal.....4916
—in prosecution for violation of prohibition law.....4663

VERDICTS
On escheator's inquest..... 496
On petition for redress against escheat 498
Of orchard inspectors..... 900
In proceeding to commit inebriate or drug addict to private hospital 1071, 1072
For plaintiff in contract action, when judgment entered for defendant 3524
In action against railroad for stock killed or injured 3995
Of coroner's jury.....4811, 4812
In action of unlawful entry or detainer 5447
In action of ejectment.....5467
—against several defendants....5467
—for plaintiff 5474
—for defendant 5475
—description of premises recovered 5476
—for undivided interest 5477
—plaintiff's title specified in....5478
—plaintiff's right expired before trial 5479
—for damages for waste.....5481
—for damages to plaintiff.....5495
—allowance for improvements by defendant 5495, 5496
In action to recover damages for wrongful death 5787, 5788
In action of detinue 5802
Quo warranto proceeding 5847
Set aside for irregularity in venire facias or in empanelling jury 6002
Court not to direct.....6003
By jury of three persons.....6012
Defects in pleading for which not set aside 6119
Death or change of parties after.6164
In suit to remove cloud on title, effect of 6248
Special verdict, in case of variance 6250
Set aside, what judgment entered 6251
—assessment of damages 6251
On declaration containing faulty counts 6258
Interest awarded in 6259
Excessive, correction 6333
Reduced and accepted under protest, appeal 6335

In Criminal Proceedings
To be unanimous.....Va. Const., § 8

Sec.

VERDICTS—Con.
When set aside for irregularity in venire facias, impanelling jury, etc. 4895
When acquittal because of insanity 4913
Set aside, of what crime accused may be convicted on second trial 4918
Conviction of part of offense charged 4918
Of guilty of involuntary manslaughter on indictment for homicide 4920
Finding guilty of murder, to specify degree of 4919
Of unlawfully wounding on indictment for maliciously wounding 4920
Conviction of petit larceny on indictment for grand larceny..4921
—where thing stolen is of value of fifty dollars or more.....4921
Of not guilty on indictment for felony to bar prosecution for attempt 4922
For attempt on indictment for felony 4922
Judgment on general verdict of guilty on indictment containing several counts 4923
On joint trial, in case of disagreement as to one 4924

VESSELS
See also **"Adrift Property"; "Pilots"; "Seamen"; "Wrecks"**
Record of tobacco transported..1393
Nuisance on, proceeding by health officer to abate.....1513
—expense 1519
Quarantine regulations for.....1534
—to whom and what to extend..1535
—penalty 1535
—when vessel and cargo put in.1536
—inquiries, penalty on master, passenger, etc., for refusing to answer 1537
—master failing to deliver bill of health, log book, etc. 1538
—expense of 1541
County bridge, making fast to, loading or unloading from, 1994, 1995
Required for Chesapeake Bay ferries 2044, 2046
Owners, examination of by examiner of records 2221
Seizure by Commissioner of Fisheries for violations of law....3155
Forfeiture for violation of oyster laws, etc., disposition of proceeds 3262, 3275
Adrift, proceedings as to...3564-3568
Assistance, to stranded vessel or cargo 3599
—penalty 3600
When pilot to convey to quarantine 3645
Bound to or from Potomac river exempt from pilotage 3647
Ballast, notice of unloading, 3655, 3656, 3657
Burial of dead bodies from.....3659
Port regulations for 3681
Registers of kept by harbor masters 3683
Action to recover for death caused by 5786-5790
—libel against 5786

Offenses By and Against
Failure to keep record of tobacco transported 1393

Digitized by Google

Sec.

VESSELS—Con.
Receiving tobacco without consent of owner 1394
Violation of quarantine regulations 1535, 1537, 1538
Making fast to, loading or unloading from county bridge...1995
For failure to give information to examiner of records.....2221
Taking without permission of owner, penalty 3562
Failing to take pilot or employing unauthorized person as, 3621, 3622, 3623
Concealing name or refusing to disclose to pilot 3627
Unloading ballast without notice 3655
—failure to produce certificate..3657
Burial of dead bodies from in improper manner 3659
Landing sick seaman 3660
—passenger without provision for maintenance 3660
Violating harbor laws 3690
Burning or destroying, punishment 4428, 4466
Entry with intent to commit murder, rape or robbery.....4438
—with intent to commit other crime 4439
Wilfully destroying or injuring, punishment 4466
—property on 4466
Shooting at, or throwing missiles at 4473
Bringing convict into State.....4709
On James river, failing to sound whistle, penalty 4755
Interfering with or destroying buoy, beacon, day mark, punishment 4756
—lien on for cost of repair or replacing 4756
Anchoring on range of lights...4756

VESTED ESTATE
See also **"Creation and Limitation of Estates"; "Estates"**
Suit to sell, bill filed by life tenant or remainderman 5161

VESTED REMAINDER
See also **"Creation and Limitation of Estates"; "Estates"; "Remainders"**
Suit to sell 5161
Attachment of 6389

VESTED RIGHTS
In mill pond, effect on of permission to erect dam or canal.....3590

VESTRIES
Donations to for charities 37

VETERINARY MEDICINE AND SURGERY
Who permitted to practice.....1272
Practitioner, who is 1273
Examination of candidates for practice of 1275, 1276
—fee 1276
—certificate 1276
Register of practitioners 1278
Penalties for violation of law...1279
When compensation for services may not be recovered 1279
Practitioner compounding own prescriptions 1681
Prescriptions for morphine, opium, &c. 1693
Practitioner furnishing drugs to habitual user 1694
—penalty 1695
Purchase of alcohol by.....4594

Sec.

VETO
Of bills, by Governor. Va. Const., § 76
Of ordinance, by mayor of city..3013
—Va. Const., § 123
—granting franchise or selling property 3016, 3018
— —Va. Const., § 125

VIADUCT COMPANIES
See also **"Public Utility Companies"**
Organization 3865
Use of streets by.....3014, 3882
—Va. Const., § 124
Powers of 4058

VICE-CONSULS
Acknowledgments before 5206
Taking depositions 6226

VICE PRESIDENT OF THE UNITED STATES
Electors for, number of..... 74
—how and when chosen 74
—election and meeting 75, 76
—vacancies 76
—compensation 77
Ballots, and voting for..... 157
Exempt from jury service.....5985

VICE PRINCIPAL
Mine foreman, boss, or fire boss as 1885

VIEW
By jury 6013

VIEWERS
Proceeding to establish or change location of road 1977, 1978
—to discontinue road 1984
Proceeding to cause removal of gate on public highway 2012
Proceedings to establish ferry...2055
Proceeding to establish rates charged by bridges 2069
Proceeding to compel repair of turnpike, appointment 4078
—meetings, oath, report 4079
—form of report 4080
—recordation, fee 4081
—inspection of repairs 4082

VILLAGES
See **"Cities and Towns"**
Boundaries of, establishment by courts 3549
—petition, order 3550
—costs 3551
Animals running at large in, penalty 3550, 3551
Riding or driving on sidewalk, punishment 4730

VINEGAR
Adulterated, sale or manufacture of 1191
Brand 1191
"Cider vinegar," construction of term 1191

VIRGINIA
See **"State,"** and titles of various officers, institutions, etc.
Extent of territory under royal government 9
Cession of Northwest Territory. 10
Boundary between and North Carolina 11
Boundary between and Tennessee 12
Boundary and compact between and Kentucky 13
Boundary and compact between and Maryland 14
—rights and powers between.... 15

VIRGINIA AGRICULTURAL AND MECHANICAL COLLEGE AND POLYTECHNIC INSTITUTE
Funds for, interest on bonds.853, 929

Digitized by Google

Sec.

VIRGINIA AGRICULTURAL AND MECHANICAL COLLEGE AND POLYTECHNIC INSTITUTE—Con.
—disbursement 853
Students, free tuition 854
—length of term 858
Property of, reversion 855
Curriculum 856
School of mines 857
Professors 864
—salaries 865
—removal 864
Fees of students 865
President 864
Discipline of students 864
Treasurer, bond 866
Donations to 867
—reversion 867
Experimental farms and laboratories 868
Agricultural experiment station. 869
—conference of director with Governor 925
Visitors, appointment, term..... 859
—vacancy 859, 862
—Superintendent of Public Instruction, a visitor 859
—president of Board of Agriculture and Immigration, a visitor 859
— —Va. Const., § 146
—a corporation, name 860
—legislative power over 860
—rector 861
—clerk 861
—quorum 861
—meetings 862
—duties 864
—expenses 864, 988
—report 987
—to nominate member of faculty to State Board of Education... 596
— —Va. Const., § 130
President, appointment 864
—member of State Geological Commission 523, 828
—regulations prescribed for demonstration farm work in high schools 717
—conference with Governor on county demonstration work... 925
—report 986, 989
—member of Board of Agriculture 1099
— —Va. Const., § 143
Professors, appointment, removal 864
—salaries 865
—nominated to be member of State Board of Education 596
— —Va. Const., § 130
—professor of civil engineering a member of State Highway Commission 1963
— —expenses 1975
County demonstration work..921-925
—appropriations for 921, 924
—payments to treasurer for.... 921
—warrants, vouchers 921
—funds for, use of 923
—agents, demonstrators 923
—salaries 924
—co-operation with United States Department of Agriculture 923, 924
—boys' demonstration work, girls' canning clubs 923
—conference on 925
State Live Stock Sanitary Board. 906
Annual report 930
Congressional appropriation.931, 932
Legislative power over..... 933

VIRGINIA FUNERAL DIRECTORS' ASSOCIATION
Nomination of members to board of embalming 1716

Sec.

VIRGINIA HISTORICAL SOCIETY
Property of exempt from taxation 2272, 2301
—Va. Const., § 183
Gifts to, inheritance tax on.....2272

VIRGINIA JOURNAL OF EDUCATION
Publication of list of retired teachers in 798

VIRGINIA MILITARY INSTITUTE
Acts of Assembly furnished to... 388
A corporation, name 834
Support and control of 834
Arsenal vested in 838
Power to borrow money and secure its payment 839
Treasurer, appointment 840
—bond, report, settlement of accounts 841
Appointment, removal, salaries of professors 842
Officers commissioned in militia. 84
Cadets, admission 844
State cadets 845
—vacancy 845
Commissioned officers of militia as students 846
Cadets to guard institute..... 847
—degree of graduate 848
State cadets act as teachers, or. 849
—in national guard, or 849
—on State Highway Commission. 849
—bond, action on 849
Visitors, appointment, apportionment, term 835
—vacancies 835
—quorum 835, 837
—powers and duties 835-837
—meetings 836
—president 836
—secretary 836
—by-laws and regulations 837
—accounts of treasurer 841
—member of Congress may be.. 291
—to nominate eligible from faculty to State Board of Education 596
—Va. Const., § 130
—inspection 850
—report 850, 987
—expenses 988
Superintendent, appointment, duties 836
—special meetings board of visitors called by 836
—a member of the State Geological Commission.....523, 828
—reports 986, 989
Treasurer, appointment 840
—bond, report, settlement of accounts 841
Professors, appointment, removal, salaries 842
—nomination to be member of State Board of Education..... 596
— —Va. Const., § 130
—professor of civil engineering, member State Highway Commission 1963
— —expenses 1975
Musicians, how enlisted and paid 851
Water supply 852
Power of eminent domain.....4385

VIRGINIA NORMAL AND INDUSTRIAL INSTITUTE
See "State Normal Schools"
Location, name, departments.... 947
Government and control of..... 947
Visitors, corporation 948, 949
—appointment, term 948, 951
—powers and duties 949, 951
—quorum 950
—rector 950
—secretary 950

Digitized by Google

Sec.
VIRGINIA NORMAL AND INDUSTRIAL INSTITUTE—Con.
—treasurer, bond 950
—report 951
—removal of officers, teachers, &c. 952
—meetings, expenses 958
—removal 963
—reports 987
—expenses 988
President, appointment 951
—salary 951, 960
—reports 986, 989
Professors, teachers, appointment 951
—salaries 951, 960
State students 953, 964
—vacancy 954
Depositaries, bond 955
Order for warrants 956
Donations to 957
Summer normal 959, 962
—salaries 960, 966
—circulars 961
Students 964
—testimonials 965
Use of funds by Superintendent of Public Instruction 967
Supervision by State Board of Education 968
Legislative control over 969

VIRGINIA PHARMACEUTICAL ASSOCIATION
See also **"Board of Pharmacy", "Pharmacy"**
Incorporation 1655
Real estate held by 1655
Objects 1656
Recommendation by of members of Board of Pharmacy 1666

VIRGINIA REPORTS
See also **"Reporter of Supreme Court of Appeals"**
Printing 394
Custody and distribution 347
Reporter, duties, etc. 5879-5883

VIRGINIA SCHOOL FOR THE DEAF AND BLIND
See also **"Virginia State School for Colored Deaf and Blind Children"**
Corporation, name 970
Legislative control 970
Visitors, appointment, term 971
—president 972
—secretary 972
—duties 973
—meetings 974
—election of superintendent and professors 975
—removal 975
—reports 976, 987
—expenses 988
—to nominate member of faculty to State Board of Education 596
—Va. Const., § 130
School for deaf mutes 977
School for the blind 977
Selection of pupils 977
—charge for support 977
Appropriation 978
President, appointment 972
—reports 986, 989
Power of eminent domain 4385
Carnal knowledge of inmate, punishment 4414

VIRGINIA STATE ASSOCIATION OF GRADUATE NURSES
Nominations by for appointment to board of examiners of graduate nurses 1703

Sec.
VIRGINIA STATE DENTAL ASSOCIATION
See **"State Board of Dental Examiners"**
Nominations to State Board of Dental Examiners 1642
Reports to 1654

VIRGINIA STATE OPTICAL ASSOCIATION
Designations to Governor for appointment to Virginia State Board of Examiners in optometry 1625

VIRGINIA STATE SCHOOL FOR COLORED DEAF AND BLIND CHILDREN
See also **"Virginia School for the Deaf and Blind"**
Continuation, government 979
Departments 980
Admission of pupils 980
—charges 981
Visitors, corporation, name 982
—powers and duties 982-985
—report 983, 987
—appointment, term 984
—president 984
—secretary 984
—executive committee 984
—meetings, quorum 984, 985
—election of superintendent 985
—removal 985
—election of professors and employees 985
— —removal 985
—expenses 985
Legislative control 983
Superintendent, election of 985
—removal 985
—reports 986, 989
Professors and employees 985
—appointment and removal 985
Power of eminent domain 4385
Carnal knowledge of inmate of, punishment 4414

VIRGINIA STATE VETERINARY ASSOCIATION
See also **"Veterinary Medicine and Surgery"**
Recommendation of persons for Board of Veterinary Examiners 1274

VIRGINIA VOLUNTEERS
Officers and members, exempt from jury service 5985
—contributing members 5985

VISITATION
Of jails and almshouses 1897
Of institutions receiving delinquent, dependent, or destitute children by Board of Charities and Corrections 1918
Of children paroled by reformatories, by Board of Charities and Corrections 1919

VITAL STATISTICS
See also **"Public Health"; "State Board of Health"**
Preservation of by secretary of local board of health 1498
Furnished to State Board of Health 1501
Burial permit 1565, 1566, 1570
Registrar, salary 1562
Registration districts 1563
Local registrar 1564
Stillborn children, registry, certificate 1566
Death, certificate, what to contain 1567

Digitized by Google

Sec.

VITAL STATISTICS—Con.
—without medical attendance, 1566, 1568
—duties of undertaker 1569
Births and deaths, registration, 1561, 1572
—forms for.....1574, 1575, 1577, 1578
—reports of maternity hospitals, 1928, 1929
Births, registration 1572
—certificate; from whom required 1573
— —form 1574, 1575
—stillborn child 1566
Register of marriages.....5096, 5097
Foreign register of births and marriages, admissibility as evidence 6207
Records, kept by registrars.1577, 1578
—of almshouse 1576
—of hospitals 1576
—of lying-in institutions.....1576
False entries in records of marriages, births, and deaths, penalty 4491
—giving false information for, penalty 4492
—violation of law by physician, undertaker, registrar, etc.....1581

VOLUNTARY ASSOCIATIONS
Fencing lands by 3540

VOLUNTARY OBLIGATIONS
Order in which paid from decedent's estate.....5390, 5391, 5395
Payment and set-off 6147

VOLUNTARY CONVEYANCES
See **"Fraudulent Conveyances"**
Fraud on creditors.....5185
Limitation on suit to set aside..5820

VOLUNTARY MANSLAUGHTER
See **"Crimes"; "Criminal Procedure"; "Homicide"**
Punishment 4396

VOTERS, VOTES
See **"Elections"**

VOTING MACHINES
General Assembly may provide for..... Va. Const., § 87

VOUCHERS
Signed by absent voter..... 211
Filed and preserved by Register of Land Office 416
Of Board of Crop Pest Commissioners 884
For payments for county demonstration work 921
For expenditures from fertilizer fund 1123
For expenses, Board of Agriculture 1153
For payments from game protection fund 3336
With certificates for fees of officers 4961
For expenditures of Superintendent of Penitentiary 5035
—superintendent of State prison farm 5035
For payment into treasury of unclaimed court funds...6311, 6312

WAGES
Assignment of as security for loan by building and loan association 4154
Of laborer, homestead exemption not to be claimed against.....6531
—Va. Const., § 190
Exemption, laboring man...6555-6557
Of minor, liability for debts of parent 6558

Sec.

WAGES—Con.
Of State employee, liability to execution and garnishment....6559
—of employees, officers, etc., of city, town, and county...6560, 6561
Restraining garnishment of.....6565

WAGON
See also **"Vehicles"**
Used in transporting ardent spirits, seizure 4657
—how disposed of 4658
Standing on railroad track, penalty 4734

WAIVER
Of defense to assessment on bond issue to establish drainage district 1773
Of proof of loss, by insurance company, failing to furnish form for 4221
In recognizance 4974
Of jointure by widow.....5121
Negotiable instrument, of presentment for payment 5644
—notice of dishonor 5671
— —who affected by 5672
—of protest 5673
—negotiability not impaired by.5567
Of jury, in civil case.....6012
—in criminal case 4927
— —Va. Const., § 8
Of answer under oath to bill in equity 6128
Of objections by failure to move for new trial 6254
Of homestead exemption.....6548
—how claims enforced.....6549
—judgment, execution 6551

WARDENS
See **"Fish and Fishing"; "Game Wardens"**

WARDS
See **"Cities and Towns"; "Guardian and Ward"**
Cities of second class 2898
In territory annexed to city or town 2964
Change of number and boundaries of 2978
—Va. Const., § 121
Apportionment of councilmen among 2979
Reapportionment of representation among 2980
—Va. Const., § 121
Justice of the peace in.....3092

WAREHOUSES AND WAREHOUSEMEN
See **"Tobacco"**
Adverse claimants, interpleader by 1306, 1307, 1308
Alteration of receipt, effect of..1302
Attachment of goods in, surrender of receipt 1314
Costs, in proceedings for delivery of goods when receipt is lost or destroyed 1303
Definitions 1347
Delivery, when duty to make, 1297, 1320
—justification for 1298
—liability for misdelivery.....1299
—cancellation of receipt...1300, 1301
—when receipt lost or destroyed.1303
—liability to holder 1303
—right of third person, when no defense for failure 1308
—excused until lien satisfied....1320
—liability for failure after goods sold 1325
—to unpaid seller 1328
Duplicate receipt, effect of.....1304

Digitized by Google

Sec.
WAREHOUSES AND WAREHOUSEMEN—Con.
Estoppel to assert title.....1305
Fee, counsel, in proceedings for delivery of goods when receipt is lost or destroyed 1303
Fungible goods, commingling, 1312, 1313
Goods, care of 1310
—kept separate 1311
—commingling of fungible goods 1312
— —attachment or levy.....1314
—lien 1316, 1317
—sale 1322, 1323
Hazardous goods, sale of.....1323
Interpleader.....1306, 1307, 1308
—time to determine validity of claim 1307
Interpretation of law.....1345, 1346
Levy on goods in.....1314
Liability for failing to cancel receipt 1300, 1301
—misdelivery 1299
—failing to mark recipt duplicate 1295
— —to mark receipt not negotiable 1296
—to holder of lost receipt. 1303
—receipt marked "duplicate"....1304
—non-existence or misdescription of goods 1309
—care of goods 1310
—to depositors of fungible goods 1313
—failing to cancel receipt when goods delivered 1300, 1301
—failure to deliver goods sold..1325
Liens 1316-1325
—claims included in.....1316, 1319
—property subject to 1317
—how lost 1318
—other remedies 1321
—satisfaction by sale.....1322, 1323
— —effect of.....1325
— —notice 1322, 1323
— —advertisement 1322, 1323
— —proceeds 1322, 1323
— —claim by third person.....1322
— —perishable and hazardous goods 1323
—other methods of enforcing....1324
Offenses by 1339-1344
—issue of receipts for goods not delivered 1339
—issue of receipt containing false statement 1340
—issue of duplicate receipts not so marked 1341
—issue of receipts for warehouseman's goods which do not state that fact 1342
—delivery of goods without obtaining negotiable receipt.....1343
Burning or destroying warehouse, punishment 4430
Entry with intent to commit murder, rape, or robbery.....4438
—with intent to commit other crime 4439
Perishable goods, sale of.. 1323
Remedies for charges and advances 1321-1324
Receipts, who may issue.....1290
—form, essential terms, 1291, 1292, 1319
—definition, non-negotiable .. .1293
—definition, negotiable 1294
—duplicate, marking 1295
— —liability for failure 1295
—non-negotiable, marking 1296
— —liability for failure 1296
—holder, rights when receipt not marked duplicate 1295

Sec.
WAREHOUSES AND WAREHOUSEMEN—Con.
— —on failure to mark receipt not negotiable 1296
—cancellation when goods are delivered 1300
— —liability for failure 1300
— —partial delivery 1301
— —liability 1301
—alteration, effect of 1302
—loss or destruction of.....1303
—duplicate, effect of 1304
—non-existence or misdescription of goods, liability.....1309
—surrender when goods attached or levied on 1314
—creditors' remedies against....1315
—holder, goods sold by warehouseman 1325
—negotiation by delivery 1326
— —by indorsement.....1327
—transfer of 1328
—who may negotiate 1329
—rights of person to who negotiated 1330
—rights of transferee 1331
— —notification 1331
—transfer without indorsement.1332
—negotiation, rights of holder..1330
—transfefr, rights of holder.....1331
—holder of negotiated, rights of.1330
— —transferred 1331
—without indorsement 1332
—transfer without indorsement, rights of holder 1332
—warranties on 1333
—indorser not a guarantor.....1334
—no warranty implied from accepting payment of a debt....1335
—when negotiation not impaired by fraud, mistake or duress...1336
—negotiation after sale, mortgage, or pledge of goods.....1337
—negotiation defeats vendor's lien 1338
— —stoppage in transitu.....1338
—holder, vendor's lien 1338
— —stoppage in transitu 1338
—offenses 1339-1344
—for mortgaged goods, negotiation of 1344
Sale to satisfy lien 1322
—of perishable or hazardous goods 1323
Stoppage in transitu 1338
Vendor's lien 1338
Warranty on sale of receipt....1333

WARRANTIES
On sale of warehouse receipt....1333
—on pledge of 1335
Special, in deed to land sold for delinquent taxes 2485, 2495
Statement in application for insurance, as 4220
—in affidavits before or after loss 4220
Liability of heir on warranty of ancestor 5148
General, effect of covenant of, 5171, 5173
Special, effect of covenant of, 5172, 5173
In deed by husband and wife, effect on wife 5211
Of indorser of negotiable instrument 5627, 5628
Plea of breach of 6145
—proceedings on 6146-6150

WARRANTS
See also "Warrants for Small Claims"
To abate nuisance 1518

Digitized by Google

Sec.

WARRANTS—Con.
For accounts, for paper furnished to Superintendent of Public Printing 383
—for stationery, printing, etc.... 385
—of Superintendent of Penitentiary for maintenance of prisoners on convict road force....2077
—of Commissioner of Game and Inland Fisheries 3312
For adjournment of special term of court 5895
For allowances made by courts..2187
For annuity for Virginia Normal and Industrial Institute 956
For appropriations for county demonstration work 921
Against attorney for money received for client 3427
By auditor, for disbursement of school funds 746
—refunding State debt 2599
—to indemnify officer collecting taxes 2619
—to refund temporary loan to State 2640
—for pensions 2652
—for cost of making report of prisoners in jail 2871
—for salaries of officers at seat of government 3453
—for amount found due to officer indebted to State.....3476
—for salary of State officer, when not to be issued.....3476
—for fees to witnesses 3530
—for expenses, fees, mileage, etc., allowed by State Corporation Commission 3744
—for payment from "Banking Fund—State Corporation Commission" 4122
—for compensation of officers and employees of penitentiary.5041
— —of State prison farm.....5047
—for expenses of State prison farm 5047
—for fees of clerks for marriages reported to 5099
—for payment of unclaimed court funds 6314
For award of arbitrators, dispute as to division fence.....3558
Of Board of Drainage Commissioners 1762
For burial expenses of Confederate pensioner 2646
On certificate of deposit issued by savings bank 4142
To change place of holding court, 5965, 5966
In cities, who to issue.... 3103
For claims against State.....2181
To commit inebriate or drug addict to private hospital 1070
Of commitment by judge of election for disturbing election... 196
Compelling mine owner to permit survey 5289
For compensation of commissioner of revenue 2349
In contempt proceeding, for violation of injunction in suit to abate house of prostitution....1524
For coroner's inquest 4806
—how executed 4808
—for arrest of accused 4813
For costs and fees of drainage district 1778
On county or city treasurer, payment 2781, 2782, 2786
—book for provided by treasurers 2781

Sec.

WARRANTS—Con.
—time within which to be presented 2783
—received for taxes 2782
—taxes deducted from 2784
—paid from school funds 726
—for State school tax fund..... 747
—for improvement of road with State aid 2106
—list to supervisors 2780
—not to deal in 2787
—liability for failure to pay....2787
—forest reserve fund paid to.... 743
For damages by trespassing animals 3541
Distress for rent 5522
—goods levied on 5523
—in possession of party.....5526
—entering by force to levy.....5526
—forthcoming bond 6518-6530
For expenses, of summer normal schools 613
—of Superintendent of Public Instruction 616
—of State Board of Education.. 620
—of school trustee electoral board 634
—of destroying diseased cedar trees 889
—of State Live Stock Sanitary Board 908
—of admitting patient to insane hospital without commitment..1035
—of Board of Agriculture.....1106
—for enforcement of law relative to agricultural seeds 1153
—of office of Dairy and Food Commissioner 1158, 1243
—of division of markets 1256
—of enforcing law relative to commission merchants 1265
—of Board of Pharmacy.....1669
For fees of officers.....3500
—State purchases of delinquent lands 2501
For fees and mileage of Commonwealth's attorney and witnesses, criminal case removed to United States court 4971
For fee for registration of dealer in nursery stock 883
For fees of commissioner of revenue, for licenses.....2383
For fertilizer fund 1123
For fines 2543
For forfeiture by pilot receiving or demanding unlawful fees...3642
On game protection fund 3336
Of Governor for commutation of punishment 5069
—return of 5070
To guard for convict 4948
Interpleader before justice.....6035
Issued in cities 3103
Land warrants, register 416
—when and to whom issued.... 418
—duplicate 419
—location of land on.....420, 422
—priorities 423
—not fully appropriated by entry 425
—how entered when no surveyor in county 426
—when surveyor is interested... 427
—location on, when land in possession of another.....428, 429, 430
— —by party in possession..... 429
— —void, when..... 434
— —because already settled on.. 457
— —on surplus in grant.....471, 472
— —several locations in one grant 475-478
—new warrant to party losing land on caveat 452

Digitized by Google

Sec.

WARRANTS—Con.
—assignment 460
—noting by register of grant on 461
—when personal estate 462
—when real estate 462
—for waste and unappropriated land 2504
Lunacy commission...1017, 1018, 1019
—for escaped lunatic, epileptic, inebriate, etc. 1044
—to commit inebriate or drug addict to private hospital.....1070
—to have person declared feeble-minded 1079
Literary fund, for claims paid from 615
—for payment into treasury.... 615
For money lost in gaming.....5559
Purchase at discount, penalty... 684
Purchase of furniture for Governor's house 405
Quarantine, person escaping from 1539
Against receivers, when tried....6293
Refund of excessive charter tax or fee charged corporation....3775
Refund of taxes after correction of assessment 2388
For removal of poor person to place of last settlement..2802, 2804
On retired teachers' fund 792
—for pensions 794
Return on by officer 2825
—forfeiture for false return, 2825, 2826
For review of judgment of inspector 1430
For salary, of assistant to Superintendent of Public Printing 398
—of messenger to Superintendent of Public Printing 400
—of division superintendent of schools 626
—of teachers 693
—for enforcement of law relative to agricultural seeds 1153
—of Dairy and Food Commissioner 1152
—of assistants to Highway Commissioner 2103
For school funds 746
—for expenses of school system. 662
—cancellation 728
—loss of, duplicate.....2184
— —relief of treasurer 2185
—for claims against school districts for salaries, etc. 670
—for payment of expenses of summer schools 698
—for appropriation for high schools 707, 710
—for transfer of school funds to depository 736
—for books for school libraries. 755
—for claims against city school board 786
By Second Auditor for payments on State bonds 2633
For seizure of property forfeited for violation of game, fish or oyster laws 3367
Service by officer 2822
—assistance to officer.....2822
—contempt, punishment.....2822
For sinking fund 2626
For special term of court.....5894
Of State Health Commissioner..1591
On State library funds 359
Of supervisors 2772
—how signed.....2713, 2770, 2772
—for disbursement of road tax, 1986, 1987

Sec.

WARRANTS—Con.
—for work on roads 2027
—for claims against county.....2724
—for premiums on scalps 2729
—for support of poor 2795
State treasury for payments into, 2155, 2182, 2183
—literary fund 615
State treasury, for payments from 2164
—for improvement of roads....2195
—duplicate 2184
—for check charged off.....2194
—from literary fund 615
For teacher's salary..... 693
Water furnished Capitol and State Library building 406

In Criminal Proceedings
For arrest, who may issue.....4823
—when to issue, how directed, executed and returned 4824
—executed anywhere in State...4825
—endorsement by justice of another jurisdiction 4825
—to carry accused to county or corporation where trial should be 4827
—of person doing business without license 2369
—issued by coroner 4813
—of fugitive from justice, 5062, 5063
—of non-resident disturbing fishing shores 5292
For carrying weapon on Sunday or to place of religious worship 4578
For cruelty to animals 4564
For deserting seaman 3661
Execution of by police 2991
For enforcement of suspension of pilot 3644
Fine imposed, endorsement of security on 2549
For misdemeanor 4987
—amendment on appeal 4989
—appeal, when new warrant issued by court 4989
—trial without warrant 4992
On petition or disposition of delinquent child 1915
In prosecution for sale of unwholesome or deleterious food.1218
—for selling unsound meat 1183
—for offences committed in Capitol Square 413
—for violation of law as to fishing 3215, 3217
—for violation of oyster laws...3277
—for violation of game law, service on corporation 3340
—for offences against law relating to pilots 3621
To require recognizance of person about to commit crime...4790
Search warrants, general warrants prohibited...Va. Const., § 10
—issuance by justice.....4819, 4820
—how directed; what to command 4821
—disposition of seized property..4822
—special police may execute....4801
—violations of prohibition law, 4612, 4618
—for vehicle transporting ardent spirits 4657
—for gambling devices 4676
Against user of truck barrel below standard 1473
Against vagrant 2309

WARRANTS FOR SMALL CLAIMS
See also "Warrants"
Jurisdiction 6015

Digitized by Google

Sec.

WARRANTS FOR SMALL CLAIMS—Con.
—when justice disqualified from trying 6019
Procedure when plaintiff swears to claim 6016
Removal to court, procedure....6017
—trial 6017, 6018
—defective or irregular warrants, effect of 6018
Issue and return 6020
Service 6020
Witnesses, compelling attendance 6021
Trial 6022
—associate justices 6022
—time for 6022
Judgment 6022
—endorsed on papers 6023
—entry in record book 6024
— —entry as evidence 6032
—abstract of.....6025
—return of abstract to clerk....6030
—action or scire facias on.....6040
Execution, how and when issued.6029
—stay of 6027
—date of entry by justice.....6024
—return 6030
—renewal 6030
—docketing 6030, 6031
—indexing 6031
—writ of possession 6029
—failure to return.....6032, 6033
—failure to pay over money received under 6032, 6034
—further executions, how issued.6031
—trial of title to property levied on 6035
— —appeal 6038
Appeals from justice 6018
—how tried 6018, 6038
—defective or irregular warrants, effect of 6018
—where justice interested or related to parties 6019
—allowance 6027
—security 6027
—payment of writ tax 6028
—stay of execution 6027
—dismissal 6027, 6028
—duty of justice and clerk.....6036
—jurisdiction 6037
—judgment 6038
—costs, damages 6038
—notice of trial 6039
—preference over other cases....6039
New trial, when and by whom granted 6026
Costs 6018, 6022, 6027, 6030
Proceedings against officer failing to pay over money collected 6032, 6034
—evidence 6032, 6034
—judgment 6033
—collection on claims 6034
Against receivers 6293

WARRANT OF ATTORNEY
Want of, no ground for reversal.6331

WARREN COUNTY
Fees of Commonwealth's attorney 3505

WARWICK COUNTY
Taking terrapins, disturbing eggs, season for 3297
—forfeiture of boats, nets, etc..3297
Commonwealth's attorney, fees.3505
Harbor master 3679
—term 3679, 3680
—duties 3679, 3681

WASHINGTON COUNTY
Fees of Commonwealth's attorney 3505

Sec.

WASH ROOMS
See **"Commissioner of Labor"; "Employers and Employees"**
In foundries and moulding shops.1834

WASTE
Action by personal representative for injury to estate.....5385
—against personal representative for injury by decedent.....5385
Action against personal representative of executor or administrator for 5386
Damages for in action of ejectment 5481, 5482, 5491-5497
Tenants liable for.....5506, 5507
Guardian liable for.....5508
Wanton, double damages.....5509
Action for 5509
Manure, removal 5510
Pendente lite, treble damages..5511

WASTE AND UNAPPROPRIATED LAND
See also **"Land Office"**
When certificate for to issue.... 418
Proceeds of for literary fund.... 738
—Va. Const., § 134
Land forfeited for failure to put on land book 2452
Grants, how issued 2504

WATCH-HOUSE
Erection by renter of oyster ground 3231

WATER
See **"Water Courses"**
Jurisdiction of circuit court over 3213
Furnishing, as public utility....4067
Condemnation of 4382
—by railroad 3857

WATER CLOSETS
See also **"Commissioner of Labor"; "Employers and Employees"**
For employees 1822-1827
In foundries and moulding shops 1834

WATER COMPANIES
See also **"Public Service Corporations"; "Public Utilities Companies"**
Use of streets by 3014
—Va. Const., § 124
As public service corporation....3881
Powers of 4058
As public utility 4067
Contracts with by supervisors to lay water pipes along roads and turnpikes 4060

WATER COURSES
See **"Canals"; "Ferries"; "Harbor Masters"; "Navigation"; "Navigable Waters"; "Pilots"**
Special laws declaring navigable prohibited .....Va. Const., § 63
Pollution, punishment 1782
Jurisdiction of circuit courts over 3213
Jurisdiction of proceedings under laws relating to oysters and other shellfish 3254
Concurrent jurisdiction of courts over 5958
City or town erecting dam in, 3054-3060
Casting noxious substance into, injuring fish 3195
—penalty 3196
As lawful fence.....3547, 3553
Statutes declaring to be lawful fences continued in force 3562

Digitized by Google

Sec.

WATER COURSES—Con.
Beds of, property of Commonwealth 3573
—use of in common for fishing, fowling, oystering, etc....3573
—not to be granted 3573
Riparian rights extend to low-water mark 3574
Clearing obstruction from 3575
Navigation, right of State to improve 3576
—removal of dam 3576
—limitation of power of court to grant leave to erect dam.....3577
—mill dam not to obstruct.....3578
Navigable, dams in 3577
—when a nuisance 3577
—locks in 3577
Dams in, proceedings for erection of 3582-3593
Crossing by railroad 3999
Felling timber or casting wood into, punishment.....4746
Dam in obstructing navigation or passage of fish, deemed a nuisance, penalty.....4747
—when not to be rebuilt 4747

WATER FIXTURES
Buying or receiving with intent to defraud 4445

WATER FRONT
Sale by city or town 3016
—Va. Const., § 125

WATER GATES
In canals of mills 3588

WATERING PLACES
Conservators of peace at.....4804
Appointment of police at 4805

WATER SUPPLY
See also **"Water Companies"; "Waterworks"**
Meaning of term 1785
For Capitol and State Library building 406
Pollution, punishment.....1783, 1785
—jurisdiction of city or town to prevent 3031
Examination of and control over by board of health 1786
Permit to water works to supply water for domestic purposes, 1787, 1788, 1789
—duration of permit 1790
—penalty for supplying without permit 1793
Regulations relating to by supervisors 2743
Cities of second class may provide 2906
Purchase of plant by city.....3017
City or town may acquire.....3031
—extent of jurisdiction to prevent pollution of 3031
Use of waters of Lake Drummond by cities, towns, and counties 3040
City or town erecting dam in water course to obtain.....3054-3060
Contract for purification by cities and towns.....3064
Bonds for by cities and towns, 3079, 3081
—how negotiated 3089
—contract with purchasers.....3090

WATER SUPPLY COMPANIES
See **"Water Companies"; "Waterworks"**

WATERWORKS
See also **"Water Companies"; "Water Supply"**
Definition 1785

Sec.

WATER WORKS—Con.
Examination and control by board of health 1786
Permit to supply water for drinking or domestic purposes, 1787-1789
—investigation of 1788
—duration of, revocation 1790
—hearing 1791
—appeals 1792
—penalty for supplying water without permit 1792
— —disobeying order of board of health 1793
Sale by city or town 3016
—Va. Const., § 125
City or town may acquire.....3031
—jurisdiction to prevent pollution 3031
Act permitting city to acquire property of corporation operating waterworks system, continued in effect 3042
Bond issue by cities and towns for 3079
Vested rights in not affected by leave to erect dams for mills..3590

WAY
See **"Roads"**

WEAPONS
Carrying concealed weapons, punishment 4534
—forfeiture of weapon.....4534
—disposition of 4534
—persons not prohibited 4534
—permit to carry 4534
Black-jack, brass or metal knucks, etc., selling, furnishing, etc. 4535
Carrying to place of religious worship or on Sunday, punishment 4578
Furnishing to minors, punishment 4695
Furnishing toy firearms to minors 4697
Recognizances from persons carrying 4795
Carrying by officers and guard of penitentiary 5040

WEEDS
See **"Board of Agriculture"**
Designation of 1139

WEIGHTS AND MEASURES
Municipal powers as to.....3033
Superintendent, Register of Land Office to be 1465
—verification, sealing.....1468, 1477
—fee 1481
—penalty for neglect of duty....1482
Sealer, proving 1476
—penalty for failure 1476
—notice of time for sealing, 1477, 1481
—sealing 1477
—appointment 1469, 1478
—fees 1479
—penalties, neglect of duty.....1482
Manufacture of 1466
Distribution of 1467, 1478
Verification and sealing 1468
Where and by whom kept..1464, 1469
Standards, where and by whom kept 1464
Fertilizers, bushel, cart-load....1126
Bags and packages for commercial feeding stuffs 1234
Tobacco warehouse, proprietor to furnish.....1387
Lumber, shingles, staves, offered for inspection 1413
Cord 1470
Bushel 1470

Digitized by Google

Sec.

WEIGHTS AND MEASURES—Con.
Barrel, apples, penalty.....1471
Barrel, agricultural products, truck 1472
—penalty 1473
Barrel, flour 1474
—penalty 1407, 1408, 1474
—for meal 1407, 1408
—for bread 1407, 1408
—for fish 1409
—for beef and pork 1410
—for pitch, tar, turpentine.....1411
—for salt 1412
Coal, public scales 1475
Sealing 1476, 1481
Seals, how procured and paid for 1480
Unsealed, use of, penalty.....1483
Banks, how often sealed.....1484
—weighing gold, legal tender...1485
For oysters 3252
—illegal, seizure of 3273

WELL
Putting poison in 4400

WESTMORELAND COUNTY
Taking terrapins or disturbing eggs, season for 3297
—forfeiture of boats, nets, etc..3297
Assignment of oyster ground to riparian owner 3223
Hunting, at night 3357
Shipping wild water fowl.....3357
Commonwealth's attorney, fees..3505

WEST VIRGINIA
Certificates for share of State debt 2589
—held by board of education...2641
Recordation of copies of writings recorded in West Virginia when original lost 5212
Records of clerks, officers, etc., copies as evidence 6198

WESTERN STATE HOSPITAL
See **"Insane Hospitals"; "Insane Persons"; "General Board of Hospital Directors"; "Commissioner of State Hospitals"**
Continued 1004
Location, name 1005

WHARVES
See also **"State Highway Commission"**
Control of in counties 1976
Use of bridges as prohibited....1994
—penalty 1995
Erection, by owner of land.....1996
—abatement of 1997
—without authority of harbor commissioners 3675
—at county landings, petition...1998
— —revocation 1999
— —regulation of rates and charges 1999
—by riparian owner over oyster ground 3269
—in Elizabeth river 3667, 3668
Ferry 2062
Sale by city or town.....3016
—Va. Const., § 125
Franchise, granting by city or town 3016-3022
—Va. Const., § 125
Bond issue by cities and towns for 3079
Lines within which may be erected in Elizabeth river....3667
—removal of when obstructing navigation 3668
Affected with public use, closing by State Corporation Commission 3669

Sec.

WHARVES—Con.
Building without authority of harbor commissioners 3675
Examination and repair of at direction of harbor commissioners 3676
Private, vessels using without fee to harbor master 3685
Separate waiting rooms for colored persons 3716
Penalty for failing to repair on order of State Corporation Commission 3932
Police agent for 4025
Accommodations for passengers at 4026
—separate for white and colored, 3716, 4026
Appeals in controversies concerning 6336

WHEAT
See also **"Warehouses and Warehousemen"**
Bushel, standard 1470
Grinding at mills 3594
—exchange for flour 3594

WHEAT STACK
Burning, punishment 4431

WHEEL OF FORTUNE
See **"Gaming"**
Keeping, punishment 4676
—aiding, punishment 4678
—resisting arrest, punishment..4678
—resisting seizure, punishment..4678
Permitting on premises, punishment 4677
Betting or playing at, punishment 4679

WHISKEY
See **"Intoxicating Liquors"**
As ardent spirits.....4581
Sale of by druggist 4588
—for medicinal purposes 4591
License to druggist to sell.....4599
—to wholesale druggist 4600

WHISTLE
See **"Railroads"; "Transportation Companies"**
On railroad locomotives, signals by 3958
—penalty for failing to give.....3960
—effect of failure to give in actions for injuries 3959

WHIPPING
See also **"Infants"; "Minors"**
Minor convicted of misdemeanor.1924

WIDOWS
See also **"Dower"; "Husband and Wife"; "Married Women"**
Dower 5117-5133
Jointure 5120-5122
Jointure, bars dower 5120
Election between jointure and dower 5121
Dower when deprived of jointure 5122
Dower barred by adultery.....5123
Rights, before assignment of dower 5124
Crops growing on dower land at death 5130
Right to husband's personal property 5273, 5274
Adultery bars rights in husband's personal estate 5277
Renunciation of will 5276
Damages for death by wrongful act 5787, 5788
Rights as to homestead....6536-6543
—when to cease.....6550
Rights as to property exempt from levy 6562

Digitized by Google

Sec.

WILD CAT
Premium on scalp 2729

WILD DUCK
See "Game"; "Hunting"; "Water Fowl"
Unlawful hunting 3356

WILD FOWL
See "Game"; "Hunting"; "Wild Water Fowl"
Preservation of, etc., powers of supervisors 2743
Taking by Commission of Fisheries for distribution, propagation, etc. 3360
Ducks, unlawful hunting 3356

WILD TURKEYS
See "Game"; "Hunting"; "Commissioner of Game"
Hunting, season for 3356
—unlawful 3356
Buying or selling prohibited....3358
Shipment from State 3361

WILD WATER FOWL
See "Game"; "Hunting"; "Wild Fowl"
Hunting of in Back Bay.....3347
Unlawful hunting 3356
Shipment from State 3361
—killing, possessing, etc., with intent to ship 3361
Laws relating to designated counties continued in force...3365

WILLIAM AND MARY COLLEGE
See also "Colleges and Universities"; "State Institutions"
General Assembly may continue appropriations to..Va. Const., § 141
Normal instruction and training. 934
Corporation, name 936
Property vested in 936
Admission of pupils 937
—apportionment 938
—vacancy 938
—tuition and fees 937, 938
Visitors, appointment, term, duties 935
—report 937
—expenses 938
—to nominate eligibles from faculty for State Board of Education 596
— —Va. Const., § 130
President, report 986, 989

WILLIAMSBURG
Eastern State Hospital for Insane at 1004, 1005
Jail, jailor 2868
Grand jurors from 4852
Circuit court 5887

WILL BOOKS
What recorded in 3393
—inventories and accounts of fiduciaries 5405, 5428
Index 3394

WILLS
See also "Bequests"; "Devisees"; "Devises"; "Legacies"
Capacity to make.....5227, 5228
Definition 5226
Devising real estate subject to payment of debts, effect on limitation of action to recover debt 5814
Directing that executor shall not give security.....5371
Executed how.....5229
Fraudulently destroying or concealing 4458
Holographic 5229
Of infant.....5228

Sec.

WILLS—Con.
List of lands devised furnished by clerk to commissioner of revenue 3275
Loan of chattels by, when valid against creditors.....5188
—reservation of property in chattels by condition, reversion, remainder, etc.....5188
Made prior to July 1, 1850, law governing 5246
Of non-resident.....5231, 5251
Power of appointment, execution 5230
—when not revoked by marriage 5232
—by terms of will.....5241
Property which may pass by, 5227, 5235
—personal property, infants.....5228
— —of soldiers or sailors.....5231
— —of non-residents.....5231
Provision for pretermitted children 5242, 5243
Recorded in will book.....3393
Of soldiers and seamen.....5231
Will book, what recorded in, 3393, 5405, 5428
—index 3394
Witnesses 5229
—creditors as.....5244
—executor as.....5245

Requisites and Validity

Execution, mode of.....5229
—when power of appointment exercised 5230
Revocation 5233
—by marriage.....5232
—intent 5232
Revival after revocation...5234, 5246
Effect of subsequent conveyance 5235
Re-execution 5246
Witnesses 5229
—creditors as.....5244
—executors as.....5245
Of will of infants.....5228
Of will of non-resident....5231, 5251
Of will of soldiers and seamen..5231

Probate

Of will containing devise or bequest for literary or educational purposes..... 589
Jurisdiction 5207
—of chancery court of city of Richmond 5247, 5920
—of clerks of courts.....5219
— —Va. Const., § 101
—hustings court of Richmond Part II.....5914
—court of law and chancery of the city of Norfolk.....5935
—court of law and chancery for city of Roanoke.....5947
Curator, during contest, appointment, power, duties.....5248, 5249
Appraisers 5249
Appeals from probate proceedings before clerk.....5249
Compelling production of will...5250
Proof of will wholly in handwriting of testator.....5229
Copy of foreign will proved without the State, extent admitted 5231, 5251
Deposition of attesting witness..5252
Summoning persons interested to appear 5253, 5254
—publication of process.....5255
Guardian ad litem.....5255
Hearing on motion.....5256
Trial by jury.....5257, 5259
—what evidence admissible.....5261
Judgment 5257, 5258
—when bar to bill in equity....5258
Ex-parte motion.....5259

Digitized by Google

Sec.

WILLS—Con.
Bill in equity to impeach or establish will.....5258-5260
—what evidence admissible.....5261
—when judgment on motion bar to 5258
—time for filing.....5259, 5260
— —as to infants and persons of unsound mind 5260
— —as to non-residents 5256
Recordation, where will kept....5262
—copies, where recorded.....5262
—effect of.....5262
—indexing 5262
—failure to record, effect of....5263
Appeals to Supreme Court of Appeals 6336, 6337
—Va. Const., § 88
Transfer fee on lands.....2347, 2348
Tax paid before will probabted..2403
Administration to cease when will probated.....5369
When not to affect title of purchaser from heir.....5263
Will directing that executor shall not give security.....5371

Construction
Conveyance of estate of inheritance or freehold by.....5141
Gifts of personal property by...5142
Interest in real estate disposed of by.....5147
Creation of future estates.....5147
Power of disposition in life tenant, when not to defeat remainder 5147
Devise without words of limitation, construction of.....5149
Rule in Shelley's case abolished.5152
Property which may pass by, 5227, 5235
—personal property of infants..5228
—of soldiers or sailors.....5231
—of non-residents.....5231
As if executed immediately before testator's death.....5236
Devises in general terms.....5240
Extent and operation of devises and bequests.....5241
Pretermitted children, where no child living when will made..5242
—after-born children.....5243
Limitation contingent on dying without heirs or heirs of the body, how construed.....5151

Rights and Liabilities of Devisees and Legatees
Advancements, when deemed satisfaction of devises or bequests 5237
Issue of legatee or devisee to take when.....5238
Devises failing, how to pass....5239
Residuary devise.....5239
Provision for child born after will made.....5243
When homicide bar to acquisition of estate by will.....5274
Widow, provisions for in will, renunciation by, how made, etc. 5276

WILLETS
See **"Game"; "Hunting"**
Unlawful hunting.....3356
Shipment from State.....3361

WILLOUGHBY BAY
Planting oysters or placing stakes within limits of fishery, penalty 3191

WINCHESTER
Jail, jailor.....2838
Commonwealth's attorney, fees..3505
Corporation court.....5905
—judge, qualification, election...5905

Sec.

WINE
See **"Intoxicating Liquors"**
As ardent spirits.....4581
Manufacture and sale of, when permitted 4588
—by druggist for medicinal purposes, prescription, etc.....4591
License to druggist to sell.....4599
—to wholesale druggist.....4600
Use of in hotels for cooking purposes, etc.....4602

WIRES
Over works of public service corporation, duty of person maintaining 3888

WISE COUNTY
Fees of Commonwealth's attorney 3505

WITNESSES
See also **"Criminal Procedure"; "Depositions"; "Evidence"; "Recognizances"**
To assignment of land office warrant 460
To contract reserving title to chattels 5189
To declaration of candidacy at primary election..... 229
To deed relinquishing citizenship 63
To dishonor of negotiable instrument for protest.....5716
To will.....5229
—when depositions taken and read 5252
—to prove holographic will.....5229
—to writing revoking.....5233
—creditors as.....5244
—executor as.....5245
To written consent of parent or guardian to marriage of minor 5078
Writings admitted to record on proof of signature by witnesses 5204
Adverse, impeachment.....6215, 6216
Affidavits of in habeas corpus proceeding 5854
Certificate of non-residence of as evidence.....6224
Contempt, summary punishment for 4521
—penalty for.....4524
—how fine imposed..4521, 4985, 6220
—power of justice to punish for.4522
—refusing to testify in prosecution for bribery.....4498
—in prosecution for unlawful gaining 4780
Corroboration of testimony of party when other party incompetent 6209
Cross-examination, of accused in criminal case.....4778
—party examined subject to rules of.....6214
Depositions, general provisions, 6225-5233
Fine, for disobedience of process, or contempt.....4524
—failing to attend and testify, or produce papers.....6220, 6221
—how imposed.....4521, 4985, 6220
Impeachment, of witness for Commonwealth in prosecution for bribery.....4498
—of accused in criminal case...4778
—conviction of felony or perjury shown as.....4779
—of adverse party.....6215, 6216
—by prior inconsistent statement 6215
— —in writing.....6215
—by party producing witness...6215

Digitized by Google

Sec.

WITNESSES—Con.
Interpreters 6223
Interrogatories to adverse party.6236
—production of books and papers in possession of.....6237, 6238
Intimidating or impeding, punishment 4525
Oath, who may administer.4969, 6222
—before General Assembly..... 304
—before school trustee electoral board 632
—before State Board of Embalming 1719
—before coroner.....4810
Parties, competency.....6208
—in criminal case.....4778
—compellable to testify.....6208
—refusing to testify, suit dismissed or plea struck out.....6213
—how examined.....6214
—corroboration required, when..6209
Penalty, for failing to attend, 4969, 6220
—for failing to testify.....4969, 6221
—for contempt.....4524
—how imposed.....4521, 4985, 6220
—for refusing to testify in prosecution for bribery.....4498
— —in prosecution for unlawful gaming 4780
—for failing to attend before school trustee electoral board. 632
—for refusing to testify before Commissioner of Labor.....1802
—for failing to attend before city councils, police or fire commissioners 2985
Perpetuation of testimony.....6235
—bill in equity.....6238
Privilege from arrest on civil process 2823
—not compelled to give evidence against himself...Va. Const., § 8
—waiver of privilege by testifying 4778
Privileged communications between husband and wife.6211, 6212
Recognizance for, how payable..4973
—penalty, conditions.....4973
—commitment for failure to give, when discharged.....4976
—in prosecutions for violation of prohibition law.....4613
—on appeal from judgment of conservator of peace requiring recognizance 4792
—by coroner to appear in court.4812
—of witness when accused arrested out of county in which offense was committed.....4837
—taken by justices.....4845
—on change of venue in criminal case.....4915
In suit on coupons from State bonds, officer, clerk or employee in office of Auditor or Treasurer as.....2618
In Supreme Court of Appeals in mandamus and prohibition proceedings 5837

Compelling Testimony—Immunity of Person Testifying

Not compelled to give evidence against himself...Va. Const., § 8
Privilege from arrest on civil process 2823
In prosecution for violation of laws relating to pure elections 258
In proceeding to abate nuisance.1528
Officers testifying before mayor of city.....3010
In prosecution for duelling or for homicide committed in duel 4425

Sec.

WITNESSES—Con.
In prosecution for bribery.....4498
In prosecutions for violations of prohibition law.....4674
In prosecution for corruptly influencing agents, servants, employees 4713
In prosecution for gaming.....4780
When statement made by accused, not received in evidence.4781
Privilege of witness attending court during elections, Va. Const., § 29

Compensation and Allowances

Fees 3529
—on lunacy commission.....1017
—of witness for Commonwealth.3512
—before State Corporation Commission 3744
—enforcement of prohibition laws 4655
—in investigations by directors of penitentiary.....5028
—payment in advance.....6220
— —in criminal case.....4969, 6220
—restriction of by court.....3532
—for certifying attendance and compelling payment for, to whom charged.....3490
—oath, entry.....3529
—payment of.....3530, 3501
— —certificates for.....3530
— —who not to become interested in.....3530
—time for presenting claim for.3531
—for entry of.....3532
—in criminal case.....4957
— —when prosecutor to pay....4953
— —payment by Commonwealth in misdemeanor cases.....4959
— —when case removed to United States court.....4971
— —payment in advance..4969, 6220
— —witness for Commonwealth.3512
—taxed in costs.....3501, 3535
—entry in order book and execution book.....3501
—how paid.....3501
Mileage, tolls, ferriage.....3529
—in criminal case.....4957
—to witnesses for Commonwealth 3512
—before State Corporation Commission 3744
—payment in advance.....6220
— —in criminal case.....4969, 6220

Competency

Of party.....6208
—corroboration, when necessary.6209
Interest not to disqualify.....6208
Accused, in criminal case.....4778
—effect of failure to testify....4778
—wife of in prosecution for pandering 4579
—husband and wife, for and against each other.....6210, 6211
— —presumption from failure to testify 6211
Of husband and wife for and against each other.....6210, 6211
—privileged communications, 6211, 6212
Of female, in prosecution for pandering 4579
Of person convicted of perjury or felony.....4779

Summoning and Attendance

Summons 6217
—in criminal case...4969, 6217, 6218
— —in jurisdiction in which accused was arrested.....4837
Subpoena duces tecum.....6218
—in criminal case.....4969, 6219
—before justice examining complaint 4824

Digitized by Google

Sec.

WITNESSES—Con.
—service by officer out of jurisdiction 6218
—penalty for failing to attend or to produce writings.....6220
—refusing to testify.....6221
Habeas corpus ad testificandum.5861
Analyst of agricultural seeds, when required to attend as...1150
Before boards of State institutions 1096
Before Board of Medical Examiners 1610
Before Board of Health.....1791
In investigations by Board of Charities and Corrections.....1902
Before board of supervisors.....2001
Chemist making analysis, when required to appear as.....4621
Before city or town councils....2952
Before city councils, board of police commissioners or board of fire commissioners.....2985
Before commission on lunatic, epileptic or inebriate.....1017
Before commissioner in chancery 6181, 6184
—power to attach and fine.....6181
— —appeal from order of.....6181
Before Commission of Fisheries.3258
In investigations by Commissioner of Insurance.....4189
Before Commissioner of Labor..1799
—penalty for refusing to testify.1802
In contested election.....261, 264
Before coroner's inquest, summons 4807, 4808, 4810
—on Sunday.....4817
—testimony reduced to writing and signed.....4810
—when recognized to appear in court 4812
Before escheator's inquest..... 494
Before General Assembly..... 303
Before grand jury.....4864
—investigations of violations of revenue laws.....2355
In investigation by inspector of accidents in mines.....1873
Before justice on trial of civil warrant 6021
Before lunacy commission.....1017
In proceeding to revoke license of dentist.....1650
Before school trustee electoral board 632, 666
Before State Accountant.....559, 565
Before State Corporation Commission 2239, 3711, 3722, 3729
—Va. Const., cl. c, § 156
Before State Tax Board.....2216

In Criminal Prosecutions

Summons 4969, 6217, 6218
—in jurisdiction in which accused was arrested.....4837
—before justice examining complaint 4824
—issued by Commonwealth's attorney 4969
—service out of jurisdiction.....6218
Subpoena duces tecum.....4969, 6219
Recognizance, how payable.....4973
—penalty, conditions.....4973
—commitment for failure to give, when discharged.....4976
—in prosecution for violation of prohibition law.....4613
—on appeal from judgment of conservator of peace requiring recognizance 4792
—by coroner.....4812
—when accused is arrested out of county in which crime was committed 4837
—taken by justices.....4845
—when venue changed.....4915
Oaths, who may administer, 4969, 6222

Sec.

WITNESSES—Con.
Fees 4957
—of witness for Commonwealth.3512
—payment in advance.....4969, 6220
—when prosecutor to pay.....4958
—payment by Commonwealth in misdemeanor cases.....4959
—when case removed to Federal court 4971
Mileage, ferriage, tolls.....3529, 4957
—payment in advance.....4969, 6220
May be separated.....4843
Testimony may be reduced to writing and signed.....4844
Accused, competency of.....4778
—effect of failure to testify....4778
—wife of in prosecution for pandering 4579
—husband and wife, for and against each other.....6219, 6211
—presumption from failure to testify 4778, 6211
—privileged communications, 6211, 6212
When statements of accused not received in evidence.....4781
Competency of female in prosecution for pandering.....4579
—of person prosecuted for gaming against witness for Commonwealth 4780
Cross-examination of accused...4778
Impeachment, of witness for Commonwealth in prosecution for bribery.....4498
—of accused.....4778
Procedure against on failure to attend and give evidence.4969, 6220
Commitment on refusal to testify 4969, 6221
Privilege of accused not to give evidence against himself, Va. Const., § 8
—waiver by testifying.....4773
Penalty for refusing to testify in prosecution for bribery....4498
—in prosecution for unlawful gaming 4780

WOLVES
Premium on scalp.....2729

WOMEN
See **"Females"; "Husband and Wife"; "Married Women"**
Eligible to office of notary public 2851
—Va. Const., § 32

WOOD
Cord, standard measure.....1470
Condemnation of.....4382
Burning, punishment.....4431
Setting fire to, punishment, 4434, 4435

WOODCOCK
Unlawful hunting, buying, selling, etc.....3356

WORDS AND PHRASES
See also **"Construction of Terms"**
Acceptance 5694, 5752
Action 1347, 5752
Adulterated food.....1181
Affirm 5
Affirmed 5
Agent 6066
Agricultural seed.....1138
Alien 4200
Any malpractice or any corrupt or unprofessional conduct.....3424
Ardent spirits.....4581
Bank 4123, 4131, 5752
Banker 4131
Bill 5752
Bill of exchange.....5688
Blend 1182
Board of Fisheries.....3270
Broker 2614
Bucket shop.....4714
Bucketing 4714

Digitized by Google

WORDS AND PHRASES—Con. Sec.

Bucket shopping....4714
Calendar month.... 5
Calendar year.... 5
Capital 2304, 3239
Cattle, meat.... 915
Certified accountant.... 567
Chartered accountant.... 567
C. P. A.... 567
C. A.... 567
Charge 3693
Charter 3693
Chattels real.... 5
Check 5747
Chiropody 1619
Cider vinegar....1191
Cities 5, 2972
Collector 2450
Colony 1066
Commercial fertilizer or fertilizer material....1125
Commercial manures, artificially manufactured, or manipulated fertilizers 1129
Commission 3270
Commission merchant....1257
Commissioner 1962, 3270
Commodities 4714
Common carriers....5795
Company 3693
Concentrated commercial feeding stuffs....1233
Constructive fees....3495
Contract 4714
Corporation 2822, 3693
Corporation court.... 5
Council 5, 2953
County 2822
County roads....1962
Credits 2304
Creditors 5200
Delinquent child....1906
Delivery 1347, 5752
Dentistry, practice of....1640
Dependent child....1906
Deranged 5
District of Columbia.... 5
Domestic 4200
Drug 1662
Drugs, adulterated....1663
—misbranded 1664
Duplicate 1304
Election 221
Electric railway....2208
Epileptic 1066
Executive power of Commonwealth 5
Farm produce....1257
Feeble-minded person....1075
Felony 4758
Fidelity company....4200
Fine 2577
Fish, fishes, fishing, fisheries....3161
Following 5
Food 1180, 1220
For lessee's quiet enjoyment of term 5183
Foreign 4200
Forest reserve fund.... 745
Fraternal benefit society....4273
Free from encumbrances....5175
Fungible goods....1347
Further assurances....5176
Garage 2150
Gender 5
General contractor....8426
General election.... 221
Goods 1347
Governor 5
Guaranty company....4200
Heirs 5152
Heirs of his body....5152
Hereditaments 5
Highways 1962
Holder 1214, 1347, 5752

WORDS AND PHRASES—Con. Sec.
—Va. Const., Cl. E, § 156
Householder 6566
Ice cream, varieties....1215
Idiot 5
Incorporated communities....2972
Indemnity company....4200
Indorsement 5752
Industrial sick benefit company.4351
In good faith....1347
Inlet 3181
Insane person....5, 1066
Insoluble phosphoric acid....1130
Instrument 5752
Insurance company....4200
In writing.... 5
Issue 5152, 5752
Judgment 5459
Justice 5
Justice of the peace.... 5
Keeper 4714
Laboring man....6566
Land 5
Lawful fence....3538
Local revenues....3481
Lodge system....4274
Lunatic 5
Medicine, practice of....1622
Milk, condensed....1215
—evaporated 1215
—concentrated 1215
—sweetened condensed....1215
—condensed skimmed....1215
Misbranded 1182
Misdemeanor 4758
Money 2304
Month 5
Mouth 3181
Neglected child....1906
Negotiable receipt....1293
No act to encumber 5177
Non compos.... 5
Non-negotiable receipt....1293
Non-resident 3212, 3255
Notary 5
Notary public.... 5
Note 5752
Number 5
Oath 5
Official publications of cities and towns 353
Optometry, practice of....1624
Order 1347
Overseer, overseers....2813
Owner 1347
Party 221
Per cent.... 5
Per centum.... 5
Permanent registration rolls or books 168
Person 5, 1188, 1214, 1347, 1665, 1773, 3693, 4714, 4582, 5752
Person having executive power. 5
Person primarily liable....5753
Person secondarily liable 5752
Personal estate.... 5
Personal representative.... 5
Pharmacy 1681
Pound net....3178
Preceding 5
Primary 221
Promissory note....5746
Public laundry....1545
Public place....4630
Public roads....1962
Public service corporation.3693, 3881
Public utility....4047
Public wash-house....1545
Pugilistic encounter....4426
Purchaser 1347, 5200
Quiet possession....5175
Railroad 5, 3881, 4260
Railroad company....3881
Railway 5
Rate 3693

Digitized by Google

Sec.

WORDS AND PHRASES—Con.
Real estate 5
Reasonable time 5754
Receipt 1347
Regulation 3693
Representative form of government 4275
Revenue of the State 2430
Right to convey 5174
Road 1962, 4757
Savings bank 4131
Seal 5
Second offense 4582
Sectarian society 3034
Securities 4714
Security company 4200
Service 4068
Soft drinks 4661
Soluble phosphoric acid 1130
Special election 141
State 5
Stationery 399
Sub-contractor 6426
Sunday 5, 4573
Swear 5
Sworn 5
Tenements 5
Territory 5
That he will leave the premises in good repair 5179, 5180
That he will not assign without leave 5179
That he will warrant generally .. 5171
That he will warrant specially .. 5171
The commission 3693
The lessor may re-enter for non-payment of rent 5182
The said . . . covenants 5170
Tidewater Virginia 3162
Timber dealers 1448
To pay the rent 5178, 5180
To pay the taxes 5178
To purchase 1347
Town 5, 2792
Transient guest 1585
Transmission company 3693, 3881
Transportation company ... 3693, 3881
Trust 4131
Trustees 590
Underwriters' agency 4313
United States 5
Unreasonable time 5754
Value 1347, 5752
Warehouseman 1347
Water supply 1785
Waterworks 1785
Will 5226
With general warranty 5173
With special warranty 5173
Works of art 583
Writing 5752
Written 5, 5758
Year 5
Year of our Lord 5

WORKHOUSE
Cities and towns may provide ... 3030

WORKSHOPS
See also **"Commissioner of Labor"; "Employer and Employees"**
Inspection of by factory inspector 1799
Female employees, hours of labor 180
Children, employment of, 1809-1811; 1814-1816
—penalty 1814
—by parent 1815
Sanitary facilities for employees 1822-1824
—expense of providing 1824
—prosecution for failure to furnish 1825, 1826, 1827
Stairs, hand rails, doors opening outward 1828, 1829

Sec.

WORKSHOPS—Con.
Safety appliances, guards for machinery, lighting 1830
Appeal from ruling of Commissioner of Labor 1831
—penalty 1832
Fire escapes 3141
—penalty for failing to provide. 3141

WOUNDING
With intent to kill, maim, etc., punishment 4402
In attempt to commit felony, punishment 4403
Live stock, dogs, fowls, etc., punishment 4467
Conviction of unlawful, on indictment for malicious 4920
Of guard by convict 5049, 5051

WRECKS
See also **"Commissioner of Wrecks"**
Property, preserving 3601
—interfering with, penalty 3605
—advertisement of 3606
—sale 3607, 3608
—sale, accounts to auditor 3609
—recovery of proceeds by State. 3610
Posting laws relating to 3611
Pay of laborers 3604

WRITS
See **"Process"**
For particular writs, see various titles
Attestation ..... Va. Const., § 106
To run in name of Commonwealth, Va. Const., § 106
Part of common law 3
To commence suit 6061
Supreme Court of Appeals may prescribe form of 5960
—may alter form of 6054
Action of ejectment commenced by 5456
Issued by State Tax Board 2216
—service of 2216
—in name of Commonwealth 2216
Issued by State Corporation Commission 3729
—where returnable 3697
—form, how issued and served .. 3730
—execution and return by bailiff. 3706

WRIT OF ELECTION
See **"Elections"**
To fill vacancy in General Assembly ..... Va. Const., § 47
How directed 135
For special elections 146, 147
For new election for general election 263
For removal of courthouse 2745
Election by town on bond issue, removal of county courthouse. 2749

WRIT OF ENTRY
Abolished 5489

WRIT OF ERROR
See also **"Appeals"; "Supreme Court of Appeals"**
From assessment for taxation, of property of railway or canal corporation ..... Va. Const., § 180
Jurisdiction of Supreme Court of Appeals 5865
—Va. Const., § 88
To courts of city of Richmond .. 5929
To court of law and chancery of city of Norfolk 5938
To court of law and chancery of city of Roanoke 5950
Petition for, cases in which allowed 6336, 6337
—Va. Const., § 88

Digitized by Google

Sec.

WRIT OF ERROR—Con.
To judgment against petitioner denied registration 103
Not allowed from determination of contested election 268
To judgment in proceedings on caveat against grant 449
In proceeding for removal of officer 2706
In proceeding forming city of first class 2912
On application of city or town to erect dam 3060
In proceeding for enforcement of forfeiture for violation of law.3376
To judgment of State Corporation Commission for contempt.3728
Appraisement of stock of dissenting stockholder, consolidation of corporations.....3822
To judgment refusing or requiring excessive bail 4930
In proceeding to establish boundaries of lands 5490
In habeas corpus proceedings...5859
Right to insist on original pleading after amendment 6116
When verdict reduced and accepted under protest 6335
Record, printing, cost of.....3486
—dismissal for failure to pay...3486
Bill of exceptions 6252
—certificate in lieu of.....6253
When motion for new trial unnecessary 6254
Vacation proceedings to prepare case for 6308
Time for 6337
When not allowed 6337
Suspension of execution 6338
Transcript of record.....6339-6345
—printing 6357-6360
Assignment of errors in petition.6346
Certificate to petition 6346
To whom petition presented....6347
Endorsement of judge on petition 6347
Refusal 6348
Allowance 6349
Certiorari 6345
Supersedeas, when allowed.....6349
—issuance 6350
Docketing 6350, 6361
—order of causes 6361
Process, issuance 6350
—endorsement of bond on 6352
Limitation 6355
Dismissal 6355, 6356
—reinstatement 6356
—finality 6356
—failure to indemnify surety...6353
Errors for which judgment not to be reversed 6331
—certificate of facts proved.....6331
Judgment, correction on appeal.6334
—motion for correction, necessity 6334
Hearing, order of causes...6361, 6362
What evidence considered.....6364
Damages awarded appellee, when 6366
—amount of 6366
Briefs and records, binding, &c..6371
Rehearing, application for, when granted 6372
—decision, entry, transmission to lower court 6372
Decision 6365
—affirmance or reversal, when...6365
—when cause remanded.....6365
—constitutional question 6365

Sec.

WRIT OF ERROR—Con.
—number of judges assenting...6365
—rule of, where evidence and not facts certified 6363
—transmission to lower court, 6367, 6368
—entry in lower court.....6369
—how executed 6369
Affirmance of judgment for specific property, damages for detention 6377
Change of parties by death or otherwise pending 6167
Bonds 6351
—how payable 287
—by whom taken 6352
—indemnity to surety 6353
—to suspend execution 6338
—in attachment proceeding.....6413

In Criminal Case

Suspension of sentence 4930
—bail 4930
When lies 4931
—for Commonwealth 4645, 4931
— —Va. Const., §§ 8, 88
In contempt proceedings 4932
Petition for 4933
—transcript of record with.....4933
—to whom presented 4934
Diminution of record 4933
Allowance of 4935
Operation as supersedeas 4935
Summons and supersedeas.....4936
Docketing and hearing.....4936
Decision 4937
—how certified to and entered by lower court 4939
Service on person sentenced to death 4944
Dismissal 4938, 6356
Printing record.....3486, 4938, 6357
Rehearing 4938, 6372
Defects in indictment sufficient to cause reversal 4879

WRIT OF FORMEDON
Abolished 5488

WRIT OF HABEAS CORPUS
See **"Habeas Corpus"**

WRIT DE HOMINE REPLEGIANDO
Abolished 5860

WRIT OF RIGHT
Abolished 5489

WRIT OF MANDAMUS
See **"Mandamus"**

WRIT OF POSSESSION
On judgment of justice.....6029
Issuance 6483
In unlawful entry or detainer, how enforced 6483
—in ejectment 6483
—for personal property 6483
—fieri facias for costs, damages and profits 6483

WRIT OF PROHIBITION
See **"Prohibition"**

WRIT OF QUO WARRANTO
See **"Quo Warranto"**

WRITINGS
Action on, debt or assumpsit. 5759, 5760
—payable to person dead at time of execution of 5761
—by assignee 5768-5770
—averred in pleading, when proof of signature not required 6125
—inquiry of damages 6132
Adopting trade mark or brand for timber 1449
Agreement for lien on crop.....6452

Digitized by Google

Sec.

WRITINGS—Con.
For amendment of charter of railroad corporation 3859
For amendment of charter of public service corporation.....3868
Appeals from decision of Superintendent of Public Instruction 613
Appeal from district school board 666
Appeal from decision of superintendent of schools to school trustee electoral board 719
Application, by voter for change of registration 100
—for license.....2360, 2361, 2362
—to Governor for remission of fine 2574
—by city or town for leave to erect dam 3054
—for assignment of oyster planting ground 3225
—for license to take oysters with scrapes and dredges.....3246
—to State Corporation Commission to examine bank 4120
—for permission to carry concealed weapon 4534
Appointment of person to preserve order at elections..... 193
Appointment of agent of mercantile business 5223
Appraisal of property forfeited under game, fish, oyster laws..3368
Approval of plan for schoolhouse 673
Assignment of land office warrant 460
—of oyster grounds 3228
By attorney in fact of married woman 5215
Binding minor as apprentice, 5302, 5303
—filing 5304
—transferring apprentice to new master 5305
—form 5305
Call of meeting of supervisors..2715
Charles against orchard inspector 902
Claiming homestead exemption in real estate 6532
—in personal estate 6540
—acquired by sale or exchange..6546
—waiving exemption 6548
— —enforcement of claim 6549
— —judgment, execution 6551
Complaint to commission merchant 1260
Complaint in proceeding to remove officer 2705
Complaint for examination into inflammable condition of premises 4190
Complaint upon which information filed 4866
Consent by land owner to trapping fur-bearing or hair-bearing animals 3348
—report to land owner of animals caught 3350
Consent to marriage of minor...5078
Consent to work mine near line of adjoining owner 5287
Contracts with public school teachers 690
Contract for purchase of real estate by county, or school board 2709
—disapproval of title by attorney 2709
Contracts of supervisors 2730

Sec.

WRITINGS—Con.
Contract reserving title to or lien on chattels for purchase price 5189
Contract for sale of land, defense to vendee in ejectment by vendor 5471, 5473
Contracts required to be in.....5561
To convey rights of wife.....5211
Copy, use in different suits.....6199
Decision of arbitrators as to division fence 3560
Decision of freeholders, construction of cattle-guard by railroad 3950
Definition 5
—in negotiable instruments law.5752
Depositions in lunacy proceedings 1017
Designation of agent by applicant to purchase delinquent land 2495
Employment agency, order of employer desiring employees..1803
Execution of by commissioner appointed by court.....6296, 6297
Forgery of 4489
For formation of fire company..3122
Gifts of real estate, necessity for 5141
Impeachment of witness by prior inconsistent statement in 6216
Intention to locate on land warrant when land is in possession of another 428
Larceny of 4442
—estimation of value of 4443
Liability of personal representative of deceased joint debtor..5762
Limitation of action on contract in writing 5810
—new promise.....5812, 5813, 5814
Loan of chattels by, when valid.5188
By minor designating guardian..5317
In negotiable instruments law, definition 5752
—conflict between written and printed provisions of negotiable instrument 5579
—indorsement 5593
—notice of dishonor.....5657, 5658
—renunciation of rights 5684
—acceptance of bill of exchange, 5694-5696
— —promise to accept 5697
— —acceptance for honor 5724
Notice of intention to be candidate for election to office..154, 168
Notice by absent voter of intention to vote 203
Notice of contest of election.... 259
—petition or complaint 267
Notice of proceeding to forfeit certificate of certified public accountant 570
Notice of orchard inspector to destroy trees 899
Notice of sale by warehouseman to satisfy lien 1322, 1323
Notice of inspector to mines that provisions as to oil are applicable 1884
Notice to owner to redeem land sold for delinquent taxes.....2470
Notice in contest of application to purchase delinquent land...2495
Notice of lien of attorney at law.3429
Notice of application for payment of attorney's fee out of funds in court 3430
Notice of intention to erect or repair division fence 3561
—of intention to let lands lie open 3561

Digitized by Google

Sec.

WRITINGS—Con.
Notice to mill owner of dam interfering with navigation 3578
Notice of unloading ballast, 3655, 3656
Notice in action of ejectment...5461
Notice of equitable defense to ejectment 5473
Notice to creditor to sue principal debtor 5774
Notice of motion for judgment generally 6046
Notice by sub-contractor to perfect mechanic's lien.....6428, 6429
Notice of sale to satisfy lien...6449
Oath of printer of ballots..... 156
Offer to commissioners of sinking fund to surrender bonds 2625
Payable to person dead at time of execution of 5761
Permit from harbor commissioners to build wharf 3675
Petition in appeal from denial of registration of voter 103
Petition for reference to voters, for increase of levy for school purposes 740
Petition for examination of turnpike 4078
Recordation of, by clerk of court 3392
—delivery to person entitled....3392
—indexing 3392
—writings partly proved.....3393
—admitted to record, when and by whom 5204
— —on certificate of acknowledgment 5205-5208
— —recitals in certificate.... ..5210
— —on certificate of proof by witnesses 5205
— —on acknowledgments outside of the United States.....5206
— —copy when original lost....5212
—acknowledgments on behalf of corporations 5207, 5208, 5209
—acknowledgments in representative capacity 5207
—priority when admitted to record on same day 5198
—when recorded in county, and when in corporation 5199
Release of part of amount of judgment or decree 6333
Relinquishing citizenship 63
Reports of executive officers and State institutions to Governor 320
Report of State cadet 849
Report by treasurer of violations of duty by commissioner of revenue 2384
Report of committee to hear applications for aid from local levy for pensions 2664
Report to oyster inspector of oysters shucked or packed....3239
Report of prosecutions under game laws 3342
Report to land owner of animal caught in trap 3350
Report of fires to State Corporation Commission 4185
Requests for drafting bills by Legislative Reference Bureau. 579
Reserving property in chattels by condition, reversion, remainder, etc. 5188
Seals 5562
Signature obtained by false pretenses 4459

Sec.

WRITINGS—Con.
Statement as to trespass by animals of non-resident 3543
Statute of frauds 5561
Subpoena to produce 6219, 6220
Summons to compel production of by adverse party.....6237
—bill in equity 6238
Sub-renting oyster ground.....3228
Threat of bodily injury contained in, punishment.....4537
Testimony of witnesses before coroner's inquest 4810
Testimony of witnesses in criminal trial before justice.....4844
Unacknowledged, preservation of by clerk of court 5213
To vacate plat of city or town lots 5221
With veto of city ordinance by mayor, assigning objections...3013
Will to be in 5229
—revocation of 5232
—renunciation of by widow....5276
Of widow waiving jointure.....5121
—renouncing will 5276

WRIT TAX
On appeal from denial of registration of voter 103

WYTHE COUNTY
Commonwealth's attorney, fees..3505

WYTHEVILLE
Branch of State law library at... 368
Supreme Court of Appeals, session 5866
—business 5868
—session of special court.....5873
—clerk 3378
— —office 3385
— —salary 3465

YEAR
Definition 5
Contract not to be performed in. writing required 5561

YELLOW FEVER
See **"Contagious Diseases"; "Public Health"**
Report, quarantine, etc.. 1497, 1500, 1505
Hospital, location.....1560
Transportation of dead bodies..1728

YORK COUNTY
Taking terrapins in, penalty....3297
—disturbing eggs 3297
—forfeiture of boats 3297
Commonwealth's attorney, fees.3505

YORK RIVER
Use of pound nets in.....3173, 3202
—penalty 3175
Fishing in 3202
—penalty for unlawful 3202

YORKTOWN
Ferries to Norfolk, Hampton, Accomac and Northampton counties 2040
—penalty for operating without license 2047

YOUNG MEN'S CHRISTIAN ASSOCIATION
Property of, exemption from taxation 2272, 2301
—Va. Const., § 183
Gifts to, inheritance tax on....2272
Not a sectarian society.....3034

YOUNG WOMEN'S CHRISTIAN ASSOCIATION
Not a sectarian society.....3034

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

ALDERMAN LIBRARY

The return of this book is due on the date indicated below

DUE	DUE

Usually books are lent out for two weeks, but there are exceptions and the borrower should note carefully the date stamped above. Fines are charged for over-due books at the rate of five cents a day; for reserved books there are special rates and regulations. Books must be presented at the desk if renewal is desired.

Digitized by Google

Digitized by Google

Digitized by Google